PHILIPPINE REPORTS

VOL. 803

JANUARY 9, 2017 TO JANUARY 23, 2017

VOLUME 803

REPORTS OF CASES

DETERMINED IN THE

SUPREME COURT

OF THE

PHILIPPINES

FROM

JANUARY 9, 2017 TO JANUARY 23, 2017

SUPREME COURT
MANILA
2018

Prepared
by

The Office of the Reporter
Supreme Court
Manila
2018

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PHILIPPINE REPORTS
CONTENTS

PHILIPPINE REPORTS

Page

Page

Page

Page

Page

Page

REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

SECOND DIVISION

[A.M. No. MTJ-16-1887. January 9, 2017]
(Formerly OCA IPI No. 15-2814-MTJ)

TRINIDAD GAMBOA-ROCES, *complainant, vs.* **JUDGE RANHEL A. PEREZ, Presiding Judge, Municipal Circuit Trial Court, Enrique Magalona-Manapla, Negros Occidental,** *respondent.*

SYLLABUS

1. JUDICIAL ETHICS; JUDGES; SHOULD METICULOUSLY OBSERVE THE PERIODS PRESCRIBED BY THE CONSTITUTION FOR DECIDING CASES, FOR FAILURE TO COMPLY WITH THE PRESCRIBED PERIOD TRANSGRESSES THE PARTIES' CONSTITUTIONAL RIGHT TO SPEEDY DISPOSITION OF THEIR CASES.— Section 15, Article VIII of the 1987 Constitution requires the lower courts to decide or resolve cases or matters for decision or final resolution within three (3) months from date of submission. In complaints for forcible entry and unlawful detainer as in this case, Section 10 of the Rules on Summary Procedure specifically requires that the complaint be resolved within thirty *(30)* days from receipt of the last affidavits and position papers. Without any order of extension granted by this Court, failure to decide even a single case within the required period constitutes gross inefficiency. In the same vein, Sections 2 and 5 of Canon 6 of the New Code of Judicial Conduct enjoin the judges to devote their professional activity to judicial duties and to perform

them, including the delivery of reserved decisions, efficiently, fairly, and with reasonable promptness. This obligation to render decision promptly is further emphasized in Administrative Circular No. 3-99 which reminds all judges to meticulously observe the periods prescribed by the Constitution for deciding cases because failure to comply with the prescribed period transgresses the parties' constitutional right to speedy disposition of their cases. The Court has always reminded the judges to attend promptly to the business of the court and to decide cases within the required periods for the honor and integrity of the Judiciary is measured not only by the fairness and correctness of the decisions rendered, but also by the efficiency with which disputes are resolved. Any delay in the disposition of cases erodes the public's faith and confidence in the Judiciary. Thus, judges should give full dedication to their primary and fundamental task of administering justice efficiently, in order to restore and maintain the people's confidence in the courts.

2. ID.; ID.; UNDUE DELAY IN RENDERING A DECISION; ESTABLISHED IN CASE AT BAR; PENALTY.— In this case, the explanation given by Judge Perez was too flimsy. His being inexperienced as a newly appointed judge and his explanation that the delay was not intended to prejudice the plaintiffs are not persuasive because it is his duty to resolve the cases within the reglementary period as mandated by law and the rules. These excuses only show his lack of diligence in discharging administrative responsibilities and professional competence in court management. **A judge is expected to keep his own listing of cases and to note therein the status of each case so that they may be acted upon accordingly and without delay. He must adopt a system of record management and organize his docket in order to monitor the flow of cases for a prompt and effective dispatch of business.** Under Sections 9 and 11, Rule 140 of the Rules of Court, as amended by A.M. No. 01-8-10-SC, undue delay in rendering a decision is a less serious charge punishable by either (a) suspension from the service without salary and other benefits for not less than one month nor more than three months; or (b) a fine of more than ₱10,000.00 but not more than ₱20,000.00. x x x [F]ollowing the mandate of the Rules of Court and jurisprudence, the Court imposes upon Judge Perez a fine in the amount of ₱10,000.00.

D E C I S I O N

MENDOZA, *J.*:

Before the Court is an administrative complaint filed by Trinidad Gamboa-Roces *(complainant)* charging Judge Ranhel A. Perez *(Judge Perez),* Presiding Judge, Municipal Circuit Trial Court, E.B. Magalona-Manapla, Negros Occidental *(MCTC),* with gross ignorance of the law for his failure to render judgment on the consolidated ejectment cases, docketed as Civil Case Nos. 451-M and 452-M, within the reglementary period as prescribed by law.

In her complaint, denominated as *Petition,*[1] dated November 17, 2015, complainant claimed that she was one of the plaintiffs in Civil Case Nos. 451-M and 452-M for unlawful detainer and damages. After the mediation proceedings and the Judicial Dispute Resolution proceedings failed in Civil Case No. 451-M, it was referred back to the MCTC for trial and was set for preliminary conference. As a new judge was soon to be assigned in the MCTC, the preliminary conference was reset to January 10, 2014, by Judge Evelyn D. Arsenio, the then acting Presiding Judge.

Complainant further stated that when Judge Perez was appointed and assumed office, her counsel filed two *(2)* separate motions for his inhibition in the two cases on the ground that she was previously involved in a legal confrontation with Judge Perez himself when he was representing his parents. Her motions, however, were denied in separate orders, dated March 7, 2014[2] and March 24, 2014,[3] respectively. Thereafter, Civil Case Nos. 451-M and 452-M were consolidated in the Order,[4] dated March 11, 2014. After the preliminary conference for the two cases

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

[2] *Id.* at 46-47.

[3] *Id.* at 48-49.

[4] *Id.* at 50-51.

was held, the parties were then required to file their respective position papers. Thereafter, Judge Perez issued the Order,[5] dated November 21, 2014, submitting the cases for resolution.

Complainant prayed that Judge Perez be found guilty of gross ignorance of the law for his failure to timely render judgment in the said cases. She claimed that despite the lapse of more than ten *(10)* months, Judge Perez failed to decide the cases in violation of the 30-day reglementary period within which to decide an ejectment case.

In his *Comment*,[6] Judge Perez admitted that Civil Case Nos. 451-M and 452-M were decided beyond the prescribed 30-day period and offered his deepest apologies, explaining that the delay was inadvertent and not intended to prejudice the plaintiffs. He explained that he was able to finish the final draft of his decision on December 1, 2014, but in his desire to have "a perfect decision," he did not immediately forward the draft to his Clerk of Court as he would still polish it. He, however, got distracted with other issues and matters in the office.

According to Judge Perez, it was only while preparing the monthly report for December 2014 that he realized he had not given the printed draft of the decision in the two cases to the Clerk of Court. He explained that reproducing the printed draft would be expensive considering the number of defendants in the case. He also failed to give the soft copy to the Clerk of Court as there was no internet connection in his office at the time and his laptop and computer at home were being serviced for maintenance. Thinking that he had already decided the cases except that he had yet to reproduce and send out copies of the decision, he included the said cases as decided in the monthly report. Thereafter, it escaped his attention to follow up on the cases.

Judge Perez further explained that he later discovered in August 2015 that the decision was not attached to the records

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[5] *Id.* at 59.

[6] *Id.* at 66-71.

of the cases when he requested to see the records while looking for a template of a pre-trial order. The mailing logbook was also checked and it was revealed that no decision in the consolidated cases had been mailed since December 2014. As he could no longer locate the printed draft decision which he thought he might have kept in his drawer, where he usually placed the scratch papers, he drafted the decision again. As it turned out, reproducing the number of copies for the parties took longer than anticipated as they were using a dot matrix printer which was placed inside the courtroom, thus, the Decision,[7] dated August 17, 2015, had not been received by complainant up until the complaint was filed on December 8, 2015.

In its Report,[8] dated September 7, 2016, the Office of the Court Administrator *(OCA)* recommended that the complaint be re-docketed as a regular administrative matter and that "Judge Perez be found GUlLTY of undue delay in rendering a decision or order and be ADMONISHED to be more mindful in the performance of his duties particularly in the prompt disposition of cases pending and/or submitted for decision/resolution before his court, with a STERN WARNING that a repetition of the same, or any similar infraction shall be dealt with severely."[9]

The Court agrees with the recommendation of the OCA except as to the penalty.

Without a doubt, Judge Perez failed to decide Civil Case Nos. 451-M and 452-M within the reglementary period as prescribed by law. These cases were submitted for decision on November 21, 2014, but up to the time of the filing of this complaint on December 8, 2015, or more than a year therefrom, no decision had been rendered. Judge Perez acknowledged his lapses and presented several excuses to justify his delay. He apologized and asked for compassion and understanding, citing mainly his inexperience as a newly appointed judge as a reason therefor.

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[7] *Id.* at 73-100.

[8] *Id.* at 101-104.

[9] *Id.* at 104.

The Court's Ruling

Section 15, Article VIII of the 1987 Constitution requires the lower courts to decide or resolve cases or matters for decision or final resolution within three (3) months from date of submission. In complaints for forcible entry and unlawful detainer as in this case, Section 10 of the Rules on Summary Procedure specifically requires that the complaint be resolved within thirty *(30)* days from receipt of the last affidavits and position papers. Without any order of extension granted by this Court, failure to decide even a single case within the required period constitutes gross inefficiency.[10]

In the same vein, Sections 2 and 5 of Canon 6 of the New Code of Judicial Conduct enjoin the judges to devote their professional activity to judicial duties and to perform them, including the delivery of reserved decisions, efficiently, fairly, and with reasonable promptness. This obligation to render decision promptly is further emphasized in Administrative Circular No. 3-99 which reminds all judges to meticulously observe the periods prescribed by the Constitution for deciding cases because failure to comply with the prescribed period transgresses the parties' constitutional right to speedy disposition of their cases.[11]

The Court has always reminded the judges to attend promptly to the business of the court and to decide cases within the required periods[12] for the honor and integrity of the Judiciary is measured not only by the fairness and correctness of the decisions rendered, but also by the efficiency with which disputes are resolved.[13] Any delay in the disposition of cases erodes the public's faith and confidence in the Judiciary.[14] Thus, judges should give full

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[10] *Saceda v. Judge Gestopa, Jr.,* 423 Phil. 420, 424 (2001).

[11] *Cabares v. Judge Tandinco, Jr.,* 675 Phil. 453, 456 (2011).

[12] Canon 3, Rule 3.05 of the Code of Judicial Conduct.

[13] *Office of the Court Administrator v. Judge Reyes,* 566 Phil. 325, 333 (2008), citing *Petallar v. Judge Pullos,* 464 Phil. 540 (2004).

[14] *Guillas v. Judge Muñez,* 416 Phil. 198, 204 (2001).

dedication to their primary and fundamental task of administering justice efficiently, in order to restore and maintain the people's confidence in the courts.[15]

In this case, the explanation given by Judge Perez was too flimsy. His being inexperienced as a newly appointed judge and his explanation that the delay was not intended to prejudice the plaintiffs are not persuasive because it is his duty to resolve the cases within the reglementary period as mandated by law and the rules. These excuses only show his lack of diligence in discharging administrative responsibilities and professional competence in court management. **A judge is expected to keep his own listing of cases and to note therein the status of each case so that they may be acted upon accordingly and without delay. He must adopt a system of record management and organize his docket in order to monitor the flow of cases for a prompt and effective dispatch of business.**[16]

Under Sections 9 and 11, Rule 140 of the Rules of Court, as amended by A.M. No. 01-8-10-SC,[17] undue delay in rendering a decision is a less serious charge punishable by either (a) suspension from the service without salary and other benefits for not less than one month nor more than three months; or (b) a fine of more than ₱10,000.00 but not more than ₱20,000.00.

In the case of *Saceda v. Judge Gestopa, Jr.*,[18] the respondent judge, after being found guilty of gross inefficiency, was fined in the amount of ₱10,000.00 for his failure to render judgment in a complaint for ejectment within the 30-day reglementary period as required by the Rules on Summary Procedure. Similarly, in the case of *Petallar v. Judge Pullos*,[19] the Court found the

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[15] *Request of Judge Irma Zita V. Masamayor, RTC-Br. 52, Talibon, Bohol for extension of time to decide Civil Case No. 0020 and Criminal Case No. 98-384,* 374 Phil. 556, 561 (1999).

[16] *Cabares v. Judge Tandinco, Jr.*, 675 Phil. 453, 457 (2011).

[17] Promulgated on September 11, 2001 and took effect on October 1, 2001.

[18] 423 Phil. 420 (2001).

[19] 464 Phil. 540 (2004).

respondent judge liable for undue delay in rendering a decision and was fined in the amount of ₱10,000.00.

Thus, following the mandate of the Rules of Court and jurisprudence, the Court imposes upon Judge Perez a fine in the amount of ₱10,000.00.

WHEREFORE, finding respondent Judge Ranhel A. Perez, Municipal Circuit Trial Court, E.B. Magalona-Manapla, Negros Occidental, **GUILTY** of undue delay in rendering a decision, the Court hereby orders him to pay a **FINE** in the amount of **TEN THOUSAND PESOS** (₱10,000.00), with **STERN WARNING** that a repetition of the same or similar offense shall be dealt with more severely.

SO ORDERED.

Carpio (Chairperson), Peralta, Leonen, and *Jardeleza,*[*] *JJ.*, concur.

FIRST DIVISION

[G.R. No. 187448. January 9, 2017]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **ALFREDO R. DE BORJA,** *respondent*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; QUESTIONS OF FACT; A REVIEW OF THE DISMISSAL OF A COMPLAINT WHERE THE PROPRIETY OF THE TRIAL COURT'S GRANTING OF A DEMURRER TO EVIDENCE WAS THE CRUX OF THE CONTROVERSY

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[*] Per Special Order No. 2416 dated January 4, 2017.

NATURALLY ENTAILS A CALIBRATION OF THE EVIDENCE ON RECORD WHICH INVOLVES A QUESTION OF FACT.— A demurrer to evidence is a motion to dismiss on the ground of insufficiency of evidence. It is a remedy available to the defendant, to the effect that the evidence produced by the plaintiff is insufficient in point of law, whether true or not, to make out a case or sustain an issue. The question in a demurrer to evidence is whether the plaintiff, by his evidence in chief, had been able to establish a *prima facie* case. In *Felipe v. MGM Motor Trading Corp*., wherein the propriety of the trial court's granting of a demurrer to evidence was the crux of the controversy, we held that a review of the dismissal of the complaint naturally entailed a calibration of the evidence on record to properly determine whether the material allegations of the complaint were amply supported by evidence. This being so, where the resolution of a question requires an examination of the evidence, the credibility of the witnesses, the existence and the relevance of surrounding circumstances, and the probability of specific situations, the same involves a question of fact.

2. **ID.; ID.; ID.; PETITION FOR REVIEW UNDER RULE 45; LIMITED ONLY TO QUESTIONS OF LAW.—** [F]actual questions are not the proper subject of a petition for review under Rule 45, the same being limited only to questions of law. Not being a trier of facts, the Court is not duty-bound to analyze and weigh again the evidence already considered in the proceedings below. For such reasons, the Court has consistently deferred to the factual findings of the trial court, in light of the unique opportunity afforded them to observe the demeanor and spontaneity of the witness in assessing the credibility of their testimony.

3. **ID.; ID.; DEMURRER TO EVIDENCE; A DISMISSAL ON THE BASIS OF A DEMURRER TO EVIDENCE IS SIMILAR TO A JUDGMENT WHICH IS A FINAL ORDER RULING ON THE MERITS OF A CASE.—** [A]nent the claim of respondent De Borja that the Petition had already been rendered moot and academic due to the dismissal of Civil Case No. 0003 by the SB, the Court finds the same lacking in merit. It is axiomatic that a dismissal on the basis of a demurrer to evidence is similar to a judgment; it is a final order ruling on the merits of a case. Hence, when petitioner Republic brought

the instant appeal before this Court, the same was limited to respondent De Borja's liability alone. In this regard, the propriety of the SB's granting of respondent De Borja's Demurrer to Evidence, which is the subject matter of this case, is separate and distinct from the subject matter of the appeal in G.R. No. 199323, *i.e.*, liability of Velasco, et al. Thus, respondent De Borja's claim in his Motion to Dismiss that "the complaint against [him] was dismissed not only once — but twice" is inaccurate and legally flawed. Perforce, it is of no moment that the SB dismissed Civil Case No. 0003 as the same was merely with respect to the respondents other than respondent De Borja who, by then, was already confronted with the instant appeal brought by petitioner Republic.

4. ID.; EVIDENCE; BURDEN OF PROOF; DEFINED; IN CIVIL CASES, THE BURDEN OF PROOF IS ON THE PLAINTIFF TO ESTABLISH HIS CASE BY PREPONDERANCE OF EVIDENCE.— Case law has defined "burden of proof" as the duty to establish the truth of a given proposition or issue by such quantum of evidence as the law demands in the case at which the issue arises. In civil cases, the burden of proof is on the plaintiff to establish his case by preponderance of evidence, *i.e.*, superior weight of evidence on the issues involved. "Preponderance of evidence" means evidence which is of greater weight, or more convincing than that which is offered in opposition to it.

5. ID.; CIVIL PROCEDURE; DEMURRER TO EVIDENCE; IT IS PREMATURE TO SPEAK OF PREPONDERANCE OF EVIDENCE IN A DEMURRER TO EVIDENCE BECAUSE IT IS FILED PRIOR TO THE DEFENDANT'S PRESENTATION OF EVIDENCE.— In a demurrer to evidence, x x x it is premature to speak of "preponderance of evidence" because it is filed *prior* to the defendant's presentation of evidence; it is precisely the office of a demurrer to evidence to expeditiously terminate the case *without the need* of the defendant's evidence. Hence, what is crucial is the determination as to whether the plaintiff's evidence entitles it to the relief sought.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Alfonso M. Cruz Law Offices for respondent.

D E C I S I O N

CAGUIOA, *J.*:

Before this Court is an Appeal by *Certiorari*[1] filed under Rule 45 of the Rules of Court (Petition), seeking review of the Resolutions dated July 31, 2008[2] and March 25, 2009[3] issued by the Sandiganbayan (SB) — First Division in Civil Case No. 0003.[4] The Resolution dated July 31, 2008 granted respondent Alfredo De Borja's (De Borja) Demurrer to Evidence dated April 15, 2005[5] (Demurrer to Evidence), while the Resolution dated March 25, 2009 denied petitioner Republic of the Philippines' (Republic) Motion for Reconsideration dated August 15, 2008[6] of the Resolution dated July 31, 2008.

The Factual Antecedents

The case stems from a Complaint[7] filed by petitioner Republic, represented by the Presidential Commission on Good Government, for "Accounting, Reconveyance, Forfeiture, Restitution, and Damages" (Complaint) before the SB (Civil Case No. 0003) for the recovery of ill-gotten assets allegedly amassed by the

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[1] *Rollo*, pp. 11-32.

[2] *Id.* at 54-63. Penned by Presiding Justice Diosdado M. Peralta (now a Member of this Court), with Associate Justices Rodolfo A. Ponferrada and Efren N. De La Cruz concurring.

[3] *Id.* at 49-52. Penned by Associate Justice Norberto Y. Geraldez, with Associate Justices Efren N. De La Cruz and Rodolfo A. Ponferrada concurring.

[4] Entitled "*Republic of the Philippines v. Geronimo Z. Velasco, Ferdinand E. Marcos, Imelda R. Marcos, Alfredo R. De Borja, Epifanio Verano, Gervel Inc., Telin Development Corporation, Republic Glass Corporation, Nobel (Phils.), Inc., ACI Philippines, Inc., Private Investments Co. for Asia, Central Azucarera De Danao, Malaganas Coal Mining Corporation, S.A. (Panama), Decision Research Management (Hongkong), Atlantic Management Corp. (USA)*".

[5] *Rollo*, pp. 484-508.

[6] *Id.* at 68-74.

[7] Third Amended Complaint dated September 20, 1991 (*id.* at 188-213). The Third Amended Complaint was admitted by the SB in its Resolution promulgated on January 28, 1992 (*id.* at 214-219).

individual respondents therein, singly or collectively, during the administration of the late President Ferdinand E. Marcos.[8]

Geronimo Z. Velasco (Velasco), one of the defendants in Civil Case No. 0003, was the President and Chairman of the Board of Directors of the Philippine National Oil Company (PNOC).[9] Herein respondent De Borja is Velasco's nephew.[10]

It appears from the records that PNOC, in the exercise of its functions, would regularly enter into charter agreements with vessels and, pursuant to industry practice, vessel owners would pay "address commissions" to PNOC as charterer, amounting to five percent (5%) of the total freight.[11] Allegedly, during the tenure of Velasco, no address commissions were remitted to PNOC.[12]

Instead, starting 1979, the percentage of the address commission no longer appeared in the charter contracts and the words "as agreed upon" were substituted therefor, per instructions of Velasco.[13] As a result, the supposed address commissions were remitted to the account of Decision Research Management Company (DRMC), one of the defendant corporations in Civil Case No. 0003 and the alleged conduit for address commissions.[14] Velasco was likewise alleged to have diverted government funds by entering into several transactions involving the purchase of crude oil tankers and by reason of which he received bribes, kickbacks, or commissions in exchange for the granting of permits, licenses, and/or charters to oil tankers to service PNOC.[15]

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[8] *Id.* at 189.

[9] *Id.* at 201.

[10] *Id.* at 192.

[11] *Id.* at 203.

[12] See *id.*

[13] *Id.*

[14] *Id.*

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

Given the foregoing, petitioner Republic claimed that it was De Borja who collected these address commissions in behalf of Velasco, basing its allegation on the testimony of Epifanio F. Verano[16] (Verano), a witness for petitioner Republic. De Borja was further alleged to have acted as Velasco's dummy, nominee, and/or agent for corporations he owned and/or controlled, such as DRMC.[17]

After the filing of the parties' responsive pleadings, trial on the merits ensued. Subsequently, upon the conclusion of its presentation of evidence, petitioner Republic submitted its Formal Offer of Evidence dated March 6, 1995.[18]

On April 15, 2005, respondent De Borja filed his Demurrer to Evidence of even date, stating therein, among others: (i) that Verano, on two (2) occasions, testified that he delivered an envelope to Velasco who, in turn, instructed him to deliver the same to De Borja; (ii) that Verano admitted that the envelope was sealed; (iii) that Verano did not open the envelope and therefore had no knowledge of the contents thereof; (iv) that Verano did not deliver the envelope personally to De Borja; and (v) that Verano did not confirm whether De Borja in fact received the said envelope.[19]

In turn, petitioner Republic filed a Comment/Opposition dated May 9, 2005,[20] to which respondent De Borja filed a Reply dated June 2, 2005.[21]

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[16] Vice President of PNOC and allegedly acted as negotiator for PNOC with respect to the chartered vessels (*id.* at 203). While originally, Epifanio F. Verano was a defendant, in the SB's Resolution dated March 21, 1995, the PCGG granted him full immunity from criminal prosecution in exchange for his testimony in connection with Civil Case No. 0003 (See *rollo*, p. 379).

[17] *Id.* at 203.

[18] *Id.* at 328-352.

[19] *Id.* at 487-488.

[20] *Id.* at 509-525.

[21] *Id.* at 22.

Ruling of the SB

In its Resolution dated July 31, 2008, the SB found that the evidence presented was insufficient to support a claim for damages against De Borja, thereby granting respondent De Borja's Demurrer to Evidence. In the said Resolution, the SB ratiocinated:

> After an assessment of the arguments raised by defendant De Borja and the comments thereto of plaintiff, **this Court finds that the plaintiff has failed to present sufficient evidence to prove that defendant De Borja is liable for damages as averred in the complaint**.
>
> Among the witnesses presented by plaintiff, the Court focused on the testimony of the witness for plaintiff Epifanio F. Verano, who was presented to prove that on two occasions, defendant Velasco instructed Verano to deliver to defendant De Borja envelopes containing money which constituted commissions given by ship brokers.
>
> Upon cross-examination, however, **witness Verano admitted that although he was instructed to deliver two envelopes to the office of De Borja, he did not know for a fact that De Borja actually received them. Moreover, witness Verano testified that after he delivered the envelopes, he did not receive any word that they did reach De Borja, nor did Verano confirm De Borja's receipt of them**.
>
> x x x x x x x x x
>
> Plaintiff also sought to prove defendant De Borja's participation in the alleged utilization of public funds by the affidavit executed by Jose M. Reyes. However, the affiant Jose M. Reyes never testified in open court, as he had a heart attack two days before he was scheduled to take the witness stand. x x x
>
> x x x In this case, **where the plaintiff's evidence against defendant De Borja consists only of Verano's testimony and Reyes' affidavit, no preponderance of evidence has been satisfactorily established**.[22] (Emphasis supplied)

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

Petitioner Republic then filed its Motion for Reconsideration dated August 15, 2008,[23] which was denied by the SB in the Resolution March 25, 2009.

Hence, petitioner Republic filed the instant Petition solely with respect to the liability of respondent De Borja, claiming that the SB erred in granting the Demurrer to Evidence and in denying its Motion for Reconsideration dated August 15, 2008.

In a Resolution dated July 15, 2009,[24] the Court required respondent De Borja to file a Comment. In compliance with the Court's directive, respondent De Borja filed his Comment dated September 11, 2009,[25] reiterating the insufficiency of the evidence adduced before the SB (*e.g.*, testimony of Verano, affidavit of deceased Jose M. Reyes).

Petitioner Republic then filed its Reply dated June 10, 2010[26] in due course. A Motion for Early Resolution dated June 7, 2011[27] was thereafter filed by respondent De Borja, which was noted by the Court in its Resolution dated August 10, 2011.[28]

Parenthetically, on June 16, 2011, the SB rendered a Decision dismissing Civil Case No. 0003 with respect to the remaining respondents therein. This, in turn, was subject of an appeal before this Court[29] and docketed as G.R. No. 199323, entitled "Republic of the Philippines *vs.* Geronimo Z. Velasco, *et al.*" On July 28, 2014, the Court rendered a Resolution, denying the appeal. Thereafter, an Entry of Judgment was made with respect to G.R. No. 199323. Subsequently, on December 6, 2016, respondent De Borja filed a Motion to Dismiss dated

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[23] *Id.* at 68-74.

[24] *Id.* at 527-528.

[25] *Id.* at 545-583.

[26] *Id.* at 645-654.

[27] *Id.* at 659-662.

[28] *Id.* at 665.

[29] First Division.

December 2, 2016,[30] on the ground that the Petition had been rendered moot and academic by reason of the said Entry of Judgment, which affirmed the June 16, 2011 Decision and November 15, 2011 Resolution of the SB that dismissed Civil Case No. 0003.

Issue

The issue presented for the Court's resolution is whether or not the SB committed reversible error in granting respondent De Borja's Demurrer to Evidence.

The Court's Ruling

Before proceeding to the substantive issue in this case, and for the guidance of the bench and bar, the Court finds it proper to first discuss procedural matters.

A demurrer to evidence is a motion to dismiss on the ground of insufficiency of evidence. It is a remedy available to the defendant, to the effect that the evidence produced by the plaintiff is insufficient in point of law, whether true or not, to make out a case or sustain an issue.[31] The question in a demurrer to evidence is whether the plaintiff, by his evidence in chief, had been able to establish a *prima facie* case.[32]

In *Felipe v. MGM Motor Trading Corp.*,[33] wherein the propriety of the trial court's granting of a demurrer to evidence was the crux of the controversy, we held that a review of the dismissal of the complaint naturally entailed a calibration of the evidence on record to properly determine whether the material allegations of the complaint were amply supported by evidence. This being so, where the resolution of a question requires an examination of the evidence, the credibility of the witnesses,

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[30] *Rollo*, pp. 667-678.

[31] See *Felipe v. MGM Motor Trading Corp.*, G.R. No. 191849, September 23, 2015, p. 5.

[32] *Spouses Condes v. Court of Appeals*, 555 Phil. 311, 323 (2007).

[33] *Felipe v. MGM Motor Trading Corp.*, *supra* note 31, at 5-6.

the existence and the relevance of surrounding circumstances, and the probability of specific situations, the same involves a question of fact.[34]

In this regard, the Court emphasizes that factual questions are not the proper subject of a petition for review under Rule 45, the same being limited only to questions of law.[35] Not being a trier of facts, the Court is not duty-bound to analyze and weigh again the evidence already considered in the proceedings below.[36] For such reasons, the Court has consistently deferred to the factual findings of the trial court, in light of the unique opportunity afforded them to observe the demeanor and spontaneity of the witness in assessing the credibility of their testimony.[37]

Further, in his Comment dated September 11, 2009, respondent De Borja points out the inadvertence of petitioner Republic, through the Office of the Solicitor General, to submit proof of service on the Sandiganbayan of a copy of the instant Petition and the preceding Motion for Extension of Time to File Petition for Review dated April 29, 2009.[38] In this regard, the failure of petitioner Republic to strictly comply with Section 5(d), Rule 56 of the Rules of Court already renders its Petition dismissible.[39]

Nevertheless, considering that rules of procedure are subservient to substantive rights, and in order to finally write *finis* to this prolonged litigation, the Court hereby dispenses

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[34] *Zoleta v. Sandiganbayan (Fourth Division)*, G.R. No. 185224, July 29, 2015, 764 SCRA 110, 121.

[35] Section 1, Rule 45, RULES OF COURT.

[36] *Miro v. Vda. de Erederos*, 721 Phil. 772, 785 (2013).

[37] See *People v. Gahi*, 727 Phil. 642, 658 (2014).

[38] *Rollo*, pp. 547-548.

[39] SEC. 5. *Grounds for dismissal of appeal*. – The appeal may be dismissed *motu proprio* or on motion of the respondent on the following grounds:

x x x x x x x x x

(d) Failure to comply with the requirements regarding proof of service and contents of and the documents which should accompany the petition;

with the foregoing lapses in the broader interest of justice. The Court has repeatedly favored the resolution of disputes on the merits, rather than on procedural defects.

Further, anent the claim of respondent De Borja that the Petition had already been rendered moot and academic due to the dismissal of Civil Case No. 0003 by the SB, the Court finds the same lacking in merit. It is axiomatic that a dismissal on the basis of a demurrer to evidence is similar to a judgment; it is a final order ruling on the merits of a case.[40] Hence, when petitioner Republic brought the instant appeal before this Court, the same was limited to respondent De Borja's liability alone. In this regard, the propriety of the SB's granting of respondent De Borja's Demurrer to Evidence, which is the subject matter of this case, is separate and distinct from the subject matter of the appeal in G.R. No. 199323, *i.e.*, liability of Velasco, et al.

Thus, respondent De Borja's claim in his Motion to Dismiss that "the complaint against [him] was dismissed not only once — but twice" is inaccurate and legally flawed. Perforce, it is of no moment that the SB dismissed Civil Case No. 0003 as the same was merely with respect to the respondents other than respondent De Borja who, by then, was already confronted with the instant appeal brought by petitioner Republic.

The singular question for the Court now is this: whether petitioner Republic was able to adduce sufficient evidence to prove the alleged complicity of respondent De Borja with the required quantum of evidence.

After a judicious review of the records and the submissions of the parties, the Court rules in the negative.

Case law has defined "burden of proof" as the duty to establish the truth of a given proposition or issue by such quantum of evidence as the law demands in the case at which the issue arises.[41] In civil cases, the burden of proof is on the plaintiff

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[40] *Republic v. Gimenez*, G.R. No. 174673, January 11, 2016, p. 2.

[41] *Far East Bank & Trust Company v. Chante*, 719 Phil. 221, 233 (2013).

to establish his case by preponderance of evidence, *i.e.*, superior weight of evidence on the issues involved.[42] "Preponderance of evidence" means evidence which is of greater weight, or more convincing than that which is offered in opposition to it.[43]

In a demurrer to evidence, however, it is premature to speak of "preponderance of evidence" because it is filed *prior* to the defendant's presentation of evidence; it is precisely the office of a demurrer to evidence to expeditiously terminate the case *without the need* of the defendant's evidence.[44] Hence, what is crucial is the determination as to whether the plaintiffs evidence entitles it to the relief sought.

Specifically, the inquiry in this case is confined to resolving whether petitioner Republic is entitled to "Accounting, Reconveyance, Forfeiture, Restitution, and Damages" based on the evidence it has presented.

As repeatedly stressed by respondent De Borja, the only evidence presented with respect to his liability is the testimony of Verano and the affidavit of one Jose M. Reyes, as summarized below:

(i) Affidavit of Jose M. Reyes

With respect to the affidavit of Jose M. Reyes, his non-appearance before the SB due to his untimely demise rendered the same inadmissible in evidence for being hearsay, as correctly observed by the SB.[45]

(ii) Testimony of Verano

Verano was presented to prove that on two (2) occasions, Velasco had instructed him to deliver to De Borja envelopes allegedly containing the "address commissions".[46]

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[42] Section 1, Rule 133, RULES OF COURT.

[43] *Spouses Condes v. Court of Appeals, supra* note 32.

[44] *Id.* at 323-324.

[45] See *rollo*, p. 61.

[46] *Id.* at 60.

SOL URETA

Q: Could you tell us about, if you know, any particular instance any payment by address commission to PNOC?

A: I begly (sic) recall. A broker coming to the house handing me a brown envelope for delivery to the Minister.

Q: Who is the Minister?

A: Minister Velasco.

x x x x x x x x x

Q: **Do you know the contents of that envelope, Mr. witness?**

A: **It was sealed. Since it is for somebody else I did not open it.**

Q: What did he say at that time he handed to you that envelope?

A: He said that is from "X-C".

x x x x x x x x x

Q: Would you tell us what was your understanding as to the contents of that particular envelope?

ATTY. MENDOZA

Objection, your Honor please, it calls for an opinion.

PJ GA[R]CHITORENA

Lay the basis...

SOL URETA

Q: Mr. witness, according to you the envelope was given to you and for what purpose again?

ATTY. MENDOZA

Already answered. He said it was to be delivered.

PJ GA[R]CHITORENA

Q: **And he did not know the contents because it was a sealed envelope.**

SOL URETA

Q: **Were there any indication from Mr. Heger at that time as to what that particular envelope contained?**

A: **No, he did not say so.**

Q: But then could you tell us what was your impression...

PJ GA[R]CHITORENA

Impression as to what?

SOL URETA

As to the nature of delivery.

ATTY. MENDOZA

Objection, that calls for an opinion.

x x x x x x x x x

PJ GA[R]CHITORENA

It could contain shirt, it could contain pieces of paper, it could contain clippings. You must show that you have basis for that question. But in fact he said, he do (*sic*) not know. He did (*sic*) know what contents was (*sic*). Any question along that line will be a guess. He is not expert at feelings (*sic*) things in coming out with a result . . . We know which was you want (*sic*) to go and for that very reason Mr. Mendoza is objecting because you give us the false.

Q: What did you do with that envelope for heaven's sake?

A: I brought it to him. What will I do with it it's not mine. I was told to give it to the Minister.

SOL URETA

Q: What happened when you weren't (*sic*) to the Minister?

A: To bring it to the office of Mr. de Borja.

x x x x x x x x x

Q: What did Mr. Velasco say with respect to that envelope.

A: He told me to bring it to Mr. de Borja.

Q: Who is Mr. de Borja?

A: At that time he was connected with Gerver.

Q: **What happened when you brought it to the office of Mr. de Borja?**

A: **I brought it to the office of Mr. de Borja and he wasn't there, so I just left it.**

x x x x x x x x x

SOL URETA

Q: Were there other occasions when envelope (*sic*) was given to you by a broker?

A: I recall once in early 80's.

Q: Who was the particular broker that brought to you the envelope?

A: Mr. David Reynolds.

Q: Will you tell us the circumstance of that delivery?

A: Well, he just came to the office I thought he was going there for a cup of coffee and then he said give this to Mr. Velasco, that's it.

Q: Did you know where that envelope that (*sic*) particular time?

A: I brought it over to Makati because I was holding office along Roxas Blvd.

Q: To whom did you bring that envelope?

A: To the office of Mr. Velasco.

Q: What happened afterwards when you brought the envelope to Mr. Velasco?

A: Again he told me to bring it over to Gerver.

Q: Did you bring it to Gerver?

A: I left it there.

PJ GA[R]CHITORENA

Q: To whom did you left (*sic*) it?

A: **Supposed to be for Mr. de Borja, but Mr. de Borja was not around.**

x x x x x x x x x

Q: The first one, when was it more or less, when somebody called, Mr. Heger?

A: Late '70's, your Honor. [t.s.n. pp. 114-123, March 1995-Verano on Direct.][47] (Additional emphasis supplied)

Moreover, during Verano's cross-examination, it was revealed that he was not knowledgeable of the contents of the envelopes and that he also never confirmed whether respondent De Borja had actually received them:

Q: Referring to this envelope which you mentioned in your direct testimony, both the envelopes delivered by Mr. Hagar to you and Mr. Reynolds. They were sealed?

A: **Right.**

Q: You did not open them?

A: **No, sir.**

Q: When you brought to the Office of Mr. Velasco they remained sealed?

A: **They remained sealed.**

Q: **And when you brought them to the Office of Mr. De Borja...**

A: **They remained sealed** [t.s.n., p. 162 March 1995-Verano on Cross].

PJ GA[R]CHITORENA

Q: Regarding these two envelopes, you said that you delivered these envelopes in the Office of Mr. de Borja?

A: Yes, your Honor.

Q: But de Borja was not around at that time?

A: **That is right.**

PJ GA[R]CHITORENA

Q: **After delivery did you receive any word that the envelopes did not reach Mr. de Borja?**

WITNESS

A: **I did not receive any report.**

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[47] *Id.* at 555-561.

Q: From anybody?

A: From anybody.

Q: Did you meet Mr. de Borja anytime before the delivery?

A: No, sir.

Q: Subsequently did you meet Mr. de Borja?

A: Yes.

Q: Did you bring the matter of the envelope?

A: No, sir.

Q: Did he bring the matter with you?

A: No, sir. [t.s.n., pp. 21-22, 2 March 1995 — Verano, Questions from the Court].[48]

In the face of the foregoing testimony, the insinuations of petitioner Republic in the instant Petition can best be described as speculative, conjectural, and inconclusive at best. Nothing in the testimony of Verano reasonably points, or even alludes, to the conclusion that De Borja acted as a dummy or conduit of Velasco in receiving address commissions from vessel owners.

The Court joins and concurs in the SB's observations pertaining to Verano's want of knowledge with respect to the contents of the envelopes allegedly delivered to respondent De Borja's office, which remained sealed the entire time it was in Verano's possession. As admitted by Verano himself, he did not and could not have known what was inside the envelopes when they were purportedly entrusted to him for delivery. In the same vein, Verano did not even confirm respondent De Borja's receipt of the envelopes, despite numerous opportunities to do so. Relatedly, it was further revealed during the cross-examination of Verano that in the first place, Velasco did not even deal directly with brokers.[49]

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[48] *Id.* at 573-574.

[49] *Id.* at 577-578.

All told, the Court finds that the evidence adduced is wholly insufficient to support the allegations of the Complaint before the SB. Thus, for failure of petitioner Republic to show any right to the relief sought, the Court affirms the SB in granting the Demurrer to Evidence.

WHEREFORE, premises considered, the Petition is **DENIED** and the Resolutions dated July 31, 2008 and March 25, 2009 of the Sandiganbayan - First Division in Civil Case No. 0003 are hereby **AFFIRMED**.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, del Castillo, and *Perlas-Bernabe, JJ.*, concur.

EN BANC

[A.M. No. P-11-2989. January 10, 2017]
(Formerly OCA IPI No. 09-3249-P)

WYNA MARIE P. GARINGAN-FERRERAS, *complainant, vs.* **EDUARDO T. UMBLAS, Legal Researcher II, Regional Trial Court, Branch 33, Ballesteros, Cagayan,** *respondent*.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; PRESENTATION OF EVIDENCE; AUTHENTICATION AND PROOF OF DOCUMENTS; GENUINENESS OF HANDWRITING; MAY BE PROVED BY A COMPARISON, MADE BY THE WITNESS OR THE COURT, WITH WRITINGS ADMITTED OR TREATED AS GENUINE BY A PARTY AGAINST WHOM THE EVIDENCE IS OFFERED, OR PROVED TO BE GENUINE TO THE SATISFACTION OF

THE JUDGE.— Indeed, having affirmatively raised the defense of forgery the burden rests upon respondent to prove the same. Plainly, he cannot discharge this burden by simply claiming that no such Civil Case No. 33-398C-2006 was on file with the RTC, Ballesteros, Cagayan. x x x Aside from his bare denial, respondent did not even make any attempt to show that the signature appearing in the Certificate of Finality was not his signature or that it was dissimilar to his real signature. We therefore lend credence to the conclusions reached by both the Investigating Judge, (after comparing the subject signature with respondent's signature in his comment), and the OCA, (after making a comparison of the subject signature with respondent's signatures in his 201 file), that the signature in the Certificate of Finality was affixed by respondent himself. Section 22, Rule 132, Rules of Court instructs that genuineness of handwriting may be proved "by a comparison, made by the witness or the court, with writings admitted or treated as genuine by a party against whom the evidence is offered, or proved to be genuine to the satisfaction of the Judge."

2. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; FALSIFICATION OF PUBLIC DOCUMENT AND DISHONESTY; FALSIFICATION OF COURT RECORDS, A CASE OF; PENALTY IN CASE AT BAR.— "Falsification of an official document such as court records is considered a grave offense. It also amounts to dishonesty. Under Section 23, Rule XIV of the Administrative Code of 1987, dishonesty (par. a) and falsification (par. f) are considered grave offenses warranting the penalty of dismissal from service" even if committed for the first time. x x x Respondent's infraction would have merited the penalty of dismissal from service. However, we note that in the recent case of *Office of the Court Administrator v. Umblas*, this Court found respondent guilty of grave misconduct and violation of Republic Act No. 6713 or the Code of Conduct and Ethical Standards for Public Officials and Employees for similarly unlawfully producing spurious court documents, particularly the purported June 20, 2005 RTC Decision and the December 18, 2005 Certificate of Finality in Civil Case No. 33-328C-2005. In said case, respondent was accordingly meted the penalty of dismissal from service with forfeiture of all benefits, except accrued leave credits, with prejudice to re-employment in any branch or instrumentality of the government,

including government-owned or controlled corporations. Thus, considering his earlier dismissal from service and its accessory penalties, the penalty applicable in this case, which is also dismissal, is no longer relevant or feasible. In lieu thereof, we find it proper to impose a fine of ₱40,000.00 to be deducted from his accrued leave credits.

D E C I S I O N

DEL CASTILLO, *J.*:

Aggrieved by what she believed was a case of falsification of public documents in the supposed Civil Case No. 33-398C-2006, Regional Trial Court (RTC), Branch 33, Ballesteros, Cagayan, complainant Wyna Marie G. Ferreras filed this case against respondent Eduardo T. Umblas, Legal Researcher II of the said RTC.

Factual Antecedents

Complainant narrated in her letter-complaint[1] that she received in June, 2009 an e-mail with an attachment purportedly a Certificate of Finality dated March 24, 2006 of Civil Case No. 33-398C-2006 entitled "Reynaldo Z. Ferreras v. Wyna Marie G. Ferreras" for Declaration of Nullity of Marriage issued by RTC, Branch 33, Ballesteros, Cagayan. The Certificate of Finality which bore the signature of respondent as Officer-in-Charge (OIC) Clerk of Court[2] stated that the Decision, declaring void *ab initio* the marriage contracted by complainant with Reynaldo Z. Ferreras (Reynaldo) on the ground of psychological capacity, granting complainant custody to their child, and dissolving their conjugal property regime, had already become final and executory.

Fearing foul play since she had absolutely no knowledge about said case nor received any summons/notices regarding the same, complainant asked for a Certification from the National

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[1] *Rollo,* pp. 3-5.

[2] *Id.* at 6.

Statistics Office which confirmed an annotation on the records of her marriage:

PURSUANT TO THE DECISION DATED JANUARY 19, 2006 RENDERED BY JUDGE EUGENIO M. TANGONAN OF THE REGIONAL TRIAL COURT, SECOND JUDICIAL REGION, BRANCH 33, BALLESTEROS, CAGAYAN UNDER CIVIL CASE NO. 33-398C-2006, THE MARRIAGE BETWEEN HEREIN PARTIES CELEBRATED ON JULY 16, 1993 IN BAYOMBONG, NUEVA VIZCAYA IS HEREBY DECLARED NULL AND VOID AB INITIO.[3]

Proceeding on her quest for the truth of such declaration, she asked for copy of all documents relative to the annulment case[4] from Branch 33, RTC, Ballesteros, Cagayan, from which the Declaration of Nullity of Marriage supposedly originated. On August 18, 2009, Jacqueline C. Fernandez, Court Interpreter III, issued one, stating in part:

THIS IS TO CERTIFY that according to available records, Civil Case No. 33-398C-2006 entitled REYNALDO Z. FERRERAS versus WYNA MARIE P. GARINGAN-FERRERAS for DECLARATION OF NULLITY OF MARRIANGE, is NOT ON FILE.[5]

On October 21, 2009, the Office of the Court Administrator (OCA) referred the said complaint to respondent for comment.[6]

In his Comment,[7] respondent denied the material allegations of the complaint, stating, among others, that the Decision and Certification of Finality were fraudulent and that his purported signatures thereto were spurious and not of his own handwriting and accord. Furthermore, he countered that he was no longer acting as the OIC Clerk of Court and responsible for such issuances as he had been replaced prior to the date of issuance.

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[3] *Id.* at 132.

[4] *Id.* at 8.

[5] *Id.* at 9.

[6] *Id.* at 10.

[7] *Id.* at 12-15.

On September 19, 2011, the Court resolved to re-docket the complaint as an administrative matter and referred the same to the Executive Judge of the RTC of Tuguegarao City for Investigation, Report and Recommendation.[8]

Report and Recommendation of the Investigating Judge

Despite calendaring several settings, no actual confrontation was had between the parties. Notably, complainant, who hails from Nueva Vizcaya, would travel all the way to Tuguegarao City to attend all the scheduled hearings, except in one instance when she moved for its postponement as she had to accompany her son to Manila. On the other hand, respondent did not honor any of the scheduled hearings with his presence despite receipt of summons.[9] So, the case revolved substantially on the documents submitted by the parties, particularly on the signature of the respondent. According to the Investigating Judge and per records, complainant submitted the following documents:

> x x x (1) A Certificate of Finality dated March 24, 2006 signed by the respondent and duly authenticated by the National Statistics Office at the dorsal portion; (2) A duly authenticated copy of the Decision in Civil Case No. 33-398C-2006; (3) A certified true copy of the Certification issued by Jacqueline Fernandez, Court Interpreter II of RTC Ballesteros; (4) A certification by the Office of the Municipal Civil Registrar of Ballesteros stating that their office had received a copy of the said Certificate of Finality and Decision on October 3, 2007; (5) The authenticated NSO copy of the petitioner's marriage contract bearing the annotation that the marriage of the petitioner was declared null and void ab initio; and (6) the Affidavit of Edna Forto.[10]

In her Report and Recommendation[11] dated February 1, 2013, Investigating Judge Vilma T. Pauig found respondent guilty of falsification of official document based on the following ratiocination:

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[8] *Id.* at 20.

[9] *Id.* at 105-123.

[10] *Id.* at 138.

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

Contrary to the respondent's vehement denial of his participation in the annulment of the petitioner's marriage, the evidence on record substantially proves that his signature in the Certificate of Finality bears a striking resemblance to the signature he uses when compared to his signature in the Comment he submitted dated February 18, 2013. x x x

x x x x x x x x x x x

From a mere examination of the signature of respondent Umblas in the Certificate of Finality and in the Comment he submitted before this investigator, the similarity of stroke creates a reasonable inference that only one and the same person could have made this signature. His mere denial that he participated in the fraud because no such case was filed before their Court is rather flimsy especially that it is precisely that fact that the petitioner contends - how could her marriage be dissolved when no case for annulment was truly filed?

x x x x x x x x x x x

Other than the respondent's claim that he did not participate in the annulment of petitioner's marriage and that the signature in the Certificate of Finality was a simulation, he did not present any evidence or witnesses to prove that his signature in the Certificate of Finality was forged. Since it was the respondent who alleged forgery, it falls upon him to produce clear, positive and convincing evidence to prove the same. However, he failed to do so.[12]

The Investigating Judge thus recommended that respondent be dismissed from service for committing the grave offense of falsification.[13]

On July 1, 2013, the Court resolved to refer this matter to the OCA for evaluation, report and recommendation.[14]

Report and Recommendation of the Office of the Court Administrator

The OCA shared the view of the Investigating Judge that there is more than substantial evidence to prove that respondent

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[12] *Id.* at 138-139.

[13] *Id.* at 140.

[14] *Id.* at 163.

falsified the subject Certificate of Finality and that he be dismissed from service for committing said infraction, *viz.*:

We agree with the findings and conclusions of Judge Pauig.

Complainant was able to adduce evidence to support her allegations of fraud against respondent whose signature appears in the Certificate of Finality dated 24 March 2006 in Civil Case No. 33-398C-2006, which case was declared as nonexistent by Branch 33, RTC, Ballesteros, Cagayan, the court where it was supposedly filed.

Complainant was able to submit certified true copies of the Decision dated 19 January 2006 in Civil Case No. 33-398C-2006 and the Certificate of Finality dated 24 March 2006 obtained from the Office of the Civil Registrar-General, NSO. The Office of the Municipal Civil Registrar of Ballesteros, Cagayan likewise certified that these were the documents they received on 3 October 2007. These were made the basis of the NSO for making the corresponding annotation on the marriage contract of complainant and her husband, the named petitioner in the contested civil case.

Respondent, on the other hand, failed to controvert the authenticity of his signature on the Certificate of Finality. He argued that his signature thereon had been forged yet he failed to validate his claim by any evidence or witnesses. Not only that, he himself failed to attend the hearings conducted by Judge Pauig. Of the seven scheduled hearings, not once did respondent appear. Four of these hearings were postponed at the instance of his counsel. Considering the gravity of the charge respondent was facing, his indifferent attitude toward the case is contrary to the natural reaction of an innocent man who would go to great lengths to defend his honor.

Instead, respondent lamely contended that it must be the petitioner who was responsible for the falsified documents since it was incumbent upon him, as the successful petitioner, to have the decree/order registered in the civil registrar. Petitioner, however, could not have acted alone and must surely have had someone who was privy to the court processes, court decisions and court personnel. The falsified documents did not utilize fictitious persons but contained the names of Judge Eugenio M. Tangonan, Jr., then the Presiding Judge of Branch 33, and of respondent who, being the court Legal Researcher and the designated Officer-in-Charge of Branch 33 from January 16, 1997 to July 31, 2005, was in a position of power and authority to confirm the authenticity of the documents should the local civil registrar or

the NSO seek verification. His assertion that he was no longer the Officer-in-Charge at the time the Certificate of Finality was purportedly issued on 24 March 2006 as his designation ended on 12 July 2005 could not be given weight as he was not precluded from issuing the said document. In fact, being privy to, if not the cause of the fraudulent transaction, he was compelled to sign it himself and not the incumbent branch clerk of court who would have looked for the records herself.

Judge Pauig observed that the signatures of respondent in the Certificate of Finality and in his Comment submitted before her are similar in stroke from which can be inferred that only one and the same person executed the same. We share the same view. A careful perusal of respondent's 201 file kept by the Records Division, Office of Administrative Services, OCA, containing his performance rating forms and applications for leave executed before, during and after the date of the questioned document, shows that his signatures therein are also very similar to, if not the same as, those appearing in the Certificate of Finality.

Having failed to adduce clear and convincing evidence to contradict complainant's evidence on record, respondent should he held accountable for issuing the fraudulent Certificate of Finality which bears his signature.[15]

Issue

The central issue around which this case revolves is whether the respondent fraudulently, maliciously, and willfully caused the preparation of, and signed, a Certificate of Finality of a non-existent case from Branch 33, RTC Ballesteros, Cagayan that led to the declaration of nullity of the marriage between Ferreras and complainant and its subsequent annotation in the marriage certificate on file with the National Statistics Office.

The Court's Ruling

We adopt the findings of the Investigating Judge and the OCA.

Indeed, having affirmatively raised the defense of forgery, the burden rests upon respondent to prove the same. Plainly, he cannot discharge this burden by simply claiming that no

[15] *Id.* at 168-169.

such Civil Case No. 33-398C-2006 was on file with the RTC, Ballesteros, Cagayan. As correctly noted by the Investigating Judge, that was precisely the issue raised by complainant. How could there be a Certificate of Finality which bore the signature of respondent when there was no pending Civil Case No. 33-398C-2006 in the first place? Aside from his bare denial, respondent did not even make any attempt to show that the signature appearing in the Certificate of Finality was not his signature or that it was dissimilar to his real signature. We therefore lend credence to the conclusions reached by both the Investigating Judge, (after comparing the subject signature with respondent's signature in his comment), and the OCA, (after making a comparison of the subject signature with respondent's signatures in his 201 file), that the signature in the Certificate of Finality was affixed by respondent himself. Section 22, Rule 132, Rules of Court instructs that genuineness of handwriting may be proved "by a comparison, made by the witness or the court, with writings admitted or treated as genuine by a party against whom the evidence is offered, or proved to be genuine to the satisfaction of the Judge."

> x x x The rule is that he who disavows the authenticity of his signature on a public document bears the responsibility of presenting evidence to that effect. Mere disclaimer is not sufficient. x x x At the very least, he should present corroborating evidence to prove his assertion. At best, he should present an expert witness. As a rule, forgery cannot be presumed and must be proved by clear, positive and convincing evidence and the burden of proof lies on the party alleging forgery.[16]

Respondent's cavalier and lackadaisical attitude regarding this administrative matter further strengthens our view that he was indeed guilty of the falsification. As pointed out by the OCA, respondent was never present during any of the seven hearings set by the Investigating Judge. For four times, he moved for postponement for ambiguous and lame grounds. During all this time, complainant would travel all the way from Nueva

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[16] *Dabu v. Judge Kapunan*, 656 Phil. 230, 242 (2011).

Vizcaya only to find out that the hearing was again cancelled or postponed. To be sure, respondent was fully aware of the gravity of the offense of which he was charged. If it was established that he committed the falsification, he could be dismissed from service or even criminally prosecuted. Yet, he did not give the complaint the requisite attention it needed thereby impressing upon this Court that he did not have any viable defense to offer and that he is guilty as charged.

The OCA correctly held that:

> Under the Revised Rules on Administrative Cases in the Civil Service (RRACCS), falsification of an official document is considered a grave offense warranting the penalty of dismissal from the service. It also amounts to serious dishonesty due to the presence of attendant circumstances such as respondent's abuse of authority in order to commit the dishonest act and his employment of fraud or falsification of an official document in the commission of the dishonest act related to his or her employment. Serious dishonesty is considered a grave offense warranting the penalty of dismissal from the service.[17]

"Falsification of an official document such as court records is considered a grave offense. It also amounts to dishonesty. Under Section 23, Rule XIV of the Administrative Code of 1987, dishonesty (par. a) and falsification (par. f) are considered grave offenses warranting the penalty of dismissal from service"[18] even if committed for the first time.

Court employees, from the presiding judge to the lowliest clerk, being public servants in an office dispensing justice, should always act with a high degree of professionalism and responsibility. Their conduct must not only be characterized by propriety and decorum, but must also be in accordance with the law and court regulations. No position demands greater moral righteousness and uprightness from its holder than an office in the judiciary. Court employees should be models of uprightness, fairness and honesty to maintain the people's respect and faith in the judiciary. They should avoid any act or conduct that would diminish public trust and confidence in the courts. Indeed,

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[17] *Rollo*, p. 170.

[18] *Dabu v. Judge Kapunan*, *supra* note 16 at 233.

those connected with dispensing justice bear a heavy burden of responsibility.[19]

Respondent's infraction would have merited the penalty of dismissal from service. However, we note that in the recent case of *Office of the Court Administrator v. Umblas*,[20] this Court found respondent guilty of grave misconduct and violation of Republic Act No. 6713 or the Code of Conduct and Ethical Standards for Public Officials and Employees for similarly unlawfully producing spurious court documents, particularly the purported June 20, 2005 RTC Decision and the December 18, 2005 Certificate of Finality in Civil Case No. 33-328C-2005. In said case, respondent was accordingly meted the penalty of dismissal from service with forfeiture of all benefits, except accrued leave credits, with prejudice to re-employment in any branch or instrumentality of the government, including government-owned or controlled corporations. Thus, considering his earlier dismissal from service and its accessory penalties, the penalty applicable in this case, which is also dismissal, is no longer relevant or feasible. In lieu thereof, we find it proper to impose a fine of ₱40,000.00 to be deducted from his accrued leave credits.[21]

WHEREFORE, respondent **EDUARDO T. UMBLAS** is found **GUILTY** of falsification of public document and dishonesty. In lieu of dismissal, he is hereby **ORDERED** to pay a fine of ₱40,000.00 to be deducted from his accrued leave credits. In case his leave credits be found insufficient, respondent is directed to pay the balance within ten (10) days from receipt of this Decision.

The Office of the Court Administrator is enjoined to file the appropriate criminal charge against respondent.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, Mendoza, Reyes, Perlas-Bernabe, Leonen, Jardeleza, and *Caguioa, JJ.,* concur.

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[19] *Id.*

[20] A.M. No. P-09-2621, September 20, 2016.

[21] See *Cañada v. Judge Suerte*, 511 Phil. 28, 39-40 (2005).

EN BANC

[G.R. No. 202781. January 10, 2017]

CRISANTO M. AALA, ROBERT N. BALAT, DATU BELARDO M. BUNGAD, CESAR B. CUNTAPAY, LAURA S. DOMINGO, GLORIA M. GAZMEN-TAN, and JOCELYN P. SALUDARES-CADAYONA, *petitioners*, *vs*. **HON. REY T. UY, in his capacity as the City Mayor of Tagum City, Davao Del Norte, MR. ALFREDO H. SILAWAN, in his capacity as City Assessor of Tagum City, HON. DE CARLO L. UY, HON. ALLAN L. RELLON, HON. MARIA LINA F. BAURA, HON. NICANDRO T. SUAYBAGUIO, JR., HON. ROBERT L. SO, HON. JOEDEL T. CAASI, HON. OSCAR M. BERMUDEZ, HON. ALAN D. ZULUETA, HON. GETERITO T. GEMENTIZA, HON. TRISTAN ROYCE R. AALA, HON. FRANCISCO C. REMITAR, in their capacity as City Councilors of Tagum City, Davao Del Norte, HON. ALFREDO R. PAGDILAO, in his capacity as ABC representative, and HON. MARIE CAMILLE C. MANANSALA, in her capacity as SKF Representative,** *respondents*.

SYLLABUS

1. REMEDIAL LAW; COURTS; DOCTRINE ON HIERARCHY OF COURTS; DETERMINATIVE OF THE APPROPRIATE VENUE WHERE PETITIONS FOR EXTRAORDINARY WRITS SHOULD BE FILED.— The doctrine on hierarchy of courts is a practical judicial policy designed to restrain parties from directly resorting to this Court when relief may be obtained before the lower courts. The logic behind this policy is grounded on the need to prevent "inordinate demands upon the Court's time and attention which are better devoted to those matters within its exclusive jurisdiction," as well as to prevent the congestion of the Court's dockets. Hence, for this Court to be able to "satisfactorily perform the functions assigned to it by the fundamental charter[,]" it must remain as a "court of last resort." This can be achieved by relieving the Court of the "task

of dealing with causes in the first instance." As expressly provided in the Constitution, this Court has original jurisdiction "over petitions for certiorari, prohibition, mandamus, quo warranto, and habeas corpus." However, this Court has emphasized in *People v. Cuaresma* that the power to issue writs of certiorari, prohibition, and mandamus does not exclusively pertain to this Court. Rather, it is shared with the Court of Appeals and the Regional Trial Courts. Nevertheless, "this concurrence of jurisdiction" does not give parties unfettered discretion as to the choice of forum. The doctrine on hierarchy of courts is determinative of the appropriate venue where petitions for extraordinary writs should be filed. Parties cannot randomly select the court or forum to which their actions will be directed.

2. ID.; ID.; ID.; THE HIERARCHY OF COURTS WAS CREATED TO ENSURE THAT EVERY LEVEL OF THE JUDICIARY PERFORMS ITS DESIGNATED ROLES IN AN EFFECTIVE AND EFFICIENT MANNER.— There is another reason why this Court enjoins strict adherence to the doctrine on hierarchy of courts. As explained in *Diocese of Bacolod v. Commission on Elections*, "[t]he doctrine that requires respect for the hierarchy of courts was created by this court to ensure that every level of the judiciary performs its designated roles in an effective and efficient manner." x x x Consequently, this Court will not entertain direct resort to it when relief can be obtained in the lower courts. This holds especially true when questions of fact are raised. Unlike this Court, trial courts and the Court of Appeals are better equipped to resolve questions of fact. They are in the best position to deal with causes in the first instance.

3. ID.; ID.; ID.; EXCEPTIONS.— [T]he doctrine on hierarchy of courts is not an inflexible rule. In Spouses *Chua v. Ang*, this Court held that "[a] strict application of this rule may be excused when the reason behind the rule is not present in a case[.]" This Court has recognized that a direct invocation of its original jurisdiction may be warranted in exceptional cases as when there are compelling reasons clearly set forth in the petition, or when what is raised is a pure question of law. In a fairly recent case, we summarized other well-defined exceptions to the doctrine on hierarchy of courts. Immediate resort to this Court may be allowed when any of the following grounds are

present: (1) when genuine issues of constitutionality are raised that must be addressed immediately; (2) when the case involves transcendental importance; (3) when the case is novel; (4) when the constitutional issues raised are better decided by this Court; (5) when time is of the essence; (6) when the subject of review involves acts of a constitutional organ; (7) when there is no other plain, speedy, adequate remedy in the ordinary course of law; (8) when the petition includes questions that may affect public welfare, public policy, or demanded by the broader interest of justice; (9) when the order complained of was a patent nullity; and (10) when the appeal was considered as an inappropriate remedy.

4. POLITICAL LAW; ADMINISTRATIVE LAW; PRINCIPLE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES; PROVIDES AN ORDERLY PROCEDURE BY GIVING THE ADMINISTRATIVE AGENCY AN OPPORTUNITY TO DECIDE THE MATTER BY ITSELF CORRECTLY AND TO PREVENT UNNECESSARY AND PREMATURE RESORT TO THE COURTS.— Parties are generally precluded from immediately seeking the intervention of courts when "the law provides for remedies against the action of an administrative board, body, or officer." The practical purpose behind the principle of exhaustion of administrative remedies is to provide an orderly procedure by giving the administrative agency an "opportunity to decide the matter by itself correctly [and] to prevent unnecessary and premature resort to the courts." Under Section 187 of the Local Government Code of 1991, aggrieved taxpayers who question the validity or legality of a tax ordinance are required to file an appeal before the Secretary of Justice before they seek intervention from the regular courts. x x x The doctrine of exhaustion of administrative remedies x x x is not an iron-clad rule. It admits of several well-defined exceptions. x x x [I]n *Alta Vista Golf and Country Club v. City of Cebu*, this Court excluded the case from the strict application of the principle on exhaustion of administrative remedies, particularly for non-compliance with Section 187 of the Local Government Code of 1991, on the ground that the issue raised in the Petition was purely legal. In this case, however, the issues involved are not purely legal. There are factual issues that need to be addressed for the proper disposition of the case. In other words, this case is still not ripe for adjudication.

APPEARANCES OF COUNSEL

Paulito R. Suaybaguio for petitioners.
Edwin M. Salvilla for respondent G.T. Gementiza.
Office of the City Legal Officer for respondents.

D E C I S I O N

LEONEN, *J.*:

Parties must comply with the doctrines on hierarchy of courts and exhaustion of administrative remedies. Otherwise, they run the risk of bringing premature cases before this Court, which may result to protracted litigation and over clogging of dockets.

This resolves the original action for Certiorari, Prohibition, and Mandamus[1] filed by petitioners Crisanto M. Aala, Robert N. Balat, Datu Belardo M. Bungad, Cesar B. Cuntapay, Laura S. Domingo, Gloria M. Gazmen-Tan, and Jocelyn P. Saludares-Cadayona.[2] They question the validity of City Ordinance No. 558, s-2012 of the City of Tagum, Davao del Norte, which the Sangguniang Panlungsod of Tagum City enacted on March 19, 2012.[3]

On July 12, 2011, the Sangguniang Panlungsod of Tagum City's Committee on Finance conducted a public hearing for the approval of a proposed ordinance. The proposed ordinance sought to adopt a new schedule of market values and assessment levels of real properties in Tagum City.[4]

On November 3, 2011, the Sangguniang Panlungsod of Tagum City passed City Ordinance No. 516, s-2011, entitled An Ordinance Approving the New Schedule of Market Values, its Classification, and Assessment Level of Real Properties in the

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[1] *Rollo*, pp. 3-55.

[2] *Id.* at 3.

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

[4] *Id.* at 236, Comment.

City of Tagum.[5] The ordinance was approved by Mayor Rey T. Uy (Mayor Uy) on November 11, 2011 and was immediately forwarded to the Sangguniang Panlalawigan of Davao del Norte for review.[6]

On February 7, 2012, the Sangguniang Panlalawigan of Davao del Norte's Committee on Ways and Means/Games and Amusement issued a report dated February 1, 2012 declaring City Ordinance No. 516, s-2011 valid.[7] It also directed the Sangguniang Panlungsod of Tagum City to revise the ordinance based on the recommendations of the Provincial Assessor's Office.[8]

Consequently, the Sangguniang Panlalawigan of Davao del Norte returned City Ordinance No. 516, s-2011 to the Sangguniang Panlungsod of Tagum City for modification.[9]

As a result of the amendments introduced to City Ordinance No. 516, s-2011, on March 19, 2012, the Sangguniang Panlungsod of Tagum City passed City Ordinance No. 558, s-2012.[10] The new ordinance was approved by Mayor Uy on April 10, 2012. On the same day, it was transmitted for review to the Sangguniang Panlalawigan of Davao del Norte. The Sangguniang Panlalawigan of Davao del Norte received the proposed ordinance on April 12, 2012.[11]

On April 30, 2012, Engineer Crisanto M. Aala (Aala) and Colonel Jorge P. Ferido (Ferido), both residents of Tagum City, filed before the Sangguniang Panlalawigan of Davao del Norte an Opposition/Objection to City Ordinance No. 558, s-2012.[12]

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[5] *Id.* at 237.

[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] *Id.* at 238.

[10] *Id.*

[11] *Id.*

[12] *Id.* at 20.

The opposition was docketed as Case No. DOCS-12-000362 and was referred to the Committee on Ways and Means/Games and Amusement.[13] The Committee conducted a hearing to tackle the matters raised in the Opposition.[14]

Present at the hearing were oppositors Aala and Ferido, their counsel, Alfredo H. Silawan, City Assessor of Tagum City, and Atty. Rolando Tumanda, City Legal Officer of Tagum City.[15]

In their Opposition/Objection,[16] Aala and Ferido asserted that City Ordinance No. 558, s-2012 violated Sections 130(a),[17] 198(a) and (b),[18] 199(b),[19] and 201[20] of the Local Government Code

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[13] *Id.*

[14] *Id.*

[15] *Id.*

[16] *Id.* at 126-135.

[17] LOCAL GOVT. CODE, Sec. 130(a) provides:

SECTION 130. *Fundamental Principles*.– The following fundamental principles shall govern the exercise of the taxing and other revenue-raising powers of local government units:

(a) Taxation shall be uniform in each local government unit[.]

[18] LOCAL GOVT. CODE, Sec. 198(a) and (b) provide.

SECTION 198. *Fundamental Principles*.– The appraisal, assessment, levy and collection of real property tax shall be guided by the following fundamental principles:

(a) Real property shall be appraised at its current and fair market value;

(b) Real property shall be classified for assessment purposes on the basis of its actual use[.]

[19] LOCAL GOVT. CODE, Sec. 199(b) provides:

SECTION 199. *Definition of Terms*.– When used in this Title, the term:

. . . . . .

(b) "Actual Use" refers to the purpose for which the property is principally or predominantly utilized by the person in possession thereof[.]

[20] LOCAL GOVT. CODE, Sec. 201 provides:

SECTION 201. *Appraisal of Real Property*.– All real property, whether taxable or exempt, shall be appraised at the current and fair market value prevailing in the locality where the property is situated. The Department of

of 1991.[21] They alleged that Sections III C 1, 2, and 3 as well as Sections III G 1(b) and 4(g)[22] of the proposed ordinance divided Tagum City into different zones, classified real properties per zone, and fixed its market values depending on where they were situated[23] without taking into account the "distinct and fundamental differences ... and elements of value"[24] of each property.

Aala and Ferido asserted that the proposed ordinance classified and valued those properties located in a predominantly commercial area as commercial, regardless of the purpose to which they were devoted.[25] According to them, this was erroneous because real property should be classified, valued, and assessed not according to its location but on the basis of actual use.[26] Moreover, they pointed out that the proposed ordinance imposed exorbitant real estate taxes, which the residents of Tagum City could not afford to pay.[27]

After the hearing, the Sangguniang Panlalawigan of Davao del Norte's Committee on Ways and Means/Games and Amusement issued Committee Report No.5 dated May 4, 2012, which returned City Ordinance No. 558, s-2012 to the Sangguniang Panlungsod of Tagum City.[28] The Sangguniang Panlalawigan of Davao del Norte also directed the Sangguniang Panlungsod of Tagum City to give attention and due course to the oppositors' concerns.[29]

Finance shall promulgate the necessary rules and regulations for the classification, appraisal, and assessment of real property pursuant to the provisions of this Code.

[21] *Rollo*, pp. 130-134.

[22] *Id.* at 141, Supplement to Opposition/Objection.

[23] *Id.* at 131 and 133.

[24] *Id.* at 131.

[25] *Id.* at 140.

[26] *Id.* at 141.

[27] *Id.* at 142.

[28] *Id.* at 145.

[29] *Id.*

On May 22, 2012, the Sangguniang Panlungsod of Tagum City issued Resolution No. 808, s-2012 dated May 14, 2012, requesting the Sangguniang Panlalawigan of Davao del Norte to reconsider its position on City Ordinance No. 558, s-2012.[30]

On June 18, 2012, the Sangguniang Panlalawigan of Davao del Norte issued Resolution No. 428[31] declaring as invalid Sections III C 1, 2, and 3, Sections III D (1) and (2), and Sections G 1(b) and 4(g) of City Ordinance No. 558, s-2012.[32]

However, on July 9, 2012, the Sangguniang Panlungsod of Tagum City passed Resolution No. 874, s-2012 declaring City Ordinance No. 558, s-2012 as valid.[33] The Sangguniang Panlungsod of Tagum City cited as its basis Section 56(d)[34] of the Local Government Code of 1991 and Department of Interior and Local Government Opinion No. 151 dated November 25, 2010.[35] It argued that the Sangguniang Panlalawigan of Davao del Norte failed to take action on City Ordinance No. 558, s-2012 within 30 days from its receipt on April 12, 2012.[36] Hence, under Section 56(d) of the Local Government Code of 1991, City Ordinance No. 558, s-2012 enjoys the presumption of validity.[37]

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[30] *Id.* at 22.

[31] *Id.* at 155-157.

[32] *Id.* at 23.

[33] *Id.*

[34] LOCAL GOVT. CODE, Sec. 56(d) provides:

SECTION 56. *Review of Component City and Municipal Ordinances or Resolutions by the Sangguniang Panlalawigan*. –

. . . . . .

(d) If no action has been taken by the sangguniang panlalawigan within thirty (30) days after submission of such an ordinance or resolution, the same shall be presumed consistent with law and therefore valid.

[35] *Id.* at 240-241.

[36] *Id.* at 241.

[37] *Id.*

On July 13, 2012, City Ordinance No. 558, s-2012 was published in the July 13-19, 2012 issue of Trends and Time,[38] a newspaper of general circulation in Tagum City.[39]

Alarmed by the impending implementation of City Ordinance No. 558, s-2012, petitioners filed before this Court an original action for Certiorari, Prohibition, and Mandamus on August 13, 2012.[40] The Petition included a prayer for the issuance of a temporary restraining order and a writ of preliminary injunction.[41]

In their Petition, petitioners seek to nullify the ordinance on the ground that respondents enacted it with grave abuse of discretion.[42] Petitioners invoke this Court's original jurisdiction under Article VIII, Section 5(1) of the Constitution[43] in view of the need to immediately resolve the issues they have raised.[44]

Petitioners allege that there is an urgent need to restrain the implementation of City Ordinance No. 558, s-2012.[45] Otherwise, the City Government of Tagum would proceed with "the collection of exorbitant real property taxes to the great damage and prejudice of . . . petitioners and the thousands of taxpayers inhabiting Tagum City[.]"[46]

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[38] *Id.* at 166-173, Trends and Time the Newspaper, pp. 10-14.

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

[40] *Id.* at 3. The Petition was filed under Rule 65 of the Rules of Court.

[41] *Id.* at 3-55.

[42] *Id.* at 6.

[43] *Id.* at 8.

CONST., Art. VIII, Sec. 5 provides:

SECTION 5. The Supreme Court shall have the following powers:

(1) Exercise original jurisdiction over cases affecting ambassadors, other public ministers and consuls, and over petitions for *certiorari*, prohibition, *mandamus, quo warranto,* and *habeas corpus.*

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

[45] *Id.*

[46] *Id.* at 47.

On October 16, 2012, respondent Geterito T. Gementiza (Gementiza) filed a Motion[47] praying that he be dropped as a respondent in the case. According to respondent Gementiza, he had opposed the passage of City Ordinance No. 558, s-2012 during the deliberations of the Sangguniang Panlungsod of Tagum City.[48] In the Reso1ution[49] dated October 23, 2012, this Court required the parties to file a comment on respondent Gementiza's Motion.

On October 31, 2012, respondents filed a Comment[50] on the Petition. In the Resolution[51] dated December 4, 2012, this Court noted the Comment and required petitioners to file a reply to the Comment.

Meanwhile, on February 20, 2013, respondents filed a Manifestation[52] stating that the implementation of City Ordinance No. 558, s-2012 had been deferred due to the wide extent of damage caused by Typhoon Pablo in Tagum City.[53]

On February 25, 2013, petitioners and respondents filed their respective Comments[54] on respondent Gementiza's Motion. Petitioners argued that the passage of the questioned ordinance was a collegial act of the Sangguniang Panlungsod of Tagum City, of which respondent Gementiza was a member. Hence, respondent Gementiza should still be impleaded in the case regardless of whether or not he opposed the passage of the ordinance.[55]

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[47] *Id.* at 176-181.

[48] *Id.* at 177.

[49] *Id.* at 222.

[50] *Id.* at 230-256.

[51] *Id.* at 294.

[52] *Id.* at 296-297.

[53] *Id.* at 297.

[54] *Id.* at 303-305 and 307-308.

[55] *Id.* at 308.

On March 6, 2013, petitioners filed a Reply[56] to the Comment dated October 18, 2012.

In the Resolution[57] dated March 19, 2013, this Court gave due course to the Petition, treated respondents' Comment as an answer, and required the parties to submit their memoranda. On July 10, 2013, petitioners filed their Memorandum[58] dated June 20, 2013. On September 6, 2013, respondents filed their Memorandum[59] dated August 2, 2013.

Petitioners allege that Tagum City is predominantly agricultural.[60] Although it boasts of expansive highways "lined with tall palm trees" and a state-of-the-art city hall, Tagum City still has an outstanding debt of ₱450 million.[61] The income level of its 240,000 inhabitants remains constant, and due to unreasonable business taxes, most businesses have either scaled down or closed.[62]

Set against this factual backdrop, petitioners assail the validity of City Ordinance No. 558, s-2012. They claim that the ordinance imposes exorbitant real estate taxes because of the Sangguniang Panlungsod's erroneous classification and valuation of real properties.[63]

Petitioners are concerned residents of Tagum City who would be directly affected by the implementation of the questioned ordinance.[64] Well-aware of the doctrines on the hierarchy of courts and exhaustion of administrative remedies, they beg this

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[56] *Id.* at 311-320.

[57] *Id.* at 330-A, Resolution.

[58] *Id.* at 331-393.

[59] *Id.* at 410-432.

[60] *Id.* at 4.

[61] *Id.*

[62] *Id.* at 4 and 25.

[63] *Id.* at 30.

[64] *Id.* at 7.

Court's indulgence to allow immediate and direct resort to it.[65] According to petitioners, this case is exempt from the application of the doctrine on hierarchy of courts. They anchor their claim on the ground that the redress they desire cannot be obtained in the appropriate courts.[66] Furthermore, petitioners assert that the issue they have raised is purely legal and that the case involves paramount public interest, which warrants the relaxation of the rule on exhaustion of administrative remedies.[67]

Petitioners believe that compliance with Section 187 of the Local Government Code of 1991 would harm the taxpayers of Tagum City.[68] They argue that the cited provision hardly constitutes an efficacious remedy that can provide the redress they urgently seek.[69] According to petitioners, there is nothing that would prevent the City Government of Tagum from collecting exorbitant real property taxes since the Secretary of Justice does not have the power to suspend the implementation of the questioned ordinance.[70] Moreover, the 60-day period given to the Secretary of Justice within which to render a decision would merely constitute delay and give the City Government of Tagum enough time to assess and collect exorbitant real property taxes.[71]

Petitioners also believe that upon receipt of an assessment, they would be precluded from questioning the excessiveness of the real property tax imposed by way of protest.[72] Under the Local Government Code of 1991, the amount of real property tax assessed must first be paid before a protest may be

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

[66] *Id.* at 9.

[67] *Id.* at 14.

[68] *Id.* at 9.

[69] *Id.* at 10.

[70] *Id.*

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

[72] *Id.* at 11.

entertained.[73] However, petitioners contend that the taxpayers of Tagum City would not be able to comply with this rule due to lack of money.[74] Petitioners justify immediate resort to this Court due to this impasse.[75]

In their Comment,[76] respondents attack the propriety of the remedy of which petitioners have availed themselves. Respondents point out that the extraordinary remedy of certiorari is only directed against judicial and quasi-judicial acts.[77] According to respondents, the Sangguniang Panlungsod of Tagum City exercised a legislative function in enacting the questioned ordinance and is, thus, beyond the scope of a petition for certiorari.[78] Moreover, there is a plain, speedy, and adequate remedy available to petitioners under the law.[79] Citing Section 187 of the Local Government Code of 1991, respondents argue that petitioners should have exhausted administrative remedies by filing an appeal before the Secretary of Justice.[80]

Respondents further argue that in directly filing their Petition before this Court, petitioners violated the doctrine on hierarchy of courts.[81] They stress that the Supreme Court, Court of Appeals, and the Regional Trial Courts have concurrent jurisdiction to issue writs of certiorari, prohibition, and mandamus.[82]

Respondents also allege that the Petition raises factual issues, which warrants the dismissal of the Petition.[83]

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[73] *Id.*

[74] *Id.*

[75] *Id.* at 10-12.

[76] *Id.* at 230-256.

[77] *Id.* at 231.

[78] *Id.*

[79] *Id.* at 232.

[80] *Id.* at 231-234.

[81] *Id.* at 233-234.

[82] *Id.*

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

Going into the substantive aspect of the case, petitioners contend that the ordinance created only two (2) categories of real properties. Petitioners point out that Sections III C and D, which pertain to the classification of commercial and industrial lands, list all the streets and barrios in Tagum City.[84] Because of this, petitioners argue that the ordinance effectively categorized all lands in Tagum City either into commercial or industrial lands, regardless of the purpose to which they were devoted and the extent of their development.[85]

Petitioners further contend that since all lands in Tagum City had been classified as commercial or industrial, all buildings and improvements would likewise be classified as commercial or industrial. Otherwise, an absurd situation would arise where the building and the land on which it stands would have a different classification.[86]

In other words, petitioners claim that the ordinance created a blanket classification of real properties without regard to the principle of actual use. To the mind of petitioners, this blanket classification "does not conform to the reality that Tagum City is not that far advanced and commercially developed like Ayala Avenue [in] Makati City where [almost all] of the properties fronting the entire breadth of Ayala Avenue are . . . used for commercial purposes."[87]

In classifying real properties based on location, petitioners argue that the ordinance contravenes Section 217 of the Local Government Code of 1991, which provides that "[r]eal property shall be classified, valued and assessed on the basis of its actual use regardless of where located, whoever owns it, and whoever uses it."[88] Petitioners highlight the necessity in properly

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

[85] *Id.*

[86] *Id.* at 26.

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

[88] *Id.* at 27.

classifying real properties based on actual use because the classification of real property determines the assessment level that would be applied in computing the real property tax due.[89]

Petitioners add that because all real properties in Tagum City were classified into commercial or industrial properties, their valuation would then correspond to that of commercial or industrial properties as the case may be.[90] In effect, the ordinance provided a uniform market value for all real properties without regard to the principle of actual use.[91] According to petitioners, this is erroneous. They further add that the schedule of fair market values was arbitrarily prepared by those who do not know the basic principles of property valuation.[92]

By way of example, petitioners point out that the market values of residential lands, which were reclassified under the ordinance as commercial, increased from ₱600.00 per square meter to ₱5,000.00 per square meter, or by 833% in a span of only three (3) years.[93] According to petitioners, this violates Section 191 of the Local Government Code of 1991.[94]

Petitioners allege that the ordinance equated the market values of unused and undeveloped lands to that of fully developed lands.[95] Hence, the ordinance discriminates against poor land owners who do not have the means to pay the increased amount of real property taxes.[96] Petitioners claim that what the Sangguniang Panlungsod had actually determined were the zonal values of real properties in Tagum City and not the market values.[97]

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[89] *Id.*

[90] *Id.* at 312.

[91] *Id.* at 28.

[92] *Id.* at 33.

[93] *Id.* at 43.

[94] *Id.*

[95] *Id.* at 28.

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

[97] *Id.* at 35.

Petitioners contend that respondents committed grave abuse of discretion in fixing the new schedule of market values by usurping or arrogating unto itself the City Assessor's authority to fix the schedule of market values.[98] Being "personally acquainted with the nature, condition, and value of the said real properties" in a given locality, the City Assessor is in the best position to fix the schedule of market values.[99] However, petitioners believe that the schedule of market values was prepared by the Sangguniang Panlungsod of Tagum City, and not by the City Assessor.[100] They also believe that the City Assessor abdicated his duty and unlawfully neglected to perform what was mandated under Section 212 of the Local Government Code of 1991.[101]

Petitioners conclude that what the Sangguniang Panlungsod of Tagum City had undertaken was a general revision of real property assessments and property classification under Section 212 of the Local Government Code of 1991.[102] They argue that "the general revision of [real property] assessments and property classification cannot be made simultaneously with the ordinance adopting [a new] schedule of fair market values."[103]

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[98] *Id.* at 34.

[99] *Id.* at 32.

[100] *Id.* at 32-34.

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

[102] Rep. Act No. 7160 (1991), Sec. 212 provides:

SECTION 212. *Preparation of Schedule of Fair Market Values*.– Before any general revision of property assessment is made pursuant to the provisions of this Title, there shall be prepared a schedule of fair market values by the provincial, city and municipal assessors of the municipalities within the Metropolitan Manila Area for the different classes of real property situated in their respective local government units for enactment by ordinance of the sanggunian concerned. The schedule of fair market values shall be published in a newspaper of general circulation in the province, city or municipality concerned, or in the absence thereof, shall be posted in the provincial capitol, city or municipal hall and in two (2) other conspicuous public places therein.

[103] *Id.* at 39.

Petitioners raise the sole substantive issue of whether respondents committed grave abuse of discretion in preparing, enacting, and approving City Ordinance No. 558, s-2012, which imposes exorbitant real property taxes in violation of the equal protection clause, due process clause, and the rule on uniformity in taxation.[104]

On the other hand, respondents argue that petitioners misconstrued the ordinance.[105] They claim that a careful reading of the provisions would reveal that there were four (4) categories by which real properties were to be classified, valued, and assessed, namely: agricultural, residential, commercial, and industrial.[106] Although the ordinance lists specific roads and areas in Tagum City classified as commercial and industrial, this does not mean that all properties located in commercial and industrial areas would automatically be classified as such.[107]

Respondents stress that the principle of actual use still plays an important role in the classification and assessment of real properties.[108] For the proper computation of the real property tax due, real properties located in commercial and industrial areas will be assessed depending on how they are used.[109] To illustrate, if a parcel of land located along a commercial area is used partly for commercial purposes and partly for agricultural purposes, then the fair market value of the portion used for commercial purposes will correspond to that of commercial lands, while the fair market value of the portion used for agricultural purposes will correspond to that of agricultural lands.[110]

Respondents reiterate their claim that the Sangguniang Panlalawigan of Davao del Norte acted beyond the 30-day

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[104] *Id.* at 24.

[105] *Id.* at 244.

[106] *Id.*

[107] *Id.* at 242-247.

[108] *Id.* at 244.

[109] *Id.*

[110] *Id.* at 244-246.

reglementary period under Section 56(d) of the Local Government Code of 1991.[111] Citing Department of Interior and Local Government's Opinion No. 151 dated November 25, 2010, respondents argue that the phrase "take action" means that the Sangguniang Panlalawigan, within 30 days from receipt of the ordinance or resolution, "should have issued their legislative action in the form of a [r]esolution containing their disapproval in whole or in part [of] any ordinance or resolution submitted to them for review[.]"[112] Since the Sangguniang Panlalawigan of Davao del Norte received the questioned ordinance on April 12, 2012, it had until May 12, 2012 to take action.[113] However, the Sangguniang Panlalawigan of Davao del Norte only issued Resolution No. 428 on June 18, 2012.[114]

For this Court's resolution are the following issues:

Procedural

First, whether this case falls under the exceptions to the doctrine on hierarchy of courts;

Second, whether this case falls under the exceptions to the rule on exhaustion of administrative remedies;

Third, whether petitioners correctly availed themselves of the extraordinary remedies of certiorari, prohibition, and mandamus; and

Lastly, whether respondent Gementiza should be dropped as a respondent in the case.

Substantive

First, whether respondents committed grave abuse of discretion amounting to lack or excess of jurisdiction in preparing, enacting, and approving City Ordinance No. 558, s-2012;

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[111] *Id.* at 240.

[112] *Id.* at 240.

[113] *Id.* at 241.

[114] *Id.* at 240.

Second, whether City Ordinance No. 558, s-2012 classifies all real properties in Tagum City into commercial or industrial properties only;

Third, whether the schedule market values conform to the principle that real properties shall be valued on the basis of actual use;

Fourth, whether City Ordinance No. 558, s-2012 imposes exorbitant real property taxes; and

Lastly, whether City Ordinance No. 558, s-2012 is unconstitutional for violation of the equal protection clause, due process clause, and the rule on uniformity in taxation.

We deny the Petition for serious procedural errors.

I

The doctrine on hierarchy of courts is a practical judicial policy designed to restrain parties from directly resorting to this Court when relief may be obtained before the lower courts.[115] The logic behind this policy is grounded on the need to prevent "inordinate demands upon the Court's time and attention which are better devoted to those matters within its exclusive jurisdiction," as well as to prevent the congestion of the Court's dockets.[116] Hence, for this Court to be able to "satisfactorily perform the functions assigned to it by the fundamental charter[,]" it must remain as a "court of last resort."[117] This can be achieved

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[115] See *De Castro v. Carlos*, 709 Phil. 389, 396-397 (2013) [Per *C.J.* Sereno, *En Banc*]; *People v. Cuaresma*, 254 Phil. 418, 426-428 (1989) [Per *J.* Narvasa, First Division]; *Bañez, Jr. v. Concepcion*, 693 Phil. 399, 411-414 (2012) [Per *J.* Bersamin, First Division]; *Kalipunan ng Damayang Mahihirap, Inc. v. Robredo*, G.R. No. 200903, July 22, 2014, 730 SCRA 322, 332-333 (2014) [Per *J.* Brion, *En Banc*]; *Ouano v. PGTT International Investment Corp.*, 434 Phil. 28, 34-35 (2002) [Per *J.* Sandoval-Gutierrez, Third Division]; *Vergara, Sr. v. Suelto*, 240 Phil. 719, 732-733 (1987) [Per *J.* Narvasa, First Division].

[116] *People v. Cuaresma*, 254 Phil. 418, 427 (1989) [Per *J.* Narvasa, First Division].

[117] *Vergara, Sr. v. Suelto*, 240 Phil. 719, 732 (1987) [Per *J.* Narvasa, First Division].

by relieving the Court of the "task of dealing with causes in the first instance."[118]

As expressly provided in the Constitution, this Court has original jurisdiction "over petitions for certiorari, prohibition, mandamus, quo warranto, and habeas corpus."[119] However, this Court has emphasized in *People v. Cuaresma*[120] that the power to issue writs of certiorari, prohibition, and mandamus does not exclusively pertain to this Court.[121] Rather, it is shared with the Court of Appeals and the Regional Trial Courts.[122] Nevertheless, "this concurrence of jurisdiction" does not give parties unfettered discretion as to the choice of forum. The doctrine on hierarchy of courts is determinative of the appropriate venue where petitions for extraordinary writs should be filed.[123] Parties cannot randomly select the court or forum to which their actions will be directed.

There is another reason why this Court enjoins strict adherence to the doctrine on hierarchy of courts. As explained in *Diocese of Bacolod v. Commission on Elections*,[124] "[t]he doctrine that requires respect for the hierarchy of courts was created by this court to ensure that every level of the judiciary performs its designated roles in an effective and efficient manner."[125] Thus:

> Trial courts do not only determine the facts from the evaluation of the evidence presented before them. They are likewise competent to determine issues of law which may include the validity of an ordinance,

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[118] *Id.*

[119] CONST., Art. VIII, Sec. 5, par. (1).

[120] *People v. Cuaresma*, 254 Phil. 418 (1989) [Per *J.* Narvasa, First Division].

[121] *Id.* at 427.

[122] *Id.*

[123] *Id.*

[124] G.R. No. 205728, January 21, 2015, 747 SCRA 1 [Per *J.* Leonen, *En Banc*].

[125] *Id.* at 43.

statute, or even an executive issuance in relation to the Constitution. To effectively perform these functions, they are territorially organized into regions and then into branches. Their writs generally reach within those territorial boundaries. Necessarily, they mostly perform the all-important task of inferring the facts from the evidence as these are physically presented before them. In many instances, the facts occur within their territorial jurisdiction, which properly present the 'actual case' that makes ripe a determination of the constitutionality of such action. The consequences, of course, would be national in scope. There are, however, some cases where resort to courts at their level would not be practical considering their decisions could still be appealed before the higher courts, such as the Court of Appeals.

The Court of Appeals is primarily designed as an appellate court that reviews the determination of facts and law made by the trial courts. It is collegiate in nature. This nature ensures more standpoints in the review of the actions of the trial court. But the Court of Appeals also has original jurisdiction over most special civil actions. Unlike the trial courts, its writs can have a nationwide scope. It is competent to determine facts and, ideally, should act on constitutional issues that may not necessarily be novel unless there are factual questions to determine.

This court, on the other hand, leads the judiciary by breaking new ground or further reiterating — in the light of new circumstances or in the light of some confusions of bench or bar — existing precedents. Rather than a court of first instance or as a repetition of the actions of the Court of Appeals, this court promulgates these doctrinal devices in order that it truly performs that role.[126] (Citation omitted)

Consequently, this Court will not entertain direct resort to it when relief can be obtained in the lower courts.[127] This holds especially true when questions of fact are raised.[128] Unlike this Court, trial courts and the Court of Appeals are better equipped to resolve questions of fact.[129] They are in the best position to deal with causes in the first instance.

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[126] *Id.* at 43-44.

[127] *Santiago v. Vasquez*, 291 Phil. 664, 683 (1993) [Per J. Regalado, *En Banc*].

[128] *Id.*

[129] *Id.*

However, the doctrine on hierarchy of courts is not an inflexible rule.[130] In *Spouses Chua v. Ang*,[131] this Court held that "[a] strict application of this rule may be excused when the reason behind the rule is not present in a case[.]"[132] This Court has recognized that a direct invocation of its original jurisdiction may be warranted in exceptional cases as when there are compelling reasons clearly set forth in the petition,[133] or when what is raised is a pure question of law.[134]

In a fairly recent case, we summarized other well-defined exceptions to the doctrine on hierarchy of courts. Immediate resort to this Court may be allowed when any of the following grounds are present: (1) when genuine issues of constitutionality are raised that must be addressed immediately; (2) when the case involves transcendental importance; (3) when the case is novel; (4) when the constitutional issues raised are better decided by this Court; (5) when time is of the essence; (6) when the subject of review involves acts of a constitutional organ; (7) when there is no other plain, speedy, adequate remedy in the ordinary course of law; (8) when the petition includes questions that may affect public welfare, public policy, or demanded by the broader interest of justice; (9) when the order complained of was a patent nullity; and (10) when the appeal was considered as an inappropriate remedy.[135]

None of the exceptions to the doctrine on hierarchy of courts are present in this case. Significantly, although petitioners raise

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[130] *Diocese of Bacolod v. Commission on Elections*, G.R. No. 205728, January 21, 2015, 747 SCRA 1, 44 [Per *J.* Leonen, *En Banc*].

[131] 614 Phil. 416 (2009) [Per *J.* Brion, Second Division].

[132] *Id.* at 426.

[133] *People v. Cuaresma*, 254 Phil. 418, 427 (1989) [Per *J.* Narvasa, First Division].

[134] *Spouses Chua v. Ang*, 614 Phil. 416, 426-427 (2009) [Per *J.* Brion, Second Division].

[135] *Diocese of Bacolod v. Commission on Elections*, G.R. No. 205728, January 21, 2015, 747 SCRA 1, 45-50 [Per *J.* Leonen, *En Banc*].

questions of law, other interrelated factual issues have emerged from the parties' arguments, which this Court deems indispensable for the proper disposition of this case.

In *Republic v. Sandiganbayan*,[136] this Court explained that a question of fact exists:

> when the doubt or difference arises as to the truth or falsehood of facts or when the query invites calibration of the whole evidence considering mainly the credibility of the witnesses, the existence and relevancy of specific surrounding circumstances as well as their relation to each other and to the whole, and the probability of the situation.[137] (Citations omitted)

The resolution of the first substantive issue of whether respondents committed grave abuse of discretion in preparing, enacting, and approving City Ordinance No. 558, s-2012 requires the presentation of evidence on the procedure undertaken by the City Government of Tagum.

The second substantive issue, which involves the alleged blanket classification of real properties, is likewise factual in nature. There is still a dispute on whether the questioned ordinance truly limited the classification of real properties into two (2) categories. This Court cannot resolve this issue without further evidence from the parties, particularly from the Sangguniang Panlungsod of Tagum City.

The third and fourth issues, which are essential for the proper disposition of this case, are questions of fact. To determine whether the schedule of fair market values conforms to the principle of actual use requires evidence from the person or persons who prepared it. These individuals must show the process and method they employed in arriving at the schedule of market values.

It is worth mentioning that several of petitioners' assertions, on which their arguments are based, are purely speculative. For instance, petitioners claim that the Sangguniang Panlungsod

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[136] 425 Phil. 752 (2002) [Per *J.* Davide, Jr., *En Banc*].

[137] *Id.* at 765-766.

of Tagum City usurped the City Assessor's authority in fixing the schedule of fair market values.[138] Yet, they offer no evidence to support their allegation. They merely rely on a comparison between the new schedule of market values and the schedule of market values in a previous ordinance.[139]

With regard to the fourth issue, petitioners invite this Court to compare the new schedule of fair market values with the old schedule of fair market values and determine whether the increase was exorbitant. In the absence of any evidence, this Court does not have the technical expertise to make such determination. We cannot simply rely on bare numbers.

In order to resolve these factual issues, we will be tasked to receive evidence from both parties. However, the initial reception and appreciation of evidence are functions that this Court cannot perform. These functions are best left to the trial courts. This Court is not a trier of facts.[140] The factual issues in this case should have been raised and ventilated in the proper forum.

II

Parties are generally precluded from immediately seeking the intervention of courts when "the law provides for remedies against the action of an administrative board, body, or officer."[141] The practical purpose behind the principle of exhaustion of administrative remedies is to provide an orderly procedure by giving the administrative agency an "opportunity to decide the matter by itself correctly [and] to prevent unnecessary and premature resort to the courts."[142]

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[138] *Rollo*, p. 33.

[139] *Id.*

[140] *Don Orestes Romualdez Electric Cooperative, Inc. v. National Labor Relations Commission*, 377 Phil. 268, 274 (1999) [Per *J.* Pardo, First Division], citing *Caruncho III v. Commission on Elections*, 374 Phil. 308 (1999) [Per *J.* Ynares-Santiago, *En Banc*].

[141] *Lopez v. City of Manila*, 363 Phil. 68, 80 (1999) [Per *J.* Quisumbing, Second Division].

[142] *Antonio v. Tanco*, 160 Phil. 467, 474 (1975) [Per *J.* Aquino, *En Banc*], citing *Cruz v. Del Rosario*, 119 Phil. 63 (1963) [Per *J.* Regala, *En Banc*].

Under Section 187 of the Local Government Code of 1991, aggrieved taxpayers who question the validity or legality of a tax ordinance are required to file an appeal before the Secretary of Justice before they seek intervention from the regular courts. Section 187 of the Local Government Code of 1991 provides:

SECTION 187. *Procedure for Approval and Effectivity of Tax Ordinances and Revenue Measures; Mandatory Public Hearings.* — The procedure for approval of local tax ordinances and revenue measures shall be in accordance with the provisions of this Code: *Provided*, That public hearings shall be conducted for the purpose prior to the enactment thereof: *Provided, further*, That any question on the constitutionality or legality of tax ordinances or revenue measures may be raised on appeal within thirty (30) days from the effectivity thereof to the Secretary of Justice who shall render a decision within sixty (60) days from the date of receipt of the appeal: *Provided, however*, That such appeal shall not have the effect of suspending the effectivity of the ordinance and the accrual and payment of the tax, fee, or charge levied therein: *Provided, finally*, That within thirty (30) days after receipt of the decision or the lapse of the sixty-day period without the Secretary of Justice acting upon the appeal, the aggrieved party may file appropriate proceedings with a court of competent jurisdiction.

In *Reyes v. Court of Appeals*,[143] this Court declared the mandatory nature of Section 187 of the Local Government Code of 1991:

[T]he law requires that the dissatisfied taxpayer who questions the validity or legality of a tax ordinance must file his appeal to the Secretary of Justice, within 30 days from effectivity thereof. In case the Secretary decides the appeal, a period also of 30 days is allowed for an aggrieved party to go to court. But if the Secretary does not act thereon, after the lapse of 60 days, a party could already proceed to seek relief in court. *These three separate periods are clearly given for compliance as a prerequisite before seeking redress in a competent court. Such statutory periods are set to prevent delays as well as enhance the orderly and speedy discharge of judicial functions. For*

[143] 378 Phil. 234 (1999) [Per *J.* Quisumbing, *En Banc*].

this reason the courts construe these provisions of statutes as mandatory.[144] (Emphasis supplied, citations omitted)

The same principle was reiterated in *Jardine Davies Insurance Brokers, Inc. v. Aliposa*.[145]

In *Jardine*, the then Sangguniang Bayan of Makati enacted Municipal Ordinance No. 92-072, otherwise known as the Makati Revenue Code, which provided for the schedule of "real estate, business, and franchise taxes . . . at rates higher than those in the Metro Manila Revenue Code." Under this ordinance, Jardine Davies Insurance Brokers, Inc. (Jardine) was assessed taxes, fees, and charges. Jardine believed that the ordinance was void. It filed before the Regional Trial Court a case seeking a refund for alleged overpayment of taxes. The trial court dismissed the complaint. Aggrieved, Jardine filed before this Court a Petition for review raising pure questions of law. Ruling on the Petition, this Court observed that Jardine essentially questioned the validity of the tax ordinance without filing an appeal before the Secretary of Justice, in violation of Section 187 of the Local Government Code of 1991:

> In this case, petitioner, relying on the resolution of the Secretary of Justice in *The Philippine Racing Club, Inc. v. Municipality of Makati* case, posited in its complaint that the ordinance which was the basis of respondent Makati for the collection of taxes from petitioner was null and void. However, the Court agrees with the contention of respondents that petitioner was proscribed from filing its complaint with the RTC of Makati for the reason that petitioner failed to appeal to the Secretary of Justice within 30 days from the effectivity date of the ordinance as mandated by Section 187 of the Local Government Code[.][146]

The doctrine of exhaustion of administrative remedies, like the doctrine on hierarchy of courts, is not an iron-clad rule. It

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[144] *Id.* at 237-238 (1999) [Per J. Quisumbing, *En Banc*]. See also *Jardine Davies Insurance Brokers, Inc. v. Aliposa*, 446 Phil. 243 (2003) [Per J. Callejo, Sr., Second Division].

[145] 446 Phil. 243 (2003) [Per J. Callejo, Sr., Second Division].

[146] *Id.* at 253-254.

admits of several well-defined exceptions. *Province of Zamboanga del Norte v. Court of Appeals*[147] has held that the principle of exhaustion of administrative remedies may be dispensed in the following instances:

> (1) [W]hen 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 and amounts to lack or excess of jurisdiction; (4) when there is estoppel on the part of the administrative agency concerned; (5) when there is irreparable injury; (6) when the respondent is a department secretary whose acts, as an alter ego of the President, bears 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) when no administrative review is provided by law; (13) where the rule of qualified political agency applies; and (14) when the issue of non-exhaustion of administrative remedies has been rendered moot.[148]

Thus, in *Alta Vista Golf and Country Club v. City of Cebu*,[149] this Court excluded the case from the strict application of the principle on exhaustion of administrative remedies, particularly for non-compliance with Section 187 of the Local Government Code of 1991, on the ground that the issue raised in the Petition was purely legal.[150]

In this case, however, the issues involved are not purely legal. There are factual issues that need to be addressed for the proper disposition of the case. In other words, this case is still not ripe for adjudication.

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[147] 396 Phil. 709 (2000) [Per *J.* Pardo, First Division].

[148] *Id.* at 718-719.

[149] G.R. No. 180235, January 20, 2016<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/january2016/180235.pdf> [Per *J.* Leonardo-De Castro, First Division].

[150] *Id.* at 10.

To question the validity of the ordinance, petitioners should have first filed an appeal before the Secretary of Justice. However, petitioners justify direct resort to this Court on the ground that they are entangled in a "catch-22 situation."[151] They believe that filing an appeal before the Secretary of Justice would merely delay the process and give the City Government of Tagum ample time to collect real property taxes.[152]

The questioned ordinance was published in July 2012.[153] Had petitioners immediately filed an appeal, the Secretary of Justice would have had enough time to render a decision. Section 187 of the Local Government Code of 1991 gives the Secretary of Justice 60 days to act on the appeal. Within 30 days from receipt of an unfavorable decision or upon inaction by the Secretary of Justice within the time prescribed, aggrieved taxpayers may opt to lodge the appropriate proceeding before the regular courts.[154]

The "catch-22 situation" petitioners allude to does not exist. Under Section 166 of the Local Government Code of 1991, local taxes "shall accrue on the first (1st) day of January of each year."[155] When the questioned ordinance was published in July 2012, the City Government of Tagum could not have immediately issued real property tax assessments. Hence, petitioners had ample time within which to question the validity of the tax ordinance.

In cases where the validity or legality of a tax ordinance is questioned, the rule that real property taxes must first be paid before a protest is lodged does not apply. Taxpayers must first receive an assessment before this rule is triggered.[156] In *Jardine*,

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[151] *Rollo*, pp. 11-12.

[152] *Id.* at 10.

[153] *Id.* at 23.

[154] Rep. Act No. 7160 (1991), Sec. 187.

[155] Rep. Act No. 7160 (1991), Sec. 166.

[156] Rep. Act No. 7160 (1991), Sec. 195 provides:

SECTION 195. *Protest of Assessment*.– When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have

this Court ruled that prior payment under protest is not required when the taxpayer is questioning the very authority of the assessor to impose taxes:

> Hence, if a taxpayer disputes the reasonableness of an increase in a real estate tax assessment, he is required to "first pay the tax" under protest. Otherwise, the city or municipal treasurer will not act on his protest. In the case at bench, however, the petitioners are questioning the very authority and power of the assessor, acting solely and independently, to impose the assessment and of the treasurer to collect the tax. These are not questions merely of amounts of the increase in the tax but attacks on the very validity of any increase.[157] (Emphasis and citation omitted)

Given the serious procedural errors committed by petitioners, we find no genuine reason to dwell on and resolve the other issues presented in this case. The factual issues raised by petitioners could have been properly addressed by the lower courts had they adhered to the doctrines of hierarchy of courts and exhaustion of administrative remedies. These rules were established for a reason. While petitioners' enthusiasm in their advocacy may be admirable, their overzealousness has further delayed their cause.

WHEREFORE, the Petition for Certiorari, Prohibition, and Mandamus is **DISMISSED**.

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not been paid, he shall issue a notice of assessment stating the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties. Within sixty (60) days from the receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment; otherwise, the assessment shall become final and executory. The local treasurer shall decide the protest within sixty (60) days from the time of its filing. If the local treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice cancelling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer. The taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty (60)-day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable.

[157] *Jardine Davies Insurance Brokers, Inc. v. Aliposa*, 446 Phil. 243, 253 (2003) [Per *J.* Callejo, Sr., Second Division].

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, del Castillo, Mendoza, Reyes, Perlas-Bernabe, Jardeleza, and *Caguioa, JJ.*, concur.

EN BANC

[G.R. No. 210788. January 10, 2017]

ANNALIZA J. GALINDO and EVELINDA P. PINTO, *petitioners, vs.* **COMMISSION ON AUDIT,** *respondent.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL COMMISSIONS; COMMISSION ON AUDIT (COA); DISCIPLINARY JURISDICTION; THE CIVIL SERVICE COMMISSION HAS APPELLATE JURISDICTION IN ADMINISTRATIVE DISCIPLINARY CASES DECIDED BY THE COA.— In **administrative disciplinary cases** decided by the COA, the proper remedy in case of an adverse decision is an appeal to the Civil Service Commission and not a petition for *certiorari* before this Court under Rule 64. Rule 64 governs the review of judgments and final orders or resolutions of the Commission on Audit and the Commission on Elections. x x x Section 7, Article IX-A of the Constitution provides that "[u]nless 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." The Administrative Code of 1987 is the law that provided for the Civil Service Commission's appellate jurisdiction in **administrative disciplinary cases** x x x. The Administrative Code of 1987 also gave the Civil Service Commission the power to "[p]rescribe, amend and enforce regulations and rules for carrying into effect the

provisions of the Civil Service Law and other pertinent laws." Sections 61 and 45 of the 2012 Revised Rules on Administrative Cases in the Civil Service echo the Administrative Code of 1987 x x x.

2. REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; *CERTIORARI*; CANNOT SUBSTITUTE FOR A LOST APPEAL.— In the present petition, Galindo and Pinto failed to explain why they filed a petition for *certiorari* before this Court instead of an appeal before the Civil Service Commission. Galindo and Pinto also failed to allege and show that the COA acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction. A petition for *certiorari* cannot substitute for a lost appeal. The supposed petition for *certiorari* imputed errors in the COA's appreciation of facts and evidence presented, which are proper subjects of an appeal.

3. ID.; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; SUBSTANTIAL EVIDENCE; SUFFICIENT TO ESTABLISH ADMINISTRATIVE LIABILITY.— Galindo and Pinto question the quantum of evidence that established their administrative liability. However, they conveniently forgot that mere substantial evidence, or "that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion," is sufficient. The pieces of evidence presented before the COA, such as the cash advances of Ms. Mendoza accompanied by the testimony of Ms. Mendoza herself, as well as the Indices of Payments and the car loan contracts, establish Galindo's and Pinto's receipt of the disallowed amounts. "Recipients of unauthorized sums would, after all, ordinarily evade traces of their receipt of such amounts. Resort to other documents from which such fact could be deduced was then appropriate."

APPEARANCES OF COUNSEL

Walden James G. Carbonell for petitioners.
The Solicitor General for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

G.R. No. 210788 is a petition[1] assailing Decision No. 2013-001[2] promulgated on 29 January 2013 by the Commission on Audit (COA) in Adm. Case No. 2010-036 for petitioner State Auditor II Annaliza J. Galindo (Galindo) and Adm. Case No. 2010-039 for petitioner State Auditing Examiner II Evelinda P. Pinto (Pinto). COA Decision No. 2013-001 involved 13 other COA personnel aside from Galindo and Pinto.[3]

The COA found Galindo and Pinto guilty of Grave Misconduct and Violation of Reasonable Office Rules and Regulations and imposed on them the penalty of suspension for one year without pay. They were also ordered to refund the amount they received from the cash advances of Metropolitan Waterworks and Sewerage System (MWSS) Supervising Cashier Iris C. Mendoza (Mendoza) for the years 2005 to 2007. The COA further ordered

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[1] Under Sections 1 to 3, Rule 64 of the 1997 Rules of Civil Procedure.

[2] *Rollo*, pp. 23-52. Signed by Chairperson Ma. Gracia M. Pulido-Tan and Commissioners Juanito G. Espino, Jr. and Heidi L. Mendoza.

[3] See *rollo*, p. 26. The following persons were charged along with petitioners Galindo and Pinto:

Administrative Case Number	Persons Charged
1. 2010-033	Atty. Norberto D. Cabibihan
2. 2010-034	Efren D. Ayson
3. 2010-035	Nymia M. Cabantug
4. 2010-037	Angelita R. Mangabat
5. 2010-038	Emilio V. Mangabat, Jr.
6. 2010-040	Cristina M. Paderes
7. 2010-041	Alberta B. Rebamba
8. 2010-042	Lilia V. Ronquillo
9. 2010-043	Evangeline G. Sison
10. 20l0-044	Vilma A. Tiongson
11. 2010-045	Enrico L. Umerez
12. 2010-046	Pacita R. Velasquez
13. 2010-047	Godofredo N. Villegas

Pinto to refund the amount she received from the MWSS for the years 1999 to 2003 based on the Indices of Payments. Both Galindo and Pinto were ordered to refund the amount paid by the MWSS Employees Welfare Fund (MEWF) for their car loans.

The Facts

On 2 June 2008, then MWSS Administrator Diosdado Jose M. Allado wrote a letter to then COA Chairman Reynaldo A. Villar (Chairman Villar) about unrecorded checks relating to Mendoza's cash advances which were allegedly used to pay claims for bonuses and other benefits of persons assigned at the COA Auditing Unit of the MWSS (COA-MWSS). A portion of the letter reads:

> Upon investigation, it came to my knowledge, that although the set-up has been going on since the time of Administrator Hondrade, the amount involved is not a [sic] large as during the time of Administrator Jamora, my predecessor. During Hondrade's time, cash advances intended for the COA were of minimal amount which were supported by payroll of the COA personnel. During the time of Administrator Jamora, Office Orders intended for payments of bonuses and other benefits for the COA [personnel] were already signed by the Administrator which amounts range from ₱l.5M to ₱3.5M per claim divided into different checks. The said benefits were not supported by payrolls. Vouchers and check[s] were processed simultaneously without passing thru the usual procedure. After the encashment of each check, the vouchers were not forwarded to the Accounting Section for book take up. When the unrecorded checks started to pile up, then it was taken cared of by the COA (see Reply Memo of Ms. Iris Mendoza dated April 28, 2008, Annex C).
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> While we do not deny that somehow, COA [personnel assigned to MWSS] are entitled to some of the benefits that the [employees of the] organization [MWSS] is receiving, we still believe that the amount due them should be not so much to amount to virtual bribery. The COA Auditor should at least show some signs of "delicadeza" receiving them. Grants of the amount of allowances given them should emanate from the Management and not be [sic] dictated by the COA Office.[4]

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[4] Letter of MWSS Administrator Diosdado Jose M. Allado to COA Chairman Reynaldo A. Villar, dated 2 June 2008.

Chairman Villar issued Office Order No. 2009-528, dated 21 July 2009, and constituted a team from the COA's Fraud Audit and Investigation Office - Legal Services Sector (FAIO-LSS) for a fact-finding investigation. The team submitted its Investigation Report dated 24 June 2010. The COA summarized the results of the Investigation Report as follows:

1. In 2005 and 2006, COA-MWSS personnel received cash amounting to ₱9,182,038.00; and in 2007, ₱38,551,133.40 from the CAs drawn by Ms. Mendoza in payments of allowances and bonuses;

2. In previous years (1999 to 2003), a total amount of ₱1,171,855.00 representing bonuses and other benefits was also received by COA-MWSS personnel from the MWSS;

3. Atty. Cabibihan and 10 of his staff availed of the Car Assistance Plan (CAP) of the [MEWF] under which they paid only 40% of the purchase price of the vehicle by way of loan from and payable to the MEWF in the total amount of ₱2,878,669.36, while the balance of 60% was paid by MEWF, hence, constituting fringe benefits in the total amount of ₱4,318,004.03;

x x x x x x x x x[5]

On 30 July 2010, Chairman Villar issued Letter Charges for Grave Misconduct and Violation of Reasonable Office Rules and Regulations to petitioners Galindo and Pinto, along with other COA-MWSS personnel.[6]

The COA summarized the relevant facts as follows:

The Prosecution alleged that the receipt and/or collection by COA-MWSS personnel of bonuses and other benefits from the MWSS, which transpired from November 2005 to December 2007, was facilitated through the CAs drawn by Ms. Mendoza specifically for the purpose, which CAs were supported by Office Orders signed by the concerned MWSS Administrator. It was claimed that by virtue of the agreement between then MWSS Administrator Orlando C. Hondrade and Atty. Cabibihan as MWSS Supervising Auditor, COA-

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[5] *Rollo*, p. 25.

[6] *Supra* note 3.

MWSS personnel received the benefits through various Board Resolutions and in the form of one-time CAs under which they (COA-MWSS personnel) were purposely not identified in the payroll as claimants. The alleged agreement was also to the effect that the liquidation of the CAs and the necessary recording thereof in the books of MWSS would be taken care[d] of by COA-MWSS.

As represented by Mr. Estrellito A. Polloso, Department Manager A, Finance, MWSS, in his Memorandum dated April 28, 2008, explaining to Administrator Allado on how the unrecorded checks came about, the CAs for the COA-MWSS personnel in 2005 were done under normal office procedures. However, these procedures were no longer observed sometime in 2006 when Ms. Carmelita S. Yabut, a former COA employee who transferred to the MWSS, started to directly approach Ms. Mendoza armed with Office Order pre-signed by then MWSS Administrator Hondrade, authorizing her (Ms. Mendoza) to draw a one-time [cash advance] and duly approved disbursement vouchers (DVs) for check preparation. When checks were already prepared, COA-MWSS personnel would get the checks for the signature of then Administrator Hondrade, after which the checks were given back to Ms. Mendoza for the latter's encashment. COA-MWSS personnel would get the entire amounts so encashed together with the DVs, leaving Ms. Mendoza with only the copy of the Office Order. Further, COA-MWSS personnel took care of the quarterly and year-end liquidations of the CAs since they had the DVs in their possession. These procedures had been pursued since 2005 up to 2007.

For her part, aside from attesting to the foregoing procedures described by Mr. Polloso, Ms. Mendoza, in her Memorandum dated April 28, 2008, to Administrator Allado, also in explanation of the unrecorded checks, stated that prior to and until October 2006, the moneys encashed from her CAs were directly given to COA-MWSS personnel as evidenced by Acknowledgment Receipts (ARs) thereof which she kept, bearing the signatures of the concerned COA-MWSS personnel who actually received the entire proceeds of the encashed checks. However, moneys for subsequent claims (after October 2006) were handed to Ms. Yabut, who was then already the Officer-in-Charge, Internal Audit Division of MWSS. For these receipts, Ms. Mendoza would still prepare ARs but these were not anymore signed by the COA-MWSS personnel.

x x x x x x x x x

Moreover, the Prosecution would like to impress that the foregoing was established by what it portrays to be a pattern, contending that the practice of COA-MWSS personnel of receiving and/or collecting bonuses and allowances from MWSS was already done even as early as 1999. As shown from the Indices of Payment[s] covering the years 1999 to 2003 obtained from the available records of the MWSS, COA-MWSS personnel received bonuses and other benefits in the total amount of ₱1,171,855.00 authorized under specific Resolutions passed by the MWSS Board of Trustees.

As regards the CAP-MEWF, it is worthy to note that per MWSS Board Resolution No. 2006-267 passed on December 7, 2006, and in view of the request of the MEWF for assistance to improve the existing vehicle plan program of its members, the MWSS Board of Trustees extended financial assistance and/or seed money in the initial amount of ₱20M from the Corporate Office (CO) and ₱10M from the Regulatory Office (RO), or a total of ₱30M, to the MEWF. The grant was anchored on the cited successfully concluded bidding out by MWSS of its right and obligation to subscribe shares in MWSI which allegedly brought significant financial gains to MWSS, thus, enhancing its capacity to pay. The grant is in the nature of loan but only 40% was supposed to be paid by the MEWF to the CO or RO of the MWSS, as the case may be, within a period of four (4) years. Apparently, the financial assistance and/or seed money breathed life to the CAP-MEWF, which money constitutes as a grant of fringe benefit to the members of the MEWF to the extent of 60% of the loan.

Under the Implementing Guidelines (IG) of the CAP-MEWF, the availees are entitled to a maximum amount of loan which varies depending on their salary grades and on the Plans (Plans A, B, C and D) that they would avail of. In line with the payment scheme under Board Resolution No. 2006-267, only 40% thereof shall be paid by them in equal monthly amortization over a maximum period of four (4) years. As a condition *sine qua non* only *bona fide* members of the MEWF were eligible to avail of the CAP.

In the case of COA-MWSS personnel, the Prosecution presented Official Receipts (ORs) evidencing their payments of capital contributions to the MEWF, thereby establishing their membership to the MEWF. Also presented were the CAP-MEWF Application Forms of Messrs. Ayson, Mangabat, Jr., and Villegas, and Mesdames Galindo, Jaro, Pinto, Sison, Tiongson, Ronquillo, and Velasquez. These CAP-MEWF Application Forms were each supported with

the corresponding Certification of Monthly Pay all issued and signed by Atty. Cabibihan himself, which the Prosecution found anomalous, since under proper, ordinary and regular circumstances, only the Accounting Office, Planning, Finance and Management Sector (PFMS), this Commission, can issue the same. On the other hand, the absence of pertinent documents pertaining to the availment of CAP-MEWF by Atty. Cabibihan was explained by Mr. Vivencio M. Solis, Jr., Financial Planning Specialist B of MWSS. Mr. Solis, Jr. testified that said documents were borrowed but never returned by Atty. Cabibihan. x x x.

When the CAP-MEWF Applications of the COA-MWSS personnel were approved, DVs indicating "*for the account of (name of COA-MWSS personnel)*" were prepared, and the corresponding checks thereon were drawn, both made payable in the names of the car manufacturers/dealers. The DVs reflected the following accounting entries:

Loans Receivable	40%	
Trust Liability-CAP	60%	
Service Fee (2% of Loans Receivable)		.8%
Cash in Bank		99.2%

x x x x x x x x x

In their respective Answers, Respondents' general argument against the documents formally offered by the Prosecution as evidence is that they do not prove directly to the infractions allegedly committed by them, or that the same were irrelevant thereto; hence, their defense of absolute dearth of the required quantum of evidence to hold them administratively liable.

x x x x x x x x x

The other respondents also denied this allegation [of taking and appropriating public funds of the MWSS]. Specifically, Respondent Ayson disowned the signature appearing in the AR dated February 10, 2006 for his alleged receipt of ₱388,326.00. So, too, did Respondents Galindo, Pinto, Ronquillo, Tiongson and Velasquez with respect to the signatures, respectively in the ARs dated December 16, 2005 (Galindo for ₱428,745.00); November 15, 2005, December 13, 2005 and January 2, 2006 (Pinto for ₱385,000.00, ₱428,745.00 [jointly with Tiongson] and ₱428,745.00, respectively); and September 15, 2006 (Ronquillo for ₱656,566.00); November 30, 2005 and December 13, 2005 (Tiongson for ₱1,020,000.00 and ₱428,745.00

[jointly with Pinto] respectively); and July 28, 2006 (Velasquez for ₱630,000.00). As for their alleged receipt of bonuses and other benefits in 1999 to 2003, Respondents Manabat, Paderes, Pinto, Rebamba and Velasquez also denied the same as the allegation was merely based on the Indices of Payments which have no probative value for being not credible and/or conclusive.

On their availment of the CAP-MEWF, Respondents Ayson, Galindo, Mangabat, Jr., Pinto, Ronquillo, Tiongson, Velasquez, and Villegas interposed an affirmative defense; they admitted the allegation but quickly justified their acts as a lawful consequence inuring to all *bona fide* members of the MEWF just like them, who contributed to the capital of MEWF, thus, have the right to enjoy the fruits of their membership. It is even their proposition that the fund managed by the MEWF is [a] private fund and so their having availed therefrom of whatever benefits did not prejudice the government. Moreover, the CAP-MEWF was established under specific authority, that is, MWSS Board Resolution No. 2006-267 and under the IG thereof was extended to personnel from other government offices assigned to MWSS, as in their case. Thus, they contended that unless these issuances were subsequently rendered without legal basis, they remain to be lawful. In fact, they asserted that not even this Commission tried to have these issuances subsequently nullified by filing in the regular courts any case questioning their validity.[7]

The COA's Ruling

The COA found that the allegations against petitioners Galindo and Pinto are supported by substantial evidence, and found them guilty of Grave Misconduct and Violation of Reasonable Office Rules and Regulations. The COA determined that petitioners Galindo and Pinto received unauthorized allowances from Mendoza's cash advances, and availed of the MEWF's car assistance plan. The COA also found that Pinto received benefits and/or bonuses from the MWSS from 1999 to 2003. The COA imposed on petitioners Galindo and Pinto the penalty of suspension for one year without pay.

The COA found that Pinto acknowledged receipt of the following amounts as allowances: ₱385,000.00 on 15 November

[7] *Rollo*, pp. 28-33.

2005, ₱428,745.00 on 13 December 2005 (jointly with State Auditor II Vilma Tiongson), and ₱428,745.00 on 2 January 2006. Galindo, on the other hand, received ₱428,745.00 as allowance on 16 December 2005.[8]

The COA ordered Pinto to refund the amount of ₱85,526.00 she received from the MWSS for the years 1999 to 2003 based on the Indices of Payments.[9]

Both Galindo and Pinto were further ordered to refund the amounts paid by MEWF for their car loans. Galindo was able to avail of the fringe benefit under the car assistance plan in the amount of ₱358,004.03, while Pinto was able to avail the same in the amount of ₱300,000.00.[10]

The COA relied on the basic rule in administrative cases that the quantum of evidence necessary to find an individual administratively liable is substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.

The COA found that the circumstances surrounding Mendoza's cash advances, which were the source of the amounts given to the COA-MWSS personnel, are supported by documentary evidence. Most of the documentary evidence are public documents, and thus admissible in evidence. Mendoza's straightforward declarations sufficiently established that Pinto and Galindo were among the COA-MWSS personnel who illegally received bonuses and benefits. The COA also found that acknowledgment receipts, being private documents, are admissible in evidence as Mendoza herself prepared and then authenticated them during the hearing. The COA was convinced that petitioners Pinto and Galindo were among the recipients of Mendoza's cash advances from 2005 to 2007.

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[8] *Id.* at 33.

[9] *Id.* at 45.

[10] Table 4, Investigation Report, Legal Services Sector, Fraud Audit and Investigation Office, Commission on Audit, p. 11.

The COA ruled that the certified photocopies of the Indices of Payments are public documents which do not require proof of their due execution and genuineness to be admissible in evidence.

The COA found petitioners' defense of their CAP-MEWF availment untenable. The COA held that the funds managed by MEWF remained public funds, and that the car loan contracts were between the MWSS and availees. MEWF's payment of 60% of the purchase price of the vehicles constitutes a grant of fringe benefits. The prohibition of the grant of fringe benefits to COA personnel assigned in national, local, and corporate sectors is enunciated in COA Memorandum No. 89-584 dated 9 January 1989. This prohibition was declared as state policy in Section 18, Republic Act No. 6758 (R.A. No. 6758), and implemented under COA Memorandum No. 99-066 dated 22 September 1999.

The COA reasoned:

> Respondents' receipt of bonuses and other benefits, including the fringe benefits gained from their availment of CAP-MEWF constitutes misconduct. Jurisprudence defines misconduct as a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer. The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law or disregard of established rules, which must be proved by substantial evidence (*Valera vs. Office of the Ombudsman, et al.*, G.R. No. 167278, February 27, 2008). Corruption, as an element of Grave Misconduct, consists in the act of an official or fiduciary person who *unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others* (*Office of the Ombudsman vs. Miedes, Sr.*, G.R. No. 176409, February 27, 2008). As thoroughly discussed above, this Commission holds that the misconduct attendant to the case at hand is grave.
>
> Dishonesty is defined as the concealment or distortion of truth in a matter of fact relevant to one's office or connected with the performance of his duty. It implies a disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity, or integrity in principle; and lack of fairness and

straightforwardness (*Japson vs. Civil Service Commission [CSC]*, G.R. No. 189479, April 12, 2011). Under Section 3 of CSC Resolution No. 060538 dated April 4, 2006, dishonesty is serious when, among others, the respondent gravely abused his authority in order to commit the dishonest act, or the dishonest act exhibits [his] moral depravity. x x x.

x x x x x x x x x

Accordingly, this Commission holds that the herein respondents are guilty as charged - x x x; Respondents x x x Galindo, x x x Pinto x x x for Grave Misconduct and Violation of Reasonable Office Rules and Regulations.

x x x x x x x x x

As to the rest of the respondents, this Commission metes upon them the penalty of suspension for one (1) year without pay, instead of dismissal from the service for humanitarian considerations.

WHEREFORE x x x [r]espondents Anna Liza J. Galindo, x x x Evelinda P. Pinto, x x x are found GUILTY of Grave Misconduct and Violation of Reasonable Office Rules and Regulations and are meted the penalty of SUSPENSION for one (1) year without pay. They shall each refund the amount each received from the CAs of Ms. Mendoza for CYs 2005 to 2007. Moreover, Respondents x x x Evelinda P. Pinto x x x are ordered to refund the amounts they received from the MWSS for the years 1999 to 2003 based on the Indices of Payments in the total amount of ₱470,607.50 as indicated in page 22 of herein discussion. Likewise, Respondents x x x Galindo, x x x Pinto, x x x shall refund the amount paid by MEWF for their car loans.

The Directors, Human Resource Management Office, Administration Sector; Accounting Office, Planning, Finance and Management Sector; and the concerned Cluster Directors having supervision over the herein respondents shall implement this Decision.

Let a copy of this Decision form part of the 201 File of the respondents in this Commission.[11]

Galindo and Pinto, along with the other respondents in the administrative case, filed a motion for reconsideration, which

[11] *Rollo*, pp. 49-5I.

the COA denied in its Resolution[12] dated 2 October 2013. Petitioners Galindo and Pinto, through their counsel Egargo Puertollano Gervacio Law Offices, received the COA's Resolution on 8 October 2013.[13] Their counsel withdrew their services on 21 October 2013.[14]

Galindo and Pinto filed, through their new counsel Walden James G. Carbonell, the present petition on 30 January 2014.

Assigned Errors

Petitioners Galindo and Pinto assigned the following errors:

A. The respondent [COA] erred in ruling that the 60% paid by the MEWF for and in behalf of the herein petitioners as availees constitutes a grant of fringe benefits, prohibited under COA Memorandum No. 89-584 dated January 9, 1989 and Section 18, R.A. 6758.

B. The respondent [COA] erred in ruling that the Prosecution had established the required quantum of evidence by taking into account the circumstances surrounding the CAs of Ms. Mendoza which were the source of the amounts given to COA-MWSS personnel and were supported with pieces of documentary evidence, most of which are private documents are admissible in evidence even without further proof of their due execution and genuineness (Antillon *vs.* Barcelon, G.R. No. L-12483, November 16, 1917).

C. The respondent [COA] erred in ruling that the CAs of Ms. Mendoza contained statements of the circumstances, the veracity of which were not controverted, thus, these circumstances are deemed established.

D. The respondent [COA] erred in ruling that it is already convinced that indeed the petitioners (COA personnel) received in 2005 to 2007 bonuses and other benefits from the CAs of Ms. Mendoza which were specifically drawn for the purpose in the total amount of ₱47,733,171.40.[15]

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[12] *Id.* at 53-57.

[13] *Id.* at 97, 110.

[14] *Id.* at 111.

[15] *Id.* at 16.

The Court's Ruling

We dismiss the petition.

In **administrative disciplinary cases** decided by the COA, the proper remedy in case of an adverse decision is an appeal to the Civil Service Commission and not a petition for *certiorari* before this Court under Rule 64.[16]

Rule 64 governs the review of judgments and final orders or resolutions of the Commission on Audit and the Commission on Elections. It refers to Rule 65 for the mode of review of the judgment or final order or resolution of the Commission on Audit and the Commission on Elections. A petition filed under Rule 65 requires that the "tribunal, board, or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law x x x."

Section 7, Article IX-A of the Constitution provides that "[u]nless 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." The Administrative Code of 1987 is the law that provided for the Civil Service Commission's appellate jurisdiction in **administrative disciplinary cases**:

Section 47. *Disciplinary Jurisdiction.* – (1) The Commission shall decide upon appeal all administrative disciplinary cases involving the imposition of a penalty of suspension for more than thirty days, or fine in an amount exceeding thirty days' salary, demotion in rank or salary or transfer, removal or dismissal from office. A complaint may be filed directly with the Commission by a private citizen against a government official or employee in which case it may hear and decide the case or it may deputize any department or agency or official or group of officials to conduct the investigation. The results of the investigation shall be submitted to the Commission with

[16] See *Cadena v. Civil Service Commission*, 679 Phil. 165 (2012).

recommendation as to the penalty to be imposed or other action to be taken.

(2) The Secretaries and heads of agencies and instrumentalities, provinces, cities and municipalities shall have jurisdiction to investigate and decide matters involving disciplinary action against officers and employees under their jurisdiction. Their decisions shall be final in case the penalty imposed is suspension for not more than thirty days or fine in an amount not exceeding thirty days' salary. In case the decision rendered by a bureau or office head is appealable to the Commission, the same may be initially appealed to the department and finally to the Commission and pending appeal, the same shall be executory except when the penalty is removal, in which case the same shall be executory only after confirmation by the Secretary concerned.

(3) An investigation may be entrusted to regional director or similar officials who shall make the necessary report and recommendation to the chief of bureau or office or department within the period specified in Paragraph (4) of the following Section.

(4) An appeal shall not stop the decision from being executory, and in case the penalty is suspension or removal, the respondent shall be considered as having been under preventive suspension during the pendency of the appeal in the event he wins an appeal.

Section 49. *Appeals*. – (1) Appeals, where allowable, shall be made by the party adversely affected by the decision within fifteen days from receipt of the decision unless a petition for reconsideration is seasonably filed, which petition shall be decided within fifteen days. Notice of the appeal shall be filed with the disciplining office, which shall forward the records of the case, together with the notice of appeal, to the appellate authority within fifteen days from filing of the notice of appeal, with its comment, if any. The notice of appeal shall specifically state the date of the decision appealed from and the date of receipt thereof. It shall also specifically set forth clearly the grounds relied upon for excepting from the decision.

(2) A petition for reconsideration shall be based only on any of the following grounds: (a) new evidence has been discovered which materially affects the decision rendered; (b) the decision is not supported by the evidence on record; or (c) error of law or irregularities have been committed which are prejudicial to the interest of the respondent: Provided, That only one petition for reconsideration shall be entertained.

The Administrative Code of 1987 also gave the Civil Service Commission the power to "[p]rescribe, amend and enforce regulations and rules for carrying into effect the provisions of the Civil Service Law and other pertinent laws."[17] Sections 61 and 45 of the 2012 Revised Rules on Administrative Cases in the Civil Service echo the Administrative Code of 1987, and read:

> Section 61. *Filing*. – Subject to Section 45 of this Rule, decisions of heads of departments, agencies, provinces, cities, municipalities and other instrumentalities imposing a penalty exceeding thirty (30) days suspension or fine in an amount exceeding thirty (30) days salary, may be appealed to the Commission within a period of fifteen (15) days from receipt thereof. In cases the decision rendered by a bureau or office head is appealable to the Commission, the same may be initially appealed to the department head and then finally to the Commission.
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> All decisions of heads of agencies are immediately executory pending appeal before the Commission. The decision imposing the penalty of dismissal by disciplining authorities in departments is not immediately executory unless confirmed by the Secretary concerned. However, the Commission may take cognizance of the appeal pending confirmation of its execution by the Secretary.
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> Section 45. *Finality of Decisions*.– A decision rendered by the disciplining authority whereby a penalty of suspension for not more than thirty (30) days or a fine in an amount not exceeding thirty (30) days' salary is imposed, shall be final, executory and not appealable unless a motion for reconsideration is seasonably filed. However, the respondent may file an appeal when the issue raised is violation of due process.
>
> If the penalty imposed is suspension exceeding thirty (30) days, or fine in an amount exceeding thirty (30) days' salary, the same shall be final and executory after the lapse of the reglementary period for filing a motion for reconsideration or an appeal and no such pleading has been filed.

The COA promulgated rules of procedure for its agency, which include rules for disciplinary and administrative cases involving officers and employees of COA. Sections 1 and 10

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[17] Section 12(2), Chapter 3, Title I(A), Book V of Executive Order No. 292.

of Rule XIV on Administrative Cases of the 2009 Revised Rules of Procedure of the Commission on Audit state:

> Section 1. *Applicability of Civil Service Law and Other Rules*. – The procedures set forth in the pertinent provisions of the Civil Service Law, The Omnibus Rules Implementing Executive Order No. 292 and COA Memorandum No. 76-48 dated April 27, 1976, in administrative cases against officers and employees of the Commission, are hereby adopted and read into these rules.
>
> Section 10. *Appeal*.– Appeals, where allowable, shall be made by the party adversely affected by the decision in accordance with the rules prescribed under existing Civil Service rules and regulations.

In the present petition, Galindo and Pinto failed to explain why they filed a petition for *certiorari* before this Court instead of an appeal before the Civil Service Commission. Galindo and Pinto also failed to allege and show that the COA acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction. A petition for *certiorari* cannot substitute for a lost appeal. The supposed petition for *certiorari* imputed errors in the COA's appreciation of facts and evidence presented, which are proper subjects of an appeal.

There is no question that the case that Galindo and Pinto sought to be reviewed is an administrative disciplinary case. We previously ruled in *Saligumba v. Commission on Audit* that our power to review is limited to legal issues in administrative matters, thus:

> The petition has to be dismissed for the following reasons:
>
> 1. Our power to review COA decisions refers to money matters and **not to administrative cases involving the discipline of its personnel**.
>
> 2. Even assuming that We have jurisdiction to review decisions on administrative matters as mentioned above, We cannot do so on factual issues; Our power to review is limited to legal issues.[18] (Emphasis supplied)

[18] 203 Phil. 34, 36 (1982).

Assuming *arguendo* that Galindo and Pinto availed of *certiorari* under Rule 64 as the proper remedy, the present petition was filed beyond the reglementary period for filing.[19] Egargo Puertollano Gervacio Law Offices, Galindo and Pinto's previous counsel, received a copy of the COA's Resolution on 8 October 2013.[20] The same lawyers withdrew their appearance in a notice dated 21 October 2013.[21] As notice to counsel is notice to the client, Galindo and Pinto had only until 7 November 2013 to file a petition for *certiorari*. When Galindo and Pinto filed their present petition for *certiorari* on 30 January 2014, the petition was already 84 days late. Thus, the ruling of the COA in the cases of Galindo and Pinto became final and executory as of 8 November 2013.

Even if the present petition properly raised this Court's *certiorari* jurisdiction and was filed within the reglementary period, we find no grave abuse of discretion in the decision of the COA. There is no capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction. The COA constituted a team from the FAIO-LSS, which in turn found *prima facie* evidence of petitioners' misconduct. Petitioners were charged and hearings were conducted. The pieces of evidence presented against petitioners were substantial enough to justify the finding of their administrative liability.

Galindo and Pinto question the quantum of evidence that established their administrative liability. However, they conveniently forgot that mere substantial evidence, or "that

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[19] Section 3, Rule 64 provides:

SEC. 3. *Time to file petition*.– The petition shall be filed within thirty (30) days from notice of the judgment or final order or resolution sought to be reviewed. The filing of a motion for new trial or reconsideration of said judgment or final order or resolution, if allowed under the procedural rules of the Commission concerned, shall interrupt the period herein fixed. If the motion is denied, the aggrieved party may file the petition within the remaining period, but which shall not be less than five (5) days in any event, reckoned from notice of denial.

[20] *Rollo*, p. 97.

[21] *Id.* at 111.

amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion,"[22] is sufficient. The pieces of evidence presented before the COA, such as the cash advances of Ms. Mendoza accompanied by the testimony of Ms. Mendoza herself, as well as the Indices of Payments and the car loan contracts, establish Galindo's and Pinto's receipt of the disallowed amounts. "Recipients of unauthorized sums would, after all, ordinarily evade traces of their receipt of such amounts. Resort to other documents from which such fact could be deduced was then appropriate."[23]

In the case of *Nacion v. Commission on Audit*,[24] an offshoot of the FAIO-LSS investigation involving the set of COA-MWSS officers that included Galindo and Pinto, this Court dismissed Atty. Janet D. Nacion's petition for *certiorari* for lack of merit. The COA assigned Atty. Nacion to MWSS as State Auditor V from 16 October 2001 to 15 September 2003. The COA initiated *motu proprio* administrative proceedings against Atty. Nacion after it found unauthorized receipt of bonuses and benefits from MWSS by COA-MWSS officers in the period immediately following Atty. Nacion's term. Atty. Nacion alleged grave abuse of discretion on the part of COA, and invoked violation of her right to due process. She argued that the records during her tenure with the MWSS should not have been included by the FAIO-LSS in its investigations because the COA Chairperson did not issue an office order specifically for her case.

We found no grave abuse of discretion on the part of COA finding Atty. Nacion guilty of Grave Misconduct and Violation of Reasonable Office Rules and Regulations. We ruled that there was no need for a separate office order for the FAIO-LSS team's investigation of Atty. Nacion's case. The COA accorded Atty. Nacion a reasonable opportunity to present her defenses through her answer to the formal charge issued by

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[22] Section 5, Rule 133 of the Rules of Court.

[23] *Nacion v. Commission on Audit*, G.R. No. 204757, 17 March 2015, 753 SCRA 297, 309.

[24] *Id.*

the COA Chairperson and her motion for reconsideration of the COA's decision.

ln *Nacion*, we underscored the prohibition enunciated in the first paragraph of Section 18 of R.A. No. 6758:

> Section 18. *Additional Compensation of Commission on Audit Personnel and of Other Agencies*. — In order to preserve the independence and integrity of the Commission on Audit (COA), its officials and employees are prohibited from receiving salaries, honoraria, bonuses, allowances or other emoluments from any government entity, local government unit, and government-owned and controlled corporations, and government financial institution, ***except*** those compensation paid directly by the COA out of its appropriations and contributions.
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> x x x x x x x x x
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> (Boldfacing, underscoring and italicization supplied)

In the same manner, it would do well for Galindo and Pinto to be reminded of this prohibition.

> To be able [to] properly perform their constitutional mandate, COA officials need to be insulated from unwarranted influences, so that they can act with independence and integrity. x x x. The removal of the temptation and enticement the extra emoluments may provide is designed to be an effective way of vigorously and aggressively enforcing the Constitutional provision mandating the COA to prevent or disallow irregular, unnecessary, excessive, extravagant, or unconscionable expenditures or uses of government funds and properties.[25]

WHEREFORE, the petition is **DISMISSED** for lack of merit.

SO ORDERED.

Sereno, C.J., Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, del Castillo, Mendoza, Reyes, Perlas-Bernabe, Leonen, and *Caguioa, JJ.*, concur.

Jardeleza, J., no part.

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[25] *Atty. Villareña v. The Commission on Audit*, 455 Phil. 908, 917 (2003). Citation omitted.

SECOND DIVISION

[A.C. No. 7478. January 11, 2017]

EDUARDO R. ALICIAS, JR., *complainant, vs.* **ATTYS. MYRNA V. MACATANGAY, KARIN LITZ P. ZERNA, ARIEL G. RONQUILLO, and CESAR D. BUENAFLOR,** *respondents.*

SYLLABUS

POLITICAL LAW; ACCOUNTABILITY OF PUBLIC OFFICERS; OFFICE OF THE OMBUDSMAN; HAS ADMINISTRATIVE DISCIPLINARY JURISDICTION OVER ACTS OR OMISSIONS OF GOVERNMENT LAWYERS RELATING TO THE PERFORMANCE OF THEIR FUNCTIONS AS GOVERNMENT OFFICIALS.— The 1987 Constitution clothes the Office of the Ombudsman with the administrative disciplinary authority to investigate and prosecute any act or omission of any government official when such act or omission appears to be illegal, unjust, improper, or inefficient. The Office of the Ombudsman is the government agency responsible for enforcing administrative, civil, and criminal liability of government officials "in every case where the evidence warrants in order **to promote efficient service by the Government to the people."** In *Samson v. Restrivera,* the Court ruled that the jurisdiction of the Ombudsman encompasses all kinds of malfeasance, misfeasance, and non-feasance committed by any public officer or employee during his or her tenure. Consequently, acts or omissions of public officials relating to the performance of their functions as government officials are within the administrative disciplinary jurisdiction of the Office of the Ombudsman. In *Spouses Buffe v. Secretary Gonzales*, the Court held that the IBP has no jurisdiction over government lawyers who are charged with administrative offenses involving their **official duties.** In the present case, the allegations in Alicias' complaint against Atty. Macatangay, Atty. Zerna, Atty. Ronquillo, and Atty. Buenaflor, which include their (1) failure to evaluate CSC records; (2) failure to evaluate documentary evidence presented to the CSC; and (3) non-service of CSC Orders and Resolutions, all relate to

their misconduct in the discharge of their official duties as government lawyers working in the CSC. Hence, the IBP has no jurisdiction over Alicias' complaint. These are acts or omissions connected with their duties as government lawyers exercising official functions in the CSC and within the administrative disciplinary jurisdiction of their superior or the Office of the Ombudsman.

APPEARANCES OF COUNSEL

Carlos P. Medina for complainant.

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court is a disbarment complaint filed by Eduardo R. Alicias, Jr. (Alicias), against Atty. Myrna V. Macatangay (Macatangay), Atty. Karin Litz P. Zerna (Zerna), Atty. Ariel G. Ronquillo (Ronquillo), and Atty. Cesar D. Buenaflor (Buenaflor) for violation of the Lawyer's Oath or Code of Professional Responsibility, gross neglect of duty, and gross ignorance of the law.

The Facts

The present administrative case stemmed from an initial complaint filed by Alicias, an Associate Professor in the College of Education of the University of the Philippines against Dean Leticia P. Ho (Ho) of the same College for two counts of violation of Republic Act No. 6713.[1] The Civil Service Commission (CSC), through its Office of Legal Affairs (CSC-OLA), then headed by Director IV Florencio P. Gabriel, Jr., referred Alicias' complaint against Ho to its Regional Office in the National Capital Region (CSC-NCR). In its 26 June 202 Resolution, the

[1] Code of Conduct and Ethical Standards for Public Officials and Employees.

CSC-NCR found that the complaint was insufficient to support a *prima facie* case against Ho. Alicias' complaint against Ho was dismissed.

On 12 July 2002, Alicias filed a petition for review[2] with the CSC. The CSC asked the CSC-NCR to comment. Pending the resolution of the petition for review, Macatangay replaced Director Gabriel, Jr. as Officer-in-Charge of the CSC-OLA. In a letter[3] dated 5 May 2003, Alicias followed up his petition for review and notified the CSC of his new residential address in Cainta, Rizal. On 26 April 2004, Alicias wrote a second letter[4] to follow-up his petition for review. On 9 August 2004, the CSC, as a collegial body, deliberated on the draft resolution prepared by the CSC-OLA. The draft resolution, however, was returned for re-writing.

On 30 August 2004, Zerna succeeded Macatangay as Officer-in-Charge of the CSC-OLA. A third follow-up was made by Alicias on 16 September 2004 through a handwritten note.[5] Alicias claimed that he never received any reply from the CSC-OLA. On 28 October 2004, the CSC released a Resolution[6] dismissing Alicias' petition for review for lack of merit.[7] As CSC Commissioner, Buenaflor was one of the signatories of the Resolution.

Alicias did not receive a copy of the Resolution. The records[8] show that it was mistakenly sent to his old address in Quezon City. Unaware that the petition for review was already resolved, Alicias moved for its resolution on 16 February 2006, followed by another letter on 10 April 2006.[9] Ronquillo, who assumed

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[2] *Rollo*, pp. 16-32.

[3] *Id.* at 34.

[4] *Id.* at 59-61.

[5] *Id.* at 62.

[6] *Id.* at 35-39.

[7] CSC Resolution No. 041187.

[8] *Rollo*, p. 73.

[9] *Id.* at 66.

as Director IV of the CSC-OLA, received Alicias' Motion for Resolution. Ronquillo replied that the petition for review was already dismissed on 28 October 2004.

On 26 April 2006, Alicias received through registered mail a copy of the CSC's Resolution. Alicias filed a Motion for Reconsideration which was denied on 1 August 2006.[10] Commissioner Buenaflor was one of the signatories of the Resolution. Alicias did not appeal the CSC's Resolution with the Court of Appeals.

On 11 April 2007, Alicias filed the present administrative complaint before the Court accusing Macatangay, Zerna, Ronquillo, and Buenaflor of violation of the Lawyer's Oath or Code of Professional Responsibility, gross neglect of duty, and gross ignorance of the law. Alicias alleged that respondents, by reason of their respective offices in the CSC, participated directly or indirectly in writing or approving the Resolution. Respondents allegedly (1) did not conduct a careful evaluation of the records; (2) did not hear the arguments of both parties; (3) ignored uncontroverted documentary evidence adduced by him; (4) erroneously applied established jurisprudence; (5) denied him due process of law by not furnishing him a copy of the CSC's Order directing the CSC-NCR to comment and a copy of the CSC-NCR comment; and (6) willfully did not give him a copy of the Resolution of his petition for review.

In their Joint Comment[11] dated 16 August 2007, respondents argued that Alicias was not denied due process because after the denial of his motion for reconsideration, he still had the available remedy of filing a petition for review on certiorari[12] with the Court of Appeals. Respondents contended that no clear and convincing evidence had been offered to show bad faith or ulterior motive on their part.

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[10] CSC Resolution No. 061342.

[11] *Rollo*, pp. 70-81.

[12] Under Rule 43 of the 1997 Rules of Civil Procedure.

In a Reply[13] dated 30 August 2007, Alicias claimed that the present administrative complaint is not an alternative remedy to seek judicial relief since it is founded on a different cause of action. Alicias contended that bad faith is not an element to sustain an action for gross ignorance of the law. He argued that the failure to follow prescribed procedure constitutes *malum prohibitum*. Hence, proof of mere violation is sufficient to sustain a conviction without need of proving ill motive.

On 8 October 2007, the Court, through the Second Division, referred the case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.

The Ruling of the IBP

In a Report and Recommendation[14] dated 20 October 2010, IBP Commissioner Maria Editha A. Go-Binas (Commissioner Go-Binas) recommended that the administrative complaint against Macatangay, Zerna, Ronquillo, and Buenaflor be dismissed for lack of merit.[15] Commissioner Go-Binas found that the complaint was baseless and Alicias failed to show sufficient proof in support of his claims.[16]

In Resolution No. XX-2011-288[17] passed on 10 December 2011, the IBP Board of Governors adopted and approved

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[13] *Rollo*, pp. 122-138.

[14] *Id.* at 431-435.

[15] *Id.* at 435.

[16] *Id.* at 434. The Report and Recommendation states: "This Honorable Commission is not persuaded to rule in favor of the complainant. We find no cogent reason why the [r]espondents should be disbarred nor be subjected for any admonition or disciplinary action. The filing of this case is definitely baseless, unjustified and malicious and made by the complainant to malign the reputation of the [r]espondents because he never got a favorable decision for the case he filed against Ho."

[17] *Id.* at 429. The Resolution states: "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 x x x and finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and considering that the case lacks merit, the same is hereby DISMISSED."

Commissioner Go-Binas' Report and Recommendation, dismissing the complaint for lack of merit.

In Resolution No. XX-2013-738[18] issued on 21 June 2013, the IBP Board of Governors likewise denied the motion for reconsideration[19] filed by Alicias. The Board found no cogent reason to reverse its initial findings since the matters raised were reiterations of those which had already been taken into consideration.

Hence, Alicias filed this petition.[20]

The Ruling of the Court

The Court disagrees with the Report and Recommendation of the IBP Board of Governors. The IBP has no jurisdiction over the disbarment complaint. The administrative complaint must be filed with the Office of the Ombudsman.

Republic Act No. 6770[21] (R.A. No. 6770), otherwise known as "The Ombudsman Act of 1989," prescribes the jurisdiction of the Office of the Ombudsman. Section 15, paragraph 1 of R.A. No. 6770 provides:

Section 15. *Powers, Functions and Duties*. — The Office of the Ombudsman shall have the following powers, functions and duties:

(1) Investigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient. It has primary jurisdiction over

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[18] *Id.* at 482. The Resolution states: "RESOLVED to unanimously DENY [c]omplainant's Motion for Reconsideration, there being no cogent reason to reverse the findings of the Commission and it being a mere reiteration of the matters which had already been threshed out and taken into consideration. Thus, Resolution No. XX-2011-288 dated December 10, 2011 is hereby AFFIRMED."

[19] *Id.* at 436-443.

[20] Petition for Review on *Certiorari* dated 7 November 2013.

[21] An Act Providing for the Functional and Structural Organization of the Office of the Ombudsman, and for Other Purposes.

> cases cognizable by the Sandiganbayan and, in the exercise of his primary jurisdiction, it may take over, at any stage, from any investigatory agency of Government, the investigation of such cases.

The 1987 Constitution clothes the Office of the Ombudsman with the administrative disciplinary authority to investigate and prosecute any act or omission of any government official when such act or omission appears to be illegal, unjust, improper, or inefficient.[22] The Office of the Ombudsman is the government agency responsible for enforcing administrative, civil, and criminal liability of government officials "in every case where the evidence warrants in order **to promote efficient service by the Government to the people**."[23] In *Samson v. Restrivera*,[24] the Court ruled that the jurisdiction of the Ombudsman encompasses all kinds of malfeasance, misfeasance, and non-feasance committed by any public officer or employee during his or her tenure. Consequently, acts or missions of public officials relating to the performance of their function as government officials are within the administrative disciplinary jurisdiction of the Office of the Ombudsman.[25]

In *Spouses Buffe v. Secretary Gonzales*,[26] the Court held that the IBP has no jurisdiction over government lawyers who are charged with administrative offenses involving their **official duties**.[27] In the present case, the allegations in Alicias' complaint against Atty. Macatangay, Atty. Zerna, Atty. Ronquillo, and Atty. Buenaflor, which include their (1) failure to evaluate CSC records; (2) failure to evaluate documentary evidence presented to the CSC; and (3) non-service of CSC Orders and Resolutions, all relate to their misconduct in the discharge of their official

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[22] CONSTITUTION, Art. XI, Sec. 13, par. (1).

[23] Sec. 13, R.A. No. 6770.

[24] 662 Phil. 45 (2011).

[25] *Id.*

[26] A.C. No. 8168, 12 October 2016.

[27] *Id.*

duties as government lawyers working in the CSC. Hence, the IBP has no jurisdiction over Alicias' complaint. These are acts or omissions connected with their duties as government lawyers exercising official functions in the CSC and within the administrative disciplinary jurisdiction of their superior[28] or the Office of the Ombudsman.[29]

WHEREFORE, the administrative complaint against Atty. Myrna V. Macatangay, Atty. Karin Litz P. Zerna, Atty. Ariel G. Ronquillo, and Atty. Cesar D. Buenaflor is **DISMISSED** for lack of jurisdiction on the part of the Integrated Bar of the Philippines.

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[28] Executive Order No. 292, or "Administrative Code of 1987," Book V, Title I, Chapter 7, Section 47: *Disciplinary Jurisdiction*.– (1) The Commission shall decide upon appeal all administrative disciplinary cases involving the imposition of a penal of suspension for more than thirty days, or fine in an amount exceeding thirty days salary, demotion in rank or salary or transfer, removal or dismissal from office. A complaint may be filed directly with the Commission by a private citizen against a government official or employee in which case it may hear and decide the case or it may deputize any department or agency or official or group of officials to conduct the investigation. The results of the investigation shall be submitted to the Commission with recommendation as to the penalty to be imposed or other action to be taken.

(2) The Secretaries and heads of agencies and instrumentalities, provinces, cities and municipalities shall have jurisdiction to investigate and decide matters involving disciplinary action against officers and employees under their jurisdiction. Their decisions shall be final in case the penalty imposed is suspension for not more than thirty days or fine in an amount not exceeding thirty days' salary. In case the decision rendered by a bureau or office head is appealable to the Commission, the same may be initially appealed to the department and finally to the Commission and pending appeal, the same shall be executory except when the penalty is removal, in which case the same shall be executory only after confirmation by the Secretary concerned.

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[29] R.A. No. 6770, Section 21: *Officials Subject to Disciplinary Authority; Exceptions*. – The Office of the Ombudsman shall have disciplinary authority over all elective and appointive officials of the Government and its subdivisions, instrumentalities and agencies, including Members of the Cabinet, local government, government-owned or controlled corporations and their subsidiaries, except over officials who may be removed only by impeachment or over Members of Congress, and the Judiciary.

Let a copy of this Decision be furnished the Office of the Ombudsman for whatever appropriate action the Ombudsman may wish to take with respect to the possible administrative and criminal liability of respondents Atty. Myrna V. Macatangay, Atty. Karin Litz P. Zerna, Atty. Ariel G. Ronquillo, and Atty. Cesar D. Buenaflor.

SO ORDERED.

Peralta, Mendoza, Leonen, and *Jardeleza, JJ.*, concur.

SECOND DIVISION

[A.M. No. RTJ-15-2423. January 11, 2017]

SANTIAGO D. ORTEGA, JR., *complainant, vs.* **JUDGE ROGELIO LL. DACARA, Presiding Judge, Regional Trial Court, Branch 37, Iriga City, Camarines Sur,** *respondent*.

SYLLABUS

1. REMEDIAL LAW; BATAS PAMBANSA BILANG 129; REGIONAL TRIAL COURTS; EXERCISE ORIGINAL JURISDICTION IN THE ISSUANCE OF WRITS OF INJUNCTION WHICH MAY BE ENFORCED IN ANY PART OF THEIR RESPECTIVE REGIONS.— [R]espondent judge erred in stating that RTC-Branch 37 of Iriga City has no jurisdiction over the defendants whose office address is in Pili, Camarines Sur. Respondent judge asserts that the territorial jurisdiction of RTC-Branch 37 includes only the City of Iriga and the municipalities of Nabua, Bato, Buhi, and Balatan, in Camarines Sur. That is incorrect. Section 21 of BP 129 provides that RTCs exercise original jurisdiction in the issuance of writs of injunction which may be enforced in any part of their respective regions. Under Section 13 of BP 129, the Fifth Judicial

Region consists of the provinces of Albay, Camarines Sur, Camarines Norte, Catanduanes, Masbate, and Sorsogon, and the cities of Legazpi, Naga, and Iriga. The RTC of Iriga City is within the Fifth Judicial Region. The Municipality of Pili, which is the capital of the Province of Camarines Sur, is also part of the Fifth Judicial Region. Clearly, respondent judge of RTC-Branch 37, Iriga City can issue a writ of injunction which can be enforced in any part of the Fifth Judicial Region, including Pili, Camarines Sur.

2. JUDICIAL ETHICS; JUDGES; GROSS IGNORANCE OF THE LAW; TO HOLD A JUDGE ADMINISTRATIVELY LIABLE FOR GROSS IGNORANCE OF THE LAW, THE ASSAILED DECISION OR ACT OF THE JUDGE IN THE PERFORMANCE OF HIS OFFICIAL DUTIES MUST NOT ONLY BE CONTRARY TO EXISTING LAW OR JURISPRUDENCE, BUT MUST ALSO BE MOTIVATED BY BAD FAITH, FRAUD, DISHONESTY, OR CORRUPTION ON HIS PART.— Not every error or mistake committed by a judge in the exercise of his adjudicative functions renders him liable, unless his act was tainted with bad faith or a deliberate intent to do an injustice. To hold a judge administratively liable for gross ignorance of the law, the assailed decision, order or act of the judge in the performance of his official duties must not only be contrary to existing law or jurisprudence, but must also be motivated by bad faith, fraud, dishonesty, or corruption on his part. In this case, there was no evidence that respondent judge was motivated with bad faith, fraud, or corruption when he denied the prayer for the issuance of a writ of preliminary mandatory injunction. More importantly, notwithstanding respondent judge's error in stating that there was no jurisdiction over the defendants, the Order denying the writ of preliminary mandatory injunction was proper. Considering the circumstances of this case and the lack of malice and bad faith on the part of respondent judge in issuing the assailed Order, the Court finds respondent judge not liable for gross ignorance of the law and gross inexcusable negligence.

D E C I S I O N

CARPIO, *J.*:

The Case

This is an administrative case for gross ignorance of the law and gross inexcusable negligence filed by Santiago D. Ortega, Jr. (complainant) against Judge Rogelio Ll. Dacara (respondent judge), Presiding Judge of the Regional Trial Court (RTC), Branch 37, Iriga City, Camarines Sur.

The Facts

In a verified complaint dated 18 December 2013, complainant charged respondent judge with gross ignorance of the law and gross inexcusable negligence.

The complaint alleged that complainant is the president of the Siramag Fishing Corporation (SFC). On 18 January 2013, SFC and complainant filed a case for Damages with Application for the Issuance of a Writ of Preliminary Mandatory Injunction against the Regional Director of the Bureau of Fisheries and Aquatic Resources, Regional Office V (BFAR RO-V) and the Chief of Fisheries Resource Management Division, BFAR RO-V. The case was raffled to RTC-Branch 37, Iriga City, Camarines Sur, presided by respondent judge.

After the hearing on the injunction issue, respondent judge issued an Order dated 22 April 2013, denying the application for the issuance of a writ of preliminary mandatory injunction. The denial of the writ of preliminary mandatory injunction was based on the following reasons: (1) plaintiffs have not shown a clear and inestimable right to be protected; (2) the trial court is prohibited from issuing the preliminary injunction under Presidential Decree No. 605[1] (PD 605) and Section 10, Rule 2

[1] Banning the Issuance by Courts of Preliminary Injunctions in Cases Involving Concessions, Licenses, and Other Permits Issued by Public Administrative Officials or Bodies for the Exploitation of Natural Resources.

of A.M. No. 09-6-8-SC;[2] and (3) the trial court has no jurisdiction over the defendants, who are within the territorial jurisdiction of RTC, Pili, Camarines Sur.

Complainant alleged that the Order shows respondent judge's incompetence and ignorance of the law by his failure to distinguish between a writ of preliminary injunction and a writ of preliminary mandatory injunction. Complainant asserted that the prohibition under Section 10, Rule 2 of A.M. No. 09-6-8-SC and PD 605 applies only to the issuance of a writ of preliminary injunction but not to a writ of preliminary mandatory injunction. Furthermore, RTC-Branch 37 has jurisdiction to issue a writ of injunction which may be enforced within the Fifth Judicial Region, which includes Pili, Camarines Sur, where the office of the defendants is located. Complainant maintained that respondent judge, whose sala is not designated as an environmental court, should not have taken cognizance of the case which involved environmental issues. It was only upon complainant's motion that the case was eventually transferred to RTC-Branch 35, a designated environmental court.

In his Comment dated 26 March 2014, respondent judge maintained that a writ of preliminary mandatory injunction is included in the term preliminary injunction under Section 3(a) of Rule 58.[3] Citing Section 10, Rule 2 of A.M. No. 09-6-8-SC and Section 1[4] of PD 605, respondent judge stated that he is

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[2] Section 10. *Prohibition against temporary restraining order (TRO) and preliminary injunction.* — Except the Supreme Court, no court can issue a TRO or writ of preliminary injunction against lawful actions of government agencies that enforce environmental laws or prevent violations thereof.

[3] Sec. 3. *Grounds for issuance of preliminary injunction*. — A preliminary injunction may be granted when it is established:

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

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[4] Section 1. No court of the Philippines shall have jurisdiction to issue any restraining order, preliminary injunction or preliminary mandatory injunction

expressly prohibited from issuing a writ of preliminary mandatory injunction.

As regards lack of jurisdiction over the defendants, respondent judge explained that under Section 18 of Batas Pambansa Blg. 129 (BP 129), the territorial jurisdiction of RTC-Branch 37 does not include the Municipality of Pili where the office of the defendants is located. Respondent judge claimed good faith in believing that the territorial jurisdiction of RTC-Branch 37 includes only the City of Iriga and the municipalities of Nabua, Bato, Buhi, and Balatan in Camarines Sur. Respondent judge submitted that if he misinterpreted the law, it was merely an error of judgment. Besides, respondent judge insisted that he denied the prayer for the issuance of a writ of preliminary mandatory injunction because the plaintiffs failed to show that there is a clear and inescapable right to be protected.

On the allegation that he should not have taken cognizance of the case since his sala is not an environmental court, respondent judge clarified that the case was assigned to him and that it was not apparent from the title of the case that it involved an environmental issue. The case was eventually transferred to RTC-Branch 35 after respondent judge told the presiding judge of RTC-Branch 35 that the case involved environmental law and thus, cognizable by RTC-Branch 35, which is designated as an environmental court.

Respondent judge compulsorily retired from service on 16 September 2014.

The OCA's Report and Recommendation

In its Report dated 27 February 2015, the Office of the Court Administrator (OCA) found respondent judge liable for gross ignorance of the law.

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in any case involving or growing out of the issuance, approval or disapproval, revocation or suspension of, or any action whatsoever by the proper administrative official or body on concessions, licenses, permits, patents, or public grants of any kind in connection with the disposition, exploitation, utilization, exploration, and/or development of the natural resources of the Philippines.

The OCA stated that although respondent judge may have loosely used the term "writ of preliminary injunction" interchangeably with "writ of preliminary mandatory injunction," he was not remiss in appreciating the requisites of Rule 58 on Preliminary Injunction. In his Order, respondent judge discussed the requirements for the issuance of a writ of preliminary mandatory injunction and found that complainant failed to show a clear and inestimable right to be protected.

On the issue that respondent judge should not have taken cognizance of the case because it is not designated as an environmental court, the OCA noted that the case was raffled to respondent judge's sala. Respondent judge cannot be faulted for taking cognizance of the case since the complaint failed to indicate that it is an environmental case. Besides, the case was eventually transferred to Branch 35, a designated environmental court.

However, the OCA found that respondent judge erred in stating that RTC-Branch 37 of Iriga City has no jurisdiction over the defendants whose office address is in Pili, Camarines Sur. Section 21 of BP 129 states that the RTCs have original jurisdiction to issue writs of injunction which may be enforced in any part of their respective regions. Under Section 13 of BP 129, the RTC of Iriga City, Camarines Sur is within the Fifth Judicial Region and the Municipality of Pili, which is the capital of the Province of Camarines Sur, is also part of the Fifth Judicial Region.

The OCA recommended (a) that the administrative complaint against respondent judge be re-docketed as a regular administrative matter; and (b) that respondent judge be fined in the amount of ₱20,000 for gross ignorance of the law, to be deducted from his retirement benefits and/or from the monetary value of leave credits due him.

The Ruling of the Court

In the case for damages filed by SFC and complainant in the trial court, they prayed for the issuance of a writ of preliminary mandatory injunction to compel the defendants to renew the Commercial Fishing Vessel/Gear License of the plaintiffs fishing

vessel F/V "Mercy Cecilia-I." Respondent judge denied the prayer for the issuance of a writ of preliminary mandatory injunction, which led to the filing of the administrative complaint against respondent judge.

Complainant asserts that the prohibition under A.M. No. 09-6-8-SC and PD 605 applies only to the issuance of a writ of preliminary injunction but not to a writ of preliminary mandatory injunction.

Contrary to complainant's allegation, respondent judge is correct in stating that he is prohibited from issuing a writ of preliminary mandatory injunction in the case filed by SFC and complainant. Although the prohibition against the issuance of a writ of preliminary mandatory injunction was not expressly stated under A.M. No. 09-6-8-SC, such prohibition is very clear under Section 1 of PD 605[5] which reads:

> SECTION 1. No court of the Philippines shall have jurisdiction to issue any restraining order, preliminary injunction or **preliminary mandatory injunction** in any case involving or growing out of the issuance, approval or disapproval, revocation or suspension of, or any action whatsoever by proper administrative official or body on concessions, licenses, permits, patents, or public grants of any kind in connection with the disposition, exploitation, utilization, exploration, and/or development of the natural resources of the Philippines. (Emphasis supplied)

The case filed by SFC and complainant to compel the renewal of the license of their fishing vessel is clearly covered under Section 1 of PD 605, prohibiting the issuance of a writ of preliminary mandatory injunction in any case involving the disapproval, revocation or suspension of a license in connection with the exploitation of natural resources. It was therefore proper for respondent judge to deny their prayer for the issuance of a writ of preliminary mandatory injunction. Besides, respondent judge found that complainant failed to show that there is a clear and inescapable right to be protected which would justify the issuance of a writ of preliminary mandatory injunction.

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[5] PD 605 was approved on 12 December 1974.

Complainant cannot blame respondent judge for taking cognizance of the case which was assigned to him. Respondent judge explained that it was not apparent from the title of the case that it involved an environmental issue. Besides, as noted by the OCA, the complaint failed to state that it is an environmental case as required under Section 3, Rule 2 of A.M. No. 09-6-8-SC.[6] Such omission caused the raffling of the case to a regular court and not to an environmental court. The case was eventually transferred to RTC-Branch 35, which is designated as an environmental court. In the same manner that, under Section 3, Rule 2 of A.M. No. 09-6-8-SC, if the complaint is not an environmental complaint despite its designation as such, the case will be re-raffled to a regular court.

Furthermore, the Court notes that complainant actively participated as plaintiff in the lower court (RTC-Branch 37) by: (a) filing a Motion to set Injunction Incident for Hearing; (b) arguing through his counsel the necessity of the writ of preliminary injunction; (c) submitting his judicial affidavit in support of his claims; and (d) filing a Manifestation with Motion praying that the injunction incident be submitted for resolution.[7] It was only after respondent judge issued an adverse Order denying the issuance of a writ of preliminary mandatory injunction that complainant attacked the jurisdiction of RTC-Branch 37 since it is not a designated environmental court.

However, respondent judge erred in stating that RTC-Branch 37 of Iriga City has no jurisdiction over the defendants whose

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[6] SEC. 3. *Verified complaint*. – The verified complaint shall contain the names of the parties, their addresses, the cause of action and the reliefs prayed for.

The plaintiff shall attach to the verified complaint all evidence proving or supporting the cause of action consisting of the affidavits of witnesses, documentary evidence and if possible, object evidence. The affidavits shall be in question and answer form and shall comply with the rules of admissibility of evidence.

The complaint shall state that it is an environmental case and the law involved. The complaint shall also include a certification against forum shopping. **If the complaint is not an environmental complaint, the presiding judge shall refer it to the executive judge for re-raffle.** (Emphasis supplied)

[7] *Rollo*, p. 5.

office address is in Pili, Camarines Sur. Respondent judge asserts that the territorial jurisdiction of RTC-Branch 37 includes only the City of Iriga and the municipalities of Nabua, Bato, Buhi, and Balatan, in Camarines Sur. That is incorrect. Section 21[8] of BP 129 provides that RTCs exercise original jurisdiction in the issuance of writs of injunction which may be enforced in any part of their respective regions. Under Section 13 of BP 129, the Fifth Judicial Region consists of the provinces of Albay, Camarines Sur, Camarines Norte, Catanduanes, Masbate, and Sorsogon, and the cities of Legazpi, Naga, and Iriga. The RTC of Iriga City is within the Fifth Judicial Region. The Municipality of Pili, which is the capital of the Province of Camarines Sur, is also part of the Fifth Judicial Region. Clearly, respondent judge of RTC-Branch 37, Iriga City can issue a writ of injunction which can be enforced in any part of the Fifth Judicial Region, including Pili, Camarines Sur.

Nevertheless, it should be stressed that respondent judge issued the Order denying the issuance of a writ of preliminary mandatory injunction primarily because the plaintiffs failed to show a clear and inestimable right to be protected and because it is prohibited under A.M. No. 09-6-8-SC and PD 605. Thus, even if respondent judge erred in stating that the trial court has no jurisdiction over the defendants, the Order denying the issuance of a writ of preliminary mandatory injunction was proper. Furthermore, there was no allegation or proof that respondent judge acted with malice or bad faith in issuing the Order denying the writ of preliminary mandatory injunction.

Not every error or mistake committed by a judge in the exercise of his adjudicative functions renders him liable, unless his act

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[8] Section 21 of BP 129 states:

SEC. 21. *Original jurisdiction in other cases*.– Regional Trial Courts shall exercise original jurisdiction:

(1) In the issuance of writs of *certiorari*, prohibition, *mandamus, quo warranto, habeas corpus* and injunction which may be enforced in any part of their respective regions; and

(2) In actions affecting ambassadors and other public ministers and consuls.

was tainted with bad faith or a deliberate intent to do an injustice.[9] To hold a judge administratively liable for gross ignorance of the law, the assailed decision, order or act of the judge in the performance of his official duties must not only be contrary to existing law or jurisprudence, but must also be motivated by bad faith, fraud, dishonesty, or corruption on his part.[10] In this case, there was no evidence that respondent judge was motivated with bad faith, fraud, or corruption when he denied the prayer for the issuance of a writ of preliminary mandatory injunction. More importantly, notwithstanding respondent judge's error in stating that there was no jurisdiction over the defendants, the Order denying the writ of preliminary mandatory injunction was proper.

Considering the circumstances of this case and the lack of malice and bad faith on the part of respondent judge in issuing the assailed Order, the Court finds respondent judge not liable for gross ignorance of the law and gross inexcusable negligence.

The Court is cognizant of respondent judge's extensive service in the judiciary. Respondent judge was appointed as Presiding Judge of RTC-Branch 37 in Iriga City on 22 September 2005 and compulsorily retired on 16 September 2014. Prior to his appointment as RTC judge, he was the Presiding Judge of the Municipal Trial Court in Cities of Iriga City since 9 September 1995. He also served as Clerk of Court VI and Clerk V of RTC-Office of the Clerk of Court, Iriga City from 1990 to 1995. As noted by the OCA, this is the only administrative case filed against respondent judge.

WHEREFORE, we **DISMISS** the administrative complaint against Judge Rogelio Ll. Dacara for lack of merit.

SO ORDERED.

Peralta, Mendoza, Leonen, and *Jardeleza, JJ.*, concur.

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[9] *Rubin v. Judge Corpus-Cabochan*, 715 Phil. 318 (2013); *Atty. Amante-Descallar v. Judge Ramas,* 601 Phil. 21 (2009).

[10] *Lorenzana v. Austria*, A.M. No. RTJ-09-2200, 2 April 2014, 720 SCRA 319; *Atty. Martinez v. Judge De Vera*, 661 Phil. 11 (2011); *Bagano v. Judge Hontanosas*, 497 Phil. 389 (2005); *The Officers and Members of the IBP, Baguio-Benguet Chapter v. Judge Pamintuan*, 485 Phil. 473 (2004).

FIRST DIVISION

[G.R. No. 170506. January 11, 2017]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **HEIRS OF LORENZO TAÑADA AND EXPEDITA EBARLE,** *respondents.*

SYLLABUS

LABOR AND SOCIAL LEGISLATION; AGRARIAN LAWS; REPUBLIC ACT NO. 6657 (THE COMPREHENSIVE AGRARIAN REFORM LAW OF 1988); JUST COMPENSATION; MUST BE GOVERNED BY THE VALUATION FACTORS UNDER SECTION 17 OF THE LAW.— Since there is no dispute that the subject properties are qualified for coverage under the agrarian reform law, the just compensation for the said properties must be governed by the valuation factors under Section 17 of Republic Act No. 6657 x x x Thus, we have held that when handling just compensation cases, the trial court acting as a SAC should be guided by the following factors: (1) the acquisition cost of the land; (2) the current value of the properties; (3) its nature, actual use, and income; (4) the sworn valuation by the owner; (5) the tax declarations; (6) the assessment made by government assessors; (7) the social and economic benefits contributed by the farmers and the farmworkers, and by the government to the property; and (8) the nonpayment of taxes or loans secured from any government financing institution on the said land, if any. Pursuant to the rule-making power of the Department of Agrarian Reform (DAR) under Section 49 of Republic Act No. 6657, the enumerated factors were translated into a formula that was outlined in DAR Administrative Order No. 17, series of 1989, as amended by DAR Administrative Order No. 03, series of 1991, and as further amended by DAR Administrative Order No. 06, series of 1992, entitled "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. x x x It is apparent x x x that both the trial court and the Court of Appeals did not observe the valuation

factors under Section 17 of Republic Act No. 6657 as translated into a basic formula in DAR Administrative Order No. 06, series of 1992, without a well-reasoned justification for the deviation as supported by the evidence on record. This is in clear violation of the express mandate of both the law and jurisprudence concerning the determination of just compensation of land subjected to coverage by the agrarian reform law. For this reason, the valuation made by the trial court cannot be upheld and must be struck down as illegal.

APPEARANCES OF COUNSEL

LBP Legal Department for petitioner.
Tañada Vivo & Tan Law Office for respondents.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Before the Court is a petition for review under Rule 45 of the 1997 Rules of Civil Procedure assailing the Decision[1] dated April 8, 2005 as well as the Resolution[2] dated November 22, 2005 of the Court of Appeals in CA-G.R. SP No. 79245, entitled *"Land Bank of the Philippines v. Heirs of Lorenzo Tañada and Expedita Ebarle."* The assailed April 8, 2005 appellate court ruling was an affirmance of the Decision[3] dated July 13, 1999 of Branch 1 of the Regional Trial Court of Bataan in Civil Case Nos. 6328 and 6333. On the other hand, the assailed November 22, 2005 Resolution denied for lack of merit the motion for reconsideration filed by petitioner.

In the aforementioned April 8, 2005 Decision of the Court of Appeals, the factual antecedents of this case were synthesized as follows:

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[1] *Rollo*, pp. 58-69; penned by Associate Justice Rebecca de Guia-Salvador with Associate Justices Conrado M. Vasquez, Jr. and Aurora Santiago-Lagman concurring.

[2] *Id.* at 71-73.

[3] *Id.* at 128-131.

Respondents, the Heirs of Lorenzo Tañada and Expedita Ebarle, are the owners of several parcels of land situated in Gabon, Abucay, Bataan, covered by TCT Nos. T-8483 and T-12610, with respective land areas of 56.8564 and 16.9268 hectares. The record shows that sometime in 1988, the aforesaid parcels of land were placed under the land reform program of the government. It was determined that 16.7692 hectares from TCT No. T-8483 and 13 hectares from TCT No. T-12610 would be included in the program.

Pursuant to its mandate under Executive Order No. 405, petitioner Land Bank of the Philippines (LBP) valued the properties to be taken at ₱223,837.29 for 16.7692 hectares and ₱192,610.16 for 13 hectares or a total of ₱416,447.43. Dissatised with this valuation for being unreasonably and unconscionably low, respondents instituted the summary administrative proceedings for the preliminary determination of just compensation in 1992 and 1993. Said cases were docketed as DARAB Case Nos. 068-B'92 for TCT No. 12610 and 103-BT'93 for TCT No. T-8483 with the Department of Agrarian Reform Adjudication Board (DARAB) in Region III.

With the DARAB's affirmation of the acquisition cost fixed by petitioner for the subject properties, respondents instituted separate petitions for the determination and payment of just compensation, viz.: Civil Case No. 6328 for the 16.7692 hectares covered by TCT No. T-8483 and Civil Case No. 6353 for the 13 hectares under TCT No. T-12610, both with the RTC of Bataan, Branch I. Contending that the price fixed by petitioner was unconscionably low, respondents prayed that their properties be revalued at ₱150,000.00 per hectare. Since they raised similar issues, the two (2) cases were eventually consolidated.

To establish their claim for just compensation, respondents presented Jose Dela Cruz, a vault keeper from the Office of the Bataan Register of Deeds, who testified that he is the custodian of documents and titles in the said office. Said witness identified a Deed of Sale dated 05 April 1997 executed by Horacio Limcangco who sold 6,158 square meters of land in Abucay, Bataan for ₱20,000.00 or for 3.24 per square meter. He also identified a Deed of Absolute Sale dated 27 August 1996 executed by Franklin and Benigno Morales whereby 53,102 square meters of land in Abucay, Bataan was sold for ₱830,000.00 or for ₱15.91 per square meter.

On the other hand, neither the Department of Agrarian Reform (DAR) nor petitioner presented any witness to refute the evidence

presented by respondents. Instead, they offered documentary exhibits to show how, in adherence to DAR Administrative Order No. 6, Series of 1992, they arrived at the valuation of the just compensation for the subject parcels.[4] (Citations omitted.)

Upon termination of the proceedings, the trial court acting as a Special Agrarian Court (SAC) rendered the assailed July 13, 1999 Decision which favored the respondents in this case and pegged the value of the lots in question at fifteen pesos per square meter or ₱150,000.00 per hectare. The dispositive portion of the trial court's judgment is reproduced here:

WHEREFORE, judgment is hereby rendered:

1. Declaring that the petitioners are entitled to just compensation; and

2. That ₱150,000.00 per hectare is just compensation for the land of the petitioners to be paid by the Land Bank of the Philippines for the areas selected by the Department of Agrarian Reform namely: 16.7692 hectares under Transfer Certicate of Title No. T-8483 and 13 hectares under Transfer Certicate of Title No. T-12610 both of the Office of the Register of Deeds of Bataan.[5]

In arriving at the said ruling, the trial court reasoned, thus:

The issue to be resolved is whether or not the valuation made by the Land Bank of the Philippines and DARAB [is] just compensation for the said properties to be acquired by the Department of Agrarian Reform.

In the case of Association of Small Landowners in the Philippines, Inc. *vs.* Secretary of Agrarian Reform, 175 SCRA 343, the Supreme Court held that:

> Just compensation is defined as the full and fair equivalent of the property taken from its owner by the expropriator. It has been repeatedly stressed by this Court that the measure is not the taker's gain but the owner's loss. The 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. Manila Railroad

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

[5] *Id.* at 131.

Co. *vs*. Velasquez, 32 Phil. 286; Manotok *vs*. National Housing Authority, 150 SCRA 89.

Based on said definition of what is just compensation, this Court believes that the price of ₱150,000.00 per hectare or ₱15.00 per square meter which the petitioners are asking is just and reasonable. This is the same price for which the owner of adjoining land was sold in Abucay, Bataan in 1996.

This Court cannot close its eyes to the prevalent practice of tenants that once they are awarded lots under the Comprehensive Agrarian Reform Program, they immediately look for prospective buyers, selling the property from ₱500,000.00 to ₱1,000,000.00 per hectare which they only acquired at a very low price to the point of being confiscatory to the prejudice of the real owners.[6]

A motion for reconsideration was subsequently filed by petitioner but this was denied by the trial court in its Order dated August 7, 2003.[7]

Dissatisfied with the adverse judgment, petitioner elevated the case to the Court of Appeals. However, the appellate court merely denied petitioner's appeal and affirmed the appealed decision of the trial court in the now assailed April 8, 2005 Decision, which dispositively states:

WHEREFORE, the petition is DENIED for lack of merit and the appealed Decision dated 13 July 1999 is **AFFIRMED *in toto*.**[8]

When the appellate court refused to reconsider the foregoing decision, petitioner sought our review of the case and our ruling on the following issue:

WHETHER OR NOT THE SPECIAL AGRARIAN COURT CAN DISREGARD THE VALUATION GUIDELINES OR FORMULA PRESCRIBED UNDER DAR AO NO. 6, SERIES OF 1992, AND AS HELD IN THE CASE OF SPS. BANAL, *SUPRA*, IN FIXING THE JUST COMPENSATION OF THE SUBJECT PROPERTIES.[9]

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[6] *Id*. at 130-131.

[7] *Id*. at 132; penned by Judge Benjamin T. Vianzon.

[8] *Id*. at 69.

[9] *Id*. at 256.

Respondents, in turn, opposed the petition on the ground that petitioner's valuation based on the formula in DAR Administrative Order No. 06, series of 1992, may not supplant the valuation of the SAC, which was affirmed by the Court of Appeals.[10] They further argued that the petitioner's valuation of the lots (at an average of a little over one peso per square meter) was grossly unjust and unsupported by proof.

Essentially, the sole issue to be resolved by this Court is whether or not the trial court utilized the correct method in fixing the just compensation due to respondents' parcels of land which have been subjected to land reform proceedings under Republic Act No. 6657 or the Comprehensive Agrarian Reform Law of 1988.

After carefully weighing the issues and arguments presented by the parties in this case, we find the petition meritorious.

In *Land Bank of the Philippines v. American Rubber Corporation,*[11] we elaborated on the concept of just compensation in this wise:

> This Court has defined "just compensation" for parcels of land taken pursuant to the agrarian reform program as "the **full and fair** equivalent of the property taken from its owner by the expropriator." The measure of compensation is not the taker's gain but the owner's loss. Just compensation means the equivalent for the value of the property at the time of its taking. It means a fair and full equivalent value for the loss sustained. All the facts as to the condition of the property and its surroundings, its improvements and capabilities should be considered. x x x. (Citations omitted.)

Since there is no dispute that the subject properties are qualified for coverage under the agrarian reform law, the just compensation for the said properties must be governed by the valuation factors under Section 17 of Republic Act No. 6657 which provides:

> SEC. 17. ***Determination of Just Compensation.*** – In determining just compensation, the cost of acquisition of the land, the current

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[10] *Id.* at 234.

[11] 715 Phil. 154, 169 (2013).

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 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.

Thus, we have held that when handling just compensation cases, the trial court acting as a SAC should be guided by the following factors: (1) the acquisition cost of the land; (2) the current value of the properties; (3) its nature, actual use, and income; (4) the sworn valuation by the owner; (5) the tax declarations; (6) the assessment made by government assessors; (7) the social and economic benefits contributed by the farmers and the farmworkers, and by the government to the property; and (8) the nonpayment of taxes or loans secured from any government financing institution on the said land, if any.[12]

Pursuant to the rule-making power of the Department of Agrarian Reform (DAR) under Section 49 of Republic Act No. 6657,[13] the enumerated factors were translated into a formula that was outlined in DAR Administrative Order No. 17, series of 1989, as amended by DAR Administrative Order No. 03, series of 1991, and as further amended by DAR Administrative Order No. 06, series of 1992, entitled "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.[14]

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[12] *Land Bank of the Philippines v. Palmares*, 711 Phil. 336 (2013).

[13] 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.

[14] CA *rollo*, pp. 47-56.

In determining the just compensation to be paid to respondents, petitioner utilized the formula indicated in DAR Administrative Order No. 06, series of 1992, which was in effect at the time the lots of respondents were subjected to coverage by the government's land reform program. The said formula is reproduced as follows:

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, SERIES 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 land 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.

A1. 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)

A2. 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)

A3. When both the CS and CNI are not present and only MV is applicable, the formula shall be:

LV = MV x 2[15]

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[15] *Id.* at 48-49.

It is settled in jurisprudence that, in order to determine just compensation, the trial court acting as a SAC must take into consideration the factors prescribed by Section 17 of Republic Act No. 6657 and is obliged to apply the formula crafted by the DAR. We discussed the long line of cases calling for the mandatory application of the DAR formula in *Land Bank of the Philippines v. Honeycomb Farms Corporation*,[16] to wit:

> In *Land Bank of the Philippines v. Sps. Banal*, we recognized that the DAR, as the administrative agency tasked with the implementation of the agrarian reform program, already came up with a formula to determine just compensation which incorporated the factors enumerated in Section 17 of RA 6657. We said:
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> > These factors [enumerated in Section 17] have been translated into a basic formula in DAR Administrative Order No. 6, Series of 1992, as amended by DAR Administrative Order No. 11, Series of 1994, issued pursuant to the DAR's rule-making power to carry out the object and purposes of R.A. 6657, as amended.
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> In *Landbank of the Philippines v. Celada*, we emphasized the duty of the RTC to apply the formula provided in the applicable DAR AO to determine just compensation, stating that:
>
> > While [the RTC] 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 R.A. 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. [The] DAR [Administrative Order] precisely "filled in the details" of Section 17, R.A. No. 6657 by providing a basic formula by which the factors mentioned therein may be taken into account. The [RTC] 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

[16] 698 Phil. 298, 318-319 (2012).

> 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.

We reiterated the mandatory application of the formula in the applicable DAR administrative regulations in *Land Bank of the Philippines v. Lim, Land Bank of the Philippines v. Heirs of Eleuterio Cruz,* and *Land Bank of the Philippines v. Barrido.* x x x.

In *Land Bank of the Philippines v. Gonzalez,*[17] we reiterated this doctrine:

> While the determination of just compensation is essentially a judicial function vested in the R TC 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 A.O. 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. (Citation omitted.)

To settle the lingering legal objections to the use of Section 17 of Republic Act No. 6657 and the implementing formulas of the DAR in the valuation of properties covered by the government's agrarian reform program, the Court *En Banc* held in the recent case of *Alfonso v. Land Bank of the Philippines*[18]:

> 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**

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[17] 711 Phil. 98, 113 (2013), citing *Allied Banking Corporation v. Land Bank of the Philippines,* 600 Phil. 346, 356 (2009).

[18] G.R. Nos. 181912 & 183347, November 29, 2016.

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 the case at bar, the trial court, in arriving at the amount of just compensation to be paid to respondents, solely based its conclusion on the alleged selling price or market value of the land adjoining respondents' properties.

Likewise, the Court of Appeals merely sustained the trial court's method of valuation which was chiefly based on the market value of adjoining properties. The appellate court held:

> In the case at bench, it cannot be gainsaid that the valuation of respondents' properties was based mainly on the market value of properties within the surrounding area. To our mind, the trial court's fixing of the just compensation for respondents' properties at ₱150,000.00 per hectare or at ₱15.00 per square meter is a fair valuation considering their suitability for agriculture, accessibility to both provincial and municipal roads and close proximity to the barangay road in the locality. Aside from the income-yielding crops and fruit bearing trees to which the subject realties are already planted, we find that the trial court also correctly took appropriate note of the fact that properties within the area commanded the price of ₱3.24 per square meter in 1977 and ₱15.91 per square meter in 1996.[19] (Citations omitted.)

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[19] *Rollo,* pp. 66-67.

Notably, in *Alfonso,* we recognized that comparable sales is one of the factors that may be considered in determining the just compensation that may be paid to the landowner. However, there must still be proof that such comparable sales met the guidelines set forth in DAR AO No. 5 (1998), which included among others, that such sales 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.

It is apparent from the foregoing that both the trial court and the Court of Appeals did not observe the valuation factors under Section 17 of Republic Act No. 6657 as translated into a basic formula in DAR Administrative Order No. 06, series of 1992, without a well-reasoned justification for the deviation as supported by the evidence on record. This is in clear violation of the express mandate of both the law and jurisprudence concerning the determination of just compensation of land subjected to coverage by the agrarian reform law. For this reason, the valuation made by the trial court cannot be upheld and must be struck down as illegal.

However, despite the necessity of setting aside the computation of just compensation of the trial court, the Court cannot automatically adopt petitioner's own calculation as prayed for in the instant petition. As we decreed in *Heirs of Lorenzo and Carmen Vidad v. Land Bank of the Philippines*,[20] the "LBP's valuation has to be substantiated during an appropriate hearing before it could be considered sufficient in accordance with Section 17 of Republic Act No. 6657 and the DAR regulations."

The veracity of the facts and figures which petitioner used in arriving at the amount of just compensation under the circumstances involves the resolution of questions of fact which is, as a rule, improper in a petition for review on *certiorari.* We have likewise consistently taken the position that the Court is not a trier of facts.[21] Thus, a remand of this case for reception

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[20] 634 Phil. 9, 38 (2010).

[21] *3rd Alert Security and Detective Services, Inc. v. Navia,* 687 Phil. 610, 615 (2012).

of further evidence is necessary in order for the trial court acting as a SAC to determine just compensation in accordance with Section 17 of Republic Act No. 6657 and the applicable DAR regulations.

WHEREFORE, premises considered, the petition is **PARTIALLY GRANTED**. The Decision dated April 8, 2005 and the Resolution dated November 22, 2005 of the Court of Appeals in CA-G.R. SP No. 79245 are **REVERSED and SET ASIDE**. Civil Case Nos. 6328 and 6333 are **REMANDED** to the Regional Trial Court of Bataan, Branch 1 for the determination of just compensation, based on Section 17 of Republic Act No. 6657 and the applicable administrative orders of the Department of Agrarian Reform, and in consonance with prevailing jurisprudence.

SO ORDERED.

Sereno, C.J. (Chairperson), del Castillo, Perlas-Bernabe, and *Caguioa, JJ.,* concur.

SECOND DIVISION

[G.R. No. 187950. January 11, 2017]

CRISTINA BARSOLO, *petitioner, vs.* **SOCIAL SECURITY SYSTEM,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; EMPLOYEES COMPENSATION COMMISSION AMENDED RULES ON EMPLOYEES COMPENSATION; COMPENSABLE OCCUPATIONAL DISEASE; MYOCARDIAL INFARCTION; TO BE COMPENSABLE, CERTAIN CONDITIONS MUST BE PROVEN BY SUBSTANTIAL

EVIDENCE.— [T]his Court has already ruled on the compensability of Myocardial Infarction as an occupational disease. *Rañises v. Employees Compensation Commission*, is instructive: Section 1(h), Rule III of the ECC Amended Rules on Employees Compensation, now considers cardio-vascular disease as compensable occupational disease. **Included in Annex "A" is cardio-vascular disease, which cover myocardial infarction. However, it may be considered as compensable occupational disease only when substantial evidence is adduced to prove any of the following conditions:** a) If the heart disease was known to have been present during employment there must be proof that an acute exacerbation clearly precipitated by the unusual strain by reason of the nature of his work; b) The strain of work that brings about an acute attack must be of sufficient severity and must be followed within twenty-four (24) hours by the clinical signs of a cardiac assault to constitute causal relationship. c) If a person who was apparently asymptomatic before subjecting himself to strain of work showed signs and symptoms of cardiac injury during the performance of his work and such symptoms and signs persisted, it is reasonable to claim a causal relationship. In *Rañises,* we held that for myocardial infarction to be considered a compensable occupational disease, any of the three conditions must be proven by substantial evidence. Petitioner failed in this regard. x x x Since there was no showing that her husband showed any sign or symptom of cardiac injury during the performance of his functions, petitioner clearly failed to show that her husband's employment caused the disease or that his working conditions aggravated his existing heart ailment.

2. ID.; ID.; ID.; ID.; ID.; FOR A CLAIM UNDER THE THIRD CONDITION TO PROSPER, THERE MUST BE PROOF THAT THE PERSON WAS ASYMPTOMATIC BEFORE BEGINNING EMPLOYMENT AND HE HAD DISPLAYED SYMPTOMS DURING THE PERFORMANCE OF HIS DUTIES.— On petitioner's insistence that Manuel's case falls under the third condition, this Court disagrees. For a claim under this condition to prosper, there must be proof that: first, the person was asymptomatic before beginning employment and second, he had displayed symptoms during the performance of his duties. Such symptoms should have persisted long enough to establish that his work caused his heart problem. However,

petitioner offered no proof that her husband suffered any of the symptoms during his employment. All she managed to prove was that her husband went to the Philippine Heart Center and was treated for Hypertensive Cardiovascular Disease from April 2, 2003 to January 9, 2004, four months after his contract with Vela ended on December 6, 2002.

3. ID.; ID.; ID.; ID.; ID.; FOR A CLAIM FOR THE FIRST CATEGORY TO PROSPER, THERE MUST BE A SHOWING THAT THERE WAS AN ACUTE EXACERBATION OF THE HEART DISEASE CAUSED BY THE UNUSUAL STRAIN OF WORK.— The Medical Certificate did not help petitioner's cause, as this only shows that Manuel was already suffering from hypertension even before his pre-employment examination, and that he did not contract it during his employment with Vela. Having had a pre-existing cardio vascular disease classifies him under the first condition. However, for a claim under the first category to prosper, petitioner must show that there was an acute exacerbation of the heart disease caused by the unusual strain of work. Petitioner failed to adduce any proof that her husband experienced any symptom of a heart ailment while employed with Vela, much less any sign that his heart condition was aggravated by his job.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
SSS Legal Department for respondent.

D E C I S I O N

LEONEN, *J.*:

This resolves a Petition for Review on Certiorari[1] filed by Cristina Barsolo, assailing the Decision[2] dated November 19,

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[1] *Rollo*, pp. 11-27.

[2] *Id.* at 98-108. The Decision was penned by Associate Justice Jose L. Sabio, Jr. and concurred in by Associate Justices Jose C. Reyes, Jr. and Myrna Dimaranan Vidal of the Sixth Division of the Court of Appeals, Manila.

2008 and the Resolution[3] dated May 19, 2009 of the Court of Appeals in CA-G.R. SP No. 102469.

Cristina Barsolo's (Cristina) deceased husband, Manuel M. Barsolo (Manuel), "was employed as a seaman by various companies from 1988 to 2002."[4] From July 2, 2002 to December 6, 2002, Manuel served as a Riding Gang/Able Seaman onboard MT Polaris Star with Vela International Marine Ltd., (Vela).[5] Vela was his last employer before he died in 2006.[6]

After his separation from employment with Vela, Manuel was diagnosed with hypertensive cardiovascular disease, coronary artery disease, and osteoarthritis.[7] He was examined and treated at the Philippine Heart Center as an outpatient from April 2, 2003 to October 22, 2004.[8] When he died on September 24, 2006, the autopsy report listed myocardial infarction as his cause of death.[9]

Believing that the cause of Manuel's death was work-related, Cristina filed a claim for death benefits under Presidential Decree No. 626, as amended, with the Social Security System.[10] The Social Security System, on June 27, 2007, denied her claim on the ground that there was no longer an employer-employee relationship at the time of Manuel's death and that "[h]is being a smoker increased his risk of contracting the illness."[11]

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[3] *Id.* at 120-121. The Resolution was penned by Associate Justice Jose L. Sabio, Jr. and concurred in by Associate Justices Jose C. Reyes, Jr. and Myrna Dimaranan Vidal of the Sixth Division of the Court of Appeals, Manila.

[4] *Id.* at 12.

[5] *Id.* at 99.

[6] *Id.* at 12.

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

[8] *Id.*

[9] *Id.* at 100.

[10] *Id.*

[11] *Id.* at 62.

Cristina appealed her case to the Employees' Compensation Commission (Commission), which, in a Decision[12] dated December 17, 2007, denied the appeal for lack of merit.[13] According to the Commission:

> Since Myocardial Infarction (Cardiovascular Disease) is listed as an occupational disease under P.D. 626 as amended, [Cristina] is bound to comply with all the conditions required [under Annex A of the Amended Rules on Employee's Compensation] to warrant the grant of benefits
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> - If the heart disease was known to have been present during employment, there must be proof that an acute exacerbation was clearly precipitated by the unusual strain by reasons of the nature of his/her work
> - The strain of work that brings about an acute attack must be of sufficient severity and must be followed within 24 hours by the clinical signs of a cardiac insult to constitute causal relationship;
> - If a person who was apparently asymptomatic before being subjected to strain at work showed signs and symptoms of cardiac injury during the performance of his work and such symptoms and signs persisted, it is reasonable to claim a causal relationship.[14]

The Commission held that Cristina was unable to establish that her husband's case fell under any of the above circumstances.[15]

Moreover, since Manuel was a smoker, the Commission believed that Manuel's "smoking habits precipitated the manifestation of his Myocardial Infarction."[16] The Commission added that "the System correctly ruled that the development of the Myocardial Infarction could not be categorically attributed

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[12] *Id.* at 63-74.

[13] *Id.* at 65.

[14] *Id.* at 66.

[15] *Id.*

[16] *Id.*

to the occupation of [Manuel] as Seaman because of the presence of major causative factor which is not work-related."[17]

Aggrieved, Cristina filed a Petition for Review[18] before the Court of Appeals, which was denied for lack of merit on November 19, 2008.[19]

The Court of Appeals ruled that while there was no doubt that myocardial infarction was a compensable disease,[20] Cristina failed to prove a causal relationship between Manuel's work and the illness that brought about his death.[21] The Court of Appeals agreed with the Commission that Manuel's habit of smoking, which dates as far back as 1973, may have contributed to the development of his heart ailment.[22]

Cristina moved for reconsideration[23] of the said Decision but her Motion was denied by the Court of Appeals in a Resolution[24] dated May 19, 2009.[25]

Hence, this Petition was filed.

Petitioner Cristina argues that the Court of Appeals erred in finding that "the illness which caused the death of [her] husband[,] had no relation with his occupation."[26] She insists that Manuel's case falls under the third condition[27] under Annex "A" of the Amended Rules on Employee Compensation.

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[17] *Id.* at 66.

[18] *Id.* at 29-45.

[19] *Id.* at 98-108.

[20] *Id.* at 102.

[21] *Id.* at 103.

[22] *Id.* at 105.

[23] *Id.* at 109-115.

[24] *Id.* at 109.

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

[26] *Id.* at 15.

[27] *Id.* at 17.

Petitioner contends that although Manuel did not exhibit symptoms while he was employed with Vela, it was not unreasonable to assume that he was already suffering from the illness, which prompted him to visit the Philippine Heart Center, four (4) months after his employment contract ended.[28]

Petitioner also presented a Medical Certificate[29] dated October 22, 2004, wherein it was stated that when Manuel was initially seen during his pre-employment examination, he claimed to have Hypertension even prior to the examination, and was already on the maintenance drug Capoten.[30]

Petitioner further avers that even if her husband had a history of smoking, it cannot be denied that the cause of his death is a compensable disease and that his work as a seaman aggravated his ailment.[31]

The issue in this case boils down to the entitlement of Cristina to compensation for the death of her husband Manuel.

The Petition has no merit.

The Amended Rules on Employee Compensation provide the guidelines before a beneficiary can claim from the state insurance fund. Rule III, Section 1(b) states:

> For the sickness and the resulting disability or death to be compensable, the sickness must be the result of an occupational disease listed under Annex "A" of these Rules with the conditions set therein satisfied, otherwise, proof must be shown that the risk of contracting the disease is increased by the working conditions.

The pertinent portions of Annex A of the Amended Rules on Employee Compensation read:

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[28] *Rollo*, p. 17.

[29] *Id.* at 56. This Medical Certificate was not considered by the Court of Appeals as it was not attached in the petition therein (*rollo*, p. 104).

[30] *Id.* at 56.

[31] *Id.* at 22.

For an occupational disease and the resulting disability or death to be compensable, all of the following conditions must be satisfied:

(1) The employee's work must involve the risks described herein;

(2) The disease was contracted as a result of the employees's exposure to the discribed risks;

(3) The disease was contracted within a period of exposure and under such other factors necessary to contract it;

(4) There was no notorious negligence on the part of the employee.

. . . . . .

The following diseases are considered as occupational when contracted under working conditions involving the risks described herein:

. . . . . .

18. CARDIO-VASCULAR DISEASES. ** Any of the following **conditions** —
a. If the heart disease was known to have been present during employment, there must be proof that an acute exacerbation was clearly precipitated by the unusual strain by reasons of the nature of his/her work.
b. The strain of work that brings about an acute attack must be of sufficient severity and must be followed within 24 hours by the clinical signs of a cardiac assault to constitute causal relationship.
c. If a person who was apparently asymptomatic before being subjected to strain at work showed signs and symptoms of cardiac injury during the performance of his work and such symptoms and signs persisted, it is reasonable to claim a causal relationship.
(Emphasis supplied)

It is worthy to note that this Court has already ruled on the compensability of Myocardial Infarction as an occupational disease. *Rañises v. Employees Compensation Commission*,[32] is instructive:

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[32] *Rañises v. Employees Compensation Commission*, 504 Phil. 340 (2005) [Per *J.* Sandoval-Gutierrez, Third Division].

Section 1(h), Rule III of the ECC Amended Rules on Employees Compensation, now considers cardio-vascular disease as compensable occupational disease. **Included in Annex "A" is cardio-vascular disease, which cover myocardial infarction. However, it may be considered as compensable occupational disease only when substantial evidence is adduced to prove any of the following conditions:**

a) If the heart disease was known to have been present during employment there must be proof that an acute exacerbation clearly precipitated by the unusual strain by reason of the nature of his work;

b) The strain of work that brings about an acute attack must be of sufficient severity and must be followed within twenty-four (24) hours by the clinical signs of a cardiac assault to constitute causal relationship.

c) If a person who was apparently asymptomatic before subjecting himself to strain of work showed signs and symptoms of cardiac injury during the performance of his work and such symptoms and signs persisted, it is reasonable to claim a causal relationship.[33] (Emphasis supplied.)

In Rañises, we held that for myocardial infarction to be considered a compensable occupational disease, any of the three conditions must be proven by substantial evidence.[34] Petitioner failed in this regard.

On petitioner's insistence that Manuel's case falls under the third condition, this Court disagrees. For a claim under this condition to prosper, there must be proof that: first, the person was asymptomatic before beginning employment and second, he had displayed symptoms during the performance of his duties. Such symptoms should have persisted long enough to establish that his work caused his heart problem. However, petitioner offered no proof that her husband suffered any of the symptoms during his employment. All she managed to prove was that her husband went to the Philippine Heart Center and was treated for Hypertensive Cardiovascular Disease from April 2, 2003

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[33] *Id.* at 343.

[34] *Id.* at 343-344.

to January 9, 2004,[35] four months after his contract with Vela ended on December 6, 2002.[36]

The Medical Certificate[37] did not help petitioner's cause, as this only shows that Manuel was already suffering from hypertension even before his pre-employment examination, and that he did not contract it during his employment with Vela. Having had a pre-existing cardio vascular disease classifies him under the first condition. However, for a claim under the first category to prosper, petitioner must show that there was an acute exacerbation of the heart disease caused by the unusual strain of work. Petitioner failed to adduce any proof that her husband experienced any symptom of a heart ailment while employed with Vela, much less any sign that his heart condition was aggravated by his job.

Since there was no showing that her husband showed any sign or symptom of cardiac injury during the performance of his functions, petitioner clearly failed to show that her husband's employment caused the disease or that his working conditions aggravated his existing heart ailment.

Moreover, as the Court of Appeals correctly pointed out, Manuel died on September 24, 2006, **four years** after he disembarked from MV Polaris Star.[38] Other factors have already played a role in aggravating his illness. Due to the considerable lapse of time, more convincing evidence must be presented in order to attribute the cause of death to Manuel's work. In the absence of such evidence and under the circumstances of this case, this Court cannot assume that the illness that caused Manuel's death was acquired during his employment with Vela.

To emphasize, it is not refuted that myocardial infarction is a compensable occupational illness. However, it becomes

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[35] *Rollo*, p. 54.

[36] *Id.* at 99.

[37] *Id.* at 56.

[38] *Id.* at 100.

compensable only when it falls under any of the three conditions, which should be proven by substantial evidence.

Furthermore, Manuel was a smoker. The presence of a different major causative factor, which could explain his illness and eventual death, defeats petitioner's claim.

In any case, the Court in *Triple Eight Integrated Services, Inc. v. National Labor Relations Commission*,[39] held that findings of facts of quasi-judicial agencies are accorded great respect and, at times, even finality if supported by substantial evidence.[40] These findings are especially persuasive when, such as in this case, all three lower tribunals concur in their findings. We find no reason to overturn their findings.

Petitioner's claim for death benefits was correctly denied by the Court of Appeals.

WHEREFORE, the Petition is **DENIED**. The Court of Appeals Decision dated November 19, 2008 and Resolution dated May 19, 2009 in CA-G.R. SP No. 102469 are hereby **AFFIRMED**.

SO ORDERED.

Carpio (Chairperson), Peralta, Mendoza, and *Jardeleza, JJ.*, concur.

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[39] *Triple Eight Integrated Services, Inc. v. National Labor Relations Commission*, 359 Phil. 955 (1998) [Per *J.* Romero, Third Division].

[40] *Id.* at 964.

THIRD DIVISION

[G.R. No. 188448. January 11, 2017]

RODOLFO LAYGO and WILLIE LAYGO, *petitioners, vs.* **MUNICIPAL MAYOR OF SOLANO, NUEVA VIZCAYA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; *MANDAMUS*; WILL NOT LIE TO COMPEL THE PERFORMANCE OF DUTIES THAT ARE DISCRETIONARY IN NATURE; EXCEPTIONS.— *Mandamus* is a command issuing from a court 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. As a rule, mandamus will not lie in the absence of any of the following grounds: [a] that the court, officer, board, or person against whom the action is taken unlawfully neglected the performance of an act which the law specifically enjoins as a duty resulting from office, trust, or station; or [b] that such court, officer, board, or person has unlawfully excluded petitioner/relator from the use and enjoyment of a right or office to which he is entitled. Neither will the extraordinary remedy of *mandamus* lie to compel the performance of duties that are discretionary in nature. In *Roble Arrastre, Inc. v. Villaflor*, we explained the difference between the exercise of ministerial and discretionary powers x x x. We do not discount, however, our ruling in previous cases where we cited exceptions to the rule that only a ministerial duty can be compelled by a writ of *mandamus*. In *Republic v. Capulong*, we held that as a general rule, a writ of *mandamus* will not issue to control or review the exercise of discretion of a public officer since it is his judgment that is to be exercised and not that of the court. Courts will not interfere to modify, control or inquire into the exercise of this discretion unless it be alleged and proven that there has been an abuse or an excess of authority on the part of the officer concerned. In *Angchango, Jr. v. Ombudsman*, we also held that

in the performance of an official duty or act involving discretion, the corresponding official can only be directed by *mandamus* to act, but not to act one way or the other. However, this rule admits of exceptions such as in cases where there is gross abuse of discretion, manifest injustice, or palpable excess of authority. These exceptions do not apply in this case.

2. **ID.; ID.; ID.; ID.; ID.; THE GRANT OR REVOCATION OF THE PRIVILEGE OF OPERATING A MARKET STALL UNDER LICENSE IS DISCRETIONARY IN NATURE.—** [W]e find that the Petition for *Mandamus* must fail because the acts sought to be done are discretionary in nature. The petition sought an order to direct Mayor Dickson to cancel the lease contract of petitioners with the Municipal Government and to lease the vacated market stalls to interested persons. We have already settled in the early case of *Aprueba v. Ganzon* that the privilege of operating a market stall under license is always subject to the police power of the city government and may be refused or granted for reasons of public policy and sound public administration. Being a delegated police power falling under the general welfare clause of Section 16 of the Local Government Code, the grant or revocation of the privilege is, therefore, discretionary in nature.

3. **ID.; ID.; ID.; ID.; MUST BE INSTITUTED BY A PARTY AGGRIEVED BY THE ALLEGED INACTION OF ANY TRIBUNAL, CORPORATION, BOARD OR PERSON WHICH UNLAWFULLY EXCLUDES SAID PARTY FROM THE ENJOYMENT OF A LEGAL RIGHT; LEGAL STANDING, DEFINED.—** [A]side from the imperative duty of the respondent in a petition for *mandamus* to perform that which is demanded of him, it is essential that, on the one hand, the person petitioning for it has a clear legal right to the claim that is sought. To be given due course, a petition for *mandamus* must have been instituted by a party aggrieved by the alleged inaction of any tribunal, corporation, board or person which unlawfully excludes said party from the enjoyment of a legal right. The petitioner in every case must therefore be an aggrieved party, in the sense that he possesses a clear right to be enforced and a direct interest in the duty or act to be performed. 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 government act that is being challenged.

APPEARANCES OF COUNSEL

Jose C. Evangelista for petitioners.

D E C I S I O N

JARDELEZA, *J.*:

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the Revised Rules of Court from the Decision[2] dated December 16, 2008 of the Court of Appeals (CA) in CA-G.R. SP No. 103922 and its Resolution[3] dated June 19, 2009.

Facts

In July 2005, Aniza Bandrang (Bandrang) sent two letter-complaints[4] to then Municipal Mayor Santiago O. Dickson (Mayor Dickson) and the *Sangguniang Bayan* of Solano, Nueva Vizcaya, informing them of the illegal sublease she entered into with petitioners Rodolfo Laygo and Willie Laygo over Public Market Stalls No. 77-A, 77-B, 78-A, and 78-B, which petitioners leased from the Municipal Government. Bandrang claimed that petitioners told her to vacate the stalls, which they subsequently subleased to another. Bandrang expressed her willingness to testify against petitioners if need be, and appealed that she be given priority in the future to lease the stalls she vacated.[5]

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[1] *Rollo*, pp. 3-9.

[2] Penned by Associate Justice Vicente S.E. Veloso, and concurred in by Associate Justices Rebecca De Guia-Salvador and Ricardo R. Rosario of the Tenth Division, *id.* at 14-25.

[3] *Id.* at 27.

[4] Records, pp. 5-6.

[5] *Id.*

In August 2005, the *Sangguniang Bayan* endorsed the letter of Bandrang and a copy of Resolution No. 183-2004[6] to Mayor Dickson for appropriate action. The *Sanggunian* informed Mayor Dickson that the matter falls under the jurisdiction of his office since it (*Sanggunian*) has already passed and approved Resolution No. 183-2004, which authorized Mayor Dickson to enforce the provision against subleasing of stalls in the public market.[7]

Mayor Dickson, in response, informed the *Sanggunian* that the stalls were constructed under a Build-Operate-Transfer (BOT) scheme, which meant that the petitioners had the right to keep their stalls until the BOT agreement was satisfied. He then asked the *Sanggunian* if provisions were made to sanction lessees under the BOT scheme similar to the provision against subleasing (Item No. 9) in the contract of lease.[8]

Thereafter, Bandrang wrote another letter to the *Sanggunian*, praying and recommending to Mayor Dickson, by way of a resolution, the cancellation of the lease contract between the Municipality and petitioners for violating the provision on subleasing. She suggested that after which, the stalls can be bidded upon anew and leased to the successful bidder. She made the suggestion because Mayor Dickson did not act on her concerns even after the *Sanggunian* referred them to him.[9]

The *Sanggunian* once again referred the letter of Bandrang, together with a copy of Resolution No. 183-2004, to Mayor Dickson for appropriate action. The *Sanggunian* opined that they no longer need to make any recommendation to Mayor

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[6] Records, pp. 8-9. Entitled "Resolution Authorizing the Hon. Mayor Santiago O. Dickson to Enforce the No. 11 Provision of the Contract of Lease of Market Stalls Between the Municipal Government and the Stall Holders at the Solano Public Market Who Violated the No. 9 Provision of Said Contract Without Prejudice to the Collection of the Unpaid Rentals of the Violators."

[7] *Id.* at 7.

[8] *Id.* at 135.

[9] *Id.* at 10.

Dickson because Resolution No. 183-2004 already empowered and authorized him to cancel the lease contracts pursuant to its pertinent provisions.[10]

Mayor Dickson, however, did not act on the letter of Bandrang and on the referrals of the *Sanggunian*. Thus, Bandrang filed a Petition for *Mandamus*[11] against him before the Regional Trial Court of Bayombong, Nueva Vizcaya (RTC). Subsequently, she amended her petition to implead petitioners.[12] Bandrang alleged that despite already being aware of the violations of the lease contracts of petitioners with the Municipality, Mayor Dickson still refused to enforce the provisions of the lease contracts against subleasing. Bandrang concluded that Mayor Dickson's inaction can only be construed as an unlawful neglect in the performance and enforcement of his public duty as the Chief Executive of Solano, Nueva Vizcaya. Thus, she sought an order directing Mayor Dickson to immediately cancel the lease between the Municipal Government and petitioners over Public Market Stall Nos. 77-A, 77-B, 78-A, and 78-B, and to lease the vacated stalls to interested persons.[13]

In his Answer with Special and Affirmative Defenses,[14] Mayor Dickson claimed that under the principle of *pari delicto*, Bandrang had no right to seek remedy with the court as she was guilty herself in leasing the market stalls. Mayor Dickson insisted that he acted in accordance with law by referring the

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[10] *Id.* at 11; Item No. 9 of the Lease Contract allegedly stipulates that "[t]here shall absolutely be no subleasing of the leased premises or any part thereof," while Item No. 11 allegedly states that "[i]f any back rental remains unpaid for more than fifteen (15) days or if any violation be made of any of the stipulations of this lease by the LESSEE, the LESSOR may declare this lease terminated and, thereafter, reenter the leased premises and repossess the same, and expel the LESSEE or others claiming under him/her from the leased premises. x x x" *Id.* at 8.

[11] *Id.* at 1-4.

[12] *Id.* at 44-48, 56.

[13] *Id.* at 45-47.

[14] *Id.* at 15-17.

matter to the *Sanggunian* for appropriate action. He also argued that Bandrang had no cause of action against him and that she was not a real-party-in-interest. He likewise asserted that the subject of the *mandamus* was not proper as it entailed an act which was purely discretionary on his part.[15]

In his Pre-Trial Brief,[16] Mayor Dickson elaborated that Bandrang had no cause of action because the stalls were on a BOT scheme covered by an ordinance. During the hearing, Mayor Dickson presented a copy of the resolution of the *Sanggunian* indicating that there was a directive to all stall owners in the public market of Solano, Nueva Vizcaya to build their own stalls after a fire gutted the public market.[17]

On the other hand, petitioners denied that they were the lessees of Stalls 77 A and B and 78 A and B. They clarified that Clarita Laygo (Clarita), their mother, was the lessee of the stalls by virtue of a BOT scheme of the Municipality. At the time they entered into a contract of lease with Bandrang, it was agreed that the contract was subject to the consent of the other heirs of Clarita. The consent, however, was never given; hence, there was no subleasing to speak of. Even on the assumption that there was, petitioners maintained that the prohibition on subleasing would not apply because the contract between the Municipality and Clarita was one under a BOT scheme. Resolution No. 183-2004 only covered stall holders who violated their lease contracts with the Municipal Government. Since their contract with the Municipal Government was not a lease contract but a BOT agreement, Resolution No. 183-2004 would neither apply to them, nor be enforced against them.[18] Further, even granting arguendo that the prohibition would apply, petitioners claimed that there was no more ground for the revocation of the lease because the subleasing claimed by

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[15] *Id.* at 15-16.

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

[17] *Id.* at 32.

[18] *Id.* at 73-75.

Bandrang had ended and the subsequent receipt by the Municipality of payments ratified the contract with petitioners.[19]

Meanwhile, on July 23, 2007, the RTC issued an Order directing the substitution of then incumbent mayor Hon. Philip A. Dacayo (Mayor Dacayo) as respondent in place of Mayor Dickson.[20]

Bandrang filed a Motion for Summary Judgment[21] on January 8, 2008 arguing that no genuine factual issues existed to necessitate trial. Bandrang reiterated the violation of petitioners against subletting in their lease contracts with the Municipal Government. She stated that the will of the *Sanggunian* to enforce the policy against subleasing was bolstered by the fact that it passed two more resolutions, Resolution No. 017-2006 and Resolution No. 135-2007, reiterating the implementation of Resolution No. 183-2004.[22] She also alleged for the first time that after the filing of the case, another violation besides the prohibition on subletting surfaced: the non-payment of stall rental fees. She pointed out that petitioners admitted this violation when they exhibited during a hearing the receipt of payment of rentals in arrears for over 17 months. Bandrang quoted Section 7B.06 (a) of Municipal Ordinance No. 164, Series of 1994, which stated that failure to pay the rental fee for three consecutive months shall cause automatic cancellation of the contract of lease of space or stall. She then concluded that this section left Mayor Dickson with no choice but to comply.[23]

RTC Ruling

In its Resolution dated January 28, 2008, the RTC granted the petition. Thus:

"WHEREFORE, in view of all the foregoing, let a Writ of Mandamus to issue ordering the Municipal Mayor of Solano to

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

[20] *Rollo*, p. 17.

[21] Records, pp. 122-125.

[22] *Id.* at 124.

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

implement Nos. 9 and 11 of the provisions of the Contract of lease of stall between the Municipal Government of Solano and private respondents Rodolfo and Willie Laygo.

The Municipal Mayor of Solano, Hon. Philip A. Dacayo, is hereby ordered as it is his duty to enforce [*Sangguniang Bayan*] Resolution Nos. 183-2004 and [135]-2007 immediately and without further delay.

SO ORDERED."[24]

The RTC held that the contract between petitioners and the Municipal Government was a lease contract, as evidenced by a certification signed by Mayor Epifanio LD. Galima (Mayor Galima) dated September 17, 2006.[25] The RTC brushed aside the non-presentation of the written contract of lease, noting that public policy and public interest must prevail. The RTC also held that even on the assumption that there was a BOT agreement between petitioners and the Municipal Government, petitioners had already been compensated for it, as evidenced by certifications of the Municipal Government dated August 28, 2006 and September 17, 2006.[26]

As regards the non-payment of stall rentals, the RTC ruled that petitioners deemed to have admitted the allegation when they exhibited to the court the receipt of payment of rentals in arrears.[27]

The RTC, thus, concluded that petitioners clearly violated the terms and conditions of the lease contract, which gave rise to the enactment of Resolution No. 183-2004. Since Mayor Dickson failed in his duty to enforce the resolution and delayed its implementation without valid reason, *mandamus* is a proper remedy.[28]

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[24] *Rollo*, p. 15. As cited in the CA Decision.

[25] *Id.* at 18.

[26] *Id.*

[27] *Rollo*, pp. 19-20.

[28] *Id.* at 19.

Petitioners appealed to the CA, while then incumbent Mayor Dacayo filed a manifestation expressing his willingness to implement Resolutions No. 183-2004 and 135-2007.[29]

Court of Appeals Ruling

On December 16, 2008, the CA rendered the now assailed Decision[30] dismissing the appeal and sustaining the resolution of the RTC.

The CA affirmed the finding of the RTC that the contract between petitioners and the Municipal Government is a lease contract and, thus, Resolution No. 183-2004 applies to them.[31]

On the issue of whether *mandamus* is proper, the CA also affirmed the ruling of the RTC stating that although *mandamus* is properly availed of to compel a ministerial duty, it is also available to compel action in matters involving judgment and discretion but not to direct an action in a particular way, to wit:

> x x x However, **mandamus is available to compel action, when refused, in matters involving judgment and discretion**, though not to direct the exercise of judgment or discretion in a particular way or the retraction or reversal of an action already taken in the exercise of either.
>
> In the case at bar, the *Sangguniang Bayan* of Solano ("Sanggunian") **delegated** to Mayor Dickson and subsequently to incumbent Mayor Dacayo, **the power to cancel the lease contracts of those market stallholders who violated their contracts with the Municipality**. Inferred from this power is the power of the Mayor to determine who among the market stallholders violated their lease contracts with the Municipality. Such power connotes an exercise of discretion.

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[29] *Id.* at 20.

[30] *Supra* note 2. The dispositive portion reads:

WHEREFORE, the instant appeal is **DISMISSED**. The assailed Resolution dated January 28, 2008 is hereby **AFFIRMED**.

SO ORDERED.

[31] *Rollo*, pp. 22-24.

When then Mayor Dickson refused to exercise this discretion, even after the *Sanggunian* assured him that the subject resolution empowered him to have the lease contracts of the Laygos cancelled, said act of refusal became proper subject of mandamus, as it involved a duty expected of him to be performed. So with the incumbent Mayor, the Hon. Philip Dacayo, as was ordered by the Court below.[32]

Willie Laygo filed a Motion for Reconsideration dated January 20, 2009, which was denied by the CA in a Resolution[33] dated June 19, 2009.

Hence, this petition, which raised the following questions:

1. May the *Sangguniang Bayan* Resolution No. 183-2004 be applied against petitioners despite the absence of a contract of lease between them and the Municipal Government of Solano, Nueva Vizcaya?

2. May the *Sangguniang Bayan* Resolution No. 183-2004 be enforced by anybody else, except Mayor Dickson?

Petitioners reiterate their position that Resolution No. 183-2004 cannot be enforced against them because there was no contract of lease between them and the Municipal Government and therefore, there cannot be any occasion for petitioner to violate any provision.

Moreover, petitioners argue that the resolution can only be enforced by Mayor Dickson because it specified Mayor Dickson and no other. Consequently, since Mayor Dickson is no longer in office, he cannot now enforce Resolution No. 183-2004.[34]

The Municipal Government, through the Provincial Legal Officer of Nueva Vizcaya, stated in its Comment[35] that the policy against subleasing was bolstered by the enactment of the *Sanggunian* of another resolution, Resolution No. 135-2007,

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[32] *Id.* at 23. Emphasis in the original, citation omitted.

[33] *Supra* note 3.

[34] *Rollo*, pp. 6-7.

[35] *Id.* at 29-37.

with the same purpose, but authorizing then Mayor Dacayo to implement the No. 9 and No. 11 provisions. in the contract of lease.[36]

Our Ruling

We grant the petition.

There is preponderant evidence that the contract between petitioners and the Municipal Government is one of lease.

The type of contract existing between petitioners and the Municipal Government is disputed. The Municipal Government asserts that it is one of lease, while petitioners insist that it is a BOT agreement. Both parties, however, failed to present the contracts which they purport to have. It is likewise uncertain whether the contract would fall under the coverage of the Statute of Frauds and would, thus, be only proven through written evidence. In spite of these, we find that the Municipal Government was able to prove its claim, through secondary evidence, that its contract with petitioners was one of lease.

We have no reason to doubt the certifications of the former mayor of Solano, Mayor Galima, and the Municipal Planning and Development Office (MPDO)[37] which show that the contract of the Municipal Government with petitioners' mother, Clarita, was converted into a BOT agreement for a time in 1992 due to the fire that razed the public market. These certifications were presented and offered in evidence by petitioners themselves. They prove that Clarita was allowed to construct her stalls that were destroyed using her own funds, and with the payment of the lease rentals being suspended until she recovers the cost she spent on the construction. The construction was, in fact, supervised by the MPDO for a period of three months. The stalls were eventually constructed completely and awarded to

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

[37] Records, pp. 136-137.

Clarita. She thereafter re-occupied the stalls under a lease contract with the Municipal Government. In fact, in his Notice dated August 21, 2007, the Municipal Treasurer of Solano reminded petitioners of their delinquent stall rentals from May 2006 to July 2007.[38] As correctly posited by the Municipal Government, if the stalls were under a BOT scheme, the Municipal Treasurer could not have assessed petitioners of any delinquency.[39]

Also, petitioners themselves raised, for the sake of argument, that even if the contract may be conceded as one of lease, the municipality is nonetheless estopped from canceling the lease contract because it subsequently accepted payment of rentals until the time of the filing of the case.[40]

In the same vein, the *Sangguniang Bayan* Resolution No. 183-2004, which quoted Items No. 9 and 11 of the lease contract on the absolute prohibition against subleasing and the possible termination of the contract in view of back rentals or any violation of the stipulations in the contract, is presumed to have been regularly issued. It deserves weight and our respect, absent a showing of grave abuse of discretion on the part of the members of the *Sanggunian*.

Mandamus, however, is not proper.

Mandamus is a command issuing from a court 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.[41]

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[38] *Id.* at 126.

[39] *Rollo*, p. 35.

[40] Records, pp. 74-75.

[41] *Abaga v. Panes*, G.R. No. 147044, August 24, 2007, 531 SCRA 56, 61-62, citing *Professional Regulation Commission v. De Guzman*, G.R. No. 144681, June 21, 2004, 432 SCRA 505, 518.

As a rule, mandamus will not lie in the absence of any of the following grounds: [a] that the court, officer, board, or person against whom the action is taken unlawfully neglected the performance of an act which the law specifically enjoins as a duty resulting from office, trust, or station; or [b] that such court, officer, board, or person has unlawfully excluded petitioner/relator from the use and enjoyment of a right or office to which he is entitled.[42] Neither will the extraordinary remedy of *mandamus* lie to compel the performance of duties that are discretionary in nature.[43] In *Roble Arrastre, Inc. v. Villaflor*,[44] we explained the difference between the exercise of ministerial and discretionary powers, to wit:

> "Discretion," when applied to public functionaries, means a power or right conferred upon them by law or acting officially, under certain circumstances, uncontrolled by the judgment or conscience of others. A purely ministerial act or duty in contradiction to a discretional act is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, without regard to or the exercise of his own judgment upon the propriety or impropriety of the act done. If the law imposes a duty upon a public officer and gives him the right to decide how or when the duty shall be performed, such duty is discretionary and not ministerial. The duty is ministerial only when the discharge of the same requires neither the exercise of official discretion or judgment.[45] (Citation omitted.)

Applying the foregoing distinction, we find that the Petition for *Mandamus* must fail because the acts sought to be done are discretionary in nature.

The petition sought an order to direct Mayor Dickson to cancel the lease contract of petitioners with the Municipal Government

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[42] *Star Special Watchman and Detective Agency, Inc. v. Puerto Princesa City*, G.R. No. 181792, April 21, 2014, 722 SCRA 66, 81.

[43] *Special People, Inc. Foundation v. Canda*, G.R. No. 160932, January 14, 2013, 688 SCRA 403, 424.

[44] G.R. No. 128509, August 22, 2006, 499 SCRA 434.

[45] *Id.* at 451.

and to lease the vacated market stalls to interested persons. We have already settled in the early case of *Aprueba v. Ganzon*[46] that the privilege of operating a market stall under license is always subject to the police power of the city government and may be refused or granted for reasons of public policy and sound public administration.[47] Being a delegated police power falling under the general welfare clause of Section 16 of the Local Government Code, the grant or revocation of the privilege is, therefore, discretionary in nature.[48]

Moreover, Resolution No. 183-2004, or even its subsequent equivalent, Resolution No. 135-2007, merely authorizes the mayor "to enforce the No. 11 provision of the contract of lease of market stalls between the Municipal Government and the stallholders at the Solano [P]ublic Market who violated the No. 9 provision of said contract x x x."[49] Item No. 11 provides that "[i]f any back rental remains unpaid for more than [15] days or if any violation be made of any of the stipulations of this lease by the LESSEE, the LESSOR **may declare** this lease terminated and, thereafter, reenter the leased premises and repossess the same, and expel the LESSEE or others claiming under him/her from the leased premises."[50] Clearly, Item No. 11 does not give the mayor a mandate to *motu proprio* or automatically terminate or cancel the lease with a lessee who is delinquent in the payment of rentals or who is in violation of any of the provisions of the contract. This is apparent from the permissive word "may" used in the provision. It does not specifically enjoin the mayor to cancel the lease as a matter of "duty." Where the words of a statute are clear, plain, and free

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[46] G.R. No. L-20867, September 3, 1966, 18 SCRA 8.

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

[48] See *Roble Arrastre, Inc. v. Villaflor, supra* note 44 at 449-450 and *Rimando v. Naguilian Emission Testing Center, Inc.*, G.R. No. 198860, July 23, 2012, 677 SCRA 343.

[49] *Rollo*, p. 31. Emphasis omitted.

[50] *Id.* Emphasis supplied.

from ambiguity, it must be given its literal meaning and applied without attempted interpretation.[51]

We do not discount, however, our ruling in previous cases where we cited exceptions to the rule that only a ministerial duty can be compelled by a writ of *mandamus*. In *Republic v. Capulong*,[52] we held that as a general rule, a writ of *mandamus* will not issue to control or review the exercise of discretion of a public officer since it is his judgment that is to be exercised and not that of the court.[53] Courts will not interfere to modify, control or inquire into the exercise of this discretion unless it be alleged and proven that there has been an abuse or an excess of authority on the part of the officer concerned.[54]

In *Angchango, Jr. v. Ombudsman*,[55] we also held that in the performance of an official duty or act involving discretion, the corresponding official can only be directed by *mandamus* to act, but not to act one way or the other. However, this rule admits of exceptions such as in cases where there is gross abuse of discretion, manifest injustice, or palpable excess of authority.[56] These exceptions do not apply in this case.

Firstly, while Mayor Dickson may be compelled to act on the directive provided in Resolution No. 135-2007, he may not be compelled to do so in a certain way, as what was prayed for by Bandrang in seeking the cancellation of the contract and to re-lease the vacated market stalls to interested persons. It was enough that Mayor Dickson be reminded of his authority to cancel the contract under Item No. 11, but whether or not his

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[51] *Philippine Amusement and Gaming Corporation v. Philippine Gaming Jurisdiction, Incorporated*, G.R. No. 177333, April 24, 2009, 586 SCRA 658, 664.

[52] G.R. No. 93359, July 12, 1991, 199 SCRA 134.

[53] *Id.* at 149, citing *Magtibay v. Garcia*, G.R. No. L-28971, January 28, 1983, 120 SCRA 370.

[54] *Id.*, citing *Calvo v. De Gutierrez*, 4 Phil. 203 (1905).

[55] G.R. No. 122728, February 13, 1997, 268 SCRA 301.

[56] *Id.* at 306.

decision would be for or against Bandrang would be for Mayor Dickson alone to decide. Not even the Court can substitute its own judgment over what he had chosen.

As it was, Mayor Dickson did act on the matter before him. He exercised his discretion by choosing not to cancel the contract on the ground of *pari delicto*, explaining that Bandrang, as the sub-lessee herself, was in violation of the same policy on subleasing. The complaint does not allege that in deciding this way, Mayor Dickson committed grave abuse of discretion, manifest injustice, or palpable excess of authority. Neither did Bandrang present proof that Mayor Dickson acted arbitrarily, wantonly, fraudulently, and against the interest of the public when he chose not to cancel the lease contract of petitioners.[57]

Further, aside from the imperative duty of the respondent in a petition for *mandamus* to perform that which is demanded of him, it is essential that, on the one hand, the person petitioning for it has a clear legal right to the claim that is sought.[58] To be given due course, a petition for *mandamus* must have been instituted by a party aggrieved by the alleged inaction of any tribunal, corporation, board or person which unlawfully excludes said party from the enjoyment of a legal right. The petitioner in every case must therefore be an aggrieved party, in the sense that he possesses a clear right to be enforced and a direct interest in the duty or act to be performed. 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 government act that is being challenged.[59] Does Bandrang have such legal standing to institute the petition? We answer in the negative.

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[57] See *Republic v. Capulong, supra*.

[58] *Olama v. Philippine National Bank*, G.R. No. 169213, June 22, 2006, 492 SCRA 343, 351.

[59] *Id.* at 353.

Following our ruling in the early case of *Almario v. City Mayor, et al.*,[60] where we ruled that the petitioner seeking to compel the city mayor to eject occupants of stalls in the public market had no *locus standi* to file the petition for *mandamus*, we also arrive here with the same conclusion. Similarly with *Almario*, Bandrang is not an applicant for any stall in the public market which is the subject of the controversy. She is neither a representative of any such applicant, stall holder, or any association of persons who are deprived of their right to occupy a stall in said market. As we have deduced in *Almario*:

> x x x Verily, he is not the real party in interest who has the capacity, right or personality to institute the present action. As this Court has well said in an analogous case, "the petitioner does not have any special or individual interest in the subject matter of the action which would enable us to say that he is entitled to the writ as a matter of right. His interest is only that a *citizen at large coupled* with the fact that in his capacity a[s] president of the Association of Engineers it is his duty to safeguard the interests of the members of his association."[61] (Italics in the original, citation omitted.)

WHEREFORE, in view of the foregoing, the petition is **GRANTED**. The Decision dated December 16, 2008 and Resolution dated June 19, 2009 of the Court of Appeals in CA-G.R. SP No. 103922, and the Resolution dated January 28, 2008 of the Regional Trial Court of Bayombong, Nueva Vizcaya are **REVERSED** and **SET ASIDE**. The Petition for *Mandamus* against Mayor Santiago O. Dickson is **DISMISSED**.

SO ORDERED.

Velasco, Jr. (Chairperson), Bersamin, Reyes, and *Caguioa*,[*] *JJ.*, concur.

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[60] G.R. No. L-21565, January 31, 1966, 16 SCRA 151.

[61] *Id.* at 153.

[*] Designated as Fifth Member of the Third Division per Special Order No. 2417 dated January 4, 2017.

SECOND DIVISION

[G.R. No. 188658. January 11, 2017]

HEIRS OF TEODORA LOYOLA, represented herein by ZOSIMO L. MENDOZA, SR., *petitioners, vs.* **COURT OF APPEALS AND ALICIA R. LOYOLA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ONLY MATTERS ASSIGNED AS ERRORS IN THE APPEAL MAY BE RESOLVED; EXCEPTIONS.— As a general rule, only matters assigned as errors in the appeal may be resolved x x x [, pursuant to] Rule 51, Section 8 of the Rules of Court x x x. This provision likewise states that the Court of Appeals may review errors that are not assigned but are closely related to or dependent on an assigned error. The Court of Appeals is allowed discretion if it "finds that their consideration is necessary in arriving at a complete and just resolution of the case." Jurisprudence has established several exceptions to this rule. x x x [T]he Court of Appeals has the discretion to consider the issue and address the matter where its ruling is necessary (a) to arrive at a just and complete resolution of the case; (b) to serve the interest of justice; or (c) to avoid dispensing piecemeal justice. This is consistent with its authority to review the totality of the controversy brought on appeal. Petitioners' appeal primarily focused on the Regional Trial Court's dismissal of the Complaint for failure to implead an indispensable party. Nonetheless, the Court of Appeals correctly ruled on whether petitioners were able to prove their claim. It had the discretion to properly consider this separate issue in order to arrive at a complete resolution of the case.

2. ID.; BATAS PAMBANSA BILANG 129; COURT OF APPEALS; HAS THE POWER TO RECEIVE EVIDENCE AND PERFORM ANY AND ALL ACTS NECESSARY TO RESOLVE FACTUAL ISSUES RAISED IN CASES FALLING WITHIN ITS ORIGINAL AND APPELLATE JURISDICTION.— [P]etitioners are incorrect in saying that their appeal before the Court of Appeals focused only on the procedural issue of dismissal. x x x Petitioners prayed that the

Court of Appeals rule on both the procedural and substantive issues. They sought its authority to consider the facts and evidence presented during the trial and to render a decision based on the merits. Section 9 of Batas Pambansa Blg. 129 grants the Court of Appeals the power to receive evidence and perform any and all acts necessary to resolve factual issues raised in cases falling within its original and appellate jurisdiction x x x. Thus, petitioners cannot now claim that the Court of Appeals exceeded its jurisdiction in ruling on the merits after consideration of the facts and evidence just because the decision was unfavorable to them. They have invoked the jurisdiction of the Court of Appeals, and thus, are now bound by it.

3. ID.; ACTIONS; RECONVEYANCE; FRAUD AND IRREGULARITY ARE PRESUPPOSED IN AN ACTION FOR RECONVEYANCE OF PROPERTY.— Petitioners insist that respondent has no rights over the land. They insist that she committed fraud. According to petitioners, the Land Registration Authority, the Register of Deeds of Bataan, the PENRO, and the CENRO certified that the documents of respondent's application could not be found in their respective offices. Petitioners posit that these certifications show that respondent did not comply with the requirements for the issuance of a free patent or title. However, these certifications contain no explicit statement that respondent did not comply with the requirements for patent application. What was certified, rather, was that the requested documents were not to be found in their particular office. Some of these certifications even refer to other offices where the documents may be found. There is no categorical statement that the documents do not exist. Such certifications are not enough to prove respondent's alleged fraud and irregularity. Fraud and irregularity are presupposed in an action for reconveyance of property. The party seeking to recover the property must prove, by clear and convincing evidence, that he or she is entitled to the property, and that the adverse party has committed fraud in obtaining his or her title. Allegations of fraud are not enough. "Intentional acts to deceive and deprive another of his right, or in some manner injure him, must be specifically alleged and proved." In the absence of any proof, the complaint for reconveyance cannot be granted.

4. REMEDIAL LAW; EVIDENCE; TAX DECLARATIONS AND TAX RECEIPTS ARE NOT CONCLUSIVE EVIDENCE

OF OWNERSHIP OR OF THE RIGHT TO POSSESS LAND, FOR THEY ARE MERELY *INDICIA* OF A CLAIM OF OWNERSHIP.— [W]e sustain the Court of Appeals' finding that petitioners failed to adequately prove their claim over the property against respondent. The testimonies of their witnesses and the tax declaration issued in 1948 without tax receipts are not sufficient to overcome the presumption of validity of patents and titles as well as the presumption of regularity of the performance of official duties of the government offices responsible for the issuance. There is no evidence of any anomaly or irregularity in the proceedings that led to the registration of the land. Tax declarations and tax receipts "are not conclusive evidence of ownership or of the right to possess land, in the absence of any other strong evidence to support them. . . . The tax receipts and tax declarations are merely *indicia* of a claim of ownership."

APPEARANCES OF COUNSEL

Angelito R. Orozco for petitioners.

Ortiguera Zuniga Pomer Salaria Sison Law Offices for private respondent.

D E C I S I O N

LEONEN, *J.*:

This resolves a Petition for Certiorari[1] assailing the Court of Appeals' December 22, 2008 Decision[2] and its May 20, 2009 Resolution[3] in CA-G.R. CV No. 88655. The assailed decision

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[1] *Rollo,* pp. 3-22. The Petition was filed under Rule 65 of the Rules of Court.

[2] *Id.* at 30-41. The Decision was penned by Associate Justice Ricardo R. Rosario and concurred in by Associate Justices Rebecca de Guia-Salvador and Vicente S.E. Veloso of the Tenth Division, Court of Appeals, Manila.

[3] *Id.* at 55-56. The Resolution was penned by Associate Justice Ricardo R. Rosario and concurred in by Associate Justices Rebecca de Guia-Salvador and Vicente S.E. Veloso of the Former Tenth Division, Court of Appeals, Manila.

affirmed the Decision[4] of Branch 3 of the Regional Trial Court, City of Balanga, which dismissed petitioners Heirs of Teodora Loyola's Complaint for annulment of free patent and original certificate of title, reconveyance of ownership and possession, and damages.[5] The assailed resolution denied the heirs' Motion for Reconsideration.[6]

This case involves a 4,419-square-meter parcel of land located in Lingatin, Morong, Bataan, known as Lot No. 780, Cad. 262 of the Morong Cadastre.[7] The land is formerly a public agricultural land planted with nipa and coconut.[8]

On May 19, 2003, the Heirs of Teodora Loyola (Heirs),[9] represented by Zosimo Mendoza, Sr. (Zosimo), filed a Complaint for annulment of free patent and original certificate of title, reconveyance of ownership and possession, and damages against respondent Alicia Loyola (Alicia).[10]

The Heirs claimed that the property belonged to the parents of their mother, Teodora Loyola (Teodora), who had been in possession of the property since time immemorial.[11] Teodora inherited the property from her parents upon their demise. In turn, when Teodora died in 1939, the Heirs inherited it from her.[12]

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[4] *Id.* at 162-176. The Decision was penned by Judge Remegio M. Escalada, Jr.

[5] *Id.* at 162.

[6] *Id.* at 42-52.

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

[8] *Id.*

[9] *Id.* at 31. The heirs of Teodora Loyola are: Zosimo Mendoza, Sr., Raymunda Mendoza, Paulina Mendoza (deceased without heirs), and Guillermo Mendoza (deceased and survived by his heirs: Guillermo Mendoza, Jr., Gil Mendoza, Gene Mendoza, Loida Mendoza-Navarro, and Luzviminda Mendoza Benedicto).

[10] *Id.*

[11] *Id.*

[12] *Id.*

The Heirs insisted that they since maintained open, continuous, exclusive, and notorious possession until the present.[13] However, Alicia was allegedly able to obtain Free Patent No. (III-14) 001627 and Original Certificate of Title No. 1782[14] over the property through fraud and misrepresentation.[15] Alicia was the wife of their deceased cousin Gabriel Loyola (Gabriel), who was given permission to use part of Teodora's property.[16]

In her Answer,[17] Alicia denied the allegations of fraud and illegality on the registration of the free patent and issuance of the original certificate of title.[18] She countered that the Complaint was barred by laches and prescription as the free patent was registered as early as December 1985.[19]

The case proceeded to trial.[20]

The Heirs relied on testimonial evidence to prove their claim over the property. Zosimo testified that he and his siblings inherited the property from their mother.[21] He admitted that their cousin Gabriel was given permission to use part of the property, but they never expected him or his wife Alicia to apply for a free patent and title over the entire property.[22] Zosimo further explained that they filed the Complaint only in 2003 as after Gabriel died, they tried for several years to peacefully recover the property from Alicia, but to no avail.[23] Zosimo and

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[13] *Id.*

[14] *Id.* at 68.

[15] *Id.* at 32.

[16] *Id.*

[17] *Id.* at 80-81-A.

[18] *Id.* at 32.

[19] *Id.*

[20] *Id.*

[21] *Id.*

[22] *Id.* at 33.

[23] *Id.*

his sister Paulina were also unaware of the condition of the property as they had been residing in the United States of America.[24]

Jose Perez, their neighbor, corroborated Zosimo's testimony that Teodora was known in town as the owner of the property.[25] However, upon cross examination, Jose Perez admitted that Teodora had a brother, Jose Loyola, the father of Gabriel and father-in-law of Alicia.[26] He also admitted that he did not know if Teodora and her brother co-owned the property.[27]

The Heirs could only present a tax declaration issued in 1948 as documentary evidence to prove their claim over the property.[28] Although they maintained that one of the heirs, Raymunda, had religiously paid the real estate taxes, they could not present any receipts because these were allegedly lost.[29]

Alicia denied all the allegations of the Heirs and maintained that she and Gabriel legally and regularly obtained the free patent and the original certificate of title.[30]

The Regional Trial Court did not rule on the merits.[31] Instead, it dismissed the case without prejudice for failure to implead an indispensable party.[32] The trial court found that the successors of one of the heirs, Guillermo Mendoza (Zosimo's deceased brother), were not impleaded as party-plaintiffs.[33] The Regional Trial Court held:

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[24] *Id.*

[25] *Id.*

[26] *Id.*

[27] *Id.*

[28] *Id.* at 32-33.

[29] *Id.* at 33.

[30] *Id.* at 34.

[31] *Id.*

[32] *Id.*

[33] *Id.*

In the light of the fact that the surviving legal heirs of the deceased Guillermo Mendoza are pro-indiviso co-owners of the property in question together with the rest of the heirs of the late Teodora Loyola who, as such are indispensable parties in this case without whom no final determination can be rendered by the Court, there is no option at hand but to dismiss the Complaint for failure of plaintiffs to implead therein said indispensable parties.

As a matter of course, the Court finds no more need to delve into the merits of the case as well as the issues raised by the parties.

WHEREFORE, the Complaint is DISMISSED, but without prejudice.

No pronouncement as to costs.

SO ORDERED.[34]

The Heirs moved for reconsideration,[35] but the Motion was denied in the Order dated October 30, 2006.[36]

The Heirs then filed an appeal before the Court of Appeals questioning the dismissal.[37]

In its Decision[38] dated December 22, 2008, the Court of Appeals upheld the Regional Trial Court's dismissal of the case.

The Court of Appeals found that the Regional Trial Court erred in finding that there was a failure to implead an indispensable party as the heirs of Guillermo Mendoza were not indispensable parties and judgment could be rendered without impleading them as party-plaintiffs.[39] It noted that in explicitly identifying themselves in the Complaint as representatives of Guillermo Mendoza and executing a Special Power of Attorney

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[34] *Id.* at 176.

[35] *Id.* at 178-190.

[36] *Id.* at 202-203.

[37] *Id.* at 205.

[38] *Id.* at 30-41.

[39] *Id.* at 38.

for Zosimo to represent them in the case, the heirs of Guillermo Mendoza voluntarily submitted themselves to the jurisidiction of the trial court.[40]

Nevertheless, the Court of Appeals found that the evidence presented by the Heirs was insufficient to overcome the presumption of regularity of the free patent and original certificate of title issued to Alicia.[41] It found that the Heirs failed to submit evidence showing that Teodora alone inherited the property when testimonies revealed that she had a brother. Likewise, they failed to prove that they were legally related to or were the only heirs of Teodora.[42] They did not even prove that she had died, and that she had the power to validly transmit rights over the property to them.[43] Thus:

> In the face of plaintiff Heirs' failure to prove that they have a right or title to the subject property, the dismissal of their complaint is in order.
>
> ***WHEREFORE***, the appeal is ***DISMISSED*** and the decision appealed from is ***AFFIRMED*** *in toto*.[44] (Emphasis in the original)

The Heirs moved for reconsideration,[45] but the Motion was denied in the Court of Appeals Resolution[46] dated May 20, 2009.

On July 24, 2009, the Heirs of Teodora Loyola filed this Petition for Certiorari.[47]

Petitioners claim that the Court of Appeals committed grave abuse of discretion amounting to lack or excess of jurisdiction

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[40] *Id.* at 35.

[41] *Id.* at 39.

[42] *Id.* at 40.

[43] *Id.* at 39.

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

[45] *Id.* at 42-52.

[46] *Id.* at 55-56.

[47] *Id.* at 3-22.

in going beyond the issues raised on appeal. They claim that the Court of Appeals touched on the factual findings of the Regional Trial Court although these were not even contested by respondent.[48] They insist that their appeal focused only on the procedural aspect of jurisdiction over indispensable parties. Thus, the Court of Appeals should have ruled on this matter alone.[49] Petitioners assert that in any case, they have convincingly proven their claim and allegations as to their rights over the land and that the patent issued to respondent is null and void.[50]

Further, petitioners aver that the Court of Appeals failed to consider that respondent did not comply with the requirements for the issuance of a free patent and original certificate of title. According to petitioners, the Land Registration Authority, the Register of Deeds of Bataan, the Provincial Environment and Natural Resources Office (PENRO), and the Central Environment and Natural Resources Office (CENRO) all certified that they did not have the documents on the application in their respective offices.[51]

Petitioners likewise insist that their witnesses' testimonies show that they have been in open, continuous, exclusive, and notorious possession and occupation of the property. Thus, they are deemed to have acquired the land by operation of law, without need of a certificate of title.[52]

In her Comment[53] dated November 2, 2010, respondent Alicia R. Loyola states that she and her predecessors in-interest exclusively, adversely, and publicly possessed the property as owners since time immemorial.[54] She claims that the patent was granted after land officers investigated the land area, the

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[48] *Id.* at 10-13.

[49] *Id.*

[50] *Id.* at 17.

[51] *Id.* at 15 and 17-18.

[52] *Id.* at 17.

[53] *Id.* at 279-286.

[54] *Id.* at 283.

improvements, the nature of her possession, and the taxes paid.[55] She alleges that after the issuance of the title, she continued to pay the taxes and introduced improvements to the land, including fruit trees she had planted, houses she and her husband had built, and the houses of their seven (7) children.[56] Respondent maintains that petitioners never resided in the land because petitioners' ancestral house was located elsewhere, as shown by their non-payment of property taxes.[57]

On the claim that no record of the processing of the free patent application exists in the PENRO and the CENRO, respondent states that Amado M. Villanueva of the Department of Natural Resources - Bataan testified that the Bureau of Lands did not endorse all its records to the Department of Environment and Natural Resources.[58] Amado M. Villanueva even categorically stated that he did not find anything illegal or irregular in the issuance of the free patent and title.[59]

Moreover, respondent asserts that the Court of Appeals was correct in finding that petitioners showed no documentary evidence that Teodora was the only owner of the property, and that they were her only heirs.[60]

In their Reply[61] dated March 11, 2011, petitioners reiterate that there is no record nor document in the proper government agencies showing that respondent validly complied with the requirements for the issuance of the patent title. Thus, this effectively overcame the presumption of regularity accorded to its issuance.[62]

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[55] *Id.*

[56] *Id.* at 284.

[57] *Id.*

[58] *Id.*

[59] *Id.*

[60] *Id.* at 285.

[61] *Id.* at 289-292.

[62] *Id.* at 290.

For resolution are the following issues:

First, whether the Court of Appeals gravely abused its discretion when it went beyond the issue of dismissal and ruled on the sufficiency of petitioners' evidence before the Regional Trial Court; and

Second, whether petitioners were able to sufficiently establish their title or ownership over the property.

We dismiss the Petition.

Petitioners availed themselves of the wrong remedy. They should have filed a petition for review under Rule 45 instead of a petition for certiorari under Rule 65 of the Rules of Court.

In *Microsoft Corp. v. Best Deal Computer Center Corp.*:[63]

> A special civil action for *certiorari* will prosper only if grave abuse of discretion is manifested. For an abuse to be grave the power must be exercised in an arbitrary or despotic manner by reason of passion or personal hostility. The abuse of discretion 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 act in contemplation of law. There is grave abuse of discretion when respondent acts in a capricious or whimsical manner in the exercise of its judgment as to be equivalent to lack of jurisdiction.
>
> Petitioner asserts that respondent trial court gravely abused its discretion in denying its application for the issuance of an *ex parte* order. However, other than this bare allegation, petitioner failed to point out specific instances where grave abuse of discretion was allegedly committed. . . .
>
> Significantly, even assuming that the orders were erroneous, such error would merely be deemed as an error of judgment that cannot be remedied by *certiorari*. As long as the respondent acted with jurisdiction, any error committed by him or it in the exercise thereof will amount to nothing more than an error of judgment which may be reviewed or corrected only by appeal. The distinction is clear: A petition for *certiorari* seeks to correct errors of jurisdiction while a petition for review seeks to correct errors of judgment committed

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[63] 438 Phil. 408 (2002) [Per *J.* Belosillo, Second Division].

by the court. Errors of judgment include errors of procedure or mistakes in the court's findings. Where a court has jurisdiction over the person and subject matter, the decision on all other questions arising in the case is an exercise of that jurisdiction. Consequently, all errors committed in the exercise of such jurisdiction are merely errors of judgment. *Certiorari* under Rule 65 is a remedy designed for the correction of errors of jurisdiction and not errors of judgment.[64] (Citations omitted)

Petitioners claim that the Court of Appeals committed grave abuse of discretion when it went beyond the issue of dismissal of the Complaint and touched on the factual findings of the Regional Trial Court. They allege that respondent did not contest the trial court's factual findings as she did not file an appellee's brief. They posit that the Court of Appeals should have just ruled on the issue of dismissal alone.[65]

The Court of Appeals did not commit grave abuse of discretion in dismissing petitioners' Complaint. It had jurisdiction over the person and the subject matter of the case, and there is no showing that it whimsically or capriciously exercised this jurisdiction. At most, it may have committed an error of procedure, as petitioners question its ruling on the merits of the case and not just on the issue of dismissal for failure to implead indispensable parties.

As petitioners fail to avail themselves of the proper remedy, the Petition ought to be dismissed. Nonetheless, so as not to further delay the disposition of this case, this Court resolves the issue of whether the Court of Appeals erred in ruling on the merits of the case and not just on the issue of dismissal for failure to implead indispensable parties.

As a general rule, only matters assigned as errors in the appeal may be resolved. Rule 51, Section 8 of the Rules of Court provides:

SECTION 8. *Questions that May Be Decided.* — No error which does not affect the jurisdiction over the subject matter or the validity

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[64] *Id.* at 414-415.

[65] *Rollo*, pp. 10-13.

of the judgment appealed from or the proceedings therein will be considered unless stated in the assignment of errors, or closely related to or dependent on an assigned error and properly argued in the brief, save as the court may pass upon plain errors and clerical errors.

This provision likewise states that the Court of Appeals may review errors that are not assigned but are closely related to or dependent on an assigned error.[66] The Court of Appeals is allowed discretion if it "finds that their consideration is necessary in arriving at a complete and just resolution of the case."[67]

Jurisprudence has established several exceptions to this rule. These exceptions are enumerated in *Catholic Bishop of Balanga v. Court of Appeals*:[68]

> True, the appealing party is legally required to indicate in his brief an assignment of errors, and only those assigned shall be considered by the appellate court in deciding the case. However, equally settled in jurisprudence is the exception to this general rule.
>
> "*. . . Roscoe Pound states that 'according to Ulpian in Justinian's Digest, appeals are necessary to correct the unfairness or unskillfulness of whose who judge.['] Pound comments that 'the purpose of review is prevention quite as much as correction of mistakes. The possibility of review by another tribunal, especially a bench of judges ... is an important check upon tribunals of first instance. It is a preventive of unfairness. It is also a stimulus to care and thoroughness as not to make mistakes.['] Pound adds that 'review involves matters of concern both to the parties to the case and to the public. . . . It is of public concern that full justice be done to [e]very one.['] This judicial injunction would best be fulfilled and the interest of full justice would best be served if it should be maintained that . . . appeal brings before the reviewing court the totality of the controversy resolved in the questioned judgment and order apart from the fact that such full-scale review by appeal is expressly*

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[66] *Heirs of Durano, Sr. v. Spouses Uy*, 398 Phil. 125, 147 (2000) [Per *J.* Gonzaga-Reyes, Third Division].

[67] *Id.*

[68] 332 Phil. 206 (1996) (Per *J.* Hermosisima, Jr., First Division].

granted as a matter of right and therefore of due process by the Rules of Court."

Guided by the foregoing precepts, we have ruled in a number of cases that the appellate court is accorded a broad discretionary power to waive the lack of proper assignment of errors and to consider errors not assigned. It is clothed with ample authority to review rulings even if they are not assigned as errors in the appeal. Inasmuch as the Court of Appeals may consider grounds other than those touched upon in the decision of the trial court and uphold the same on the basis of such other grounds, the Court of Appeals may, with no less authority, reverse the decision of the trial court on the basis of grounds other than those raised as errors on appeal. We have applied this rule, as a matter of exception, in the following instances:

(1) Grounds not assigned as errors but affecting jurisdiction over the subject matter;
(2) Matters not assigned as errors on appeal but are evidently plain or clerical errors within contemplation of law;
(3) *Matters not assigned as errors on appeal but consideration of which is necessary in arriving at a just decision and complete resolution of the case or to serve the interest of justice or to avoid dispensing piecemeal justice;*
(4) *Matters not specifically assigned as errors on appeal but raised in the trial court and are matters of record having some bearing on the issue submitted which the parties failed to raise or which the lower court ignored;*
(5) Matters not assigned as errors on appeal but closely related to an error assigned; and
(6) Matters not assigned as errors on appeal but upon which the determination of a question properly assigned, is dependent.[69]

(Emphasis supplied, citations omitted)

Thus, the Court of Appeals has the discretion to consider the issue and address the matter where its ruling is necessary (a) to arrive at a just and complete resolution of the case; (b) to serve the interest of justice; or (c) to avoid dispensing piecemeal justice. This is consistent with its authority to review the totality of the controversy brought on appeal.

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[69] *Id.* at 216-218.

Petitioners' appeal primarily focused on the Regional Trial Court's dismissal of the Complaint for failure to implead an indispensable party.[70] Nonetheless, the Court of Appeals correctly ruled on whether petitioners were able to prove their claim. It had the discretion to properly consider this separate issue in order to arrive at a complete resolution of the case.

Ordinarily, this case should have been remanded to the Regional Trial Court to make the proper factual determination. However, due to judicial economy, or "the goal to have cases prosecuted with the least cost to the parties,"[71] the Court of Appeals correctly reviewed the case in its entire context.

Moreover, petitioners are incorrect in saying that their appeal before the Court of Appeals focused only on the procedural issue of dismissal. In petitioners' Appellant's Brief dated July 2, 2007 before the Court of Appeals, one of its assigned errors reads:[72]

5.D THE HONORABLE REGIONAL TRIAL COURT GRIEVOUSLY ERRED WHEN IT ABDICATED FROM ITS ROLE TO RULE ON THE MERITS AS IT COULD HAVE DONE RIGHTLY SO, *THUS CALLING FOR THE INTERVENTION OF THE HONORABLE COURT OF APPEALS TO CONSIDER THE FACTS AND RENDER THE PERTINENT DECISION*.

5.D.l Considering the circumstances surrounding the instant case, *it is respectfully submitted that, after deciding on the procedural issues raised, the Honorable Court of Appeals render a decision based on the merits*;

5.D.2 Such action on the part of the Honorable Court of Appeals acquires utmost importance and urgency in view of the evident pre-judgment by the RTC of the case at hand. At the risk of sounding redundant, with but a single bold stroke, the court *a quo* brushed

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[70] *Id.* at 221.

[71] *E.I. Dupont De Nemours and Co. v. Francisco*, G.R. No. 174379, August 31, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/august2016/174379.pdf> 9 [Per *J.* Leonen, Second Division].

[72] *Rollo* pp. 229-231.

aside all the pleadings, all the evidence, all the testimonies, all the documents properly introduced and offered by appellants, covering a span of three (3) years;

. . . . . .

5.D.5 Yet, the RTC decided to wash off its hands and sought an excuse on the issue of jurisdiction. Appellants, *thus request for the Honorable Court of Appeals' wisdom in so deciding the instant appeal both on technical and substantive grounds*.[73] (Emphasis supplied)

The prayer in their appeal states:

WHEREFORE, premises considered:

6.1 Plaintiff-Appellants respectfully pray that the assailed Decision dated 15 March 2006 and Order dated 22 November 2006 of the Honorable Regional Trial [Court] -Branch 3 (Balanag City, Bataan) in the civil case of "*Heirs of Teodora Loyola represented by Zosimo L. Mendoza, Sr. vs. Alicia R. Loyola*," with docket no. 7732, be reversed an set aside for utter lack of merit;

6.2 Appellants further pray that, *after ruling on the merits*, the Honorable Court of Appeals grant the prayers as indicated in the appellants' Complaint, to wit —

1. Declaring as null and void ab initio Free Patent No. (III-14) 001627 and Original Certificate of Title No. 1782 of the Registry of Deeds for the Province of Bataan registered or issued in the name of defendant Alicia R. Loyola;

2. Declaring herein appellants as the true and lawful owners of the above-mentioned parcel of land covered by Free Patent No. (III-14) 001627 and Original Certificate of Title No. 1782 of the Registry of Deeds for the Province of Bataan;

3. Ordering appellee to reconvey to herein appellants the ownership and possession over the above-mentioned parcel of land covered by Free Patent No. (III-14) 001627 and Original Certificate of Title No. 1782 of the Registry of Deeds for the Province of Bataan; and

4. Ordering appellee to pay to herein appellants the amount of Two Hundred Thousand Pesos (₱200,000.00) as and for attorney's

[73] *Id.* at 230-231.

fees, plus Five Thousand Pesos (₱5,000.00) per hearing as appearance fee, and other litigation expenses, and the costs of suit.

6.3 Appellants finally pray for such other just and equitable relief.[74]

Petitioners prayed that the Court of Appeals rule on both the procedural and substantive issues. They sought its authority to consider the facts and evidence presented during the trial and to render a decision based on the merits.

Section 9 of Batas Pambansa Blg. 129 grants the Court of Appeals the power to receive evidence and perform any and all acts necessary to resolve factual issues raised in cases falling within its original and appellate jurisdiction:

SECTION 9. Jurisdiction. —

. . . . . .

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)

Thus, petitioners cannot now claim that the Court of Appeals exceeded its jurisdiction in ruling on the merits after consideration of the facts and evidence just because the decision was unfavorable to them. They have invoked the jurisdiction of the Court of Appeals, and thus, are now bound by it.

Petitioners assert that respondent did not controvert the factual findings of the Regional Trial Court, thus, the Court of Appeals should have accorded respect to these findings since the trial court was in the best position to consider the evidence of the parties.[75]

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[74] *Id.* at 231.

[75] *Id.* at 10-13.

The Regional Trial Court did not actually make any findings on any matter in favor of any party. Rather, it limited its evaluation and discussion to the issue of failure to implead indispensable parties. The Regional Trial Court Decision stated the various pieces of evidence presented by the parties, but it gave no particular weight to any of this. The trial court made no explicit conclusion as to which of the parties was more entitled to the property.[76]

It is incorrect for petitioners to argue that the factual findings of the Regional Trial Court are binding when, in fact, these do not exist.

In any case, the Court of Appeals has the authority to reverse the factual findings of the Regional Trial Court if these are not in accord with evidence. In *Gonzales v. Court of Appeals*:[77]

> The right of the Court of Appeals to review, alter and reverse the findings of the trial court where the appellate court, in reviewing the evidence has found that facts and circumstances of weight and influence have been ignored and overlooked and the significance of which have been misinterpreted by the trial court, cannot be disputed.[78]

Petitioners insist that respondent has no rights over the land. They insist that she committed fraud.[79] According to petitioners, the Land Registration Authority, the Register of Deeds of Bataan, the PENRO, and the CENRO certified that the documents of respondent's application could not be found in their respective offices.[80] Petitioners posit that these certifications show that respondent did not comply with the requirements for the issuance of a free patent or title.[81]

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[76] *Id.* at 173.

[77] 179 Phil. 149 (1979) [Per *J.* Guerrero, First Division].

[78] *Id.* at 172-174.

[79] *Rollo*, p. 20.

[80] *Id.* at 18.

[81] *Id.* at 17.

However, these certifications contain no explicit statement that respondent did not comply with the requirements for patent application.[82] What was certified, rather, was that the requested documents were not to be found in their particular office.[83] Some of these certifications even refer to other offices where the documents may be found.[84] There is no categorical statement that the documents do not exist.

Such certifications are not enough to prove respondent's alleged fraud and irregularity.

Fraud and irregularity are presupposed in an action for reconveyance of property.[85] The party seeking to recover the property must prove, by clear and convincing evidence, that he or she is entitled to the property, and that the adverse party has committed fraud in obtaining his or her title.[86] Allegations of fraud are not enough.[87] "Intentional acts to deceive and deprive another of his right, or in some manner injure him, must be specifically alleged and proved."[88] In the absence of any proof, the complaint for reconveyance cannot be granted.

Furthermore, we sustain the Court of Appeals' finding that petitioners failed to adequately prove their claim over the property against respondent. The testimonies of their witnesses and the

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[82] *Id.* at 70-78.

[83] *Id.*

[84] *See* Certification dated August 19, 2002 of the Registry of Deeds, Balanga, Bataan (*Id.* at 70); Letter dated August 21, 2002 of the Land Registration Authority, Quezon (*Id.* at 71); Letter dated September 3, 2002 of the PENRO, Balanga, Bataan (*Id.* at 73); Letter dated December 4, 2002 of the Lands Management Bureau (*Id.* at 75); Letter dated January 28, 2003 of the DENRR-NCR (*Id.* at 76); Letter dated November 15, 2002 of the PENRO, Balanga, Bataan (*Id.* at 78).

[85] *Heirs of Brusas v. Court of Appeals*, 372 Phil. 47, 55 (1999) (Per *J.* Bellosillo, Second Division].

[86] *Id.*

[87] *Id.* at 58.

[88] *Id.*

tax declaration issued in 1948 without tax receipts are not sufficient to overcome the presumption of validity of patents and titles as well as the presumption of regularity of the performance of official duties of the government offices responsible for the issuance.

There is no evidence of any anomaly or irregularity in the proceedings that led to the registration of the land. Tax declarations and tax receipts "are not conclusive evidence of ownership or of the right to possess land, in the absence of any other strong evidence to support them. . . . The tax receipts and tax declarations are merely *indicia* of a claim of ownership."[89]

Petitioners failed to show that Teodora Loyola is the only heir to the property. Testimonies revealed that she has a brother. Likewise, petitioners failed to show that they are the only heirs of Teodora Loyola.

Failing to prove their title over the property, petitioners cannot rightfully claim that they have been fraudulently deprived of the property.

WHEREFORE, premises considered, this Court resolves to **DISMISS** the Petition. The December 22, 2008 Decision and May 20, 2009 Resolution of the Court of Appeals in CA-G.R. CV No. 88655 are hereby **AFFIRMED**.

SO ORDERED.

Carpio (Chairperson), Peralta, Mendoza, and *Jardeleza, JJ.*, concur.

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[89] *Id.* at 55.

FIRST DIVISION

[G.R. No. 189158. January 11, 2017]

JAMES IENT and MAHARLIKA SCHULZE, *petitioners, vs.* **TULLETT PREBON (PHILIPPINES), INC.,** *respondent*.

[G.R. No. 189530. January 11, 2017]

JAMES IENT and MAHARLIKA SCHULZE, *petitioners, vs.* **TULLETT PREBON (PHILIPPINES), INC.,** *respondent*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; WHERE THE ACTION OF THE SECRETARY OF JUSTICE IS TAINTED WITH ARBITRARINESS, AN AGGRIEVED PARTY MAY SEEK JUDICIAL REVIEW VIA *CERTIORARI* ON THE GROUND OF GRAVE ABUSE OF DISCRETION.— In the case at bar, it is unsettling to perceive a seeming lack of uniformity in the rulings of the Secretary of Justice on the issue of whether a violation of Section 31 entails criminal or only civil liability and such divergent actions are explained with a terse declaration of an alleged difference in factual milieu and nothing further. Such a state of affairs is not only offensive to principles of fair play but also anathema to the orderly administration of justice. Indeed, we have held that where the action of the Secretary of Justice is tainted with arbitrariness, an aggrieved party may seek judicial review via *certiorari* on the ground of grave abuse of discretion.

2. ID.; ID.; FORUM SHOPPING; DEFINED; THERE IS NO FORUM SHOPPING WHERE THE SUITS INVOLVE DIFFERENT CAUSES OF ACTION OR DIFFERENT RELIEFS.— Forum shopping is an act of a party, against whom an adverse judgment or order has been rendered in one forum, of seeking and possibly getting a favorable opinion in another

forum, **other than by appeal or special civil action for *certiorari*.** It may also involve the institution of two or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition. There is no forum shopping where the suits involve different causes of action or different reliefs.

3. POLITICAL LAW; STATUTES; STATUTORY CONSTRUCTION; PENAL STATUTES; CONSTRUED STRICTLY AGAINST THE STATE AND LIBERALLY IN FAVOR OF THE ACCUSED.— As Section 144 [of the Corporation Code] speaks, among others, of the imposition of criminal penalties, the Court is guided by the elementary rules of statutory construction of penal provisions. x x x [I]n all criminal prosecutions, the existence of criminal liability for which the accused is made answerable must be clear and certain. We have consistently held that "penal statutes are construed strictly against the State and liberally in favor of the accused. When there is doubt on the interpretation of criminal laws, all must be resolved in favor of the accused. Since penal laws should not be applied mechanically, the Court must determine whether their application is consistent with the purpose and reason of the law."

4. ID.; ID.; ID.; ID.; RULE OF LENITY; THE RULE CALLS FOR THE ADOPTION OF AN INTERPRETATION WHICH IS MORE LENIENT TO THE ACCUSED WHEN THERE ARE TWO POSSIBLE INTERPRETATIONS OF A PENAL STATUTE, ONE THAT IS PREJUDICIAL TO THE ACCUSED AND ANOTHER THAT IS FAVORABLE TO HIM .— Intimately related to the *in dubio pro reo* principle is the **rule of lenity.** The rule applies when the court is faced with two possible interpretations of a penal statute, one that is prejudicial to the accused and another that is favorable to him. The rule calls for the adoption of an interpretation which is more lenient to the accused. In American jurisprudence, there are two schools of thought regarding the application of the rule of lenity. Justice David Souter, writing for the majority in *United States v. R.L.C.*, refused to resort to the rule and held that lenity is reserved "for those situations in which a reasonable doubt persists about a statute's intended scope even *after* resort to 'the language and structure, legislative history, and motivating policies' of the statute." Justice Antonin Scalia, although

concurring in part and concurring in the judgment, argued that "it is not consistent with the rule of lenity to construe a textually ambiguous penal statute against a criminal defendant on the basis of legislative history . . . The rule of lenity, in my view, prescribes the result when a criminal statute is ambiguous: The more lenient interpretation must prevail." In other words, for Justice Scalia, textual ambiguity in a penal statute suffices for the rule of lenity to be applied. Although foreign case law is merely persuasive authority and this Court is not bound by either legal perspective expounded in *United States v. R.L.C.*, said case provides a useful framework in our own examination of the scope and application of Section 144. After a meticulous consideration of the arguments presented by both sides, the Court comes to the conclusion that there is textual ambiguity in Section 144; moreover, such ambiguity remains even after an examination of its legislative history and the use of other aids to statutory construction, necessitating the application of the rule of lenity in the case at bar.

5. MERCANTILE LAW; CORPORATION LAW; CORPORATION CODE; SECTIONS 31 AND 34 OF THE CODE CANNOT BE GIVEN A STRICT CONSTRUCTION AS PENAL OFFENSES IN THE ABSENCE OF UNAMBIGUOUS STATUTORY LANGUAGE AND LEGISLATIVE INTENT TO THAT EFFECT.— We agree with petitioners that the lack of specific language imposing criminal liability in Sections 31 and 34 shows legislative intent to limit the consequences of their violation to the civil liabilities mentioned therein. x x x The Corporation Code was intended as a regulatory measure, not primarily as a penal statute. Sections 31 to 34 in particular were intended to impose exacting standards of fidelity on corporate officers and directors but without unduly impeding them in the discharge of their work with concerns of litigation. Considering the object and policy of the Corporation Code to encourage the use of the corporate entity as a vehicle for economic growth, we cannot espouse a strict construction of Sections 31 and 34 as penal offenses in relation to Section 144 in the absence of unambiguous statutory language and legislative intent to that effect. When Congress intends to criminalize certain acts it does so in plain, categorical language, otherwise such a statute would be susceptible to constitutional attack. x x x We stress that had the Legislature intended to attach penal sanctions to Sections 31 and 34 of the Corporation Code it

could have expressly stated such intent in the same manner that it did for Section 74 of the same Code.

APPEARANCES OF COUNSEL

Kapunan Garcia & Castillo Law Offices for petitioners James A. Ient & Maharlika Esperanza Schulze.
Villaraza & Angangco for respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

In these consolidated Petitions for Review under Rule 45 of the Rules of Court, petitioners James A. Ient (Ient) and Maharlika C. Schulze (Schulze) assail the Court of Appeals Decision[1] dated August 12, 2009 in CA-G.R. SP No. 109094, which affirmed the Resolutions dated April 23, 2009[2] and May 15, 2009[3] of the Secretary of Justice in I.S. No. 08-J-8651. The Secretary of Justice, through the Resolutions dated April 23, 2009 and May 15, 2009, essentially ruled that there was probable cause to hold petitioners, in conspiracy with certain former directors and officers of respondent Tullett Prebon (Philippines), Inc. (Tullett), criminally liable for violation of Sections 31 and 34 in relation to Section 144 of the Corporation Code.

From an assiduous review of the records, we find that the relevant factual and procedural antecedents for these petitions can be summarized as follows:

Petitioner Ient is a British national and the Chief Financial Officer of Tradition Asia Pacific Pte. Ltd. (Tradition Asia) in Singapore.[4]

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[1] *Rollo* (G.R. No. 189158), Vol. I, pp. 64-84; penned by then Court of Appeals Associate Justice Martin S. Villarama, Jr. (a retired member of this Court) with Associate Justices Vicente S.E. Veloso and Normandie B. Pizarro concurring.

[2] *Id.* at 85-95.

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

[4] *Id.* at 19.

Petitioner Schulze is a Filipino/German who does Application Support for Tradition Financial Services Ltd. in London (Tradition London).[5] Tradition Asia and Tradition London are subsidiaries of *Compagnie Financiere* Tradition and are part of the "Tradition Group." The Tradition Group is allegedly the third largest group of Inter-dealer Brokers (IDB) in the world while the corporate organization, of which respondent Tullett is a part, is supposedly the second largest. In other words, the Tradition Group and Tullett are competitors in the inter-dealer broking business. IDBs purportedly "utilize the secondary fixed income and foreign exchange markets to execute their banks and their bank customers' orders, trade for a profit and manage their exposure to risk, including credit, interest rate and exchange rate risks." In the Philippines, the clientele for IDBs is mainly comprised of banks and financial institutions.[6]

Tullett was the first to establish a business presence in the Philippines and had been engaged in the inter-dealer broking business or voice brokerage here since 1995.[7] Meanwhile, on the part of the Tradition Group, the needs of its Philippine clients were previously being serviced by Tradition Asia in Singapore. The other IDBs in the Philippines are Amstel and Icap.[8]

Sometime in August 2008, in line with Tradition Group's motive of expansion and diversification in Asia, petitioners Ient and Schulze were tasked with the establishment of a Philippine subsidiary of Tradition Asia to be known as Tradition Financial Services Philippines, Inc. (Tradition Philippines).[9] Tradition Philippines was registered with the Securities and Exchange Commission (SEC) on September 19, 2008[10] with

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[5] *Rollo* (G.R. No. 189530), Vol. I, p. 7.

[6] *Rollo* (G.R. No. 189158), Vol. I, pp. 19-22.

[7] See Tullett's 2007 General Information Sheet, *id*. at 112.

[8] *Id.* at 21-22.

[9] *Rollo* (G.R. No. 189530), Vol. I, p. 10.

[10] See 2008 General Information Sheet of Tradition Philippines, *id.* at 240.

petitioners Ient and Schulze, among others, named as incorporators and directors in its Articles of Incorporation.[11]

On October 15, 2008, Tullett, through one of its directors, Gordon Buchan, filed a Complaint-Affidavit[12] with the City Prosecution Office of Makati City against the officers/employees of the Tradition Group for violation of the Corporation Code. Impleaded as respondents in the Complaint-Affidavit were petitioners Ient and Schulze, Jaime Villalon (Villalon), who was formerly President and Managing Director of Tullett, Mercedes Chuidian (Chuidian), who was formerly a member of Tullett's Board of Directors, and other John and Jane Does. Villalon and Chuidian were charged with using their former positions in Tullett to sabotage said company by orchestrating the mass resignation of its entire brokering staff in order for them to join Tradition Philippines. With respect to Villalon, Tullett claimed that the former held several meetings between August 22 to 25, 2008 with members of Tullett's Spot Desk and brokering staff in order to convince them to leave the company. Villalon likewise supposedly intentionally failed to renew the contracts of some of the brokers. On August 25, 2008, a meeting was also allegedly held in Howzat Bar in Makati City where petitioners and a lawyer of Tradition Philippines were present. At said meeting, the brokers of complainant Tullett were purportedly induced, *en masse*, to sign employment contracts with Tradition Philippines and were allegedly instructed by Tradition Philippines' lawyer as to how they should file their resignation letters.

Complainant also claimed that Villalon asked the brokers present at the meeting to call up Tullett's clients to inform them that they had already resigned from the company and were moving to Tradition Philippines. On August 26, 2008, Villalon allegedly informed Mr. Barry Dennahy, Chief Operating Officer of Tullett Prebon in the Asia-Pacific, through electronic mail that all of Tullett's brokers had resigned. Subsequently, on

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[11] *Rollo* (G.R. No. 189158), Vol. I, pp. 118-124.

[12] *Id.* at 98-111.

September 1, 2008, in another meeting with Ient and Tradition Philippines' counsel, indemnity contracts in favor of the resigning employees were purportedly distributed by Tradition Philippines. According to Tullett, respondents Villalon and Chuidian (who were still its directors or officers at the times material to the Complaint-Affidavit) violated Sections 31 and 34 of the Corporation Code which made them criminally liable under Section 144. As for petitioners Ient and Schulze, Tullett asserted that they conspired with Villalon and Chuidian in the latter's acts of disloyalty against the company.[13]

Villalon and Chuidian filed their respective Counter-Affivadits.[14]

Villalon alleged that frustration with management changes in Tullett Prebon motivated his personal decision to move from Tullett and accept the invitation of a Leonard Harvey (also formerly an executive of Tullett) to enlist with the Tradition Group. As a courtesy to the brokers and staff, he informed them of his move contemporaneously with the tender of his resignation letter and claimed that his meetings with the brokers was not done in bad faith as it was but natural, in light of their long working relationship, that he share with them his plans. The affidavit of Engelbert Wee should allegedly be viewed with great caution since Wee was one of those who accepted employment with Tradition Philippines but changed his mind and was subsequently appointed Managing Director (Villalon's former position) as a prize for his return. Villalon further argued that his resignation from Tullett was done in the exercise of his fundamental rights to the pursuit of life and the exercise of his profession; he can freely choose to avail of a better life by seeking greener pastures; and his actions did not fall under any of the prohibited acts under Sections 31 and 34 of the Corporation Code. It is likewise his contention that Section 144 of the Corporation Code applies only to violations of the Corporation Code which do not provide for a penalty while

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[13] *Id.* at 102-107.

[14] *Id.* at 200-254 and 255-295.

Sections 31 and 34 already provide for the applicable penalties for violations of said provisions — damages, accounting and restitution. Citing the Department of Justice (DOJ) Resolution dated July 30, 2008 in *UCPB v. Antiporda*, Villalon claimed that the DOJ had previously proclaimed that Section 31 is not a penal provision of law but only the basis of a cause of action for civil liability. Thus, he concluded that there was no probable cause that he violated the Corporation Code nor was the charge of conspiracy properly substantiated.[15]

Chuidian claimed that she left Tullett simply to seek greener pastures. She also insisted the complaint did not allege any act on her part that is illegal or shows her participation in any conspiracy. She merely exercised her right to exercise her chosen profession and pursue a better life. Like Villalon, she stressed that her resignation from Tullett and subsequent transfer to Tradition Philippines did not fall under any of the prohibited acts under Sections 31 and 34. Section 144 of the Corporation Code purportedly only applies to provisions of said Code that do not provide for any penalty while Sections 31 and 34 already provide for the penalties for their violation – damages, accounting and restitution. In her view, that Section 34 provided for the ratification of the acts of the erring corporate director, trustee or office evinced legislative intent to exclude violation of Section 34 from criminal prosecution. She argued that Section 144 as a penal provision should be strictly construed against the State and liberally in favor of the accused and Tullett has failed to substantiate its charge of bad faith on her part.[16]

In her Counter-Affidavit,[17] petitioner Schulze denied the charges leveled against her. She pointed out that the Corporation Code is not a "special law" within the contemplation of Article 10[18]

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[15] *Id.* at 203-223.

[16] *Id.* at 256-273.

[17] *Id.* at 308-313.

[18] Article 10 of the Revised Penal Code states:

Art. 10. *Offenses not subject to the provisions of this Code*.– Offenses which are or in the future may be punishable under special laws are not subject

of the Revised Penal Code on the supplementary application of the Revised Penal Code to special laws since said provision purportedly applies only to "special penal laws." She further argued that "[s]ince the Corporation Code does not expressly provide that the provisions of the Revised Penal Code shall be made to apply suppletorily, nor does it adopt the nomenclature of penalties of the Revised Penal Code, the provisions of the latter cannot be made to apply suppletorily to the former as provided for in the first sentence of Article 10 of the Revised Penal Code."[19] Thus, she concluded that a charge of conspiracy which has for its basis Article 8 of the Revised Penal Code cannot be made applicable to the provisions of the Corporation Code.

Schulze also claimed that the resignations of Tullett's employees were done out of their own free will without force, intimidation or pressure on her and Ient's part and were well within said employees' right to "free choice of employment."[20]

For his part, petitioner Ient alleged in his Counter-Affidavit that the charges against him were merely filed to harass Tradition Philippines and prevent it from penetrating the Philippine market. He further asserted that due to the highly specialized nature of the industry, there has always been a regular flow of brokers between the major players. He claimed that Tradition came to the Philippines in good faith and with a sincere desire to foster healthy competition with the other brokers. He averred that he never forced anyone to join Tradition Philippines and the Tullett employees' signing on with Tradition Philippines was their voluntary act since they were discontented with the working environment in Tullett. Adopting a similar line of reasoning as Schulze, Ient believed that the Revised Penal Code could not be made suppletorily applicable to the Corporation Code so as to charge him as a conspirator. According to Ient, he merely

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to the provisions of this Code. This Code shall be supplementary to such laws, unless the latter should specially provide the contrary.

[19] *Rollo* (G.R. No. 189158), Vol. I, p. 312.

[20] *Id.* at 312.

acted within his rights when he offered job opportunities to any interested person as it was within the employees' rights to change their employment, especially since Article 23 of the Universal Declaration of Human Rights (of which the Philippines is a signatory) provides that "everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment."[21] He also denounced the Complaint-Affidavit and the affidavits of Tullett employees attached thereto as self-serving or as an exaggeration/ twisting of the true events.[22]

In a Consolidated Reply-Affidavit[23] notarized on January 22, 2009, Tullett argued that Villalon, Chuidian, Schulze, and Ient have mostly admitted the acts attributed to them in the Complaint-Affidavit and only attempted to characterize said acts as "normal," "innocent" or "customary." It was allegedly evident from the Counter-Affidavits that the resignation of Tullett's employees was an orchestrated plan and not simply motivated by their seeking "greener pastures." Purported employee movements in the industry between the major companies are irrelevant since such movements are subject to contractual obligations. Tullett likewise denied that its working environment was stringent and "weird." Even assuming that Villalon and Chuidian were dissatisfied with their employment in Tullett, this would supposedly not justify nor exempt them from violating their duties as Tullett's officers/directors. There was purportedly no violation of their constitutional rights to liberty or to exercise their profession as such rights are not unbridled and subject to the laws of the State. In the case of Villalon and Chuidian, they had to comply with their duties found in Sections 31 and 34 of the Corporation Code. Tullett asserts that Section 144 applies to the case at bar since the DOJ Resolution in *UCPB* is not binding as it applies only to the parties therein and it likewise involved facts different from

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[21] *Id.* at 323.

[22] *Id.* at 314-323.

[23] *Id.* at 370-401.

the present case. Relying on *Home Insurance Company v. Eastern Shipping Lines*,[24] Tullett argued that Section 144 applies to all other violations of the Corporation Code without exception. Article 8 of the Revised Penal Code on conspiracy was allegedly applicable to the Corporation Code as a special law with a penal provision.[25]

In a Supplemental Complaint-Affidavit[26] likewise notarized on January 22, 2009, Tullett included Leonard James Harvey (Harvey) in the case and alleged that it learned of Harvey's complicity through the Counter-Affidavit of Villalon. Tullett claimed that Harvey, who was Chairman of its Board of Directors at the time material to the Complaint, also conspired to instigate the resignations of its employees and was an indispensable part of the sabotage committed against it.

In his Rejoiner-Affidavit,[27] Ient vehemently denied that there was a pre-arranged plan to sabotage Tullett. According to Ient, Gordon Buchan of Tullett thought too highly of his employer to believe that the Tradition Group's purpose in setting up Tradition Philippines was specifically to sabotage Tullett. He stressed that Tradition Philippines was set up for legitimate business purposes and Tullett employees who signed with Tradition did so out of their own free will and without any force, intimidation, pressure or inducement on his and Schulze's part. All he allegedly did was confirm the rumors that the Tradition Group was planning to set up a Philippine office. Echoing the arguments of Villalon and Chuidian, Ient claimed that (a) there could be no violation of Sections 31 and 34 of the Corporation as these sections refer to corporate acts or corporate opportunity; (b) Section 144 of the same Code cannot be applied to Sections 31 and 34 which already contains the penalties or remedies for their violation; and (c) conspiracy

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[24] 208 Phil. 359 (1983).

[25] *Rollo* (G.R. No. 189158), Vol. I, pp. 395-397.

[26] *Id.* at 402-411.

[27] *Id.* at 429.

under the Revised Penal Code cannot be applied to the Sections 31 and 34 of the Corporation Code.

In a Resolution[28] dated February 17, 2009, State Prosecutor Cresencio F. Delos Trinos, Jr. (Prosecutor Delos Trinos), Acting City Prosecutor of Makati City, dismissed the criminal complaints. He reasoned that:

> It is our considered view that the acts ascribed [to] respondents Villalon and Chuidian did not constitute any of the prohibited acts of directors or trustees enunciated under Section 31. Their cited actuations certainly did not involve voting for or assenting to patently unlawful acts of [Tullett] nor could the same be construed as gross negligence or bad faith in directing the affairs of [Tullett]. There is also no showing that they acquired any personal or pecuniary interest in conflict with their duty as directors of [Tullett]. Neither was there a showing that they attempted to acquire or acquired, in violation of their duty as directors, any interest adverse to [Tullett] in respect [to] any matter which has been reposed in them in confidence.
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> x x x x x x x x x
>
> The issue that respondent Villalon informed the brokers of his plan to resign from [Tullett] and to subsequently transfer to Tradition is not in dispute. However, we are unable to agree that the brokers were induced or coerced into resigning from [Tullett] and transferring to Tradition themselves. x x x As the record shows, Mr. Englebert Wee and the six (6) members of the broking staff who stand as [Tullett]'s witnesses, also initially resigned from [Tullett] and transferred to Tradition but backed out from their contract of employment with Tradition and opted to remain with [Tullett].
>
> Even assuming *ex gratia argumenti* that the brokers were induced by the respondents or anyone of them to leave their employment with [Tullett], such inducement may only give rise to civil liability for damages against the respondents but no criminal liability would attach on them. x x x.
>
> On the alleged inducements of clients of [Tullett] to transfer to Tradition, there is no showing that clients of [Tullett] actually transferred to Tradition. Also, the allegation that respondents orchestrated the mass resignation of employees of [Tullett] to destroy

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[28] *Id.* at 455-472.

or shut down its business and to eliminate it from the market in order that Tradition could take its place is baseless and speculative. Significantly, it is noted that despite the resignations of respondents Villalon and Chuidian and the majority of the broking staff and their subsequent transfer to Tradition, the business of [Tullet] was not destroyed or shut down. [Tullett] was neither eliminated from the market nor its place in the market taken by Tradition. x x x

In the same vein, the "corporate opportunity doctrine" enunciated under Section 34 does not apply herein and cannot be rightfully raised against respondents Villalon and Chuidian. Under Section 34, a director of a corporation is prohibited from competing with the business in which his corporation is engaged in as otherwise he would be guilty of disloyalty where profits that he may realize will have to go to the corporate funds except if the disloyal act is ratified. Suffice it to say that their cited acts did not involve any competition with the business of [Tullett].[29]

On the issue of conspiracy, Prosecutor Delos Trinos found that since Villalon and Chuidian did not commit any acts in violation of Sections 31 and 34 of the Corporation Code, the charge of conspiracy against Schulze and Ient had no basis. As for Harvey, said Resolution noted that he was similarly situated as Villalon and Chuidian; thus, the considerations in the latter's favor were applicable to the former.[30] Lastly, on the applicability of Section 144 to Sections 31 and 34, Prosecutor Delos Trinos relied on the reasoning in the DOJ Resolution dated July 30, 2008 in *UCPB v. Antiporda* issued by then Secretary of Justice Raul M. Gonzalez, to wit:

We maintain and reiterate the ratiocination of the Secretary of Justice in United Coconut Planters Bank vs. Tirso Antiporda, et al., I.S. No. 2007-633 promulgated on July 30, 2008, thus — "*It must be noted that Section 144 covers only those provisions 'not otherwise specifically penalized therein.' In plain language, this means that the penalties under Section 144 apply only when the other provisions of the Corporation Code do not yet provide penalties for non-compliance therewith.*"

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[29] *Id.* at 467-469.

[30] *Id.* at 469.

A reading of Sections 31 and 34 shows that penalties for violations thereof are already provided therein. Under Section 31, directors or trustees are made liable for damages that may result from their fraudulent or illegal acts. Also, directors, trustees or officers who attempt to acquire or acquire any interest adverse to the corporation will have to account for the profits which otherwise would have accrued to the corporation. Section 34, on the other hand, penalizes directors who would be guilty of disloyalty to the corporation by accounting to the corporation all profits that they may realize by refunding the same.[31]

Consequently, Tullett filed a petition for review with the Secretary of Justice to assail the foregoing resolution of the Acting City Prosecutor of Makati City. In a Resolution[32] dated April 23, 2009, then Secretary of Justice Raul M. Gonzalez reversed and set aside Prosecutor Delos Trinos's resolution and directed the latter to file the information for violation of Sections 31 and 34 in relation to Section 144 of the Corporation Code against Villalon, Chuidian, Harvey, Schulze, and Ient before the proper court. As can be gleaned from the April 23, 2009 Resolution, the Secretary of Justice ruled that:

It is evident from the case at bar that there is probable cause to indict respondents Villalon, Chuidian and Harvey for violating Section 31 of the Corporation Code. Indeed, there is *prima facie* evidence to show that the said respondents acted in bad faith in directing the affairs of complainant. Undeniably, respondents Villalon, Chuidian and Harvey occupied positions of high responsibility and great trust as they were members of the board of directors and corporate officers of complainant. x x x As such, they are required to administer the corporate affairs of complainant for the welfare and benefit of the stockholders and to exercise the best care, skill and judgment in the management of the corporate business and act solely for the interest of the corporation.

x x x x x x x x x

Respondents Villalon and Chuidian acted with dishonesty and in fraud. They went to the extent of having their several meetings away

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[31] *Id.* at 470.

[32] *Id.* at 85-95.

from complainant's office so as to secretly entice and induce all its brokers to transfer to Tradition. Respondents Villalon and Chuidian did not entice merely one or two employees of complainant but admittedly, the entire broking staff of the latter. This act would lead to the sure collapse of complainant. x x x.

Further, respondents Villalon and Chuidian acquired personal and pecuniary interest in conflict with their duties as directors of complainant. Respondents Villalon and Chuidian committed the acts complained of in order to transfer to Tradition, to have a higher salary and position and bring the clients and business of complainant with them. The fact that Tradition is not yet incorporated at that time is of no consequence.

Moreover, respondents Villalon and Chuidian violated Section 34 of the Corporation Code when they acquired business opportunity adverse to that of complainant. When respondents Villalon and Chuidian told the brokers of complainant to convince their clients to transfer their business to Tradition, the profits of complainant which rightly belonging to it will be transferred to a competitor company to be headed by respondents.

The provision of Section 144 of the Corporation Code is also applicable in the case at bar as the penal provision provided therein is made applicable to all violations of the Corporation Code, not otherwise specifically penalized. Moreover, the factual milieu of the case entitled "Antiporda, et al., IS No. 2007-633" is inapplicable as the facts of the above-entitled case is different.

x x x x x x x x x

As for respondent Harvey's probable indictment, aside from not submitting his counter-affidavit, the counter-affidavit of respondent Villalon showed that he is also liable as such since the idea to transfer the employment of complainant's brokers was broached by him.

Anent respondents Ient and Schulze, record revealed that they conspired with respondents Villalon and Chuidian when they actively participated in the acts complained of. They presented the employment contracts and indemnity agreements with the brokers of complainant in a series of meetings held with respondents Villalon and Chuidian. Respondent Ient signed the contracts as CFO of Tradition Asia and even confirmed the transfer of respondent Villalon to Tradition. Respondent Schulze admitted that the purpose of her sojourn in the Philippines was to assist in the formation of Tradition. Thus, it is

clear that their role in the acts complained of were instrumental for respondents Villalon and Chuidian to violate their duties and responsibilities as directors and officers of complainant.[33]

Ient and Schulze moved for reconsideration of the foregoing Resolution by the Secretary of Justice. Meanwhile, on May 14, 2009, two Informations, one for violation of Section 31 and another for violation of Section 34, were filed by Prosecutor Delos Trinos with the Metropolitan Trial Court of Makati City. In a Resolution dated May 15, 2009, the Secretary of Justice denied the motion for reconsideration filed by petitioners. Unsatisfied with this turn of events, petitioners Ient and Schulze brought the matter to the Court of Appeals *via* a petition for *certiorari* under Rule 65 which was docketed as CA-G.R. SP No. 109094.

In a Decision dated August 12, 2009, the Court of Appeals affirmed the Secretary of Justice's Resolutions dated April 23, 2009 and May 15, 2009, after holding that:

> Respondent Secretary correctly stressed that Sections 31 and 34 must be read in the light of the nature of the position of a director and officer of the corporation as highly imbued with trust and confidence. Petitioners' rigid interpretation of clear-cut instances of liability serves only to undermine the values of loyalty, honesty and fairness in managing the affairs of the corporation, which the law vested on their position. Besides, this Court can hardly deduce abuse of discretion on the part of respondent Secretary in considering a conflict of interest scenario from petitioners' act of advancing the interest of an emerging competitor in the field rather than fiercely protecting the business of their own company. As aptly pointed out by the private respondent, the issue is not the right of the employee brokers to seek greener pastures or better employment opportunities but the *breach of fiduciary duty owed by its directors and officers*.

In the commentary on the subject of duties of directors and controlling stockholders under the Corporation Code, Campos explained:

> "*Fiduciary Duties; Conflict of Interest*
>
> "A director, holding as he does a position of trust, is a fiduciary of the corporation. As such, in case of conflict of his interest

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

> with those of the corporation, he cannot sacrifice the latter without incurring liability for his disloyal act. **The fiduciary duty has many ramifications, and the possible conflict-of-interest situations are almost limitless, each possibility posing different problems.** There will be cases where a breach of trust is clear. Thus, where a director converts for his own use funds or property belonging to the corporation, or accepts material benefits for exercising his powers in favor of someone seeking to do business with the corporation, no court will allow him to keep the profit he derives from his wrongdoing. In many other cases, however, the line of demarcation between the fiduciary relationship and a director's personal right is not easy to define. **The Code has attempted at least to lay down general rules of conduct and although these serve as guidelines for directors to follow, the determination as to whether in a given case the duty of loyalty has been violated has ultimately to be decided by the court on the case's own merits.**" x x x.

Prescinding from the above, We agree with the Secretary of Justice that the acts complained of in this case establish a *prima facie* case for violation of Sec. 31 such that the accused directors and officers of private respondent corporation are probably guilty of breach of *bad faith in directing the affairs of the corporation*. The breach of fiduciary duty as such director and corporate office (sic) are evident from their participation in recruiting the brokers employed in the corporation, inducing them to accept employment contracts with the newly formed firm engaged in competing business, and securing these new hires against possible breach of contract complaint by the corporation through indemnity contracts provided by Tradition Philippines. Clearly, no grave abuse of discretion was committed by the respondent Secretary in reversing the city prosecutor's dismissal of the criminal complaint and ordering the filing of the corresponding information against the accused, including herein petitioners.

As to petitioners' contention that conspiracy had not been established by the evidence, suffice it to state that such stance is belied by their own admission of the very acts complained of in the Complaint-Affidavit, the defense put up by them consists merely in their common argument that no crime was committed because private respondent's brokers had the right to resign and transfer employment if they so decide.

It bears to reiterate that probable cause is such set of facts and circumstances which would lead a reasonably discreet and prudent

man to believe that the offense charged in the Information or any offense included therein has been committed by the person sought to be arrested. In determining probable cause, the average man weighs the facts and circumstances without resorting to the calibrations of the rules of evidence of which he has no technical knowledge. He relies on common sense. Thus, a finding of probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction. It is enough that it is believed that the act or omission complained of constitutes the offense charged. Precisely, there is a trial for the reception of evidence of the prosecution in support of the charge.

Finally, the Court finds no merit in the argument of petitioners that Sec. 144 is not applicable since Sec. 31 already provides for liability for damages against the guilty director or corporate officer.

> "SEC. 144. ***Violations of the Code.*** — Violations of **any of the provisions of this Code** or its amendments **not otherwise specifically penalized therein** shall be punished by a fine of not less than one thousand (₱1,000.00) pesos but not more than ten thousand (₱10,000.00) pesos or by imprisonment for not less than thirty (30) days but not more than five (5) years, or both, in the discretion of the court. If the violation is committed by a corporation, the same may, after notice and hearing, be dissolved in appropriate proceedings before the Securities and Exchange Commission; *Provided*, That such dissolution shall not preclude the institution of appropriate action against the director, trustee or officer of the corporation responsible for the said violation; *Provided, further*, That nothing in this section shall be construed to repeal the other causes for dissolution of a corporation provided in this Code." x x x.

"Damages" as the term is used in Sec. 31 cannot be deemed as punishment or penalty as this appears in the above-cited criminal provision of the Corporation Code. Such "damage" implies civil, rather than, criminal liability and hence does not fall under those provisions of the Code which are not "specifically penalized" with fine or imprisonment.[34]

In light of the adverse ruling of the Court of Appeals, petitioners Ient and Schulze filed separate petitions for review

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[34] *Id.* at 81-83.

with this Court. After requiring further pleadings from the parties, the Court directed the parties to submit their memoranda to consolidate their positions on the issues.

At the outset, it should be noted that respondent Tullett interposed several procedural objections which we shall dispose of first.

Anent respondent's contentions that the present petitions (assailing the issuances of the Secretary of Justice on the question of probable cause) had become moot and academic with the filing of the Informations in the trial court and that under our ruling in *Advincula v. Court of Appeals*[35] the filing of a petition for *certiorari* with the appellate court was the improper remedy as findings of the Secretary of Justice on probable cause must be respected, we hold that these cited rules are not inflexible.

In *Yambot v. Tuquero,*[36] we observed that under exceptional circumstances, a petition for *certiorari* assailing the resolution of the Secretary of Justice (involving an appeal of the prosecutor's ruling on probable cause) may be allowed, notwithstanding the filing of an information with the trial court. We reiterated the doctrine in *Ching v. Secretary of Justice*[37] that the acts of a quasi-judicial officer may be assailed by the aggrieved party through a petition for *certiorari* and enjoined (a) when necessary to afford adequate protection to the constitutional rights of the accused; (b) when necessary for the orderly administration of justice; (c) when the acts of the officer are without or in excess of authority; (d) where the charges are manifestly false and motivated by the lust for vengeance; and (e) when there is clearly no *prima facie* case against the accused.

In the case at bar, it is unsettling to perceive a seeming lack of uniformity in the rulings of the Secretary of Justice on the issue of whether a violation of Section 31 entails criminal or only civil liability and such divergent actions are explained

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[35] 397 Phil. 641 (2000).

[36] 661 Phil. 599, 606 (2011).

[37] 517 Phil. 151, 170 (2006).

with a terse declaration of an alleged difference in factual milieu and nothing further. Such a state of affairs is not only offensive to principles of fair play but also anathema to the orderly administration of justice. Indeed, we have held that where the action of the Secretary of Justice is tainted with arbitrariness, an aggrieved party may seek judicial review via *certiorari* on the ground of grave abuse of discretion.[38]

We likewise cannot give credit to respondent's claim of mootness. The "moot and academic" principle is not a magical formula that can automatically dissuade the courts in resolving a case.[39] The Court will not hesitate to resolve the legal and constitutional issues raised to formulate controlling principles to guide the bench, the bar, and the public, particularly on a question capable of repetition, yet evading review.[40]

As for the assertion that the present petitions are dismissible due to forum shopping since they were filed during the pendency of petitioners' motion to quash and their co-accused's motion for judicial determination of probable cause with the trial court, we hold that there is no cause to dismiss these petitions on such ground.

Forum shopping is an act of a party, against whom an adverse judgment or order has been rendered in one forum, of seeking and possibly getting a favorable opinion in another forum, **other than by appeal or special civil action for *certiorari***. It may also involve the institution of two or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition.[41] There is no forum shopping where the suits involve different causes of action or different reliefs.[42]

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[38] *Ty v. De Jemil*, 653 Phil. 356, 369 (2010).

[39] *Funa v. Villar*, 686 Phil. 571, 583 (2012).

[40] *Deutsche Bank AG v. Court of Appeals*, 683 Phil. 80, 88 (2012).

[41] *People v. Grey*, 639 Phil. 535, 545 (2010).

[42] *Chavez v. Court of Appeals*, 624 Phil. 396, 400 (2010).

Jurisprudence explains that:

> A motion to quash is the mode by which an accused assails, before entering his plea, the validity of the criminal complaint or the criminal information filed against him for insufficiency on its face in point of law, or for defect apparent on the face of the Information. The motion, as a rule, hypothetically admits the truth of the facts spelled out in the complaint or information. The rules governing a motion to quash are found under Rule 117 of the Revised Rules of Court. Section 3 of this Rule enumerates the grounds for the quashal of a complaint or information. x x x.[43] (Citation omitted.)

On the other hand, the action at bar is a review on *certiorari* of the assailed Court of Appeals decision wherein the main issue is whether or not the Secretary of Justice committed grave abuse of discretion in reversing the City Prosecutor's dismissal of the criminal complaint. These consolidated petitions may proceed regardless of whether or not there are grounds to quash the criminal information pending in the court *a quo*.

Neither do we find relevant the pendency of petitioners' co-accused's motion for judicial determination of probable cause before the trial court. The several accused in these consolidated cases had a number of remedies available to them and they are each free to pursue the remedy which they deem is their best option. Certainly, there is no requirement that the different parties in a case must all choose the same remedy. We have held that even assuming separate actions have been filed by different parties involving essentially the same subject matter, no forum shopping is committed where the parties did not resort to multiple judicial remedies.[44] In any event, we have stated in the past that the rules on forum shopping are not always applied with inflexibility.[45]

As a final point on the technical aspects of this case, we reiterate here the principle that in the exercise of the Court's

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[43] *Los Baños v. Pedro*, 604 Phil. 215, 227-228 (2009).

[44] *Development Bank of the Philippines v. Court of Appeals*, 526 Phil. 525, 548-549 (2006).

[45] *London v. Baguio Country Club Corp.*, 439 Phil. 487, 492 (2002).

equity jurisdiction, procedural lapses may be disregarded so that a case may be resolved on its merits.[46] Indeed where strong considerations of substantive justice are manifest in a petition, the strict application of the rules of procedure may be relaxed.[47] This is particularly true in these consolidated cases where legal issues of first impression have been raised.

We now proceed to rule upon the parties' substantive arguments.

The main bone of disagreement among the parties in this case is the applicability of Section 144 of the Corporation Code to Sections 31 and 34 of the same statute such that criminal liability attaches to violations of Sections 31 and 34. For convenient reference, we quote the contentious provisions here:

SECTION 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.

When a director, trustee or officer attempts to acquire or acquires, in violation of his duty, any interest adverse to the corporation in respect of any matter which has been reposed in him in confidence, as to which equity imposes a disability upon him to deal in his own behalf, he shall be liable as a trustee for the corporation and must account for the profits which otherwise would have accrued to the corporation.

SECTION 34. *Disloyalty of a Director*. — Where a director, by virtue of his office, acquires for himself a business opportunity which should belong to the corporation, thereby obtaining profits to the prejudice of such corporation, he must account to the latter for all

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[46] *Superlines Transportation Co., Inc. v. Philippine National Construction Co.*, 548 Phil. 354, 362 (2007).

[47] *Victorio-Aquino v. Pacific Plans, Inc.*, G.R. No. 193108, December 10, 2014, 744 SCRA 480, 499.

such profits by refunding the same, unless his act has been ratified by a vote of the stockholders owning or representing at least two-thirds (2/3) of the outstanding capital stock. This provision shall be applicable, notwithstanding the fact that the director risked his own funds in the venture.

SECTION 144. *Violations of the Code*. — Violations of any of the provisions of this Code or its amendments not otherwise specifically penalized therein shall be punished by a fine of not less than one thousand (₱1,000.00) pesos but not more than ten thousand (₱10,000.00) pesos or by imprisonment for not less than thirty (30) days but not more than five (5) years, or both, in the discretion of the court. If the violation is committed by a corporation, the same may, after notice and hearing, be dissolved in appropriate proceedings before the Securities and Exchange Commission: *Provided*, That such dissolution shall not preclude the institution of appropriate action against the director, trustee or officer of the corporation responsible for said violation: *Provided, further*, That nothing in this section shall be construed to repeal the other causes for dissolution of a corporation provided in this Code.

Petitioners posit that Section 144 only applies to the provisions of the Corporation Code or its amendments "not otherwise specifically penalized" by said statute and should not cover Sections 31 and 34 which both prescribe the "penalties" for their violation; namely, damages, accounting and restitution of profits. On the other hand, respondent and the appellate court have taken the position that the term "penalized" under Section 144 should be interpreted as referring to criminal penalty, such as fine or imprisonment, and that it could not possibly contemplate "civil" penalties such as damages, accounting or restitution.

As Section 144 speaks, among others, of the imposition of criminal penalties, the Court is guided by the elementary rules of statutory construction of penal provisions. First, in all criminal prosecutions, the existence of criminal liability for which the accused is made answerable must be clear and certain. We have consistently held that "penal statutes are construed strictly against the State and liberally in favor of the accused. When there is doubt on the interpretation of criminal laws, all must be resolved in favor of the accused. Since penal laws should not be applied

mechanically, the Court must determine whether their application is consistent with the purpose and reason of the law."[48]

Intimately related to the *in dubio pro reo*[49] principle is the **rule of lenity**. The rule applies when the court is faced with two possible interpretations of a penal statute, one that is prejudicial to the accused and another that is favorable to him. The rule calls for the adoption of an interpretation which is more lenient to the accused.[50]

In American jurisprudence, there are two schools of thought regarding the application of the rule of lenity. Justice David Souter, writing for the majority in *United States v. R.L.C.*,[51] refused to resort to the rule and held that lenity is reserved "for those situations in which a reasonable doubt persists about a statute's intended scope even *after* resort to 'the language and structure, legislative history, and motivating policies' of the statute." Justice Antonin Scalia, although concurring in part and concurring in the judgment, argued that "it is not consistent with the rule of lenity to construe a textually ambiguous penal statute against a criminal defendant on the basis of legislative history... The rule of lenity, in my view, prescribes the result when a criminal statute is ambiguous: The more lenient interpretation must prevail."[52] In other words, for Justice Scalia, textual ambiguity in a penal statute suffices for the rule of lenity to be applied. Although foreign case law is merely persuasive authority and this Court is not bound by either legal perspective expounded in *United States v. R.L.C.*, said case provides a useful framework in our own examination of the scope and application of Section 144.

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[48] *People v. Valdez*, G.R. Nos. 216007-09, December 8, 2015.

[49] This Latin legal maxim translates into "when in doubt, [rule] for the accused."

[50] *Intestate Estate of Manolita Gonzales Vda. de Carungcong v. People*, 626 Phil. 177, 200 (2010).

[51] 503 U.S. 291, 305-308 (1992).

[52] *Id.* at 307-308.

After a meticulous consideration of the arguments presented by both sides, the Court comes to the conclusion that there is textual ambiguity in Section 144; moreover, such ambiguity remains even after an examination of its legislative history and the use of other aids to statutory construction, necessitating the application of the rule of lenity in the case at bar.

Respondent urges this Court to strictly construe Section 144 as contemplating only penal penalties. However, a perusal of Section 144 shows that it is not a purely penal provision. When it is a corporation that commits a violation of the Corporation Code, it may be dissolved in appropriate proceedings before the Securities and Exchange Commission. The involuntary dissolution of an erring corporation is not imposed as a criminal sanction,[53] but rather it is an administrative penalty.

The ambivalence in the language of Section 144 becomes more readily apparent in comparison to the penal provision[54] in Republic Act No. 8189 (The Voter's Registration Act of 1996), which was the subject of our decision in *Romualdez v. Commission on Elections*.[55] In that case, we upheld the constitutionality of Section 45(j) of Republic Act No. 8189 which made any violation of said statute a criminal offense. It is respondent's opinion that the penal clause in Section 144 should receive similar treatment and be deemed applicable to any violation of the Corporation Code. The Court cannot accept

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[53] Criminal penalties are generally understood to be limited to imprisonment or a fine. In Article 25 of the Revised Penal Code, penalties for lighter crimes may include suspension, destierro, public censure and a bond to keep the peace.

[54] We are aware of the existence of other penal/penalty provisions in various civil statutes. However, as the constitutionality and proper interpretation of these provisions *vis-a-vis* criminal law principles have not been specifically dealt with in jurisprudence, it is neither necessary nor practical to analyze and discuss here the variances in wording or syntax of every penal/penalty provision in our jurisdiction. The validity, scope and application of each penal/penalty provision should be raised and decided in the proper case.

[55] 576 Phil. 357 (2008).

this proposition for there are weighty reasons to distinguish this case from *Romualdez*.

We find it apropos to quote Sections 45 and 46 of Republic Act No. 8189 here:

SECTION 45. *Election Offense*. — **The following shall be considered election offenses under this Act:**

a) to deliver, hand over, entrust or give, directly or indirectly, his voter's identification card to another in consideration of money or other benefit or promise; or take or accept such voter's identification card, directly or indirectly, by giving or causing the giving of money or other benefit or making or causing the making of a promise therefor;

b) to fail, without cause, to post or give any of the notices or to make any of the reports required under this Act;

c) to issue or cause the issuance of a voter's identification number to cancel or cause the cancellation thereof in violation of the provisions of this Act; or to refuse the issuance of registered voters their voter's identification card;

d) to accept an appointment, to assume office and to actually serve as a member of the Election Registration Board although ineligible thereto; to appoint such ineligible person knowing him to be ineligible;

e) to interfere with, impede, abscond for purposes of gain or to prevent the installation or use of computers and devices and the processing, storage, generation and transmission of registration data or information;

f) to gain, cause access to, use, alter, destroy, or disclose any computer data, program, system software, network, or any computer-related devices, facilities, hardware or equipment, whether classified or declassified;

g) failure to provide certified voters and deactivated voters list to candidates and heads or representatives of political parties upon written request as provided in Section 30 hereof;

h) failure to include the approved application form for registration of a qualified voter in the book of voters of a particular precinct or the omission of the name of a duly registered voter in the certified list of voters of the precinct where he is duly registered resulting in his failure to cast his vote during an election, plebiscite, referendum,

initiative and/or recall. The presence of the form or name in the book of voters or certified list of voters in precincts other than where he is duly registered shall not be an excuse hereof;

i) The posting of a list of voters outside or at the door of a precinct on the day of an election, plebiscite, referendum, initiative and/or recall and which list is different in contents from the certified list of voters being used by the Board of Election Inspectors; and

j) Violation of any of the provisions of this Act.

SECTION 46. *Penalties*. — Any person found guilty of any Election offense under this Act shall be punished with imprisonment of not less than one (1) year but nor more than six (6) years and shall not be subject to probation. In addition, the guilty party shall be sentenced to suffer disqualification to hold public office and deprivation of the right of suffrage. If he is a foreigner, he shall be deported after the prison term has been served. Any political party found guilty shall be sentenced to pay a fine of not less than One hundred thousand pesos (₱100,000) but not more than Five hundred thousand pesos (₱500,000).

The crux of the Court's ruling in *Romualdez* is that, from the wording of Section 45 (j), there is a clear legislative intent to treat as an election offense any violation of the provisions of Republic Act No. 8189. For this reason, we do not doubt that Section 46 contemplates the term "penalty" primarily in the criminal law or punitive concept of the term.

There is no provision in the Corporation Code using similarly emphatic language that evinces a categorical legislative intent to treat as a criminal offense each and every violation of that law. Consequently, there is no compelling reason for the Court to construe Section 144 as similarly employing the term "penalized" or "penalty" solely in terms of criminal liability.

In *People v. Temporada*,[56] we held that in interpreting penal laws, "words are given their ordinary meaning and that any reasonable doubt about the meaning is decided in favor of anyone subjected to a criminal statute." Black's Law Dictionary recognizes the numerous conceptions of the term penalty and

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[56] 594 Phil. 680, 739 (2008).

discusses in part that it is "[a]n **elastic term** with many different shades of meaning; it involves idea of punishment, **corporeal or pecuniary, or civil or criminal**, although its meaning is generally confined to pecuniary punishment."[57] Persuasively, in *Smith v. Doe*,[58] the U.S. Supreme Court, interpreting a statutory provision that covers both punitive and non-punitive provisions, held that:

> The location and labels of a statutory provision do not by themselves transform a civil remedy into a criminal one. In *89 Firearms*, the Court held a forfeiture provision to be a civil sanction even though the authorizing statute was in the criminal code. The Court rejected the argument that the placement demonstrated Congress' "intention to create an additional criminal sanction," observing that "**both criminal and civil sanctions may be labeled 'penalties.'**" (Emphasis supplied.)

Giving a broad and flexible interpretation to the term "penalized" in Section 144 only has utility if there are provisions in the Corporation Code that specify consequences other than "penal" or "criminal" for violation of, or non-compliance with, the tenets of the Code. Petitioners point to the civil liability prescribed in Sections 31 and 34. Aside from Sections 31 and 34, we consider these provisions of interest:

> SECTION 21. *Corporation by Estoppel*. — **All persons who assume to act as a corporation knowing it to be without authority to do so shall be liable as general partners for all debts, liabilities and damages incurred or arising as a result** thereof: *Provided, however*, That when any such ostensible corporation is sued on any transaction entered by it as a corporation or on any tort committed by it as such, it shall not be allowed to use as a defense its lack of corporate personality.
>
> One who assumes an obligation to an ostensible corporation as such, cannot resist performance thereof on the ground that there was in fact no corporation.

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[57] *Black's Law Dictionary*, 6th edition (1990), p. 1133.

[58] *Smith v. Doe*, 538 U.S. 84, 94-95 (2003); citing *U.S. v. One Assortment of 89 Firearms*, 465 U.S. 354, 364-365, 104 S.Ct. 1099 (1984).

SECTION 22. *Effects of non-use of corporate charter and continuous in operation of a corporation*. — **If a corporation does not formally organize and commence the transaction of its business or the construction of its works within two (2) years from the date of its incorporation, its corporate powers cease and the corporation shall be deemed dissolved.** However, if a corporation has commenced the transaction of its business but subsequently becomes continuously inoperative for a period of at least five (5) years, the same shall be a ground for the suspension or revocation of its corporate franchise or certificate of incorporation.

This provision shall not apply if the failure to organize, commence the transaction of its business or the construction of its works, or to continuously operate is due to causes beyond the control of the corporation as may be determined by the Securities and Exchange Commission.

SECTION 65. *Liability of directors for watered stocks*. — **Any director or officer of a corporation consenting to the issuance of stocks for a consideration less than its par or issued value or for a consideration in any form other than cash, valued in excess of its fair value, or who, having knowledge thereof**, does not forthwith express his objection in writing and file the same with the corporate secretary, **shall be solidarily liable with the stockholder concerned to the corporation and its creditors for the difference between the fair value received at the time of issuance of the stock and the par or issued value of the same**.

SECTION 66. *Interest on unpaid subscriptions*. — **Subscribers for stock shall pay to the corporation interest on all unpaid subscriptions** from the date of subscription, if so required by, and at the rate of interest fixed in, the by-laws. If no rate of interest is fixed in the by-laws, such rate shall be deemed to be the legal rate.

SECTION 67. *Payment of balance of subscription*. — Subject to the provisions of the contract of subscription, the board of directors of any stock corporation may at any time declare due and payable to the corporation unpaid subscriptions to the capital stock and may collect the same or such percentage of said unpaid subscriptions, in either case with interest accrued, if any, as it may deem necessary.

Payment of any unpaid subscription or any percentage thereof, together with the interest accrued, if any, shall be made on the date specified in the contract of subscription or on the date stated in the

call made by the board. **Failure to pay on such date shall render the entire balance due and payable and shall make the stockholder liable for interest at the legal rate on such balance, unless a different rate of interest is provided in the by-laws, computed from such date until full payment.** If within thirty (30) days from the said date no payment is made, all stocks covered by said subscription **shall thereupon become delinquent and shall be subject to sale** as hereinafter provided, unless the board of directors orders otherwise.

SECTION 74. *Books to be kept; stock transfer agent*. — Every corporation shall, at its principal office, keep and carefully preserve a record of all business transactions, and minutes of all meetings of stockholders or members, or of the board of directors or trustees, in which shall be set forth in detail the time and place of holding the meeting, how authorized, the notice given, whether the meeting was regular or special, if special its object, those present and absent, and every act done or ordered done at the meeting. Upon the demand of any director, trustee, stockholder or member, the time when any director, trustee, stockholder or member entered or left the meeting must be noted in the minutes; and on a similar demand, the *yeas* and *nays* must be taken on any motion or proposition, and a record thereof carefully made. The protest of any director, trustee, stockholder or member on any action or proposed action must be recorded in full on his demand.

The records of all business transactions of the corporation and the minutes of any meeting shall be open to the inspection of any director, trustee, stockholder or member of the corporation at reasonable hours on business days and he may demand, in writing, for a copy of excerpts from said records or minutes, at his expense.

Any officer or agent of the corporation who shall refuse to allow any director, trustee, stockholder or member of the corporation to examine and copy excerpts from its records or minutes, in accordance with the provisions of this Code, shall be liable to such director, trustee, stockholder or member for damages, and in addition, shall be guilty of an offense which shall be punishable under Section 144 of this Code: *Provided*, That if such refusal is pursuant to a resolution or order of the board of directors or trustees, the liability under this section for such action shall be imposed upon the directors or trustees who voted for such refusal: and *Provided, further*, That it shall be a defense to any action under this section that the person demanding to examine and copy excerpts from the corporation's records and minutes has improperly used any

information secured through any prior examination of the records or minutes of such corporation or of any other corporation, or was not acting in good faith or for a legitimate purpose in making his demand.

Stock corporations must also keep a book to be known as the "stock and transfer book", in which must be kept a record of all stocks in the names of the stockholders alphabetically arranged; the installments paid and unpaid on all stock for which subscription has been made, and the date of payment of any installment; a statement of every alienation, sale or transfer of stock made, the date thereof, and by and to whom made; and such other entries as the by-laws may prescribe. The stock and transfer book shall be kept in the principal office of the corporation or in the office of its stock transfer agent and shall be open for inspection of any director or stockholder of the corporation at reasonable hours on business days.

No stock transfer agent or one engaged principally in the business of registering transfer of stocks in behalf of a stock corporation shall be allowed to operate in the Philippines unless he secures a license from the Securities and Exchange Commission and pays a fee as may be fixed by the Commission, which shall be renewed annually: *Provided*, That a stock corporation is not precluded from performing or making transfer of its own stocks, in which case all the rules and regulations imposed on stock transfer agents, except the payment of a license fee herein provided, shall be applicable.

Section 22 imposes the penalty of involuntary dissolution for non-use of corporate charter. The rest of the above-quoted provisions, like Sections 31 and 34, provide for civil or pecuniary liabilities for the acts covered therein but what is significant is the fact that, of all these provisions that provide for consequences other than penal, only Section 74 expressly states that a violation thereof is likewise considered an offense under Section 144. If respondent and the Court of Appeals are correct, that Section 144 automatically imposes penal sanctions on violations of provisions for which no criminal penalty was imposed, then such language in Section 74 defining a violation thereof as an offense would have been superfluous. There would be no need for legislators to clarify that, aside from civil liability, violators of Section 74 are exposed to criminal liability as well. We agree with petitioners that the lack of specific language imposing criminal liability in Sections 31 and 34 shows legislative intent

to limit the consequences of their violation to the civil liabilities mentioned therein. Had it been the intention of the drafters of the law to define Sections 31 and 34 as offenses, they could have easily included similar language as that found in Section 74.

If we were to employ the same line of reasoning as the majority in *United States v. R.L.C.*, would the apparent ambiguities in the text of the Corporation Code disappear with an analysis of said statute's legislative history as to warrant a strict interpretation of its provisions? The answer is a negative.

In his sponsorship speech of Cabinet Bill (C.B.) No. 3 (the bill that was enacted into the Corporation Code), then Minister Estelito Mendoza highlighted Sections 31 to 34 as among the significant innovations made to the previous statute (Act 1459 or the Corporation Law), thusly:

> There is a lot of jurisprudence on the liability of directors, trustees or officers for breach of trust or acts of disloyalty to the corporation. Such jurisprudence is not, of course, without any ambiguity of dissent. Sections 31, 32, 33 and 34 of the code indicate in detail prohibited acts in this area as well as consequences of the performance of such acts or failure to perform or discharge the responsibility to direct the affairs of the corporation with utmost fidelity.[59]

Alternatively stated, Sections 31 to 34 were introduced into the Corporation Code to define what acts are covered, as well as the consequences of such acts or omissions amounting to a failure to fulfil a director's or corporate officer's fiduciary duties to the corporation. A closer look at the subsequent deliberations on C.B. No. 3, particularly in relation to Sections 31 and 34, would show that the discussions focused on the civil liabilities or consequences prescribed in said provisions themselves. We quote the pertinent portions of the legislative records:

On Section 31

(Period of Sponsorship, December 4, 1979 Session)

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[59] *Rollo* (G.R. No. 189158), Vol. I, p. 1454. Record of Batasan (R.B.), November 5, 1979, p. 1214.

MR. LEGASPI. x x x.

In Section 31 page 22, it seems that the proviso is to make the **directors or the trustees who willfully and knowingly vote for or assent to patently unlawful act or guilty of gross negligence or bad faith in directing the affairs of the corporation would be solidarily liable with the officers** concerned.

Now, **would this**, Your Honor, **not discourage the serving of competent people as members of the Board of Directors, considering that they might feel that in the event things would do badly against the corporation, they might be held liable personally** for acts which should be attributed only to the corporation?

MR. MENDOZA. Your Honor will note that the directors or trustees who are held liable must be proven to have acted willfully and knowingly, or if not willfully and knowingly, it must be proven that they acted with gross negligence or bad faith. It must also be demonstrated that the acts done were patently unlawful. So, the requirement for liability is somewhat serious to the point of, in my opinion, being extreme. It will be noted that this provision does not merely require assenting to patently unlawful acts. It does not merely require being negligent. The provision requires that they assent to patently unlawful acts willfully and with knowledge of the illegality of the act.

Now, it might be true, as Your Honor suggested, that some persons will be discouraged or disinclined to agree to serve the Board of Directors because of this liability. But at the same time **this provision — Section 31 — is really no more than a consequence of the requirement that the position of membership in the Board of Directors is a position of high responsibility and great trust**. Unless a provision such as this is included, then that requirement of responsibility and trust will not be as meaningful as it should be. For after all, directors may take the attitude that unless they themselves commit the act, they would not be liable. But the responsibility of a director is not merely to act properly. The responsibility of a director is to assure that the Board of Directors, which means his colleagues acting together, does not act in a manner that is unlawful or to the prejudice of the corporation because of personal or pecuniary interest of the directors.[60] (Emphases supplied.)

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[60] *Id.* at 1480; R.B., December 4, 1979, p. 1614.

(Period of Amendments, March 11, 1980 Session)

MR. MILLORA. On line 16, Section 31, referring to the phrase "patently unlawful acts." Before I introduce my proposed amendment to delete the word "patently" is there a reason for placing this adjective before the word "unlawful", Your Honor?

MR. ABELLO. Probably the one who prepared this original draft of Cabinet Bill No. 3 wanted to make sure that a director or trustee is not [made] liable for an act that is not clearly unlawful, so he used a better word than "clearly," he used the word "patently."

MR. MILLORA. So, in that case, Your Honor, **a director may not be liable for certain unlawful acts**. Is that right, Your Honor?

MR. ABELLO. **Yes, if it is not patently unlawful.** Precisely, the use of the word "patently" is also **to give some kind of protection to the directors or trustees. Because if you will hold the directors or trustees responsible for everything, then no one will serve as director or trustee of any corporation.** But, he is made liable so long as he willfully and knowingly votes for or assent to patently unlawful acts of the corporation. So it is also to protect the director [or] trustees from liability for acts that was not patently unlawful.

MR. MILLORA. With that explanation, Your Honor, I will not proceed with my proposed amendment.[61]

On Section 34

(Period of Sponsorship, November 5, 1979 Session)

MR. NUÑEZ. x x x

May I go now to page 24, Section 34.

"Disloyalty of a Director — Where a director by virtue of his office acquires for himself a business opportunity which should belong to the corporation thereby obtaining profits to the prejudice of the corporation, he must account to the latter for all such profits, unless his act has been ratified by a vote of the stockholders owning or representing at least two-thirds (2/3) of the outstanding capital stock. This provision shall be applicable notwithstanding the fact that the director risked his own funds in the venture."

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[61] *Id.* at 1563-1564; R.B., March 11, 1980, pp. 2349-2350.

My question, Your Honor, is: **is this not the so-called corporate opportunity doctrine found in the American jurisprudence**?

MR. MENDOZA. Yes, Mr. Speaker, as I stated many of the changes that have been incorporated in the Code were drawn from jurisprudence on the matter, but even jurisprudence on several matters or several issues relating to the Corporation Code are sometimes ambiguous, sometimes controversial. In order, therefore, to clarify those issues, **what was done was to spell out in statutory language the rule that should be applied on those matters and one of such examples is Section 34**.

MR. NUÑEZ. Does not His Honor believe that to codify this particular document into law may lead to absurdity or confusion as the cited doctrine is subject to many qualifications depending on the peculiar nature of the case?

Let us suppose that there is a business opportunity that the corporation did not take advantage of or was not interested in. Would you hold the director responsible for acquiring the interest despite the fact that the corporation did not take advantage of or was not interested in that particular business venture? Does not His Honor believe that this should be subject to qualifications and should be dealt with on a case-to-case basis depending on the circumstances of the case?

MR. MENDOZA. If a director is prudent or wise enough, then he can protect himself in such contingency. **If he is aware of a business opportunity, he can make it known to the corporation, propose it to the corporation, and allow the corporation to reject it, after which he, certainly, may avail of it without risk of the consequences provided for in Section 34.**

MR. NUÑEZ. I see. So that the position of Your Honor is that the matter should be communicated to the corporation, the matter of the director acquiring the business opportunity should be communicated to the corporation and that if it is not communicated to the corporation, the director will be responsible. Is that the position of His Honor?

MR. MENDOZA. In my opinion it must not only be made known to the corporation; the corporation must be formally advised and **if he really would like to be assured that he is protected against the consequences provided for in Section 34**, he should take such steps whereby the opportunity is clearly presented to the corporation and the corporation has the opportunity to decide on whether to avail

of it or not and then let the corporation reject it, after which then he may avail of it. Under such circumstances I do not believe he would **expose himself to the consequences provided for under Section 34**.

Precisely, the reason we have laid down this ruling in statutory language is that for as long as the rule is not clarified there will be ambiguity in the matter. And directors of corporations who may acquire knowledge of such opportunities would always be risking consequences not knowing how the courts will later on decide such issues. **But now with the statutory rule, any director who comes to know of an opportunity that may be available to the corporation would be aware of the consequences** in case he avails of that opportunity without giving the corporation the privilege of deciding beforehand on whether to take advantage of it or not.

MR. NUÑEZ. Let us take the case of a corporation where, from all indications, the corporation was aware of this business opportunity and despite this fact, Your Honor, and the failure of the director to communicate the venture to the corporation, the director entered into the business venture. Is the director liable, Your Honor, despite the fact that the corporation has knowledge, Your Honor, from all indications, from all facts, from all circumstances of the case, the corporation is aware?

MR. MENDOZA. First of all, to say that a corporation has knowledge is itself a point that can be subject of an argument. When does a corporation have knowledge — when its president comes to know of the fact, when its general manager knows of the fact, when one or two of the directors know of that fact, when a majority of the directors come to know of that fact? So that in itself is a matter of great ambiguity, when one says it has knowledge.

That is why when I said that a **prudent director, who would assure that he does not become liable under Section 34**, should not only be sure that the corporation has official knowledge, that is, the Board of Directors, but must take steps, positive steps, which will demonstrate that the matter or opportunity was brought before the corporation for its decision whether to avail of it or not, and the corporation rejected it.

So, under those circumstances narrated by Your Honor, it is my view that the director will be liable, unless his acts are ratified later by the vote of stockholders holding at least 2/3 of the outstanding capital stock.

MR. NUÑEZ. Your Honor has already raised the possible complications that may arise out of this particular provision. My question is: how can we remedy the situation? Is there a necessity, Your Honor, of a formal notice to the corporation that it should be placed in the agenda, in a meeting or a special or regular meeting of the corporation that such a business venture exists, that the corporation should take advantage of this business venture before a director can be held not responsible for acquiring this business venture?

MR. MENDOZA. Well, I believe, as I have stated, Mr. Speaker, that is what a prudent director should do. If he does not wish to be in any way handicapped in availing of business opportunities, he should, to the same degree, be circumspect in accepting directorships in corporations. If he wants to be completely free to avail of any opportunity which may come his way, he should not accept the position of director in any corporation which he may anticipate may be dealing in a business in connection with which he may acquire a certain interest.

The purpose of all these provisions is to assure that directors or corporations constantly — not only constantly remember but **actually are imposed with certain positive obligations** that at least would assure **that they will discharge their responsibilities with utmost fidelity**.[62]

(December 5, 1979 Session)

MR. CAMARA. Thank you, Your Honor. May we go to page 24, lines 1 to 20, Section 34 — Disloyalty of a director.

Your Honor, it is provided that a director, who by virtue of his office acquires for himself a business opportunity which should belong to the corporation thereby obtaining profits to the prejudice of such corporation, must account to the corporation for all such profits unless his act has been ratified by a vote of the stockholders owning or representing at least two-thirds (2/3) of the outstanding capital stock.

However, Your Honor, the right to ratification would serve to defeat the intention of this provision. This is possible if the director or officer is the controlling stockholder.

It is, therefore, suggested, Your Honor, that the twenty per cent (20%) stockholding limit be applied here in which case, over twenty per cent limit, said director or officer is disallowed to participate in

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[62] *Id.* at 1457-1459; R.B., November 5, 1979, pp. 1217-1219.

the ratification. And this is precisely the point I was driving at in the previous section, Your Honor.

MR. ABELLO. Your Honor, I see the point that Your Honor has raised and that will be considered by the committee at an appropriate time.

MR. CAMARA. Thank you, Your Honor.

Further, under the same provision, it is not clear as to what "account to the corporation" means or what it includes. Is the offender liable for the profits in favor of the corporation?

MR. ABELLO. Yes, that is what it means.

MR. CAMARA. Or he be merely made to account?

MR. ABELLO. **Well, Your Honor, when the law says "He must account to the latter for all such profits," that means that he is liable to the corporation for such profits.**

MR. CAMARA. Who gets the profits then, Your Honor?

MR. ABELLO. The corporation itself.

MR. CAMARA. The corporation?

MR. ABELLO. Correct.

MR. CAMARA. Thank you, Your Honor.

Supposing under the same section, Your Honor, the director took the opportunity after resigning as director or officer? It is suggested, Your Honor, that this should be clarified because the resigning director can take the opportunity of this transaction before he resigns.

MR. ABELLO. If Your Honor refers to the fact that he took that opportunity while he was a director, Section 34, would apply. But if the action was made after his resignation as a director of the corporation, then Section 34 would not apply.[63]

(Period of Amendments, March 11, 1980 Session)

MR. CAMARA. This is on Section 34, page 24, line 15, I propose to insert between the word "profits" and the comma (,) the words BY REFUNDING THE SAME. So that the first sentence, lines 11 to 18 of said section, as modified, shall read as follows:

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[63] *Id.* at 1498; R.B., December 5, 1979, p. 1633.

> "SEC. 34. *Disloyalty of a director*. — Where a director by virtue of his office acquires for himself a business opportunity which should belong to the corporation thereby obtaining profits to the prejudice of such corporation, he must account to the latter for all such profits BY REFUNDING THE SAME, unless his act has been ratified by a vote of the stockholders owning or representing at least two-thirds (2/3) of the outstanding capital stock."

The purpose of this amendment, Mr. Speaker, is to clarify as to what to account to the corporation.

MR. ABELLO. Mr. Speaker, the committee accepts the amendment.[64] (Emphases and underscoring supplied.)

Verily, in the instances that Sections 31 and 34 were taken up on the floor, legislators did not veer away from the civil consequences as stated within the four corners of these provisions. Contrasted with the interpellations on Section 74 (regarding the right to inspect the corporate records), the discussions on said provision leave no doubt that legislators intended both civil and penal liabilities to attach to corporate officers who violate the same, as was repeatedly stressed in the excerpts from the legislative record quoted below:

On Section 74:

(Period of Sponsorship, December 10, 1979 Session)

MR. TUPAZ. x x x I guess, Mr. Speaker, that the distinguished sponsor has in mind a particular situation where a minority shareholder is one of the thousands of shareholders. But I present a situation, Your Honor, where the minority is 49% owner of a corporation and here comes this minority shareholder wanting, but a substantial minority, and yet he cannot even have access to the records of this corporation over which he owns almost one-half because, precisely, of this particular provision of law.[65]

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[64] *Id.* at 1565; R.B., March 11, 1980. p. 2351.

[65] Mr. Tupaz's interpellation centered on the proviso in Section 74 that it is a defense under said section that the person demanding to see the corporation's records has improperly used any information secured through any prior examination or was not acting in good faith or for a legitimate purpose.

MR. MENDOZA. He will not have access if the grounds expressed in the proviso are present. It must also be noted, Mr. Speaker, that the provision before us would, let us say, make it very difficult for **corporate officers** to act unreasonably because they **are not only subject to a suit which would compel them to allow the access to corporate records, they are also liable for damages and are in fact guilty of a penal act under Section 143**.[66]

MR. TUPAZ. That is correct, Your Honor.

MR. MENDOZA. So that when corporate officers deny access to a shareholder, they do so under very serious consequences. If they should err in making that decision and it is demonstrated that they have erred deliberately, they **expose themselves to damages and even to certain penal sanctions**.

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As I said, Your Honor, I think it is fair enough to assume that persons do not act deliberately in bad faith, that **they do not act deliberately to expose themselves to damages, or to penal sanctions**. In the ultimate, I would agree that certain decisions may be unnecessarily harsh and prejudicial. But by and large, I think, the probabilities are in favor of a decision being reasonable and in accord with the interest of the corporation.[67] (Emphases and underscoring supplied.)

Quite apart that no legislative intent to criminalize Sections 31 and 34 was manifested in the deliberations on the Corporation Code, it is noteworthy from the same deliberations that legislators intended to codify the common law concepts of corporate opportunity and fiduciary obligations of corporate officers as found in American jurisprudence into said provisions. In common law, the remedies available in the event of a breach of director's fiduciary duties to the corporation are civil remedies. If a director or officer is found to have breached his duty of loyalty, an injunction may be issued or damages may be awarded.[68]

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[66] This was renumbered as Section 144 when the Corporation Code was enacted.

[67] *Rollo* (G.R. No. 189158), Vol. I, pp. 1515-1516; R.B., December 10, 1979, pp. 1695-1696.

[68] See *Fletcher Cyclopedia of the Law of Corporations*, 3 Fletcher Cyc. Corp. § 837.60, September 2016 update.

A corporate officer guilty of fraud or mismanagement may be held liable for lost profits.[69] A disloyal agent may also suffer forfeiture of his compensation.[70] There is nothing in the deliberations to indicate that drafters of the Corporation Code intended to deviate from common law practice and enforce the fiduciary obligations of directors and corporate officers through penal sanction aside from civil liability. On the contrary, there appears to be a concern among the drafters of the Corporation Code that even the imposition of the civil sanctions under Section 31 and 34 might discourage competent persons from serving as directors in corporations.

In *Crandon v. United States*,[71] the U.S. Supreme Court had the occasion to state that:

> In determining the meaning of the statute, **we look not only to the particular statutory language, but to the design of the statute as a whole and to its object and policy.** Moreover, because the governing standard is set forth in a criminal statute, it is appropriate to apply the rule of lenity in resolving any ambiguity in the ambit of the statute's coverage. To the extent that the language or history of [the statute] is uncertain, this "time-honored interpretive guideline" serves to ensure both that there is **fair warning of the boundaries of criminal conduct and that legislatures, not courts, define criminal liability**. (Citations omitted; emphases supplied.)

Under the circumstances of this case, we are convinced to adopt a similar view. For this reason, we take into account the avowed legislative policy in the enactment of the Corporation Code as outlined in the Sponsorship Speech of Minister Mendoza:

> Cabinet Bill No. 3 is entitled "The Corporation Code of the Philippines." Its consideration at this time in the history of our nation provides a fitting occasion to remind that **under our Constitution the economic system known as "free enterprise" is recognized and protected**. We acknowledge as a democratic republic that the

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[69] *See* 3A Fletcher Cyc. Corp. § 1343.

[70] *See* 5A Fletcher Cyc. Corp. § 2185.

[71] 494 U.S. 152, 110 S.Ct. 997, 1001-1002 (1990).

individual must be free and that as a free man — "free to choose his work and to retain the fruits of his labor" — he may best develop his capabilities and **will produce and supply the economic needs of the nation**.

x x x x x x x x x

The formation and organization of private corporations, and I underscore private corporations as distinguished from corporations owned or controlled by the government or any subdivision or instrumentality thereof, **gives wider dimensions to free enterprise or free trade**. For not only is the right of individuals to organize collectively recognized; the collective organization is vested with a juridical personality distinct from their own. Thus "the skill, dexterity, and judgment" of a nation's labor force need not be constricted in their application to those of an individual or that which he alone may assemble but to those of a collective organization.

While a code, such as the proposed code now before us, **may appear essentially regulatory in nature, it does not, and is not intended, to curb or stifle the use of the corporate entity as a business organization**. Rather, the proposed code recognizes the value, and seeks to inspire confidence in the value of the corporate vehicle in the economic life of society.[72] (Emphases supplied.)

The Corporation Code was intended as a regulatory measure, not primarily as a penal statute. Sections 31 to 34 in particular were intended to impose exacting standards of fidelity on corporate officers and directors but without unduly impeding them in the discharge of their work with concerns of litigation. Considering the object and policy of the Corporation Code to encourage the use of the corporate entity as a vehicle for economic growth, we cannot espouse a strict construction of Sections 31 and 34 as penal offenses in relation to Section 144 in the absence of unambiguous statutory language and legislative intent to that effect.

When Congress intends to criminalize certain acts it does so in plain, categorical language, otherwise such a statute would be susceptible to constitutional attack. As earlier discussed,

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[72] *Rollo* (G.R. No. 189158) Vol. I, p. 1452; R.B., November 5, 1979, p. 1212.

this can be readily seen from the text of Section 45(j) of Republic Act No. 8189 and Section 74 of the Corporation Code.

We stress that had the Legislature intended to attach penal sanctions to Sections 31 and 34 of the Corporation Code it could have expressly stated such intent in the same manner that it did for Section 74 of the same Code.

At this point, we dispose of some related arguments raised in the pleadings.

We do not agree with respondent Tullett that previous decisions of this Court have already settled the matter in controversy in the consolidated cases at bar. The declaration of the Court in *Home Insurance Company v. Eastern Shipping Lines*[73] that "[t]he prohibition against doing business without first securing a license [under Section 133] is now given penal sanction which is also applicable to other violations of the Corporation Code under the general provisions of Section 144 of the Code" is unmistakably *obiter dictum*. We explained in another case:

> An *obiter dictum has been defined as an opinion expressed by a court upon some question of law that is not necessary* in the determination of the case before the court. It is a remark made, or opinion expressed, by a judge, in his decision upon a cause *by the way*, that is, *incidentally* or *collaterally*, and not directly upon the question before him, or upon a point not necessarily involved in the determination of the cause, or introduced by way of illustration, or analogy or argument. **It does not embody the resolution or determination of the court, and is made without argument, or full consideration of the point. It lacks the force of an adjudication, being a mere expression of an opinion with no binding force for purposes of *res judicata*.**[74] (Emphasis supplied.)

The issue in the *Home Insurance Company* case was whether or not a foreign corporation previously doing business here without a license has the capacity to sue in our courts when it had already acquired the necessary license at the time of the

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[73] 208 Phil. 359, 372 (1983).

[74] *Ocean East Agency, Corp. v. Lopez*, G.R. No. 194410, October 14, 2015.

filing of the complaints. The Court ruled in the affirmative. The statement regarding the supposed penal sanction for violation of Section 133 of the Corporation Code was not essential to the resolution of the case as none of the parties was being made criminally liable under Section 133.

As for respondent's allusion to *Genuino v. National Labor Relations Commission*,[75] we find the same unavailing. *Genuino* involved the appeal of an illegal dismissal case wherein it was merely mentioned in the narration of facts that the employer-bank also filed criminal complaints against its dismissed corporate officers for alleged violation of Section 31 in relation to Section 144 of the Corporation Code. The interpretation of said provisions of the Corporation Code in the context of a criminal proceeding was **not** at issue in that case.

As additional support for its contentions, respondent cites several opinions of the SEC, applying Section 144 to various violations of the Corporation Code in the imposition of graduated fines. In respondent's view, these opinions show a consistent administrative interpretation on the applicability of Section 144 to the other provisions of the Corporation Code and allegedly render absurd petitioners' concern regarding the "over-criminalization" of the Corporation Code. We find respondent's reliance on these SEC opinions to be misplaced. As petitioners correctly point out, the fines imposed by the SEC in these instances of violations of the Corporation Code are in the nature of administrative fines and are not penal in nature. Without ruling upon the soundness of the legal reasoning of the SEC in these opinions, we note that these opinions in fact support the view that even the SEC construes "penalty" as used in Section 144 as encompassing administrative penalties, not only criminal sanctions. In all, these SEC issuances weaken rather than strengthen respondent's case.

With respect to the minutiae of other arguments cited in the parties' pleadings, it is no longer necessary for the Court to pass upon the same in light of our determination that there is

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[75] 564 Phil. 315 (2007).

no clear, categorical legislative intent to define Sections 31 and 34 as offenses under Section 144 of the Corporation Code. We likewise refrain from resolving the question on the constitutionality of Section 144 of the Corporation Code. It is a long standing principle in jurisprudence that "courts will not resolve the constitutionality of a law, if the controversy can be settled on other grounds. The policy of the courts is to avoid ruling on constitutional questions and to presume that the acts of the politica1 departments are valid, absent a clear and unmistakable showing to the contrary."[76]

WHEREFORE, the consolidated petitions are **GRANTED**. The Decision dated August 12, 2009 of the Court of Appeals in CA-G.R. SP No. 109094 and the Resolutions dated April 23, 2009 and May 15, 2009 of the Secretary of Justice in I.S. No. 08-J-8651 are **REVERSED and SET ASIDE**.

SO ORDERED.

Sereno, C.J. (Chairperson), del Castillo, Jardeleza,* and *Caguioa, JJ.*, concur.

THIRD DIVISION

[G.R. No. 193340. January 11, 2017]

THE MUNICIPALITY OF TANGKAL, PROVINCE OF LANAO DEL NORTE, *petitioner, vs.* **HON. RASAD B. BALINDONG, in his capacity as Presiding Judge, Shari'a District Court, 4th Judicial District, Marawi City, and HEIRS OF THE LATE MACALABO ALOMPO, represented by SULTAN DIMNANG B. ALOMPO,** *respondents*.

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[76] *Mirasol v. Court of Appeals*, 403 Phil. 760, 774 (2001).

* Per Raffle dated December 7, 2016.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JURISDICTION; WHEN IT IS APPARENT FROM THE PLEADINGS THAT THE COURT HAS NO JURISDICTION OVER THE SUBJECT MATTER, IT IS DUTY BOUND TO DISMISS THE CASE REGARDLESS OF WHETHER THE DEFENDANT FILED A MOTION TO DISMISS.— Although the Special Rules of Procedure in Shari'a Courts prohibits the filing of a motion to dismiss, this procedural rule may be relaxed when the ground relied on is lack of jurisdiction which is patent on the face of the complaint. x x x Indeed, when it is apparent from the pleadings that the court has no jurisdiction over the subject matter, it is duty-bound to dismiss the case regardless of whether the defendant filed a motion to dismiss. Thus, in *Villagracia v. Fifth Shari'a District Court,* we held that once it became apparent that the Shari'a court has no jurisdiction over the subject matter because the defendant is not a Muslim, the court should have *motu proprio* dismissed the case.

2. ID.; ID.; JUDGMENTS OR ORDERS; A DENIAL OF A MOTION TO DISMISS CANNOT BE QUESTIONED IN A SPECIAL CIVIL ACTION FOR *CERTIORARI* WHICH IS A REMEDY DESIGNED TO CORRECT ERRORS OF JURISDICTION; EXCEPTIONS.— An order denying a motion to dismiss is an interlocutory order which neither terminates nor finally disposes of a case as it leaves something to be done by the court before the case is finally decided on the merits. Thus, as a general rule, the denial of a motion to dismiss cannot be questioned in a special civil action for *certiorari* which is a remedy designed to correct errors of jurisdiction and not errors of judgment. As exceptions, however, the defendant may avail of a petition for *certiorari* if the ground raised in the motion to dismiss is lack of jurisdiction over the person of the defendant or over the subject matter, or when the denial of the motion to dismiss ts tainted with grave abuse of discretion. The reason why lack of jurisdiction as a ground for dismissal is treated differently from others is because of the basic principle that jurisdiction 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 — to the extent that all proceedings before a court without jurisdiction are void.

3. POLITICAL LAW; STATUTES; THE CODE OF MUSLIM PERSONAL LAWS; SHARI'A DISTRICT COURTS; THE GENERAL JURISDICTION OF SHARI'A DISTRICT COURTS OVER MATTERS ORDINARILY COGNIZABLE BY REGULAR COURTS MAY ONLY BE INVOKED IF BOTH PARTIES ARE MUSLIMS.— The matters over which Shari'a district courts have jurisdiction are enumerated in the Code of Muslim Personal Laws, specifically in Article 143. Consistent with the purpose of the law to provide for an effective administration and enforcement of Muslim personal laws among Muslims, it has a catchall provision granting Shari'a district courts original jurisdiction over personal and real actions except those for forcible entry and unlawful detainer. The Shari'a district courts' jurisdiction over these matters is concurrent with regular civil courts, *i.e.*, municipal trial courts and regional trial courts. There is, however, a limit to the general jurisdiction of Shari'a district courts over matters ordinarily cognizable by regular courts: such jurisdiction may only be invoked if both parties are Muslims. If one party is not a Muslim, the action must be filed before the regular courts.

4. REMEDIAL LAW; CIVIL PROCEDURE; PARTIES TO CIVIL ACTIONS; REAL PARTIES IN INTEREST; REFER TO THOSE WHO STAND TO BE BENEFITED OR INJURED BY THE JUDGMENT IN THE SUIT, OR ARE ENTITLED TO THE AVAILS OF THE SUIT.— When Article 143(2)(b) qualifies the conferment of jurisdiction to actions "wherein the parties involved are Muslims," the word "parties" necessarily refers to the real parties in interest. Section 2 of Rule 3 of the Rules of Court defines real parties in interest as those who stand to be benefited or injured by the judgment in the suit, or are entitled to the avails of the suit. In this case, the parties who will be directly benefited or injured are the private respondents, as real party plaintiffs, and the Municipality of Tangkal, as the real party defendant. x x x It is clear from the title and the averments in the complaint that Mayor Batingolo was impleaded only in a representative capacity, as chief executive of the local government of Tangkal. When an action is defended by a representative, that representative is not—and neither does he become—a real party in interest. The person represented is deemed the real party in interest; the representative remains to be a third party to the action. That Mayor Batingolo is a Muslim is therefore irrelevant for

purposes of complying with the jurisdictional requirement under Article 143(2)(b) that both parties be Muslims. To satisfy the requirement, it is the real party defendant, the Municipality of Tangkal, who must be a Muslim. Such a proposition, however, is a legal impossibility.

5. POLITICAL LAW; STATUTES; THE CODE OF MUSLIM PERSONAL LAWS; MUSLIM, DEFINED; THE ABILITY TO TESTIFY TO THE ONENESS OF GOD AND THE PROPHETHOOD OF MUHAMMAD AND TO PROFESS ISLAM IS, BY ITS NATURE, RESTRICTED TO NATURAL PERSONS.— The Code of Muslim Personal Laws defines a "Muslim" as "a person who testifies to the oneness of God and the Prophethood of Muhammad and professes Islam." Although the definition does not explicitly distinguish between natural and juridical persons, it nonetheless connotes the exercise of religion, which is a fundamental personal right. The ability to testify to the "oneness of God and the Prophethood of Muhammad" and to profess Islam is, by its nature, restricted to natural persons. In contrast, juridical persons are artificial beings with "no consciences, no beliefs, no feelings, no thoughts, no desires." They are considered persons only by virtue of legal fiction. The Municipality of Tangkal falls under this category. Under the Local Government Code, a municipality is a body politic and corporate that exercises powers as a political subdivision of the national government and as a corporate entity representing the inhabitants of its territory. Furthermore, as a government instrumentality, the Municipality of Tangkal can only act for secular purposes and in ways that have primarily secular effects—consistent with the non-establishment clause. Hence, even if it is assumed that juridical persons are capable of practicing religion, the Municipality of Tangkal is constitutionally proscribed from adopting, much less exercising, any religion, including Islam. x x x It is an elementary principle that a municipality has a personality that is separate and distinct from its mayor, vice-mayor, *sanggunian*, and other officers composing it. And under no circumstances can this corporate veil be pierced on purely religious considerations—as the Shari'a District Court has done — without running afoul the inviolability of the separation of Church and State enshrined in the Constitution.

APPEARANCES OF COUNSEL

Edgar A. Masorong for petitioner.
Daud R. Calala for private respondents.

D E C I S I O N

JARDELEZA, *J.*:

The Code of Muslim Personal Laws of the Philippines[1] (Code of Muslim Personal Laws) vests concurrent jurisdiction upon Shari'a district courts over personal and real actions wherein the parties involved are Muslims, except those for forcible entry and unlawful detainer. The question presented is whether the Shari'a District Court of Marawi City has jurisdiction in an action for recovery of possession filed by Muslim individuals against a municipality whose mayor is a Muslim. The respondent judge held that it has. We reverse.

I

The private respondents, heirs of the late Macalabo Alompo, filed a Complaint[2] with the Shari'a District Court of Marawi City (Shari'a District Court) against the petitioner, Municipality of Tangkal, for recovery of possession and ownership of a parcel of land with an area of approximately 25 hectares located at Barangay Banisilon, Tangkal, Lanao del Norte. They alleged that Macalabo was the owner of the land, and that in 1962, he entered into an agreement with the Municipality of Tangkal allowing the latter to "borrow" the land to pave the way for the construction of the municipal hall and a health center building. The agreement allegedly imposed a condition upon the Municipality of Tangkal to pay the value of the land within 35 years, or until 1997; otherwise, ownership of the land would revert to Macalabo. Private respondents claimed that the Municipality of Tangkal neither paid the value of the land within

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[1] Presidential Decree No. 1083 (1977).

[2] *Rollo*, pp. 39-47.

the agreed period nor returned the land to its owner. Thus, they prayed that the land be returned to them as successors-in-interest of Macalabo.

The Municipality of Tangkal filed an Urgent Motion to Dismiss[3] on the ground of improper venue and lack of jurisdiction. It argued that since it has no religious affiliation and represents no cultural or ethnic tribe, it cannot be considered as a Muslim under the Code of Muslim Personal Laws. Moreover, since the complaint for recovery of land is a real action, it should have been filed in the appropriate Regional Trial Court of Lanao del Norte.

In its Order[4] dated March 9, 2010, the Shari'a District Court denied the Municipality of Tangkal's motion to dismiss. It held that since the mayor of Tangkal, Abdulazis A.M. Batingolo, is a Muslim, the case "is an action involving Muslims, hence, the court has original jurisdiction concurrently with that of regular/civil courts." It added that venue was properly laid because the Shari'a District Court has territorial jurisdiction over the provinces of Lanao del Sur and Lanao del Norte, in addition to the cities of Marawi and Iligan. Moreover, the filing of a motion to dismiss is a disallowed pleading under the Special Rules of Procedure in Shari'a Courts.[5]

The Municipality of Tangkal moved for reconsideration, which was denied by the Shari'a District Court. The Shari'a District Court also ordered the Municipality of Tangkal to file its answer within 10 days.[6] The Municipality of Tangkal timely filed its answer[7] and raised as an affirmative defense the court's lack of jurisdiction.

Within the 60-day reglementary period, the Municipality of Tangkal elevated the case to us via petition for *certiorari*,

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[3] *Id.* at 48-53.

[4] *Id.* at 57-A.

[5] *En Banc* Resolution promulgated by the Supreme Court on September 20, 1983.

[6] *Rollo*, p. 76.

[7] *Id.* at 84-89.

prohibition, and *mandamus* with prayer for a temporary restraining order[8] (TRO). It reiterated its arguments in its earlier motion to dismiss and answer that the Shari'a District Court has no jurisdiction since one party is a municipality which has no religious affiliation.

In their Comment,[9] private respondents argue that under the Special Rules of Procedure in Shari'a Courts, a petition for *certiorari*, *mandamus*, or prohibition against any interlocutory order issued by the district court is a prohibited pleading. Likewise, the Municipality of Tangkal's motion to dismiss is disallowed by the rules. They also echo the reasoning of the Shari'a District Court that since both the plaintiffs below and the mayor of defendant municipality are Muslims, the Shari'a District Court has jurisdiction over the case.

In the meantime, we issued a TRO[10] against the Shari'a District Court and its presiding judge, Rasad Balindong, from holding any further proceedings in the case below.

II

In its petition, the Municipality of Tangkal acknowledges that generally, neither *certiorari* nor prohibition is an available remedy to assail a court's interlocutory order denying a motion to dismiss. But it cites one of the exceptions to the rule, *i.e.*, when the denial is without or in excess of jurisdiction to justify its remedial action.[11] In rebuttal, private respondents rely on the Special Rules of Procedure in Shari'a Courts which expressly identifies a motion to dismiss and a petition for *certiorari*, *mandamus*, or prohibition against any interlocutory order issued by the court as prohibited pleadings.[12]

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[8] *Id.* at 6-37.

[9] *Id.* at 96-105.

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

[11] *Id.* at 6-8.

[12] *Id.* at 96-97, citing the Special Rules of Procedure in Shari'a Courts, Sec. 13(a) & (f).

A

Although the Special Rules of Procedure in Shari'a Courts prohibits the filing of a motion to dismiss, this procedural rule may be relaxed when the ground relied on is lack of jurisdiction which is patent on the face of the complaint. As we held in *Rulona-Al Awadhi v. Astih*:[13]

> Instead of invoking a procedural technicality, the respondent court should have recognized its lack of jurisdiction over the parties and promptly dismissed the action, for, without jurisdiction, all its proceedings would be, as they were, a futile and invalid exercise. A summary rule prohibiting the filing of a motion to dismiss should not be a bar to the dismissal of the action for lack of jurisdiction when the jurisdictional infirmity is patent on the face of the complaint itself, in view of the fundamental procedural doctrine that the jurisdiction of a court may be challenged at anytime and at any stage of the action.[14]

Indeed, when it is apparent from the pleadings that the court has no jurisdiction over the subject matter, it is duty-bound to dismiss the case regardless of whether the defendant filed a motion to dismiss.[15] Thus, in *Villagracia v. Fifth Shari'a District Court*,[16] we held that once it became apparent that the Shari'a court has no jurisdiction over the subject matter because the defendant is not a Muslim, the court should have *motu proprio* dismissed the case.[17]

B

An order denying a motion to dismiss is an interlocutory order which neither terminates nor finally disposes of a case as it leaves something to be done by the court before the case is finally decided on the merits. Thus, as a general rule, the

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[13] G.R. No. 81969, September 2, 1988, 165 SCRA 771.

[14] *Id.* at 777. Citations omitted.

[15] RULES OF COURT, Rule 9, Sec. 1.

[16] G.R. No. 188832, April 23, 2014, 723 SCRA 550.

[17] *Id.* at 565-566.

denial of a motion to dismiss cannot be questioned in a special civil action for *certiorari* which is a remedy designed to correct errors of jurisdiction and not errors of judgment.[18] As exceptions, however, the defendant may avail of a petition for *certiorari* if the ground raised in the motion to dismiss is lack of jurisdiction over the person of the defendant or over the subject matter,[19] or when the denial of the motion to dismiss is tainted with grave abuse of discretion.[20]

The reason why lack of jurisdiction as a ground for dismissal is treated differently from others is because of the basic principle that jurisdiction 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[21] — to the extent that all proceedings before a court without jurisdiction are void.[22] We grant *certiorari* on this basis. As will be shown below, the Shari'a District Court's lack of jurisdiction over the subject matter is patent on the face of the complaint, and therefore, should have been dismissed outright.

III

The matters over which Shari'a district courts have jurisdiction are enumerated in the Code of Muslim Personal Laws, specifically in Article 143.[23] Consistent with the purpose of the law to provide

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[18] *Republic v. Transunion Corporation*, G.R. No. 191590, April 21, 2014, 722 SCRA 273, 279.

[19] *Tung Ho Steel Enterprises Corporation v. Ting Guan Trading Corporation*, G.R. No. 182153, April 7, 2014, 720 SCRA 707, 720.

[20] *Republic v. Transunion Corporation, supra* at 279.

[21] *Francel Realty Corporation v. Sycip*, G.R. No. 154684, September 8, 2005, 469 SCRA 424, 431.

[22] *Monsanto v. Lim*, G.R. No. 178911, September 17, 2014, 735 SCRA 252, 265-266.

[23] Art.143. *Original jurisdiction*. —

(1) The Shari'a District Court shall have exclusive original jurisdiction over:

(a) All cases involving custody, guardianship, legitimacy, paternity and filiation arising under this Code;

for an effective administration and enforcement of Muslim personal laws among Muslims,[24] it has a catchall provision granting Shari'a district courts original jurisdiction over personal and real actions except those for forcible entry and unlawful detainer.[25] The Shari'a district courts' jurisdiction over these matters is concurrent with regular civil courts, *i.e.*, municipal trial courts and regional trial courts.[26] There is, however, a limit to the general jurisdiction of Shari'a district courts over matters ordinarily cognizable by regular courts: such jurisdiction may only be invoked if both parties are Muslims. If one party is not a Muslim, the action must be filed before the regular courts.[27]

(b) All cases involving disposition, distribution and settlement of the estate of deceased Muslims, probate of wills, issuance of letters of administration or appointment of administrator or executors regardless of the nature or the aggregate value of the property;
(c) Petitions for the declaration of absence and death and for the cancellation or correction of entries in the Muslim Registries mentioned in Title VI of Book Two of this Code;
(d) All actions arising from customary contracts in which the parties are Muslims, if they have not specified which law shall govern their relations; and
(e) All petitions for *mandamus*, prohibition, injunction, *certiorari*, *habeas corpus*, and all other auxiliary writs and processes in aid of its appellate jurisdiction.

(2) Concurrently with existing civil courts, the Shari'a District Court shall have original jurisdiction over:

(a) Petitions by Muslims for the constitution of a family home, change of name and commitment of an insane person to an asylum;
(b) All other personal and real actions not mentioned in paragraph 1 (d) wherein the parties involved are Muslims except those for forcible entry and unlawful detainer, which shall fall under the exclusive original jurisdiction of the Municipal Circuit Court; and
(c) All special civil actions for interpleader or declaratory relief wherein the parties are Muslims or the property involved belongs exclusively to Muslims.

[24] CODE OF MUSLIM PERSONAL LAWS, Art. 2(c).

[25] CODE OF MUSLIM PERSONAL LAWS, Art. 143(2)(b).

[26] *Tomawis v. Balindong*, G.R. No. 182434, March 5, 2010, 614 SCRA 354, 364-365.

[27] *Villagracia v. Fifth Shari'a District Court*, *supra* note 16 at 566.

The complaint below, which is a real action[28] involving title to and possession of the land situated at Barangay Banisilon, Tangkal, was filed by private respondents before the Shari'a District Court pursuant to the general jurisdiction conferred by Article 143(2)(b). In determining whether the Shari'a District Court has jurisdiction over the case, the threshold question is whether both parties are Muslims. There is no disagreement that private respondents, as plaintiffs below, are Muslims. The only dispute is whether the requirement is satisfied because the mayor of the defendant municipality is also a Muslim.

When Article 143(2)(b) qualifies the conferment of jurisdiction to actions "wherein the parties involved are Muslims," the word "parties" necessarily refers to the real parties in interest. Section 2 of Rule 3 of the Rules of Court defines real parties in interest as those who stand to be benefited or injured by the judgment in the suit, or are entitled to the avails of the suit. In this case, the parties who will be directly benefited or injured are the private respondents, as real party plaintiffs, and the Municipality of Tangkal, as the real party defendant. In their complaint, private respondents claim that their predecessor-in-interest, Macalabo, entered into an agreement with the Municipality of Tangkal for the use of the land. Their cause of action is based on the Municipality of Tangkal's alleged failure and refusal to return the land or pay for its reasonable value in accordance with the agreement. Accordingly, they pray for the return of the land or the payment of reasonable rentals thereon. Thus, a judgment in favor of private respondents, either allowing them to recover possession or entitling them to rentals, would undoubtedly be beneficial to them; correlatively, it would be prejudicial to the Municipality of Tangkal which would either be deprived possession of the land on which its municipal hall currently stands or be required to allocate funds for payment of rent. Conversely, a judgment in favor of the Municipality of Tangkal would effectively quiet its title over the land and defeat the claims of private respondents.

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[28] A real action is one that affects title to or possession of real property, or an interest therein. RULES OF COURT, Rule 4, Sec. 1.

It is clear from the title and the averments in the complaint that Mayor Batingolo was impleaded only in a representative capacity, as chief executive of the local government of Tangkal. When an action is defended by a representative, that representative is not — and neither does he become — a real party in interest. The person represented is deemed the real party in interest;[29] the representative remains to be a third party to the action.[30] That Mayor Batingolo is a Muslim is therefore irrelevant for purposes of complying with the jurisdictional requirement under Article 143(2)(b) that both parties be Muslims. To satisfy the requirement, it is the real party defendant, the Municipality of Tangkal, who must be a Muslim. Such a proposition, however, is a legal impossibility.

The Code of Muslim Personal Laws defines a "Muslim" as "a person who testifies to the oneness of God and the Prophethood of Muhammad and professes Islam."[31] Although the definition does not explicitly distinguish between natural and juridical persons, it nonetheless connotes the exercise of religion, which is a fundamental personal right.[32] The ability to testify to the "oneness of God and the Prophethood of Muhammad" and to profess Islam is, by its nature, restricted to natural persons. In contrast, juridical persons are artificial beings with "no consciences, no beliefs, no feelings, no thoughts, no desires."[33] They are considered persons only by virtue of legal fiction. The Municipality of Tangkal falls under this category. Under the Local Government Code, a municipality is a body politic and corporate that exercises powers as a political subdivision of the national government and as a corporate entity representing the inhabitants of its territory.[34]

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[29] RULES OF COURT, Rule 3, Sec. 3.

[30] *Ang v. Ang*, G.R. No. 186993, August 22, 2012, 678 SCRA 699, 708-709.

[31] CODE OF MUSLIM PERSONAL LAWS, Art. 7(g).

[32] *Victoriano v. Elizalde Rope Workers' Union*, G.R. No. L-25246, September 12, 1974, 59 SCRA 54, 72.

[33] *Citizens United v. Federal Election Comm'n.*, 558 U.S. 310, 466 (2010), *J.* Stevens, dissenting.

[34] LOCAL GOV'T CODE, Sec. 15.

Furthermore, as a government instrumentality, the Municipality of Tangkal can only act for secular purposes and in ways that have primarily secular effects[35]— consistent with the non-establishment clause.[36] Hence, even if it is assumed that juridical persons are capable of practicing religion, the Municipality of Tangkal is constitutionally proscribed from adopting, much less exercising, any religion, including Islam.

The Shari'a District Court appears to have understood the foregoing principles, as it conceded that the Municipality of Tangkal "is neither a Muslim nor a Christian."[37] Yet it still proceeded to attribute the religious affiliation of the mayor to the municipality. This is manifest error on the part of the Shari'a District Court. It is an elementary principle that a municipality has a personality that is separate and distinct from its mayor, vice-mayor, *sanggunian*, and other officers composing it.[38] And under no circumstances can this corporate veil be pierced on purely religious considerations — as the Shari'a District Court has done — without running afoul the inviolability of the separation of Church and State enshrined in the Constitution.[39]

In view of the foregoing, the Shari'a District Court had no jurisdiction under the law to decide private respondents' complaint because not all of the parties involved in the action are Muslims. Since it was clear from the complaint that the real party defendant was the Municipality of Tangkal, the Shari'a District Court should have simply applied the basic doctrine

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[35] *Ang Ladlad LGBT Party v. Commission on Elections*, G.R. No. 190582, April 8, 2010, 618 SCRA 32, 59.

[36] CONSTITUTION, Art. III, Sec. 5. **No law shall be made respecting an establishment of religion**, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights.

[37] *Rollo*, p. 57-A.

[38] *Torio v. Fontanilla*, G.R. No. L-29993, October 23, 1978, 85 SCRA 599, 615.

[39] CONSTITUTION, Article II, Sec. 6.

of separate juridical personality and *motu proprio* dismissed the case.

WHEREFORE, the petition is **GRANTED**. The assailed orders of the Shari'a District Court of Marawi City in Civil Case No. 201-09 are **REVERSED** and **SET ASIDE**. Accordingly, Civil Case No. 201-09 is **DISMISSED**.

SO ORDERED.

Velasco, Jr. (Chairperson), Bersamin, Reyes, and *Caguioa*,* *JJ.*, concur.

FIRST DIVISION

[G.R. No. 198760. January 11, 2017]

ATTY. ALLAN S. HILBERO, *petitioner, vs.* **FLORENCIO A. MORALES, JR.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; *CERTIORARI*; BEING AN EXTRAORDINARY REMEDY, IT MAY BE FILED ONLY IF APPEAL IS NOT AVAILABLE.— A petition for *certiorari* under Rule 65 of the Revised Rules of Court is a special civil action that may be resorted to only in the absence of appeal or any plain, speedy, and adequate remedy in the ordinary course of law. It is adopted to correct errors of jurisdiction committed by the lower court or quasi-judicial agency, or when there is grave abuse of discretion on the part of such court or agency amounting to lack or excess of jurisdiction. An extraordinary remedy, a petition

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* Designated as Fifth Member of the Third Division per Special Order No. 2417 dated January 4, 2017.

for *certiorari* may be filed only if appeal is not available. If appeal is available, an appeal must be taken even if the ground relied upon is grave abuse of discretion.

2. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE AGENCIES; DEPARTMENT OF JUSTICE; THE RESOLUTION OF THE SECRETARY OF JUSTICE ON PRELIMINARY INVESTIGATION FOR OFFENSES PUNISHABLE BY *RECLUSION PERPETUA* TO DEATH IS APPEALABLE ADMINISTRATIVELY TO THE OFFICE OF THE PRESIDENT.— Memorandum Circular (MC) No. 58, issued by the OP on June 30, 1993, clearly identifies the instances when appeal from or a petition for review of the decisions, orders, or resolutions of the Secretary of Justice on preliminary investigations of criminal cases may be filed before the OP x x x. In Acting DOJ Secretary De Vanadera's Resolution dated September 30, 2009, she found probable cause that respondent was criminally liable, together with Primo, Lorenzo, and Sandy, for the murder of Demetrio. Murder is a crime punishable by *reclusion perpetua* to death. Moreover, Lydia's *Kusang Loob na Salaysay* was not presented during the preliminary investigation nor the appeal proceedings before DOJ Secretary Gonzalez and, therefore, could not have been considered by the ORSP-Laguna in its Resolution dated May 6, 2008 nor by DOJ Secretary Gonzalez in his Resolution dated March 18, 2009. Respondent mentioned for the first time and attached Lydia's *Kusang Loob na Salaysay* to his Comment and Opposition to petitioner's Motion for Reconsideration of DOJ Secretary Gonzalez's Resolution dated March 18, 2009. Even then, Acting DOJ Secretary De Vanadera's Resolution dated September 30, 2009 was silent as to Lydia's *Kusang Loob na Salaysay*. A cursory reading of respondent's Petition for *Certiorari* in CA-G.R. SP No. 111191 reveals that respondent fundamentally relied on Lydia's *Kusang Loob na Salaysay* to refute eyewitness Reynaldo's *Sinumpaang Salaysay*; and such was a new and material issue, not previously ruled upon by the DOJ, which should have been raised in an appeal before the OP rather than a Petition for *Certiorari* before the Court of Appeals. Based on MC No. 58, Acting DOJ Secretary De Vanadera's Resolution dated September 30, 2009 is appealable administratively to the Office of the President since the crime of murder, with which respondent is charged, is punishable by *reclusion perpetua* to

death. From the Office of the President, the aggrieved party may file an appeal with the Court of Appeals pursuant to Rule 43 of the Revised Rules of Court.

3. REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; *CERTIORARI*; WILL LIE ONLY IF THERE IS NO APPEAL OR ANY OTHER PLAIN, SPEEDY, AND ADEQUATE REMEDY IN THE ORDINARY COURSE OF LAW AGAINST THE ACTS OF THE ADVERSE PARTY.— The Court further highlights the fact that respondent did not file a motion for reconsideration of Acting DOJ Secretary De Vanadera's Resolution dated September 30, 2009 prior to filing his Petition for *Certiorari* in CA-G.R. SP No. 111191 before the Court of Appeals, which was likewise fatal to the said Petition. Again, the unquestioned rule in this jurisdiction is that *certiorari* will lie only if there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law against the acts of the adverse party. In the present case, the plain and adequate remedy of a motion for reconsideration of Acting DOJ Secretary De Vanadera's Resolution dated September 30, 2009 was available to respondent under Section 13 of DOJ Department Circular No. 70, the National Prosecution Service Rule on Appeal, dated July 3, 2000. The filing of a motion for reconsideration is intended to afford public respondent DOJ an opportunity to correct any actual or fancied error attributed to it by way of a re-examination of the legal and factual aspects of the case. Respondent's failure to file a motion for reconsideration is tantamount to a deprivation of the right and opportunity of the public respondent DOJ to cleanse itself of an error unwittingly committed or to vindicate itself of an act unfairly imputed.

4. ID.; ID.; ID.; ID.; GRAVE ABUSE OF DISCRETION; NOT DULY ESTABLISHED IN CASE AT BAR.— Respondent failed to establish that Acting DOJ Secretary De Vanadera committed grave abuse of discretion, amounting to lack or excess of jurisdiction, in finding probable cause to charge him for the murder of Demetrio. In *Aguilar v. Department of Justice*, the Court laid down the guiding principles in determining whether the public prosecutor committed grave abuse of discretion in the exercise of his/her function x x x. Acting DOJ Secretary De Vanadera, in her Resolution dated September 30, 2009, found probable cause to charge respondent for the murder of Demetrio

based on eyewitness Reynaldo's credible narration of the circumstances surrounding the shooting of Demetrio and his positive identification of the culprits. Aside from respondent's general and sweeping allegations, there was no basis for concluding that Secretary De Vanadera issued her Resolution dated September 30, 2009 capriciously, whimsically, arbitrarily, or despotically, by reason of passion and hostility, as to constitute abuse of discretion; and that such abuse of discretion was so patent and gross that it was tantamount to lack or excess of jurisdiction.

APPEARANCES OF COUNSEL

Emilio C. Capulong, Jr. for petitioner.
Navarroza Law Offices collaborating counsel for petitioner.
Aguirre Abaño Pamfilo Paras Pineda & Agustin Law Offices for respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Petitioner Atty. Allan S. Hilbero, through the instant Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court, assails the Decision[1] dated June 7, 2011 of the Court of Appeals in CA-G.R. SP No. 111191, which (a) modified the Resolution[2] dated September 30, 2009 of the Department of Justice (DOJ) in I.S. No. 1428-07 finding probable cause to charge respondent Florencio A. Morales, Jr., along with Primo J. Lopez (Primo), Lorenzo M. Pamplona (Lorenzo), and Sandy M. Pamplona (Sandy), with the murder of petitioner's father, Atty. Demetrio L. Hilbero (Demetrio); and (b) ordered the dropping of the criminal charge against respondent.

The antecedent facts are as follows:

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[1] *Rollo,* pp. 29-43, penned by Associate Justice Danton Q. Bueser with Associate Justices Hakim S. Abdulwahid and Mario V. Lopez concurring.

[2] CA *rollo,* pp. 126-134.

Based on the initial criminal investigations conducted by the Calamba City Police Station,[3] on June 16, 2007, Demetrio and his wife, Estela S. Hilbero (Estela), had just attended the Saturday evening anticipated mass at the Calamba Catholic Church. Spouses Demetrio and Estela then proceeded to Demetrio's law office located along Gen. Lim St., Barangay 5, Calamba City, arriving at said office around 7:45 p.m. Estela alighted first from their car and immediately went inside the office, while Demetrio went to a nearby store to buy cigarettes. When Demetrio was about to enter the gate of his office, two armed men on-board a motorcycle suddenly appeared and shot Demetrio several times. The gunmen escaped towards the adjacent Mabini Street.

Estela thought that the gunshots were mere firecrackers, but when she checked, she found Demetrio sprawled on the ground. Estela cried for help. Demetrio was rushed to the Calamba Medical Center where he was pronounced dead on arrival. Initial medico-legal findings revealed that Demetrio sustained three gunshot wounds on the left side of his body.

Three spent shells and one deformed slug of a .45 caliber pistol were recovered from the crime scene. A cartographic sketch of one of Demetrio' s assailants was made based on the descriptions given by eyewitnesses to the shooting incident. Demetrio's relatives also informed police investigators that Demetrio was heard having a heated argument on the telephone with an unknown caller inside his office at around 12:30 p.m. on June 16, 2007. Demetrio seemed bothered and anxious after said telephone conversation.

On December 26, 2007, P/Supt. Mariano Nachor Manaog, Jr. of the Laguna Criminal Investigation and Detection Team (CIDT-Laguna) forwarded to the Calamba City Prosecution Office (CCPO) the records of the investigation relative to

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[3] *Rollo,* pp. 113-114 and 118-122; Spot Investigation Report No. CNR CLBE-0616-2 l and Progress Report[s] Re: Murder of Atty. Demetrio Lugo Hilbero dated June 20, 2007, July 4, 2007, and July 20, 2007 issued by the Calamba City Police Station.

Demetrio's killing. Among the documents submitted was a *Sinumpaang Salaysay*[4] dated December 26, 2007 executed by Reynaldo M. Leyva (Reynaldo), an alleged eyewitness to the shooting of Demetrio. In his *Sinumpaang Salaysay*, Reynaldo recounted:

SINUMPAANG SALAYSAY

AKO, si Reynaldo M. Leyva, may sapat na gulang, at nakatira sa Brgy. Real Calamba City, matapos manumpa na naayon sa batas ay nagsasalaysay ng mga sumusunod:

NA noong Hunyo 16, 2007 ang oras sa pagitan ng 7:00 at 8:00 ng gabi, ako noon ay papunta sa Mercury Drug sa may lumang palengke Calamba upang bumili ng gamot para sa aking ubo pagkatapos ko manggaling sa simbahan sa bayan ng Calamba, Laguna. Habang binabaybay ko ang Gen. Lim St., Calamba City, Laguna, papuntang Mercury Drug sa lumang palengke, ako ay napadaan sa Morales-Alihan Tax Accounting Firm at doon ay napansin ko ang isang motorsiklo na nakaparada na katabi ang dalawang tao na nag-uusap. Agad kong nakilala ang dalawang tao na iyon na sina Sandy Pamplona at Florencio Morales, Jr. Nakilala ko sila dahil si Florencio Morales, Jr. ay ka-barangay ko sa Real samantalang si Sandy Pamplona naman ay madalas ko rin makita sa Real.

AKO ay nagpatuloy sa paglalakad papuntang Mercury Drug sa lumang palengke. Pagkatapos kong makabili ng gamot, ay nagpasya ako na bumili ng okoy sa may Gen. Lim St., Calamba City. Habang ako ay nandoon sa tindahan, may nakita akong kotseng kulay gray na pumarada sa isang bahay na halos katapat ng tindahan ng okoy na pinagbibilihan ko. Nakita ko ang isang babae na bumaba sa sasakyan at pumasok sa gate ng bahay. Ilang sandali pa, ang lalaki na nasa kotse naman ang bumaba ngunit hindi siya pumasok sa gate ng bahay. Namukhaan ko agad ang matandang lalaki na si Atty. Demetrio Hilbero dahil maliwanag naman sa lugar na kanyang kinatatayuan dahil sa ilaw sa bahay.

NA may bigla akong napansin na dalawang lalaki na nakasakay sa motorsiklo na biglang lumapit kay Atty. Hilbero habang siya ay nakatalikod. Isa sa mga lalaki ang biglang bumaba ng motorsiklo at bumunot ng baril at pinaputukan si Atty. Hilbero. Nakita kong bumagsak si Atty. Hilbero habang ang bumaril na lalaki ay agad

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

sumakay sa motorsiklo, samantalang ang lalaki na naiwan sa motorsiklo ay nagpaputok rin ng baril pataas. Nakilala ko agad ang nasabing lalaki na si Lorie Pamplona dahil siya ay kabarangay ko din sa Real. Subalit ang lalaki na bumaril kay Atty. Hilbero ay hindi ko kakilala bagamat nakita ko ang kanyang mukha at kung makikita ko muli yung bumaril ay makikilala ko siya. Agad agad na umalis ang motorsiklo na lulan ang dalawang lalaki at sinundan sila ng isa pang motorsiklo na una kong nakita na nakaparada sa Morales-Alihan Accounting Firm na nadaanan ko kanina papuntang Mercury Drug pagkatapos silang senyasan ng bumaril kay Atty. Hilbero. Sakay sa nasabing motorsiklo si Sandy Pamplona na angkas naman si Florencio Morales, Jr.

NA, dahil sa pagkabigla sa aking nasaksihan ako ay hindi agad nakakilos sa aking kinalagyan. Nakita ko na lang ang asawa ni Atty. Hilbero na nagsisigaw at humihingi ng tulong. Ilang sandali pa, may mga tao ng tumulong at isang tricycle ang dumating at doon isinakay si Atty. Hilbero.

NA, dahil sa kalituhan ay agad agad ako na pumuntang palengke at sumakay sa tricycle pauwi ng Real.

Nang ako ay makauwi sa Real, wala akong pinagsabihan na tao sa aking nasaksihan. Natakot ako sa maaaring mangyari sa akin at sa aking mga anak kung irereport ko ang nakita ko sa pulisya ng Calamba.

NA, hindi ko nireport ang aking nasaksihan sa pulisya ng Calamba sa kadahilanan na ako ay nangangamba na si Lorie Pamplona ay maari akong balikan dahil alam ko na siya ay miyembro ng KALADRO na hawak ng isang pulis Calamba.

Ngunit habang tumatagal ang araw ay ako ay nababagabag ng aking kunsyensya. Lagi kong naiisip ang aking nasaksihan. Hanggang sa ako'y magpasya na pumunta na sa pulisya at ireport ang mga nakita ko. Pinili kong puntahan ang CIDG sa Cabuyao noong Disyembre 26, 2007 at sinabi sa kanila ang aking nasaksihan. May pinakitang mga larawan ang CIDG sa akin at doon ko nakilala at itinuro ang lalaki na bumaril kay Atty. Hilbero. Sinabi sa akin ng CIDG na ang pangalan ng aking itinuro ay si Primo Lopez na isa ring miyembro ng KALADRO. Si Primo Lopez ang aking nakita na bumaril kay Atty. Hilbero kasama sina Lorie Pamplona, Sandy Pamplona, at Florencio Morales, Jr.

NA ginawa ko itong salaysay na ito upang tumestigo laban kina Primo Lopez, Lorie Pamplona, Florencio Morales, Jr., at Sandy Pamplona at iba pang sangkot sa pagpaslang kay Atty. Demetrio Hilbero.

The CCPO docketed the preliminary investigation of Demetrio's killing as I.S. No. 1428-07.

The Preliminary Investigation in I.S. No.1428-07 by the ORSP-Laguna and the appeals before the DOJ

Acting on the voluntary inhibition of Prosecutor Miguel Noel T. Ocampo of the CCPO, Regional State Prosecutor Ernesto C. Mendoza officially designated Assistant Regional State Prosecutor Dominador A. Leyros (Leyros) as the Acting City Prosecutor of Calamba City in charge of I.S. No. 1428-07.[5] Prosecutors Oscar T. Co and Elnora L. Nombrado of the Office of the Regional State Prosecutor of Region IV, San Pablo City, Laguna (ORSP-Laguna) joined Prosecutor Leyros in conducting the preliminary investigation.

In a Resolution[6] dated May 6, 2008, the ORSP-Laguna stated that there was well-founded belief that Primo and Lorenzo were responsible for the murder of Demetrio and ordered that an information for murder under Article 248 of the Revised Penal Code, attended by the qualifying aggravating circumstance of night time, be filed against them. In the same Resolution, the ORSP-Laguna directed that the case against Sandy and respondent be dismissed for lack of sufficient evidence. The ORSP-Laguna evaluated the evidence before it, thus:

> Primo Lopez was positively identified by the eyewitness Reynaldo M. Leyva as the gunman who shot Atty. [Demetrio] Hilbero, while x x x Lorenzo Pamplona was positively identified by the same eyewitness as the driver of the motorcycle where the gunman alighted before shooting Atty. [Demetrio] Hilbero and mounted the same after the shooting and sped away.
>
> The defense of alibi presented by Lorenzo Pamplona cannot overcome the positive, clear and convincing identification made by the eyewitness as narrated in his sworn statement. His self-serving declaration that the witness has erred in identifying him affords him

[5] *Id.* at 129.

[6] *Id.* at 48-51.

no respite. Neither the sworn statement of his witness purportedly seeing him and with him in a place other than the place of the shooting at the given time nor the production and submission of pictures and/or photographs depicting that he was in Baguio City on the fateful day of the shooting incident could extricate him from being indicted. They have no probative value to overcome the testimony of the eyewitness pointing to his possible participation in the commission of the crime. The quantum of evidence necessary to put up a finding of probable cause is not proof beyond reasonable doubt or moral certainty for purposes of charging the respondent in criminal information before the courts. We can only restate the time honored principle that alibi is inherently weak and easily contrived. Furthermore, in the case before us there had been a positive identication made by the witness that x x x Primo Lopez and Lorenzo Pamplona are the perpetrators of the crime.

x x x x x x x x x

With regard to x x x Sandy Pamplona and [respondent] Florencio Morales, Jr., we find no evidence had been introduced that may tend to establish their direct or indirect participation or cooperation in the commission of the crime. Even if we assume that what was stated by the witness Reynaldo M. Leyva in his sworn statement, in so far as x x x Sandy and [respondent] Florencio were concerned, was factual, still that would not be enough basis to include them in the indictment **in the absence of any other independent evidence.** For such alleged "thumb's-up sign" allegedly executed by the gunman Primo Lopez immediately after shooting Atty. [Demetrio] Hilbero, and which the witness perceived to be a signal intended for the other two persons on board a motorcycle, that immediately sped off does not necessarily or absolutely mean that the two persons (Sandy and [respondent] Florencio) riding in tandem on a motorcycle were co-plotters in the crime committed. We cannot reasonably draw the inference from such events and conclusively assert that x x x Sandy Pamplona and [respondent] Florencio Morales, Jr., who happened to be there — if indeed they were there!, had anything to do with the murder of Atty. [Demetrio] Hilbero. What we have here is at best a suspicion, which is tantamount to doubt or skepticism. For that alleged "thumb's-up sign" could be at risk to varying interpretation. It could be taken as a boastful expression for achieving an objective. It could also be a demonstration directed to nobody or such did not happen at all and was just perceived to be so. The speeding off of the other motorcycle after the shooting incident is just but a natural reaction of persons

fleeing from danger. It is noteworthy to mention that other than the speeding off of the other motorcycle, which was allegedly boarded by x x x Sandy and [respondent] Florencio, no evidence was proffered to show that the latter participated or conspired before, during and after the commission of the crime of murder against Atty. [Demetrio] Hilbero. One could always speculate, however, but it is not evidence.

Lastly, the evidence for the prosecution in its entirety strongly implies the presence of all the elements of the crime of Murder perpetrated by x x x Primo Lopez and Lorenzo Pamplona.

Accordingly, an Information[7] for murder against Primo and Lorenzo was filed before the Regional Trial Court (RTC) of Calamba City on May 15, 2008, docketed as Criminal Case No. 15782-2008-C.

Petitioner challenged before the DOJ the Resolution dated May 6, 2008 of the ORSP-Laguna in I.S. No. 1428-07 insofar as it found no sufficient evidence to indict Sandy and respondent for the murder of Demetrio. Primo and Lorenzo likewise assailed before the DOJ the same Resolution of the ORSP-Laguna for finding that there was probable cause to charge them for the murder of Demetrio.

The DOJ, through Secretary Raul M. Gonzalez (Gonzalez), issued a Resolution[8] dated March 18, 2009, which (a) granted the appeal of Primo and Lorenzo and denied the appeal of petitioner; (b) reversed and set aside the Resolution dated May 6, 2008 of the ORSP-Laguna in I.S. No. 1428-07; and (c) directed the ORSP-Laguna to withdraw the Information against Primo and Lorenzo filed with the RTC and inform the DOJ of the action taken. DOJ Secretary Gonzalez reasoned in his Resolution that:

Culled from the records, it is undeniable that the entire case of the [petitioner] rests upon the statement of alleged eyewitness Reynaldo Leyva. Simply put, without his statement, there is nothing to hold [Primo, Lorenzo, Sandy, and respondent] for trial.

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[7] CA *rollo*, p. 71.

[8] *Id.* at 81-86.

Thus, the bone of contention is whether or not such statement of Reynaldo Leyva is sufficient for purposes of indicting [Primo, Lorenzo, Sandy, and respondent].

After a thorough evaluation of the evidence on record, this Office is not convinced that probable cause exists to indict [Primo, Lorenzo, Sandy, and respondent] for the offense levelled against them.

While it is true that positive identication ordinarily prevails over alibi, it admits of qualifications as held in the case of *People v. Ondalok*, to wit:

> "Positive identification where categorical and consistent and without any showing of ill motive on the part of the eyewitness testifying on the matter prevails over the alibi and denial which if not substantiated by clear and convincing evidence are negative and self- serving evidence undeserving of weight in law." (G.R. Nos. 95682-83, May 27, 1997)

In the instant case, [Primo, Lorenzo, Sandy, and respondent] allege that Reynaldo Leyva not only works for the [petitioner] but a relative as well. In addition, they claimed that said witness has an ax to grind against Florencio Morales, Sr. [father of respondent] the latter having impounded his motorcycle for having been involved in a crime.

Such allegations are imputations of motive on the part of the said witness to lie and the failure of the [petitioner] to refute the same bodes ill to the credibility of his witness. Had said witness really been present at the time of the incident, had he really been a relative and at the employ of the [petitioner], it behoves this Office why he did not rush to the aid of the victim even after the assailants had already left, why he waited more than six (6) months before coming out with what he supposedly know.

In addition, there appears to be other pieces of evidence which had they been presented, would either corroborate or damage the statement of the said witness, among which is a picture from the CIDG where [Primo] was supposed to have been identified from by Reynaldo Leyva.

This Office is not oblivious to the jurisprudential declaration that *"a finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed and was committed by the suspect"* (Webb *v.* De Leon, 247 SCRA 652). However, we should also be mindful that the instant case is for the

crime of murder, a non-bailable offense where a person stands to be deprived of his liberty. If in the first place we are not certain that the person committed the act imputed, it would not only be unwise but downright reckless for us to indict him in court.

To the mind of this Office, the statement of Reynaldo Leyva still leaves much to be desired with to convince us that [Primo, Lorenzo, Sandy, and respondent] were the ones who committed the crime.

Petitioner filed with the DOJ a Motion for Declaration of Nullity of the DOJ Resolution, or In the Alternative, For its Reconsideration.[9] Petitioner alleged in his Motion that neither he nor his counsel were furnished a copy of DOJ Secretary Gonzalez's Resolution dated March 18, 2009; petitioner only learned three days earlier that the CCPO had long received a copy of said Resolution (apparently forwarded by the ORSP-Laguna); and petitioner merely photocopied the copy of said Resolution of the CCPO. According to petitioner, there was a clandestine and deliberate design by some operators at the DOJ to conceal from petitioner the issuance of DOJ Secretary Gonzalez's Resolution dated March 18, 2009, which invalidated the said Resolution. In the alternative, petitioner sought reconsideration of DOJ Secretary Gonzalez's Resolution dated March 18, 2009 because: (a) based on Reynaldo's testimony during the preliminary investigation before the ORSP-Laguna, Primo, Lorenzo, Sandy, and respondent were companions and confederates in the perpetration of the murder of Demetrio; (b) the preliminary investigation was not a trial on the merits; (c) Primo, Lorenzo, Sandy, and respondent were all positively identified; (d) the allegations of Primo, Lorenzo, Sandy, and respondent that Reynaldo is a relative of petitioner, worked for petitioner, and had an ax to grind against respondent's father, were baseless and unsubstantiated; (e) Reynaldo's supposed delay in coming forward as eyewitness did not affect his credibility as he explained that it was because he feared for his life and the safety of his family; (f) Reynaldo's behavior after witnessing the murder of Demetrio, *i.e.*, failing to aid Demetrio

[9] *Id.* at 87-108.

and waiting six months before coming forward, was natural as there is no standard form of human behavioral response to a strange or frightful experience; (g) the allegations of Primo, Lorenzo, Sandy, and respondent were purely evidentiary, which should be tested in a full-blown trial; (h) the appeals of Primo and Lorenzo, who were fugitives from justice, should have been dismissed; and (i) there was no basis for dismissing the criminal complaint against Primo, Lorenzo, Sandy, and respondent without any evaluation of the issue of conspiracy.

Respondent, in his Comment & Opposition to Motion for Reconsideration filed by Allan S. Hilbero,[10] defended DOJ Secretary Gonzalez's Resolution dated March 18, 2009. Respondent contended that Reynaldo's averments in his *Sinumpaang Salaysay* were lies and fabrications. Respondent presented for the first time the *Kusang Loob na Salaysay* dated March 7, 2008 executed by Lydia M. Leyva-Alcaide (Lydia), purportedly Reynaldo's sister, who claimed that a certain Jesus Bengco repeatedly visited Lydia's home trying to convince Lydia's husband to present himself as an eyewitness to the killing of Demetrio in exchange for money, but Lydia's husband refused; if Lydia's husband truly witnessed the killing of Demetrio, he would not hesitate to come forward as a witness since Demetrio was their relative; Reynaldo was convinced to testify and identify Primo, Lorenzo, Sandy, and respondent as Demetrio's killers because Demetrio was their relative and Reynaldo received a sum of money; and Lydia was aware that Reynaldo had a grudge against respondent's family because respondent's father refused to help Reynaldo when Reynaldo's tricycle was impounded. Respondent additionally asserted that Reynaldo's statements on the killing of Demetrio were insufficient to hold Sandy and respondent liable for the crime, as their mere presence at the scene, assuming it to be true, was not evidence of conspiracy with the killers.

The DOJ, this time through Acting Secretary Agnes VST De Vanadera (De Vanadera), in its Resolution dated September

[10] *Id.* at 109-125.

30, 2009, granted petitioner's motion for reconsideration and set aside DOJ Secretary Gonzalez's Resolution dated March 18, 2009. Acting DOJ Secretary De Vanadera held that petitioner and/or his counsel were indeed not furnished with a copy of DOJ Secretary Gonzalez's Resolution dated March 18, 2009, which amounts to a denial of petitioner's right to file a motion for reconsideration. Nevertheless, Acting DOJ Secretary De Vanadera deemed it best to disregard the procedural issue, and dwell on the actual merits of the case, thus:

> Clearly, the DOJ resolution [dated March 18, 2009] dwelt on the evaluation and interpretation of the probative value of the testimony of eyewitness Reynaldo Leyva even if such matter is not within the ambit of the prosecution's duty of finding probable cause. The matter is certainly evidentiary in nature and is best addressed to the trial court whose proximate contact with witnesses places it in a more competent position to discriminate between true and false testimony.
>
> Perforce, we are not in the position to depart from the settled rule that positive identification, when categorical and consistent on the part of the eyewitness, prevails over the defense of alibi and denial *(People v. Dela Tonga*, 534 SCRA 135 [2007]). As between the self-serving testimony of the accused [(Primo, Lorenzo, Sandy, and respondent)], and the positive identification by the prosecution witnesses, the latter deserves greater credence *(People v. Ducabo,* 534 SCRA 458 [2007]). Indeed, a witness who testifies that an event occurred is more credible and trustworthy than a witness who testifies to the non-happening of such event. An eyewitness' account is sterling since its accuracy and authenticity may be tested. In contrast, denials and alibi are inherently weak defenses for they are easy to concoct and difficult to disprove. Even if we assume for argument's sake that eyewitness Reynaldo Leyva's statement is tainted by improper motive, still, it is incumbent upon [Primo, Lorenzo, Sandy, and respondent] to show by clear and convincing evidence that their alibis and denials are feasible in the present case. Otherwise, their defenses cannot stand against the positive testimony of eyewitness Reynaldo Leyva. Likewise, [Primo, Lorenzo, Sandy, and respondent's] denials must be buttressed by strong evidence of non-culpability in order to merit credibility. Priscinding (sic) from these premises, [Primo, Lorenzo, Sandy, and respondent] have certainly failed to discharge such burden.
>
> Moreover, it must be admitted that we overlooked the fact that the criminal information against x x x the persons of Primo Lopez

and Lorenzo Pamplona was already filed with the Regional Trial Court of Calamba City, Laguna, and the corresponding warrants of arrest against them were already issued by said court. The said warrants of arrest were issued upon a judicial determination of probable cause by the judge assigned to handle the case. The findings of probable cause made by a judge is independent of any pronouncement in regard to probable cause made by the public prosecutor in the preliminary investigation. With this in mind, judicial determination of probable cause made by the judge should be accorded with respect and should not be disturbed as a matter of courtesy. On this score alone, the petitions for review of Primo Lopez and Lorenzo Pamplona must necessarily fail.

Again, we respect the doctrine enunciated in the case of *Crespo v. Mogul* (G.R. No. L-53373, June 30, 1987) that:

> *"In order therefore to avoid such a situation whereby the opinion of the Secretary of Justice who reviewed the action of the fiscal may be disregarded by the trial court, the Secretary of Justice should, as far as practicable, refrain from entertaining a petition for review or appeal from the action of the fiscal, when the complaint or information has already been filed in Court. The matter should be left entirely for the determination the Court."*

As regards Sandy Pamplona and [respondent] Florencio Morales, Jr. who were earlier cleared by the Office of the Regional State Prosecutor of Region IV for insufficiency of evidence, we find that there exists probable cause to indict them for murder. It is incontrovertible that a crime has been committed and the only question that remains unanswered would be the identity of the perpetrators. This fact was established by eyewitness Reynaldo Leyva when he positively identified x x x Pamplona and [respondent] as among the perpetrators.

In this case, [Primo, Lorenzo, Sandy, and respondent] appear to have conspired with each other in the commission of the crime. x x x

x x x x x x x x x

A revisit of the statement of the eyewitness reveals that [respondent and Sandy] were not mere bystanders at the scene of the crime but, rather, they were active participants whose actions were indicative of a meeting of the minds towards a common criminal goal. They acted as lookouts to ensure the execution of the crime and the

identification of the victim. It is highly unusual for mere bystanders to wait for the victim at the scene of the crime before its occurrence, stay there without budging from their positions while the crime is being executed and then finally leave the crime scene only after the crime was consummated and upon a signal from the gunman for them to flee. This theory of conspiracy by [petitioner] was further reinforced by the action of [respondent and Sandy] in fleeing from the crime scene together with Primo Lopez, the gunman, and Lorenzo Pamplona, riding in tandem in two motorcycles, at the same time and in the same direction. From all indications, [Primo, Lorenzo, Sandy, and respondent] acted in a synchronized and coordinated manner in carrying out the criminal enterprise, thus evincing the existence of conspiracy among them.[11]

Acting DOJ Secretary De Vanadera decreed in the end:

WHEREFORE, premises considered, the motion for reconsideration is hereby **GRANTED**. The DOJ resolution [dated March 18, 2009] (Resolution 212, series of 2009) is hereby **RECONSIDERED** and **SET ASIDE.** Accordingly, the Office of the Regional State Prosecutor of Region IV, San Pablo City, is directed to file the necessary information for murder against x x x Primo Lopez, Lorenzo Pamplona, [respondent] Florencio Morales, Jr. and Sandy Pamplona, should the information filed earlier against x x x Primo Lopez and Lorenzo Pamplona was already withdrawn, otherwise, to cause the amendment thereof to include x x x Sandy Pamplona and [respondent] Florencio Morales, Jr. in the information as co-accused, and report the action taken hereon within ten (10) days from receipt hereof.[12]

In compliance with Acting DOJ Secretary De Vanadera's Resolution dated September 30, 2009, Assistant City Prosecutor Joyce B. Martinez-Barut filed before the RTC a Motion to Admit Amended Information[13] in Criminal Case No. 15782-2008-C. The Amended Information also charged Sandy and respondent for the murder of Demetrio:

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[11] *Id.* at 130-132.

[12] *Id.* at 133.

[13] *Id.* at 292-293.

AMENDED INFORMATION

The undersigned Assistant City Prosecutor-Designate accuses PRIMO LOPEZ *y* JAVIER, LORENZO PAMPLONA y MANAGA alias LORIE, FLORENCIO MORALES, JR. and SANDY PAMPLONA [y MAIQUEZ], of the crime of Murder committed as follows:

That on or about 8:00 p.m. of 16 June 2007, at Gen. Lim St., Calamba City, and within the jurisdiction of this Honorable Court, the above-named accused conspiring and confederating, without justifiable cause, with intent to kill, treachery and abuse of superior strength, did then and there intentionally, willfully, unlawfully, and feloniously shoot Atty. Demetrio L. Hilbero causing the death of the latter, to the damage and prejudice of the heirs of the said victim.

That in the commission of the offense, the qualifying circumstances of treachery and abuse of superior strength were attendant.[14]

In its Order[15] dated December 2, 2009, the RTC admitted the Amended Information and ordered the issuance of warrant of arrest against Primo, Lorenzo, Sandy, and respondent. The Warrant of Arrest[16] for the four named accused was subsequently issued on June 10, 2010.

Respondent's Special Civil Action for Certiorari under Rule 65 of the Rules of Court in CA-G.R. SP No. 111191 before the Court of Appeals

Respondent assailed Acting DOJ Secretary De Vanadera' s Resolution dated September 30, 2009 directly before the Court of Appeals *via* a Petition for *Certiorari*[17] under Rule 65 of the Revised Rules of Court, without first filing a motion for reconsideration of the said resolution. Respondent's Petition was docketed as CA-G.R. SP No. 111191.

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[14] *Id.* at 294.

[15] *Id.* at 295-296.

[16] *Id.* at 298.

[17] *Id.* at 3-47.

Respondent explained that he dispensed with the filing of a motion for reconsideration before the DOJ because that would just be an exercise in futility. Respondent argued that Acting DOJ Secretary De Vanadera's Resolution dated September 30, 2009 was "a patent nullity rendered in excess of or want of jurisdiction; the [question] being raised having been duly raised and erroneously passed upon by the [DOJ]; and there [being] an extreme urgency of resolving the issues raised as the [respondent] will surely be deprived of due process and liberty since an Information will be railroaded and the warrant of arrest issued without properly determining probable cause."[18] Respondent pointed out that Acting DOJ Secretary De Vanadera acted without or in excess of her jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, in still finding probable cause to indict respondent for the murder of Demetrio even when Reynaldo's *Sinumpaang Salaysay* was duly refuted by his sister Lydia's *Kusang Loob na Salaysay*.[19]

Petitioner, in his Comment,[20] prayed for the outright dismissal of respondent's Petition due to the latter's failure to file a motion for reconsideration of Acting DOJ Secretary De Vanadera's Resolution dated September 30, 2009, when the filing of such a motion was a condition precedent for a petition for *certiorari* under Rule 65 of the Revised Rules of Court. Petitioner likewise pointed out that if respondent's motion for reconsideration was denied, respondent still had the remedy of an appeal to the Office of the President (OP). Alternatively, petitioner insisted that Acting DOJ Secretary De Vanadera did not commit grave abuse of discretion in finding probable cause to charge respondent, along with Primo, Lorenzo, and Sandy, for the murder of Demetrio. Petitioner posited that Lydia's *Kusang Loob na Salaysay* deserved no probative value since it was never presented

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[18] *Id.* at 8.

[19] *Id.* at 135-136; a copy of the *Kusang Loob na Salaysay* executed on March 7, 2008 by Lydia M. Leyva-Alcaide was attached to respondent's Petition for *Certiorari* before the CA marked as Annex T.

[20] *Id.* at 145-192.

during the preliminary investigation, as it was executed only after the preliminary investigation had been submitted for resolution.

On June 7, 2011, the Court of Appeals rendered its Decision. On procedural issues, the appellate court adjudged that the filing of a motion for reconsideration may be dispensed with in this case because "there [was] an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the [respondent]" and "public interest [was] involved."[21]

The Court of Appeals likewise ruled in respondent's favor on the substantive issues, finding grave abuse of discretion amounting to lack or excess of jurisdiction on the part of Acting DOJ Secretary De Vanadera in her issuance of the Resolution dated September 30, 2009 considering that there was not enough evidence to establish that respondent conspired with Primo, Lorenzo, and Sandy to kill Demetrio. The appellate court opined that:

> There is conspiracy when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. The essence of conspiracy is the unity of action and purpose. When there is conspiracy, the act of one is the act of all *(Rosie Quidet vs. People of the Philippines,* G.R. No. 170289, April 8, 2010.)
>
> It should be remembered nonetheless that **conspiracy is not presumed**. Like the physical acts constituting the crime itself, the **elements of conspiracy must be proven beyond reasonable doubt.** While conspiracy need not be established by direct evidence, for it may be inferred from the conduct of the accused before, during and after the commission of the crime, all taken together, however, **the evidence therefor must reasonably be strong enough to show a community of criminal design.** *(Hermenegildo M. Magcusi v. The Hon. Sandiganbayan,* G.R. No. L-101545 January 3, 1995.)
>
> In order to hold an accused liable by reason of conspiracy, **he must be shown to have performed an overt act** in pursuance or in furtherance of conspiracy. *(People of the Philippines v. Jessie Ballesta,*

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

G.R. No. 181632 September 25, 2008.) The *raison detre* for the law requiring a direct overt act is that, in a majority of cases, the conduct of the accused consisting merely of acts of preparation has never ceased to be equivocal; and this is necessarily so, irrespective of his declared intent. It is that quality of being equivocal that must be lacking before the act becomes one which may be said to be a commencement of the commission of the crime, or an overt act or before any fragment of the crime itself has been committed, and this is so for the reason that **so long as the equivocal quality remains, no one can say with certainty what the intent of the accused is.** *(Felix Rait v. People of the Philippines,* G.R. No. 180425 July 31, 2008.)

[Respondent] Morales has been thrown into a conspiracy net with Primo Lopez and Lorenzo Pamplona for no evident reason **except that he happened to be in the scene of the crime.** The [petitioner] ought to be reminded that **mere presence at the scene of the incident, knowledge of the plan and acquiescence thereto are not sufficient grounds to hold a person liable as a conspirator.** *(People of the Philippines v. Jessie Ballesta, supra.)* Also, We are not in agreement with the September 30, 2009 ruling of the DOJ that the theory of conspiracy "was further reinforced by the action of [respondent] Morales and [Sandy] in fleeing from the crime scene together with x x x Primo Lopez, x x x, and Lorenzo Pamplona, x x x, at the same time and the same direction." In determining whether conspiracy exists, **it is not sufficient that the attack be joint and simultaneous for simultaneousness does not of itself demonstrate the concurrence of will or unity of action and purpose.** It cannot be used as basis. *(Rosie Quidet v. People of the Philippines, supra.)*

Looking at the facts on record, it is very patent that criminal intent cannot be inferred from the actuations of [respondent] Morales on the day that Atty. Demetrio Hilbero was assailed. Otherwise, a person may be indicted for a crime even when he is doing merely the most innocent acts. This is a dangerous doctrine. It is, consequently, clear that a grave abuse of discretion was committed by the then Acting Secretary of Justice in issuing the challenged Resolution of September 30, 2009.[22]

The dispositive portion of the Court of Appeals Decision reads:

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[22] *Id.* at 39-42.

WHEREFORE, premises considered, the petition is partly **GRANTED**. The Resolution relative to I.S. No. 1428-07 issued by the Department of Justice on September 30, 2009 is hereby **MODIFIED**. The order directing the filing of a necessary information for murder against Florencio Morales, Jr. or to amend an existing information to include him as co-accsued is **REVERSED** and **SET ASIDE**. Let Florencio Morales, Jr. be **DROPPED** by the Regional Trial Court of Calamba City, Branch 37, as a party in Criminal Case No. 15782-08-C.[23]

Petitioner filed a Motion for Reconsideration[24] of the foregoing judgment of the Court of Appeals.

Sandy also filed before the Court of Appeals a Motion (For Leave of Court to Intervene),[25] praying that he be allowed to intervene in CA-G.R. SP No. 111191 and that his attached pleading-in-intervention be admitted. In his Intervention, Sandy claimed that the evidence presented against respondent, which the Court of Appeals deemed inadequate to support a finding of probable cause to charge respondent for murder, was the very same evidence against him, so he asked of the appellate court to likewise apply to him its Decision dated June 7, 2011, in so far as favorable to him, by ordering the RTC to drop Sandy as an accused in Criminal Case No. 15782-2008-C.

In a Resolution dated September 14, 2011,[26] the Court of Appeals denied for lack of merit petitioner's Motion for Reconsideration of its Decision dated June 7, 2011 and Sandy's Motion (For Leave of Court to Intervene).

Respondent, in the meantime, filed with the Court of Appeals a Motion to Furnish the Regional Trial Court with Copy of the Decision and Resolution.[27] On October 7, 2011, the appellate

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[23] *Id.* at 42-43.

[24] CA *rollo,* pp. 316-338.

[25] *Id.* at 361-368.

[26] *Rollo,* pp. 45-47.

[27] CA *rollo,* pp. 427-430.

court sent a Notice of Judgment dated June 7, 2011 and Notice of Resolution dated September 14, 2011 to the RTC of Calamba City, Branches 35 and 37.[28]

On November 24, 2011, respondent filed a Manifestation[29] before the Court of Appeals relaying that the RTC, acting upon respondent's motion and over the objection of the prosecution, issued a Resolution[30] dated October 17, 2011 in Criminal Case No. 15782-2008-C which already excluded respondent from the charge for the murder of Demetrio. The RTC, declaring that the findings and conclusion of the Court of Appeals in its Decision dated June 7, 2011 in CA-G.R. SP No. 111191 was binding upon it, accordingly resolved as follows:

> WHEREFORE, premises considered, the Motion to Resolve *"Manifestation with Omnibus Motion — to Drop Florencio Morales, Jr. as accused in Criminal Case No. 15782-08-C dated June 16, 2011"* is hereby GRANTED. Let the name of accused Florencio Morales, Jr. be dropped from the herein case, the warrant of arrest dated 2 December 2009, and from the hold departure or watch list order of the Department of Justice and/or Bureau of Immigration.

In the same Manifestation before the Court of Appeals, respondent moved that the CCPO and/or Assistant City Prosecutor Edizer J. Resurrecion be ordered to explain or show cause why they should not be cited in contempt for defying the Decision dated June 7, 2011 of the appellate court when they opposed his exclusion from Criminal Case No. 15782-2008-C.

The Court of Appeals, in its Resolution[31] dated January 19, 2012, simply noted respondent's aforementioned Manifestation since its Decision dated June 7, 2011 and Resolution dated September 14, 2011 were already the subject of a Petition for Review filed before this Court.

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[28] *Id.* at 431-432.

[29] *Id.* at 441-444.

[30] *Id.* at 445-448.

[31] *Id.* at 470.

The Present Petition

Petitioner raises the following issues and errors for review of the Court:

ONE: RESPONDENT COURT OF APPEALS SERIOUSLY ERRED IN GIVING DUE COURSE TO RESPONDENT FLORENCIO MORALES JR.'S PETITION DESPITE THE VERY GLARING AND SERIOUS PROCEDURAL DEFECTS IN SAID RESPONDENT'S PETITION, NAMELY:

1) SAID RESPONDENT FAILED TO IMPLEAD THE OFFICE OF SOLICITOR GENERAL AS COUNSEL FOR THE DEPARTMENT OF JUSTICE (DOJ);

(2) SAID RESPONDENT FAILED TO FILE A MOTION FOR RECONSIDERATION BEFORE THE DEPARTMENT OF JUSTICE.[32]

TWO: THE COURT OF APPEALS SERIOUSLY ERRED IN FINDING THAT PETITIONER (sic) DOJ SECRETARY GRAVELY ABUSED ITS DISCRETION IN FINDING PROBABLE CAUSE FOR THE CRIME OF MURDER AGAINST RESPONDENT FLORENCIO MORALES, JR.[33]

THREE: THE RESPONDENT COURT OF APPEALS SERIOUSLY ERRED IN DROPPING THE NAME OF RESPONDENT FLORENCIO MORALES, JR. FROM THE INFORMATION, GIVEN THAT SAID RESPONDENT COURT OF APPEALS NEVER TOUCHED, LET ALONE EVER DISPUTED, THE FINDINGS OF PROBABLE CAUSE RENDERED BY THE REGIONAL TRIAL COURT.[34]

FOURTH: RESPONDENT COURT OF APPEALS SERIOUSLY ERRED IN GRANTING AFFIRMATIVE RELIEF TO RESPONDENT-ACCUSED FLORENCIO MORALES, JR. WHO WAS (AND UNTIL NOW) A FUGITIVE FROM JUSTICE, AND AS SUCH, HAS ABSOLUTELY NO PERSONALITY NOR ANY

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[32] *Rollo,* pp. 12-13.

[33] *Id.* at 16.

[34] *Id.* at 20.

RIGHT TO ASK FOR ANY AFFIRMATIVE RELIEF FROM RESPONDENT COURT OF APPEALS.[35]

Respondent, in his Comment filed on March 23, 2012,[36] countered the petition with these arguments:

I.

THE COURT OF APPEALS, THE DEPARTMENT OF JUSTICE THRU JUSTICE SECRETARY RAUL M. GONZALEZ AND THE PANEL OF PROSECUTORS CORRECTLY RULED AND DID NOT COMMIT GRAVE ABUSE OF DISCRETION OR ACTED IN EXCESS OR WANT OF JURISDICTION IN ORDERING THE DISMISSAL OF THE CASE FOR WANT OF EVIDENCE AGAINST THE RESPONDENT FLORENCIO MORALES, JR.

II.

THE PETITIONER AND HIS FABRICATED AND DISCREDITED WITNESS WERE NOT ABLE TO ESTABLISH ANY IOTA OR EVIDENCE TO SHOW AND PROVE THAT FLORENCIO MORALES, JR. IS A CO-CONSPIRATOR IN THE SHOOTING OF THE VICTIM. THE MERE PRESENCE OF THE RESPONDENT FLORENCIO MORALES, JR. ASSUMING THAT TO BE TRUE DOES NOT MAKE HIM A CO-CONSPIRATOR.[37]

III.

THE DECISION OF THE HONORABLE COURT OF APPEALS IN THE CASE OF "LUISITO Q. GONZALES, ET AL. *VS*. ACTING SECRETARY OF JUSTICE AGNES VST DE VANADERA, ET AL.," WHICH DECISION OF THE COURT OF APPEALS IS IN ALL FOURS WITH THE FACTUAL SETTINGS IN THE CASE AT BAR SHOULD BE APPLIED IN THE CASE AT BAR.[38]

IV.

THE ATTACHMENTS SUBMITTED BY THE PETITIONER HILBERO IN HIS PLEADINGS, SPECIALLY BEFORE THE

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[35] *Id*. at 23.

[36] *Id*. at 68-164.

[37] *Id*. at 83.

[38] *Id*. at 93.

DEPARTMENT OF JUSTICE EVEN SHOWS THAT THE ALLEGED EYE WITNESS REYNALDO LEYVA IS FABRICATING AND LYING WHEN HE CLAIMED THAT HE WAS ABLE TO IDENTIFY THE GUNMAN.[39]

V.

THE ELEMENTS OF THE CRIME OF MURDER WAS NEVER ESTABLISHED EVEN ON PRELIMINARY INVESTIGATION.[40]

VI.

THE ACTING SECRETARY DE VANADERA COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR WANT OF JURISDICTION IN CHARGING THE FOUR ACCUSED, SPECIALLY THE PETITIONER HEREIN ABSENT THE AGGRAVATING CIRCUMSTANCE OF NIGHTIME, TREACHERY AND ABUSE OF SUPERIOR STRENGTH WHICH ARE NOT PRESENT IN THE CASE AT BAR AS PRESENTED BY THE LONE FABRICATED EYEWITNESS.[41]

VII.

THE PETITIONER AND HIS COUNSEL ARE GUILTY OF "FORUM SHOPPING" FOR WHICH THE PRESENT PETITION AND THE PETITION FILED WITH THE COURT OF APPEALS MUST BOTH BE DISMISSED.[42]

VIII.

THE SOLICITOR GENERAL IS NOT A PARTY TO BE IMPLEADED AS A PARTY IN THE CASE AT BAR.

IX.

THE RESPONDENT COMPLIED WITH THE PROCEDURAL RULES AND IS NOT A FUGITIVE FROM JUSTICE.[43]

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[39] *Id.* at 98.

[40] *Id.* at 101.

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

[42] *Id.* at 105.

[43] *Id.* at 106.

X.

THE REGIONAL TRIAL COURT FINDING OF PROBABLE CAUSE FOR THE ISSUANCE OF A WARRANT OF ARREST WAS BASED ON THE ERRONEOUS FINDINGS OF THEN ACTING SECRETARY AGNES VST DEVANADERA, THUS, CLEARLY THERE WAS NO JUDICIAL FINDINGS OF PROBABLE CAUSE FOR THE ISSUANCE OF A WARRANT OF ARREST WHICH WAS ACTUALLY SET ASIDE BY THE COURT A QUO IN ITS SUBSEQUENT ORDER.[44]

The Court, at the outset, finds no merit in petitioner's assertion that respondent's failure to implead the Office of the Solicitor General (OSG) as a public respondent in his Petition for *Certiorari* in CA-G.R. SP No. 111191 before the Court of Appeals and the lack of participation of the OSG in the said proceedings as counsel for the DOJ warrant the outright dismissal of CA-G.R. SP No. 111191.

As petitioner himself pointed out, the OSG merely represents the government, its agencies and instrumentalities, and its officials and agents, and generally acts as the government's counsel in any litigation, proceeding, investigation, or matter requiring the services of a lawyer.[45] The OSG is not the actual party in any of the cases it handles in representation of the government. Therefore, respondent need not implead the OSG as a public respondent in CA-G.R. SP No. 111191.

Section 5, Rule 65 of the Revised Rules of Court further provides:

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[44] *Id.* at 109.

[45] Section 35, Chapter 12, Title III, Book IV of the Administrative Code of 1987 which states:

Sec. 35. *Powers and Functions.* — The Office of the Solicitor General shall **represent** the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of lawyers. When authorized by the President or head of the office concerned, it shall also **represent** government-owned or controlled corporations. **The Office of the Solicitor General shall constitute the law office of the Government and, as such, shall discharge duties requiring the services of lawyers**. x x x. (Emphases supplied.)

SECTION 5. *Respondents and costs in certain cases.*— When the petition filed relates to the acts or omissions of a judge, court, quasi-judicial agency, tribunal, corporation, board, officer or person, the petitioner shall join, as private respondent or respondents with such public respondent or respondents, the person or persons interested in sustaining the proceedings in the court; and **it shall be the duty of such private respondents to appear and defend, both in his or their own behalf and in behalf of the public respondent or respondents affected by the proceedings,** and the costs awarded in such proceedings in favor of the petitioner shall be against the private respondents only, and not against the judge, court, quasi-judicial agency, tribunal, corporation, board, officer or person impleaded as public respondent or respondents.

Unless otherwise specifically directed by the court where the petition is pending, the public respondents shall not appear in or file an answer or comment to the petition or any pleading therein. If the case is elevated to a higher court by either party, the public respondents shall be included therein as nominal parties. However, unless otherwise specifically directed by the court, they shall not appear or participate in the proceedings therein. (Emphases supplied.)

Irrefragably, the duty to appear for and defend Acting DOJ Secretary De Vanadera's Resolution dated September 30, 2009 before the Court of Appeals in CA-G.R. SP No. 111191 lay with petitioner, the private respondent in said case, and his counsel; and not upon the DOJ, the public respondent, and the OSG, as counsel of the DOJ. The DOJ, whether *per se* or by counsel, was a nominal party and did not have to actively participate in CA-G.R. SP No. 111191, unless specifically directed by the Court of Appeals. In a Resolution dated March 18, 2011, the Court of Appeals simply noted the Manifestation[46] of the OSG that it was not filing a memorandum in CA-G.R. SP No. 111191 on behalf of the DOJ since it had no participation therein.

Nonetheless, the Court agrees with petitioner that the Court of Appeals should have dismissed respondent's Petition for *Certiorari* in CA-G.R. SP No. 111191 for being the wrong

[46] CA *rollo*, pp. 275-279.

remedy. The proper remedies respondent should have availed himself to assail Acting DOJ Secretary De Vanadera's Resolution dated September 30, 2009 was to file a motion for reconsideration of said Resolution with the DOJ and, in case such motion is denied, then to file an appeal before the OP.

A petition for *certiorari* under Rule 65 of the Revised Rules of Court is a special civil action that may be resorted to only in the absence of appeal or any plain, speedy, and adequate remedy in the ordinary course of law.[47] It is adopted to correct errors of jurisdiction committed by the lower court or quasi-judicial agency, or when there is grave abuse of discretion on the part of such court or agency amounting to lack or excess of jurisdiction. An extraordinary remedy, a petition for *certiorari* may be led only if appeal is not available. If appeal is available, an appeal must be taken even if the ground relied upon is grave abuse of discretion.[48]

Memorandum Circular (MC) No. 58,[49] issued by the OP on June 30, 1993, clearly identifies the instances when appeal from or a petition for review of the decisions, orders, or resolutions of the Secretary of Justice on preliminary investigations of criminal cases may be filed before the OP:

> In the interest of the speedy administration of justice, the guidelines enunciated in Memorandum Circular No. 1266 (4 November 1983) on the review by the Office of the President of resolutions/orders/ decisions issued by the Secretary of Justice concerning preliminary investigations of criminal cases are reiterated and clarified.

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[47] *Malayang Manggagawa ng Stayfast Phils., Inc. v. National Labor Relations Commission,* 716 Phil. 500, 512 (2013).

[48] *Philippine Electric Corporation v. Court of Appeals,* G.R. No. 168612, December 10, 2014, 744 SCRA 361, 389.

[49] On October 11, 2011, the OP issued Administrative Order (AO) No. 22, Prescribing Rules and Regulations Governing Appeals to the Office of the President of the Philippines. Section 18 of AO No. 22, series of 2011, reads:

> Sec. 18. *Limitation on Appeals.*– Appeals from decisions/resolutions/ orders of the Department of Justice shall continue to be limited to those involving offenses punishable by *reclusion perpetua* to death in accordance with MC No. 58 (s. 1993).

No appeal from or petition for review of decisions/orders/ resolutions of the Secretary of Justice on preliminary investigations of criminal cases shall be entertained by the Office of the President, **except those involving offenses punishable by *reclusion perpetua* to death wherein new and material issues are raised which were not previously presented before the Department of Justice and were not ruled upon in the subject decision/order/resolution,** in which case the President may order the Secretary of Justice to reopen/ review the case, provided, that, the prescription of the offense is not due to lapse within six (6) months from notice of the questioned resolution/order/decision, and provided further, that, the appeal or petition for review is filed within thirty (30) days from such notice. (Emphasis supplied.)

In Acting DOJ Secretary De Vanadera's Resolution dated September 30, 2009, she found probable cause that respondent was criminally liable, together with Primo, Lorenzo, and Sandy, for the murder of Demetrio. Murder is a crime punishable by *reclusion perpetua* to death.[50] Moreover, Lydia's *Kusang Loob na Salaysay* was not presented during the preliminary investigation nor the appeal proceedings before DOJ Secretary Gonzalez and, therefore, could not have been considered by the ORSP-Laguna in its Resolution dated May 6, 2008 nor by DOJ Secretary Gonzalez in his Resolution dated March 18, 2009. Respondent mentioned for the first time and attached Lydia's *Kusang Loob na Salaysay* to his Comment and Opposition to petitioner's Motion for Reconsideration of DOJ Secretary Gonzalez's Resolution dated March 18, 2009. Even then, Acting DOJ Secretary De Vanadera's Resolution dated September 30, 2009 was silent as to Lydia's *Kusang Loob na Salaysay*. A cursory reading of respondent's Petition for *Certiorari* in CA-G.R. SP No. 111191 reveals that respondent fundamentally relied on Lydia's *Kusang Loob na Salaysay* to refute eyewitness Reynaldo's *Sinumpaang Salaysay;* and such was a new and material issue, not previously ruled upon by the DOJ, which should have been raised in an appeal before the OP rather than a Petition for *Certiorari* before the Court of Appeals.

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[50] Revised Penal Code, Article 248.

Based on MC No. 58, Acting DOJ Secretary De Vanadera's Resolution dated September 30, 2009 is appealable administratively to the Office of the President since the crime of murder, with which respondent is charged, is punishable by *reclusion perpetua* to death. From the Office of the President, the aggrieved party may file an appeal with the Court of Appeals pursuant to Rule 43 of the Revised Rules of Court.[51]

The Court further highlights the fact that respondent did not file a motion for reconsideration of Acting DOJ Secretary De Vanadera's Resolution dated September 30, 2009 prior to filing his Petition for *Certiorari* in CA-G.R. SP No. 111191 before the Court of Appeals, which was likewise fatal to the said Petition. Again, the unquestioned rule in this jurisdiction is that *certiorari* will lie only if there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law against the acts of the adverse party. In the present case, the plain and adequate remedy of a motion for reconsideration of Acting DOJ Secretary De Vanadera's Resolution dated September 30, 2009 was available to respondent under Section 13 of DOJ Department Circular No. 70, the National Prosecution Service Rule on Appeal, dated July 3, 2000.[52] The filing of a motion for reconsideration is intended to afford public respondent DOJ an opportunity to correct any actual or fancied error attributed to it by way of a reexamination of the legal and factual aspects of the case. Respondent's failure to file a motion for reconsideration is tantamount to a deprivation of the right and opportunity of the public respondent DOJ to cleanse itself of an error unwittingly committed or to vindicate itself of an act unfairly imputed.[53]

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[51] *De Ocampo v. Secretary of Justice,* 515 Phil. 702, 710 (2006).

[52] Sec. 13. *Motion for Reconsideration.* – The aggrieved party may file a motion for reconsideration within a non-extendible period of ten (10) days from receipt of the resolution on appeal, furnishing the adverse party and the Prosecution Office concerned with copies thereof and submitting proof of such service. No second or further motion for reconsideration shall be entertained.

[53] *Pure Foods Corp. v. National Labor Relations Commission,* 253 Phil. 411, 420-421 (1989).

While there are well-recognized exceptions to the rule that a motion for reconsideration is a condition *sine qua non* for the filing of a petition for *certiorari*,[54] none applies to respondent's case. Contrary to the findings of the Court of Appeals, respondent's claims that Acting DOJ Secretary De Vanadera's Resolution dated September 30, 2009 was a "patent nullity rendered in excess of or want of jurisdiction" and that there was "an extreme urgency of resolving the issues raised as [respondent] will surely be deprived of due process and liberty since an Information will be railroaded and the warrant of arrest issued without properly determining probable cause,"[55] were unavailing.

Respondent failed to establish that Acting DOJ Secretary De Vanadera committed grave abuse of discretion, amounting to lack or excess of jurisdiction, in finding probable cause to charge him for the murder of Demetrio. In *Aguilar v. Department of Justice*,[56] the Court laid down the guiding principles in determining whether the public prosecutor committed grave abuse of discretion in the exercise of his/her function:

A public prosecutor's determination of probable cause — that is, one made for the purpose of filing an information in court —

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[54] The recognized exceptions to the rules are as follows: (a) where the order is a patent nullity, as where the court *a quo* has no jurisdiction; (b) where the questions raised in the *certiorari* proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court; (c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable; (d) where, under the circumstances, a motion for reconsideration would be useless; (e) where petitioner was deprived of due process and there is extreme urgency for relief; (f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable; (g) where the proceedings in the lower court are a nullity for lack of due process; (h) where the proceeding were *ex parte* or in which the petitioner had no opportunity to object; and (i) where the issue raised is one purely of law or where public interest is involved. *(Republic of the Philippines v. Bayao*, 710 Phil. 279, 287-288 (2013), citing *Siok Ping Tang v. Subic Bay Distribution, Inc.*, 653 Phil. 124, 136-137 (2010).

[55] *Rollo*, pp. 107-108.

[56] 717 Phil. 789, 798-800 (2013).

is essentially an executive function and, therefore, generally lies beyond the pale of judicial scrutiny. The exception to this rule is when such determination is tainted with grave abuse of discretion and perforce becomes correctible through the extraordinary writ of *certiorari.* It is fundamental that the concept of grave abuse of discretion transcends mere judgmental error as it properly pertains to a jurisdictional aberration. While defying precise denition, grave abuse of discretion generally refers to a "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction." Corollary, the abuse of discretion must be patent and gross so as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law. **To note, the underlying principle behind the courts' power to review a public prosecutor's determination of probable cause is to ensure that the latter acts within the permissible bounds of his authority or does not gravely abuse the same.** This manner of judicial review is a constitutionally-enshrined form of check and balance which underpins the very core of our system of government. As aptly edified in the recent case of *Alberto v. CA:*

> It is well-settled that courts of law are precluded from disturbing the findings of public prosecutors and the DOJ on the existence or non-existence of probable cause for the purpose of filing criminal informations, unless such findings are tainted with grave abuse of discretion, amounting to lack or excess of jurisdiction. The rationale behind the general rule rests on the principle of separation of powers, dictating that the determination of probable cause for the purpose of indicting a suspect is properly an executive function; while the exception hinges on the limiting principle of checks and balances, whereby the judiciary, through a special civil action of *certiorari*, has been tasked by the present Constitution "to determine whether or not 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." x x x.

In the foregoing context, the Court observes that grave abuse of discretion taints a public prosecutor's resolution if he arbitrarily disregards the jurisprudential parameters of probable cause. In particular, case law states that probable cause, for the purpose of filing a criminal information, exists when the facts are sufficient to engender a well-founded belief that a crime has been committed and

that the respondent is probably guilty thereof. It does not mean "actual and positive cause" nor does it import absolute certainty. Rather, it is merely based on opinion and reasonable belief and, as such, does not require an inquiry into whether there is sufficient evidence to procure a conviction; it is enough that it is believed that the act or omission complained of constitutes the offense charged. As pronounced in *Reyes v. Pearlbank Securities, Inc.*:

> **A finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed by the suspects. It need not be based on clear and convincing evidence of guilt, not on evidence establishing guilt beyond reasonable doubt, and definitely not on evidence establishing absolute certainty of guilt**. In determining probable cause, the average man weighs facts and circumstances without resorting to the calibrations of the rules of evidence of which he has no technical knowledge. He relies on common sense. What is determined is whether there is sufficient ground to engender a well-founded belief that a crime has been committed, and that the accused is probably guilty thereof and should be held for trial. It does not require an inquiry as to whether there is sufficient evidence to secure a conviction.

Apropos thereto, for the public prosecutor to determine if there exists a well-founded belief that a crime has been committed, and that the suspect is probably guilty of the same, the elements of the crime charged should, in all reasonable likelihood, be present. This is based on the principle that every crime is defined by its elements, without which there should be, at the most, no criminal offense. (Emphases supplied.)

Acting DOJ Secretary De Vanadera, in her Resolution dated September 30, 2009, found probable cause to charge respondent for the murder of Demetrio based on eyewitness Reynaldo's credible narration of the circumstances surrounding the shooting of Demetrio and his positive identification of the culprits. Aside from respondent's general and sweeping allegations, there was no basis for concluding that Secretary De Vanadera issued her Resolution dated September 30, 2009 capriciously, whimsically, arbitrarily, or despotically, by reason of passion and hostility, as to constitute abuse of discretion; and that such abuse of discretion was so patent and gross that it was tantamount to lack

or excess of jurisdiction. Respondent had already discussed and argued extensively his defenses to the charge of murder, which, as Acting DOJ Secretary De Vanadera correctly ruled, should be properly threshed out and ventilated in the course of the trial of Criminal Case No. 15782-2008-C before the RTC. Thus, the Court of Appeals should not have disturbed the findings of Acting DOJ Secretary De Vanadera in her Resolution dated September 30, 2009, absent a clear showing of grave abuse of discretion, amounting to lack or excess of jurisdiction.

WHEREFORE, in view of the foregoing, the Petition is **GRANTED.** The Decision dated June 7, 2011 of the Court of Appeals in CA-G.R. SP No. 111191 is **REVERSED** and **SET ASIDE**. The Resolution dated September 30, 2009 of the Department of Justice in I.S. No. 1428-07 directing the inclusion of Florencio A. Morales, Jr. as an accused in the Information for the murder of Atty. Demetrio L. Hilbero is **REINSTATED.**

SO ORDERED.

Sereno, C.J. (Chairperson), del Castillo, Perlas-Bernabe, and *Caguioa, JJ.,* concur.

FIRST DIVISION

[G.R. No. 215290. January 11, 2017]

HEIRS OF PABLO FELICIANO, JR., namely: LOURDES FELICIANO TUDLA, GLORIA FELICIANO CAUDAL, GABRIELA FELICIANO BAUTISTA, ANGELA FELICIANO LUCAS, DONNA CELESTE FELICIANO-GATMAITAN, CYNTHIA CELESTE FELICIANO, and HECTOR REUBEN FELICIANO, represented by its assignee, VICTORIA ALDA REYES ESPIRITU, *petitioners, vs.* **LAND BANK OF THE PHILIPPINES,** *respondent*.

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; AGRARIAN LAWS; REPUBLIC ACT NO. 6657 (THE COMPREHENSIVE AGRARIAN REFORM LAW OF 1988); JUST COMPENSATION; THE FAIR MARKET VALUE OF AN EXPROPRIATED PROPERTY IS DETERMINED BY ITS CHARACTER AND ITS PRICE AT THE TIME OF TAKING.— Case law states that when the acquisition process under PD 27 is still incomplete — such as in this case, where the just compensation due the landowner has yet to be settled — just compensation should be determined and the process be concluded under Republic Act No. (RA) 6657, otherwise known as the "Comprehensive Agrarian Reform Law of 1988." **For purposes of determining just compensation, the fair market value of an expropriated property is determined by its character and its price at the time of *taking***, or the time when the landowner was deprived of the use and benefit of his property, such as when the title is transferred in the name of the beneficiaries. In addition, the factors enumerated under Section 17 of RA 6657, as amended, *i.e.*, (*a*) the acquisition cost of the land, (*b*) the current value of like properties, (*c*) the nature and actual use of the property, and the income therefrom, (*d*) the owner's sworn valuation, (*e*) the tax declarations, (*f*) the assessment made by government assessors, (*g*) the social and economic benefits contributed by the farmers and the farmworkers, and by the government to the property, and (*h*) the non-payment of taxes or loans secured from any government financing institution on the said land, if any, must be equally considered.

2. ID.; ID.; ID.; ID.; FOR CASES WHERE THE CLAIM FOLDERS WERE RECEIVED BY THE LAND BANK OF THE PHILIPPINES PRIOR TO JULY 1, 2009, THE JUST COMPENSATION SHALL BE DETERMINED IN ACCORDANCE WITH SECTION 17 OF THE LAW.— [W]hile Congress passed **RA 9700** on August 7, 2009, further amending certain provisions of RA 6657, as amended, among them, Section 17, its implementing rules, *i.e.*, DAR AO 2, Series of 2009, clarified that the said law shall not apply to claims/cases where the **claim folders were received by the LBP prior to July 1, 2009**. In such a situation, just compensation **shall be determined in accordance with Section 17 of RA 6657,**

as amended, ***prior to its further amendment by RA 9700***. x x x [S]ince the claim folder covering the subject land was received by the LBP on December 2, 1997, or prior to July 1, 2009, the RTC should have computed just compensation using pertinent DAR regulations applying Section 17 of RA 6657 prior to its amendment by RA 9700 instead of adopting the new DAR issuance. While the RTC, acting as a Special Agrarian Court (SAC), is not strictly bound by the different formula created by the DAR since the valuation of property or the determination of just compensation is essentially a judicial function which is vested with the courts, and not with administrative agencies, it must explain and justify in clear terms the reason for any deviation from the prescribed factors and the applicable formula.

3. CIVIL LAW; OBLIGATIONS AND CONTRACTS; LEGAL INTEREST; MAY BE GRANTED IN EXPROPRIATION CASES WHERE THERE IS DELAY IN THE PAYMENT OF JUST COMPENSATION DUE TO THE LANDOWNERS.— In previous cases, the Court has allowed the grant of legal interest in expropriation cases where there is delay in the payment since the just compensation due to the landowners was deemed to be an effective forbearance on the part of the State. Legal interest on the unpaid balance shall be pegged at the rate of 12% p.a. from the time of taking in 1989 when Emancipation Patents were issued, until June 30, 2013 only. Thereafter, or beginning July 1, 2013, until fully paid, the just compensation due the landowners shall earn interest at the new legal rate of 6% p.a. in line with the amendment introduced by *Bangko Sentral ng Pilipinas*-Monetary Board Circular No. 799, Series of 2013.

4. LABOR AND SOCIAL LEGISLATION; AGRARIAN LAWS; REPUBLIC ACT NO. 6657 (THE COMPREHENSIVE AGRARIAN REFORM LAW OF 1988); JUST COMPENSATION; COURTS OF LAW POSSESS THE POWER TO MAKE A FINAL DETERMINATION OF JUST COMPENSATION.— For 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 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.

APPEARANCES OF COUNSEL

The Law Firm of Chan Robles and Associates for petitioners.
LBP Legal Services Group Carp Legal Services Department for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is a petition for review on *certiorari*[1] assailing the Amended Decision[2] dated October 24, 2014 of the Court of Appeals (CA) in CA-G.R. SP No. 122761, directing respondent the Land Bank of the Philippines (LBP) to pay petitioner, Victoria Alda Reyes Espiritu (Espiritu) the amount of ₱1,892,471.01, representing the interest due on the balance of the revalued just compensation which accrued from July 1, 2009 until December 13, 2011, with interest at the rate of 6% per annum (p.a.) from the finality of the Decision until full payment.

The Facts

Petitioners heirs of Pablo Feliciano, Jr., namely: Lourdes Feliciano Tudla, Gloria Feliciano Caudal, Gabriela Feliciano Bautista, Angela Feliciano Lucas, Donna Celeste Feliciano-Gatmaitan, Cynthia Celeste Feliciano, and Hector Reuben Feliciano (Feliciano heirs) are co-owners of a 300 hectare (ha.) parcel of agricultural land situated at F. Simeon, Ragay,

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[1] *Rollo*, pp. 3-52.

[2] *Id.* at 54-62. Penned by Associate Justice Victoria Isabel A. Paredes with Associate Justices Isaias P. Dicdican and Pedro B. Corales concurring.

Camarines Sur, covered by Transfer Certificate of Title (TCT) No. RT 3080 (4120).[3]

In 1972, a 135.2583 ha. portion of the afore-mentioned land was classified as un-irrigated riceland (subject land), and placed under the coverage[4] of Presidential Decree No. (PD) 27.[5] The Certificates of Land Transfer were distributed to the 84 tenant-beneficiaries in 1973 who were issued Emancipation Patents in 1989.[6] The claim folder covering the subject land was received by the LBP from the Department of Agrarian Reform (DAR) on December 2, 1997.[7] The DAR valued the subject land at ₱1,301,498.09, inclusive of interests, but the Feliciano heirs rejected the said valuation, prompting the LBP to deposit the said amount in the latter's name on January 26, 1998.[8] On March 24, 2000, the said amount was released to them.[9]

After the summary administrative proceedings for the determination of just compensation, the Office of the Provincial Agrarian Reform Adjudicator of Camarines Sur, Branch I rendered a Decision[10] dated September 28, 2001, fixing the value of the subject land at ₱4,641,080.465 or an average of ₱34,302.375/ha.[11]

On November 22, 2001, the LBP filed a petition[12] for the determination of just compensation before the Regional Trial

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[3] *Id.* at 64.

[4] *Id.* at 65.

[5] Entitled "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" (October 21, 1972).

[6] *Rollo*, p. 86.

[7] *Id.* at 84.

[8] *Id.* at 83 and 85.

[9] *Id.* at 65.

[10] *Id.* at 109-113. Signed by Provincial Adjudicator Virgil G. Alberto.

[11] *Id.* at 113.

[12] *Id.* at 94-98.

Court of Naga City, Branch 23 (RTC), docketed as Civil Case No. 2001-0359, which was initially dismissed, but eventually reinstated.[13]

In the interim, the Feliciano heirs assigned their rights over the just compensation claims to Espiritu.[14]

The RTC Proceedings

In an Order dated May 4, 2011, the RTC directed the LBP to revalue the subject land in accordance with DAR Administrative Order No. (AO) 1, Series of 2010[15] (DAR AO 1, Series of 2010). In compliance therewith, the LBP revalued the land at ₱7,725,904.05. Espiritu accepted the said amount but insisted on petitioners' entitlement to twelve percent (12%) interest p.a. on the revalued amount on the ground of unreasonable delay in the payment thereof.[16]

In a Decision[17] dated September 19, 2011, the RTC (*a*) fixed the just compensation for the subject land at ₱7,725,904.05; and (*b*) directed the LBP (*i*) to pay Espiritu the said amount, less amounts already paid to and received by the Feliciano heirs, and (*ii*) to pay 12% interest p.a. on the unpaid balance of the just compensation, computed from January 1, 2010 until full payment.[18] It observed that the subject land, which was expropriated

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[13] *Id.* at 65-66. The case was dismissed on the ground that the LBP had no right to institute the case for determination of just compensation (*Rollo*, p. 238). However, the dismissal order was reversed by the CA in a Decision dated April 9, 2008 in CA-G.R. CV-No. 75802 (*Rollo*, pp. 235-244). Penned by Associate Justice Ramon R. Garcia with Associate Justices Juan Q. Enriquez, Jr. and Arcangelita Romilla-Lontok concurring.

[14] *Id.* at 66.

[15] Entitled "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" (February 12, 2010).

[16] *Rollo*, p. 66.

[17] *Id.* at 83-92. Penned by Presiding Judge Valentin E. Pura, Jr.

[18] *Id.* at 92.

pursuant to PD 27, fell under the coverage of DAR AO 13, Series of 1994,[19] DAR AO 2, Series of 2004,[20] and DAR AO 6, Series of 2008[21] (DAR AO 6-2008; collectively, DAR AOs) that provided for the payment of 6% annual interest for any delay in the payment of just compensation. Since DAR AO 06-2008 was effective only until December 31, 2009, the RTC imposed 12% interest p.a. on the unpaid just compensation[22] from January 1, 2010 until full payment.[23]

Both parties moved for reconsideration,[24] which were denied in an Order[25] dated November 24, 2011, modifying the reckoning of the 12% interest p.a. from the finality of the Decision until its satisfaction.

Aggrieved, the Feliciano heirs, represented by Espiritu (collectively, petitioners), elevated the matter before the CA.[26]

The CA Ruling

In a Decision[27] dated March 17, 2014, the CA fixed the just compensation for the subject land at ₱7,725,904.05, plus legal

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[19] Entitled "RULES AND REGULATIONS GOVERNING THE GRANT OF INCREMENT OF SIX PERCENT (6%) YEARLY INTEREST COMPOUNDED ANNUALLY ON LANDS COVERED BY PRESIDENTIAL DECREE NO. 27 AND EXECUTIVE ORDER No. 228" (October 27, 1994).

[20] Entitled "AMENDMENT TO ADMINISTRATIVE ORDER NO. 13, SERIES OF 1994 ENTITLED 'RULES AND REGULATIONS GOVERNING THE GRANT OF INCREMENT OF SIX PERCENT (6%) YEARLY INTEREST COMPOUNDED ANNUALLY ON LANDS COVERED BY PRESIDENTIAL DECREE No. 27 AND EXECUTIVE ORDER No. 228" (November 4, 2004).

[21] Entitled "AMENDMENT TO DAR ADMINISTRATIVE ORDER NO. 2. S. OF 2004 ON THE GRANT OF INCREMENT OF SIX PERCENT (6%) YEARLY INTEREST COMPOUNDED ANNUALLY ON LANDS COVERED BY PRESIDENTIAL DECREE (PD) NO. 27 AND EXECUTIVE ORDER (EO) No. 228" (July 28, 2008).

[22] See *Apo Fruits Corp. v. LBP*, 647 Phil. 251 (2010).

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

[24] See *id.* at 67.

[25] *Id.* at 78-82.

[26] *Id.* at 68.

[27] *Id.* at 63-77.

interest at the rate of twelve percent (12%) p.a., computed from July 1, 2009 up to the finality of the Decision, or the total amount of ₱8,316,876.97, and directed the LBP to pay the said amount to Espiritu.[28] It ruled that the DAR AOs are no longer applicable to the instant case since the subject land was revalued based on the July 1, 2009 values pursuant to DAR AO 1, Series of 2010. It further held that interest at 12% p.a. was proper considering the delay in the payment of just compensation.[29]

Petitioners filed a motion for reconsideration[30] but the same was denied by the CA in an Amended Decision[31] dated October 24, 2014, which modified its earlier ruling. The CA pointed out that since the LBP had already paid petitioners the total amount of ₱7,725,904.05 on December 13, 2011, it is only liable for the payment of 12% interest p.a., accruing from July 1, 2009 up to the said date, or the amount of ₱1,892,471.01. Accordingly, it ordered the LBP to pay Espiritu the said amount, which shall thereafter earn interest at the rate of six percent (6%) p.a. from the finality of the said Decision until full payment.[32] Hence, the instant petition.

The Issue Before the Court

The essential issue for the Court's resolution is whether or not the CA's determination of just compensation is correct.

The Court's Ruling

Case law states that when the acquisition process under PD 27 is still incomplete — such as in this case, where the just compensation due the landowner has yet to be settled — just compensation should be determined and the process be concluded

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[28] *Id.* at 75-77.

[29] *Id.* at 73-75.

[30] Dated Apri1 14, 2014; *id.* at 127-148.

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

[32] *Id.* at 59-61.

under Republic Act No. (RA) 6657,[33] otherwise known as the "Comprehensive Agrarian Reform Law of 1988."[34]

For purposes of determining just compensation, the fair market value of an expropriated property is determined by its character and its price at the time of *taking*, or the time when the landowner was deprived of the use and benefit of his property, such as when the title is transferred in the name of the beneficiaries. In addition, the factors enumerated under Section 17 of RA 6657, as amended, *i.e.*, (*a*) the acquisition cost of the land, (*b*) the current value of like properties, (*c*) the nature and actual use of the property, and the income therefrom, (*d*) the owner's sworn valuation, (*e*) the tax declarations, (*f*) the assessment made by government assessors, (*g*) the social and economic benefits contributed by the farmers and the farmworkers, and by the government to the property, and (*h*) the non-payment of taxes or loans secured from any government financing institution on the said land, if any, must be equally considered.[35]

However, it bears pointing out that while Congress passed **RA 9700**[36] on August 7, 2009, further amending certain provisions of RA 6657, as amended, among them, Section 17, its implementing rules, *i.e.*, DAR AO 2, Series of 2009,[37]

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[33] Entitled "AN ACT INSTITUTING A COMPREHENSIVE AGRARIAN REFORM PROGRAM TO PROMOTE SOCIAL JUSTICE AND INDUSTRIALIZATION, PROVIDING THE MECHANISM FOR ITS IMPLEMENTATION, AND FOR OTHER PURPOSES," approved on June 10, 1988.

[34] *DAR v. Sps. Sta. Romana*, 738 Phil. 590, 600 (2014). See also *DAR v. Beriña*, 738 Phil. 605, 615-616 (2014).

[35] *DAR v. Sps. Sta. Romana*, *id.*

[36] Entitled "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," approved on August 7, 2009.

[37] Entitled "RULES AND PROCEDURES GOVERNING THE ACQUISITION AND DISTRIBUTION OF AGRICULTURAL LANDS UNDER REPUBLIC ACT (R.A.) NO. 6657, AS AMENDED BY R.A. NO. 9700" (October 15, 2009).

clarified that the said law shall not apply to claims/cases where the **claim folders were received by the LBP prior to July 1, 2009**.[38] In such a situation, just compensation **shall be determined in accordance with Section 17 of RA 6657, as amended, *prior to its further amendment by RA 9700***.[39]

In *LBP v. Kho*,[40] the Court had succinctly explained the "cut-off rule" in the application of RA 9700:

> It is significant to stress, however, that DAR AO 1, series of 2010 which was issued in line with Section 31 of RA 9700 empowering the DAR to provide the necessary rules and regulations for its implementation, became effective only *subsequent to July 1, 2009*. Consequently, it cannot be applied in the determination of just compensation for the subject land where the claim folders were undisputedly received by the LBP *prior to July 1, 2009*, and, as such, should be valued in accordance with Section 17 of RA 6657 prior to its further amendment by RA 9700 pursuant to the cut-off date set under DAR AO 2, series of 2009 (cut-off rule). Notably, DAR AO 1, series of 2010 did not expressly or impliedly repeal the cut-off rule set under DAR AO 2, series of 2009, having made no reference to any cut-off date with respect to land valuation for previously acquired lands under PD 27 and EO 228 wherein valuation is subject to challenge by landowners. Consequently, the application of DAR AO 1, series of 2010 should be, thus, limited to those where the claim folders

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[38] Item VI of DAR AO 2, Series of 2009 provides:

VI. Transitory Provision

With respect to cases where the Master List of ARBs has been finalized on or before July 1, 2009 pursuant to Administrative Order No. 7, Series of 2003, the acquisition and distribution of landholdings shall continue to be processed under the provisions of R.A. No. 6657 prior to its amendment by R.A. No. 9700.

However, **with respect to land valuation, all Claim Folders received by LBP prior to July 1, 2009 shall be valued in accordance with Section 17 of R.A. No. 6657 prior to its amendment by R.A. No. 9700**. (Emphasis supplied)

[39] *Id.* See also *DAR v. Sps. Sta. Romana*, *supra* note 34, at 602 and *DAR v. Beriña*, *supra* note 34, at 620.

[40] G.R. No. 214901, June 15, 2016.

were received *on or subsequent to July 1, 2009*. (Emphases and underlining supplied)

Following the above dictum, since the claim folder covering the subject land was received by the LBP on December 2, 1997,[41] or prior to July 1, 2009, the RTC should have computed just compensation using pertinent DAR regulations applying Section 17 of RA 6657 prior to its amendment by RA 9700 instead of adopting the new DAR issuance. While the RTC, acting as a Special Agrarian Court (SAC), is not strictly bound by the different formula created by the DAR since the valuation of property or the determination of just compensation is essentially a judicial function which is vested with the courts, and not with administrative agencies,[42] it must explain and justify in clear terms the reason for any deviation from the prescribed factors and the applicable formula.[43]

In this case, the Court has gone over the records and found that neither the RTC nor the CA considered the date when the claim folder was received nor explained their reasons for deviating from the DAR formula. Therefore, as it stands, the RTC and the CA should have utilized the basic formula prescribed and laid down in pertinent DAR regulations existing prior to the passage of RA 9700, in determining the just compensation for the subject land.

Accordingly, while the parties did not raise as issue the *improper* application of DAR AO 1, Series of 2010, the Court finds the need to ***remand*** the case to the RTC for the determination of just compensation to **ensure compliance with the law, and to give everyone — the landowner, the farmers, and the State — their due**.[44] To this end, the RTC is hereby directed to observe the following guidelines in the remand of the case:

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[41] *Rollo*, p. 84.

[42] See *Mercado v. LBP*, G.R. No. 196707, June 17, 2015, 759 SCRA 193.

[43] *LBP v. Kho*, *supra* note 40, citing *LBP v. Eusebio, Jr.*, 738 Phil. 7, 22 (2014).

[44] See *Mercado v. LBP*, *supra* note 42.

1. ***Just compensation must be valued at the time of taking***, or the time when the owner was deprived of the use and benefit of his property, in this case, when emancipation patents were issued in the names of the farmer - beneficiaries in 1989.[45] Hence, the evidence to be presented by the parties before the RTC for the valuation of the subject land must be based on the values prevalent on such time of taking for like agricultural lands.[46]

2. ***Just compensation must be arrived at pursuant to the guidelines set forth in Section 17 of RA 6657, as amended, prior to its amendment by RA 9700.*** However, the RTC is reminded that while it should take into account the different formula created by the DAR in arriving at the just compensation for the subject land, it is not strictly bound thereto if the situations before it do not warrant their application.[47] In any event, should the RTC find the said guidelines to be inapplicable, it must clearly explain the reasons for deviating therefrom, and for using other factors or formula in arriving at the reasonable just compensation for the acquired property.[48]

3. ***Interest may be awarded as may be warranted by the circumstances of the case and based on prevailing jurisprudence.*** In previous cases, the Court has allowed the grant of legal interest in expropriation cases where there is delay in the payment since the just compensation due to the landowners was deemed to be an effective forbearance on the part of the State.[49] Legal interest on the unpaid balance shall be pegged at the rate of 12% p.a. from the time of taking in 1989 when Emancipation Patents were issued, until June 30, 2013 only. Thereafter, or beginning July 1, 2013, until fully paid, the just compensation due the landowners shall earn interest at the new

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[45] *Rollo*, p. 86.

[46] See *DAR v. Sps. Sta. Romana*, *supra* note 34, at 601. See also *DAR v. Beriña*, *supra* note 34, at 620.

[47] See *DAR v. Sps. Sta. Romana*, *id.* at 601-602 and *DAR v. Beriña*, *id.*

[48] See *Mercado v. LBP*, *supra* note 42.

[49] *Id.*

legal rate of 6% p.a.[50] in line with the amendment introduced by *Bangko Sentral ng Pilipinas*-Monetary Board Circular No. 799,[51] Series of 2013.

For 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 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.[52]

WHEREFORE, the Amended Decision dated October 24, 2014 of the Court of Appeals in CA-G.R. SP No. 122761 is **REVERSED** and **SET ASIDE**. Civil Case No. 2001-0359 is hereby **REMANDED** to the Regional Trial Court of Naga City, Branch 23 for reception of evidence on the issue of just compensation in accordance with the guidelines set in this Decision. The trial court is **DIRECTED** to conduct the proceedings in the said case with reasonable dispatch, and to submit to the Court a report on its findings and recommended conclusions within sixty (60) days from notice of this Decision.

SO ORDERED.

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

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[50] See *Nacar v. Gallery Frames*, 716 Phil. 267, 281-283 (2013).

[51] Entitled "Subject: Rate of interest in the absence of stipulation" (June 21, 2013).

[52] See *Alfonso v. LBP*, G.R. Nos. 181912 and 183347, November 29, 2016.

FIRST DIVISION

[G.R. No. 218871. January 11, 2017]

JEBSENS[*] MARITIME, INC., SEA CHEFS LTD.,[**] and ENRIQUE M. ABOITIZ, *petitioners, vs.* **FLORVIN G. RAPIZ,** *respondent*.

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; PHILIPPINE OVERSEAS EMPLOYMENT ASSOCIATION-STANDARD EMPLOYMENT CONTRACT (POEA-SEC); PERMANENT AND TOTAL DISABILITY BENEFITS; GUIDELINES.— In this case, the (Voluntary Arbitrators) VA and the (Court of Appeals) CA's award of permanent and total disability benefits in respondent's favor was heavily anchored on his failure to obtain any gainful employment for more than 120 days after his medical repatriation. However, in *Ace Navigation Company v. Garcia*, the Court explained that the company-designated physician is given an additional 120 days, or a total of 240 days from repatriation, to give the seafarer further treatment, and thereafter, make a declaration as to the nature of the latter's disability x x x In *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr.*, the Court further clarified that for the company-designated physician to avail of the extended 240-day period, he must first perform some significant act to justify an extension (*e.g.*, that the illness still requires medical attendance beyond the initial 120 days but not to exceed 240 days); otherwise, the seafarer's disability shall be conclusively presumed to be permanent and total. Accordingly, the Court laid down the following guidelines that shall govern seafarers' claims for permanent and total disability benefits: 1. The company-designated physician must issue a final medical assessment on the seafarer's disability grading within a period of 120 days from the time the seafarer reported to him; 2. If the company-designated physician fails to give his assessment within the

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[*] "JEBSEN" in the petition before the Court (see *rollo*, p. 15).

[**] "SEA CHEFS CRUISES LTD" in the Contract of Employment (see *id.* at 128).

period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total; 3. If the company-designated physician fails to give his assessment within the period of 120 days with a sufficient justification (e.g. seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be extended to 240 days. The employer has the burden to prove that the company-designated physician has sufficient justification to extend the period; and 4. If the company-designated physician still fails to give his assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification.

2. ID.; ID.; DETERMINATION OF PROPER DISABILITY BENEFITS TO BE GIVEN TO A SEAFARER SHALL DEPEND ON THE GRADING SYSTEM PROVIDED BY SECTION 32 THEREIN, REGARDLESS OF THE ACTUAL NUMBER OF DAYS THAT THE SEAFARER UNDERWENT TREATMENT; CASE AT BAR.— Under Section 20(A)(6) of the 2010 POEA-SEC, the determination of the proper disability benefits to be given to a seafarer shall depend on the grading system provided by Section 32 of the said contract, regardless of the actual number of days that the seafarer underwent treatment: x x x In this case, x x x it remains undisputed that respondent suffered an injury while on board the M/V Mercury, a work-related disability that is clearly compensable as it is a permanent and partial disability, as classified by both the company-designated and independent physicians. As adverted to, there is a slight discrepancy with the classifications of the aforesaid physicians, as the former rated respondent's disability as Grade 11, while the latter's rating was Grade 10. In this regard, the Court rules that the findings of the company-designated physician should prevail, considering that he examined, diagnosed, and treated respondent from his repatriation on October 14, 2011 until he was assessed with a Grade 11 disability rating on January 24, 2012; whereas the independent physician only examined him sparingly on March 13, 2012.

APPEARANCES OF COUNSEL

Del Rosario & Del Rosario Law Offices for petitioners.
Valmores and Valmores Law Offices for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated January 20, 2015 and the Resolution[3] dated June 5, 2015 of the Court of Appeals (CA) in CA-G.R. SP No. 130442, which affirmed the Decision[4] dated January 25, 2013 and the Resolution[5] dated May 22, 2013 of the Office of the Panel of Voluntary Arbitrators (VA) of the National Conciliation and Mediation Board (NCMB) in AC-305-NCMB-NCR-78-01-08-12 and, accordingly, ordered petitioners Jebsens Maritime, Inc., Sea Chefs Ltd. (Sea Chefs), and Mr. Enrique Aboitiz (Aboitiz; collectively, petitioners) to jointly and severally pay respondent Florvin G. Rapiz (respondent) permanent and total disability benefits in the amount of US$60,000.00 plus attorney's fees in the amount of US$6,000.00 or their peso equivalent at the time of payment.

The Facts

On March 16, 2011, Jebsens, on behalf of its foreign principal, Sea Chefs, engaged the services of respondent to work on board the M/V Mercury as a buffet cook for a period of nine (9) months with a basic monthly salary of US$501.00.[6] On March 30, 2011,

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[1] *Id.* at 15-54.

[2] *Id.* at 56-63. Penned by Associate Justice Socorro B. Inting with Associate Justices Hakim S. Abdulwahid and Priscilla J. Baltazar-Padilla concurring.

[3] *Id.* at 66-67.

[4] CA *rollo*, pp. 39-55. Signed by Chairman AVA Jesus S. Silo and Members AVA Allan S. Montano and AVA Froilan A. Bagabaldo.

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

[6] See Contract of Employment; *rollo*, p. 128.

respondent boarded the said vessel. Sometime in September 2011, respondent experienced excruciating pain and swelling on his right wrist/forearm while lifting a heavy load of meat. A consultation with the ship doctor revealed that respondent was suffering from severe "*Tendovaginitis De Quevain*"[7] which caused his medical repatriation since it was not possible for him to work without using his right forearm.[8]

On October 14, 2011,[9] respondent was repatriated to the Philippines and underwent consultation, medication, and therapy with the company-designated physician. After a lengthy treatment, the company-designated physician issued a 7th and Final Summary Medical Report[10] and a Disability Grading[11] both dated January 24, 2012, diagnosing respondent with "*Flexor Carpi Radialis Tendinitis, Right; Sprain, Right thumb; Extensor Carpi Ulnaris Tendinitis, Right*," and classifying his condition as a "Grade 11" disability pursuant to the disability grading provided for in the 2010 Philippine Overseas Employment Association-Standard Employment Contract (POEA-SEC). Dissatisfied, respondent consulted an independent physician, who classified his condition as a Grade 10 disability.[12] Thereafter, respondent requested petitioners to pay him total and permanent disability benefits, which the latter did not heed, thus,

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[7] "De Quervain's Tenosynovitis" in the Initial Medical Report dated October 18, 2011 (see *id.* at 131) and 7th and Final Summary Medical Report dated January 24, 2012 (see *id.* at 142). "De Quervain tendinitis," medically defined as "[a] tendon is thick, bendable tissue that connects muscle to bone. Two tendons run from the back of your thumb down the side of your wrist. [It] is caused when these tendons are swollen and irritated." See <https://medlineplus.gov/ency/patientinstructions/000537.htm> and <https://www.ncbi.nlm.nih.gov/pinc/articles/PMC2568250/pdf/jnma00166-0036.pdf> (visited January 9, 2017).

[8] *Rollo*, p. 57.

[9] In the various medical reports, respondent's date of repatriation was on October 13, 2011 (see *id.* at 131-143).

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

[11] CA *rollo*, p. 88.

[12] See Medical Evaluation Report dated March 13, 2012; *rollo*, pp. 145-146.

constraining the former to file a Notice to Arbitrate before the NCMB. As the parties failed to amicably settle the case, the parties submitted the same to the VA for adjudication.[13]

Respondent argued, *inter alia*, that while both the company-designated and independent physicians gave him disability ratings of Grade 11 and 10, respectively, he is nevertheless entitled to permanent and total disability benefits as he was unable to work as a cook for a period of 120 days from his medical repatriation.[14] On the other hand, petitioners maintained that respondent is only entitled to Grade 11 disability benefits pursuant to the classification made by the company-designated physician.[15]

The VA Ruling

In a Decision[16] dated January 25, 2013, the VA ruled in respondent's favor and, accordingly, ordered petitioners to pay him permanent and total disability benefits in the amount of US$60,000.00 plus attorney's fees in the amount of US$6,000.00 or their peso equivalent at the time of payment.[17]

The VA found that respondent is entitled to permanent and total disability benefits, considering that: (*a*) he suffered his disability on his right hand while working at petitioners' vessel; (*b*) he can no longer pursue his work on board the vessel as a cook due to the recurrent nature of his disability; and (*c*) such disability persisted beyond 120 days after his medical repatriation.[18] The VA also found respondent to be entitled to attorney's fees as he was forced to litigate to protect his rights and interest.[19]

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[13] *Id.* at 57.

[14] See Position Paper dated October 29, 2012; CA *rollo*, pp. 91-101.

[15] See Position Paper dated October 30, 2012; *id.* at 58-81.

[16] *Id.* at 39-55.

[17] *Id.* at 54-55.

[18] See *id.* at 51-53.

[19] *Id.* at 54.

Petitioners filed a motion for reconsideration,[20] but the same was denied in a Resolution[21] dated May 22, 2013. Aggrieved, they appealed to the CA *via* a petition for review.[22]

The CA Ruling

In a Decision[23] dated January 20, 2015, the CA affirmed the VA ruling. Similar to the VA's findings, the CA held that: (*a*) respondent's disability should be considered permanent and total because he was unable to continue his work as a seaman for more than 120 days from his medical repatriation on October 11, 2011; and (*b*) he is entitled to attorney's fees as he was forced to litigate and incur expenses to protect his rights and interests.[24]

Petitioners moved for reconsideration,[25] which was, however, denied in a Resolution[26] dated June 5, 2015; hence, this petition.

The Issue Before the Court

The essential issue for the Court's resolution is whether or not the CA correctly held that respondent is entitled to permanent and total disability benefits.

The Court's Ruling

The petition is meritorious.

In this case, the VA and the CA's award of permanent and total disability benefits in respondent's favor was heavily anchored on his failure to obtain any gainful employment for

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[20] Not attached to the records of this case.

[21] CA *rollo*, pp. 56-57.

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

[23] *Rollo*, pp. 56-63.

[24] See *id.* at 59-62.

[25] See motion for reconsideration dated February 16, 2015; CA *rollo*, pp. 364-387.

[26] *Rollo*, pp. 66-67.

more than 120 days after his medical repatriation. However, in *Ace Navigation Company v. Garcia*,[27] the Court explained that the company-designated physician is given an additional 120 days, or a total of 240 days from repatriation, to give the seafarer further treatment and, thereafter, make a declaration as to the nature of the latter's disability, *viz*.:

> As these provisions operate, the seafarer, upon sign-off from his vessel, must report to the company-designated physician within three (3) days from arrival for diagnosis and treatment. For the duration of the treatment but in no case to exceed 120 days, the seaman is on *temporary total disability* as he is totally unable to work. He receives his basic wage during this period until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally, as his condition is defined under the POEA-Standard Employment Contract [(SEC)] and by applicable Philippine laws. **If the 120 days initial period is exceeded and no such declaration is made because the seafarer requires further medical attention, then the temporary total disability period may be extended up to a maximum of 240 days, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists. The seaman may of course also be declared fit to work at any time such declaration is justified by his medical condition.**
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> As we outlined above, **a temporary total disability only becomes permanent when so declared by the company physician within the periods he is allowed to do so, or upon the expiration of the maximum 240-day medical treatment period without a declaration of either fitness to work or the existence of a permanent disability**. In the present case, while the initial 120-day treatment or temporary total disability period was exceeded, the company-designated doctor duly made a declaration well within the extended 240-day period that the petitioner was fit to work.[28] (Emphases and underscoring in the original)

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[27] G.R. No. 207804, June 17, 2015, 759 SCRA 274.

[28] *Id.* at 283, citing *Vergara v. Hammonia Maritime Services, Inc.*, 588 Phil. 895, 912-913 (2008).

In *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr.*,[29] the Court further clarified that for the company-designated physician to avail of the extended 240-day period, he must first perform some significant act to justify an extension (*e.g.*, that the illness still requires medical attendance beyond the initial 120 days but not to exceed 240 days); otherwise, the seafarer's disability shall be conclusively presumed to be permanent and total.[30] Accordingly, the Court laid down the following guidelines that shall govern seafarers' claims for permanent and total disability benefits:

1. The company-designated physician must issue a final medical assessment on the seafarer's disability grading within a period of 120 days from the time the seafarer reported to him;
2. If the company-designated physician fails to give his assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total;
3. If the company-designated physician fails to give his assessment within the period of 120 days with a sufficient justification (e.g. seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be extended to 240 days. The employer has the burden to prove that the company-designated physician has sufficient justification to extend the period; and
4. If the company-designated physician still fails to give his assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification.[31]

Here, records reveal that on **October 14, 2011**, respondent was medically repatriated for what was initially diagnosed by the ship doctor as "*Tendovaginitis DeQuevain*." As early as **January 24, 2012**, or just **102 days from repatriation**, the

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[29] G.R. No. 211882, July 29, 2015, 764 SCRA 431.

[30] See *id.* at 453.

[31] *Id.* at 453-454.

company-designated physician had already given his final assessment on respondent when he diagnosed the latter with "*Flexor Carpi Radialis Tendinitis, Right; Sprain, Right thumb; Extensor Carpi Ulnaris Tendinitis, Right*" and gave a final disability rating of "Grade 11" pursuant to the disability grading provided in the 2010 POEA-SEC.[32] In view of the final disability rating made by the company-designated physician classifying respondent's disability as merely **permanent and partial**[33] — which was not refuted by the independent physician except that respondent's condition was classified as a Grade 10 disability — it is plain error to award permanent and total disability benefits to respondent.

Moreover, it bears noting that as per respondent's contract[34] with Jebsens, his employment is covered by the 2010 POEA-SEC. It is well-settled that the POEA-SEC is the law between the parties and, as such, its provisions bind both of them.[35] Under Section 20 (A) (6) of the 2010 POEA-SEC, the determination of the proper disability benefits to be given to a seafarer shall depend on the grading system provided by Section 32 of the said contract, regardless of the actual number of days that the seafarer underwent treatment:

SECTION 20. COMPENSATION AND BENEFITS

A. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:

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6. In case of permanent total or partial disability of the seafarer caused by either injury or illness[,] the seafarer shall be compensated

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[32] See *rollo*, pp. 142-143 and CA *rollo*, p. 88.

[33] Section 32 of the 2010 POEA-SEC provides that only disabilities classified as Grade 1 shall be deemed as permanent and total.

[34] See *rollo*, p. 128.

[35] *Magsaysay Maritime Corporation v. Simbajon*, G.R. No. 203472, July 9, 2014, 729 SCRA 631, 645, citing *Philippine Hammonia Ship Agency, Inc. v. Dumadag*, G.R. No. 194362, June 26, 2013, 700 SCRA 53, 65.

> in accordance with the schedule of benefits enumerated in Section 32 of this Contract. Computation of his benefits arising from an illness or disease shall be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted.
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> **The disability shall be based solely on the disability gradings provided under Section 32 of this Contract, and shall not be measured or determined by the number of days a seafarer is under treatment or the number of days in which sickness allowance is paid.** (Emphasis and underscoring supplied)

In this case, respondent's disability was already determined as only permanent and partial, in view of its classification as Grade 11 by the company-designated physician and Grade 10 by the independent physician. As such, the award of US$60,000.00 representing Grade 1 (*i.e.*, permanent and total disability) benefits in favor of respondent clearly has no basis and, consequently, must be struck down.

Be that as it may, it remains undisputed that respondent suffered an injury while on board the M/V Mercury, a work-related disability that is clearly compensable as it is a permanent and partial disability, as classified by both the company-designated and independent physicians. As already adverted to, there is a slight discrepancy with the classifications of the aforesaid physicians, as the former rated respondent's disability as Grade 11, while the latter's rating was Grade 10. In this regard, the Court rules that the findings of the company-designated physician should prevail, considering that he examined, diagnosed, and treated respondent from his repatriation on October 14, 2011 until he was assessed with a Grade 11 disability rating on January 24, 2012; whereas the independent physician only examined him sparingly on March 13, 2012. In *Formerly INC Shipmanagement Incorporated (now INC Navigation Co. Philippines, Inc.) v. Rosales*,[36] the Court held that under these circumstances, the assessment of the company-designated physician is more credible for having been arrived

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[36] G.R. No. 195832, October 1, 2014, 737 SCRA 438.

at after months of medical attendance and diagnosis, compared with the assessment of a private physician done in one day on the basis of an examination or existing medical records.[37] In view of the foregoing, respondent is therefore entitled to permanent and partial disability benefits corresponding to a Grade 11 rating in the amount of US$7,465.00 or its peso equivalent at the time of payment,[38] which shall then earn legal interest at the rate of six percent (6%) per annum from the finality of this Decision until fully paid.[39]

Finally, the Court finds that the award of attorney's fees lacks legal basis and, perforce, should be deleted.[40]

WHEREFORE, the petition is **GRANTED**. The Decision dated January 20, 2015 and the Resolution dated June 5, 2015 of the Court of Appeals in CA-G.R. SP No. 130442 are hereby **MODIFIED**, ordering petitioners Jebsens Maritime, Inc., Sea Chefs Ltd., and Enrique M. Aboitiz to jointly and severally pay respondent Florvin G. Rapiz permanent and partial disability benefits corresponding to a Grade 11 disability under the 2010 POEA-SEC in the amount of US$7,465.00 or its peso equivalent at the time of payment, with legal interest at the rate of six

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[37] *Id.* at 453.

[38] Under Section 32 of the 2010 POEA-SEC, a seafarer who suffers a Grade 11 disability is entitled to US$50,000.00 multiplied by 14.93%, or a total of US$7,465.00.

[39] See *Nacar v. Gallery Frames*, 716 Phil. 267, 278-283 (2013).

[40] "Anent the issue on attorney's fees, the general rule is that the same cannot be recovered as part of damages because of the policy that no premium should be placed on the right to litigate. They are not to be awarded every time a party wins a suit. The power of the court to award attorney's fees under Article 2208 of the Civil Code demands factual, legal, and equitable justification. Even when a claimant is compelled to litigate with third persons or to incur expenses to protect his rights, still attorney's fees may not be awarded where no sufficient showing of bad faith could be reflected in a party's persistence in a case other than an erroneous conviction of the righteousness of his cause." (*Spouses Vergara v. Sonkin*, G.R. No. 193659, June 15, 2015, 757 SCRA 442, 456-457; citations omitted)

percent (6%) per annum from the finality of this Decision until fully paid.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 223528. January 11, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JEFFREY HIRANG *y* RODRIGUEZ,** *defendant-appellant.*

SYLLABUS

1. CRIMINAL LAW; ANTI-TRAFFICKING IN PERSONS ACT OF 2003 (RA NO. 9208); TRAFFICKING IN PERSONS; ELEMENTS.— In *People v. Casio*, the Court defined the elements of trafficking in persons, as derived from Section 3(a) [of RA 9208 on Anti-Trafficking in Persons Act of 2003], to wit: (1)The *act* of "recruitment, transportation, transfer or harbouring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders"; (2) The *means* used which include "threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another"; and (3) The *purpose* of trafficking is exploitation which includes "exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs."

2. ID.; ID.; QUALIFIED TRAFFICKING IN PERSONS; PRESENT IN CASE AT BAR AS CRIME WAS COMMITTED IN LARGE SCALE AND THE FOUR VICTIMS WERE UNDER 18 YEARS OF AGE.— Hirang was charged and convicted for qualified trafficking in persons under Section 4(a), in relation to Section 6(a) and (c), and Section 3(a), (b) and (c) of R.A. No. 9208 x x x The information filed against Hirang sufficiently alleged the recruitment and transportation of the minor victims for sexual activities and exploitation, with the offender taking advantage of the vulnerability of the young girls through the guarantee of a good time and financial gain. Pursuant to Section 6 of R.A. No. 9208, the crime committed by Hirang was qualified trafficking, as it was committed in a large scale and his four victims were under 18 years of age.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; COMMISSION OF CRIME CANNOT BE NEGATED BY MINOR INCONSISTENCIES IN THE TESTIMONIES OF THE WITNESSES.— Hirang still sought an acquittal by claiming that the prosecution witnesses' testimonies were conflicting and improbable. x x x It is evident, however, that the supposed inconsistencies in the witnesses' testimonies pertained to minor details that, in any case, could not negate Hirang's unlawful activity and violation of R.A. No. 9208. Moreover, the Court has ruled time and again that factual findings of the trial court, its assessment of the credibility of witnesses and the probative weight of their testimonies and the conclusions based on these factual findings are to be given the highest respect. As a rule, the Court will not weigh anew the evidence already passed on by the trial court and affirmed by the CA.

4. CRIMINAL LAW; ENTRAPMENT DISTINGUISHED FROM INSTIGATION; CASE AT BAR.— Hirang argued that he was merely instigated to commit the offense, but even such defense deserves scant consideration. It has been established by the prosecution that Hirang has been engaged in the illegal activities leading young women to prostitution, and the police officers merely employed means for his capture. Trafficking of women was his habitual trade; he was merely entrapped by authorities. Entrapment is an acceptable means to capture a wrongdoer. In *People v. Bartolome*, the Court distinguished between entrapment and instigation, as it explained: Instigation is the means by which the accused is lured into the commission

of the offense charged in order to prosecute him. On the other hand, entrapment is the employment of such ways and means for the purpose of trapping or capturing a lawbreaker. Thus, in instigation, officers of the law or their agents incite, induce, instigate or lure an accused into committing an offense which he or she would otherwise not commit and has no intention of committing. But in entrapment, the criminal intent or design to commit the offense charged originates in the mind of the accused, and law enforcement officials merely facilitate the apprehension of the criminal by employing ruses and schemes; thus, the accused cannot justify his or her conduct. In instigation, where law enforcers act as co-principals, the accused will have to be acquitted. But entrapment cannot bar prosecution and conviction. As has been said, instigation is a "trap for the unwary innocent" while entrapment is a "trap for the unwary criminal."

5. REMEDIAL LAW; CRIMINAL PROCEDURE; ARREST; ANY DEFECT THEREIN WAS CURED BY THE VOLUNTARY ACT OF ENTERING A PLEA AND PARTICIPATING IN TRIAL WITHOUT RAISING THE ISSUE.— Even as the Court considers the alleged failure of the apprehending police officers to inform Hirang of the Miranda rights upon his arrest, there is no sufficient ground for the Court to acquit him. The CA correctly explained that any defect in the arrest of the accused was cured by his voluntary act of entering a plea and participating in the trial without raising the issue.

6. CRIMINAL LAW; ANTI-TRAFFICKING IN PERSONS ACT OF 2003 (RA NO. 9208); QUALIFIED TRAFFICKING IN PERSONS; PENALTIES AND DAMAGES.— [For] Hirang's conviction for qualified trafficking under R.A. No. 9208, [t]he RTC and CA correctly imposed the penalty of life imprisonment and fine of ₱2,000,000.00, applying Section 10(c) of R.A. No. 9208, x x x Damages in favor of the victims should also be awarded. In line with prevailing jurisprudence, each victim is entitled to ₱500,000.00 as moral damages, and ₱100,000.00 as exemplary damages. This is supported by Article 2219 of the New Civil Code, x x x The criminal case of Trafficking in Persons as a Prostitute is an analogous case to the crimes of seduction, abduction, rape, or other lascivious acts. In fact, it is worse, thereby justifying the award of moral damages. When the crime is aggravated, the award of exemplary damages is also justified.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
*Public Attorney's Offic*e for defendant-appellant.

D E C I S I O N

REYES, *J.*:

This is an appeal from the Decision[1] dated March 9, 2015 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 05129, which affirmed the conviction of defendant-appellant Jeffrey Hirang *y* Rodriguez (Hirang) for violation of Section 6 of Republic Act (R.A.) No. 9208, otherwise known as the Anti-Trafficking in Persons Act of 2003.

The Facts

Hirang, also known as Jojit and Jojie, was charged before the Regional Trial Court (RTC) of Pasig City with the crime of qualified trafficking in persons, as defined and penalized under Section 4(a), in relation to Section 6(a) and (c), and Section 3(a), (b) and (c) of R.A. No. 9208, *via* an Amended Information[2] that reads:

That on or about June 27, 2007, at Taguig City and within the jurisdiction of this Honorable Court, the above named accused, did then and there, willfully, unlawfully and feloniously **recruited, transported and <u>provided in a large scale</u> minors [AAA],**[3] **17 years old, [BBB], 17 years old, [CCC], 14 years old and [DDD], 17 years old, <u>for the purpose of prostitution</u>** by taking advantage of their

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[1] Penned by Associate Justice Melchor Q.C. Sadang, with Associate Justices Celia C. Librea-Leagogo and Amy C. Lazaro-Javier concurring; CA *rollo*, pp. 131-148.

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

[3] The real names of the minor victims were disclosed in the RTC and CA decisions. However, their real names are now withheld and replaced with fictitious initials to protect the victims' identities, as required under Section 6 of R.A. No. 9208.

vulnerability as young girls through promise of a good time or "gimik" in a disco and good food if they would simply accompany him in meeting and entertaining his Korean friends and to induce their full consent further promise them Five Thousand Pesos (Php5,000.00) to Ten Thousand Pesos (Php10,000.00) each afterwards when in truth and in fact peddled them for sexual favors and pleasure in consideration of Twenty Thousand Pesos (Php20,000.00) each and engaged their services in prostitution as in fact he already received Seven Thousand Pesos down payment from the Korean national who engaged their services.

CONTRARY TO LAW.[4] (Emphasis and underlining in the original)

Upon arraignment, Hirang entered a plea of not guilty. After pre-trial, trial on the merits ensued.[5]

Version of the Prosecution

The private complainants are minor victims of Hirang in his prostitution activities. The following persons testified for the prosecution: victims DDD, AAA, CCC and BBB, International Justice Mission (IJM) Investigators Alvin Sarmiento (Sarmiento) and Jeffrey Villagracia (Villagracia), National Bureau of Investigation (NBI) Special Investigator (SI) Menandro Cariaga (Cariaga), SI Anson L. Chumacera and forensic chemist Loren J. Briones.[6]

AAA was born on November 25, 1989. She was only 16 years old when Hirang recruited her in August of 2006 as a sex worker, for which she was paid ₱1,000.00 per day, less Hirang's commission of ₱200.00. She was later prodded to work as a sexy dancer and prostitute at the Catwalk Club along Quezon Avenue. She joined her customers in their tables at the club, and gave sexual services in hotels. She left the club after two nights, upon her live-in partner's order. Still, Hirang sourced several other prostitution jobs for AAA. He convinced AAA

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[4] CA *rollo*, p. 11.

[5] *Id.* at 34.

[6] *Id.* at 34-35.

to work in a cybersex den in Muñoz, Quezon City. She received ₱700.00 a month, less ₱200.00 commission received by Hirang. In September 2006, Hirang made AAA work again as a sexy dancer at Philippine Village bar in Puerto Galera. AAA had to quit her job when she got pregnant, but resumed work for Hirang after she gave birth.[7]

CCC was born on December 19, 1992. She was 14 years old when she was recruited by Hirang for his illicit activities. She met Hirang at the house of Ka Lolet, her best friend's mother. She knew Hirang to be scouting young girls who could be traded for sex. Sometime in June 2007, Hirang asked CCC to go with him and meet some Koreans.[8]

DDD, who was born on February 11, 1991, was 16 years old when she ran away from home in 2007 and stayed at a friend's house in Sta. Ana, Taguig City. As she was then in need of money, she accepted an offer from one Ate Lolet, a pimp, that she be introduced to a male customer, with whom she had sexual intercourse for ₱2,500.00. It was Ate Lolet who later introduced DDD to Hirang.[9]

BBB was born on March 28, 1990. CCC is her younger sister. She was 17 years old when on June 27, 2007, she visited CCC at Ka Lolet's house. There she saw Hirang, who invited her to come with him in meeting some Koreans that evening. Later in the evening, at around 8:00 p.m., BBB went back to the house of Ka Lolet to meet Hirang. It was then on June 27, 2007 that Hirang sold BBB, along with AAA, CCC and DDD, to his Korean customers for sexual activities. Hirang told his victims that they would receive ₱5,000.00 after a "gimik"[10] with them. At around 10:00 p.m., their group proceeded to meet with the Koreans at Chowking restaurant, C-5 in Taguig City. Hirang

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[7] *Id.* at 37.

[8] *Id.* at 38.

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

[10] A colloquial term for hangout, night-out or party.

instructed the girls to tell the Koreans that they were 16 years of age, as this was their customers' preference.[11]

When their group arrived at Chowking, Hirang talked to a Korean and then introduced the girls to him. The Korean handed money to Hirang and as the latter was counting it, NBI agents arrived at the scene and announced a raid. NBI agents arrested Hirang, while a social worker approached the girls and brought them to the NBI for their statements.[12]

The raid was conducted following a prior investigation conducted by IJM, a non-profit organization that renders legal services and is based in Washington, D.C. IJM's investigators Sarmiento and Villagracia gathered data on human trafficking in Metro Manila, after information that Hirang was selling minors for prostitution. Hirang was introduced by a confidential informant to Villagracia, who posed as a travel agency employee having Korean friends. Villagracia claimed to have Korean friends as they knew Hirang to be transacting only with foreign customers.[13]

Hirang and Villagracia first agreed to meet on June 20, 2007 at Chowking restaurant along C-5 Road in Taguig City. Villagracia introduced Hirang to Sarmiento, who introduced himself as Korean national studying English in Manila. Hirang informed Sarmiento that he had with him AAA, who was good in bed, only 15 years old and could perform any sexual position, for a fee of ₱20,000.00. Sarmiento, however, told Hirang that he and his other Korean friends had other plans for the night. Hirang demanded a cancellation fee of ₱1,500.00 and scheduled another meeting with Sarmiento and the other Koreans on June 26, 2007.[14]

Thereafter, IJM submitted a report to the NBI-Field Office Division, and asked for the agency's investigative assistance

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[11] CA *rollo*, pp. 38-39.

[12] *Id.* at 39.

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

[14] *Id.*

and operation against Hirang. On June 26, 2007, IJM and NBI operatives agreed during a conference that they would conduct an entrapment operation on June 27, 2007. Sarmiento reset his meeting with Hirang to June 27, 2007. Hirang initially got mad, but was appeased after Sarmiento promised to give a bonus of ₱20,0000.00. Cariaga prepared the marked money to be used during the entrapment, and was tasked to be the driver of poseur-customer Sarmiento. Several other NBI and IJM agents served as back-up during the operation, in case any untoward incident should happen.[15]

On June 27, 2007, the entrapment was conducted with proper coordination with local authorities. A social worker from the Department of Social Welfare and Development and members of the media for the segment XXX of ABS-CBN Channel 2 joined the operation. Villagracia secretly recorded his conversation with Hirang.[16]

Hirang introduced AAA, BBB, CCC and DDD to Sarmiento, who feigned his desire to pursue the transaction. Hirang specified the sexual services that the girls could offer, and assured Sarmiento that the girls could fulfill their customers' sexual fantasies.[17] Sarmiento then handed to Hirang a fictitious check amounting to ₱20,000.00, while Cariaga handed the ₱7,000.00 marked money. As Hirang was counting the cash, he complained that the amount was not enough as he charged ₱20,000.00 per girl, plus bonus. At this point, Cariaga performed the pre-arranged signal with NBI operatives, who declared the entrapment operation and arrested Hirang. An ultraviolet dust examination later performed upon Hirang rendered positive result for fluorescent powder specks.[18]

Version of the Defense

Hirang and his mother Myrna Hirang (Myrna) testified for the defense.

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[15] *Id.* at 40.

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

[17] *Id.* at 41.

[18] *Id.*

Hirang claimed to be self-employed, selling *longganisa* and other wares for a living. He denied dealing with sexual trade. It was upon the instigation of Villagracia, who was introduced to him by his friend Jun Valentin (Valentin), that he agreed to bring the girls for the supposed Korean clients. Hirang described Villagracia as a drug addict who frequently visited Valentin's house for pot sessions. Villagracia told Hirang that he knew of Koreans looking for girls and were willing to pay ₱20,000.00 to ₱25,000.00 for each girl who must be 13 to 14 years old.[19]

On June 20, 2007, Hirang, Valentin and two girls went to meet up with Villagracia at Chowking in C-5 Road, but the Koreans cancelled the transaction. Villagracia was disappointed that the girls brought by Hirang were already 23 years old. They agreed to meet again, but Villagracia reminded Hirang to bring young girls next time. Hirang promised to do so, and then received ₱500.00 from Villagracia.[20]

When they later talked again over the telephone, Villagracia advised Hirang to convince the Koreans to hire the girls so that Hirang and Valentin could receive the ₱5,000.00 commission per girl. Another Korean promised to give a bonus of ₱10,000.00 if Hirang could provide young girls. Since Hirang claimed to have no girls for the service, he went to the house of Ka Lolet with whom he had previously transacted whenever he needed girls for sexual services. Ka Lolet provided BBB, CCC and DDD, while Hirang personally talked to AAA. Hirang and Ka Lolet agreed to give each girl ₱5,000.00, while a ₱5,000.00 commission for each girl would be divided among him, Ka Lolet, Villagracia and Valentin.[21]

Hirang and Villagracia met again on June 26, 2007 at Valentin's house. Villagracia reminded Hirang that the girls should be young. He also gave instructions on the dresses that the girls should wear during their meeting. On the evening of June 27, 2007, Hirang went to Ka Lolet's house and from there,

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[19] *Id.* at 42-43.

[20] *Id.* at 43.

[21] *Id.*

brought the girls to Chowking in C-5 Road on board a van provided by Ka Lolet. One Korean national gave Hirang money for their food. As their order was being served at the restaurant, NBI operatives approached Hirang and arrested him.[22]

In her testimony, defense witness Myrna claimed knowing Villagracia, as the latter frequently talked to Hirang over the cellphone. There were times that she answered Villagracia's calls, and the latter introduced himself as a friend of Hirang with whom he had an arrangement.[23]

Ruling of the RTC

On June 25, 2011, the RTC of Pasig City, Branch 163, Taguig City Station rendered its Decision[24] convicting Hirang of the crime of human trafficking. The dispositive portion of the decision reads:

> WHEREFORE, [HIRANG] is hereby found GUILTY beyond reasonable doubt of the crime of Violation of Section 6 of [R.A.] No. 9208 and is hereby sentenced to suffer the penalty of life imprisonment and a fine of Two Million Pesos (Php2,000,000.00).
>
> SO ORDERED.[25]

Feeling aggrieved, Hirang appealed[26] to the CA based on the following assignment of errors:

I. THE TRIAL COURT GRAVELY ERRED IN REJECTING [HIRANG'S] DEFENSE.

II. THE TRIAL COURT GRAVELY ERRED IN GIVING CREDENCE TO THE CONFLICTING AND IMPROBABLE TESTIMONIES OF THE PROSECUTION WITNESSES.

III. THE TRIAL COURT GRAVELY ERRED IN NOT FINDING THAT [HIRANG'S] RIGHTS UNDER [R.A.] NO. 7438 (AN

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[22] *Id.* at 43-44.

[23] *Id.* at 44.

[24] Issued by Judge Leili Cruz Suarez; *id.* at 34-48.

[25] *Id.* at 48.

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

ACT DEFINING CERTAIN RIGHTS OF PERSON ARRESTED, DETAINED OR UNDER CUSTODIAL INVESTIGATION AS WELL AS THE DUTIES OF THE ARRESTING, DETAINING AND INVESTIGATING OFFICERS, AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF) WERE VIOLATED.[27]

Ruling of the CA

The CA denied the appeal *via* a Decision[28] dated March 9, 2015, with dispositive portion that reads:

WHEREFORE, the appeal is **DENIED**. The Decision dated June 25, 2011 of the [RTC] of Pasig City, Branch 163, Taguig City Station in Criminal Case No. 135682 is **AFFIRMED** *in toto*.

SO ORDERED.[29]

Hence, this appeal.[30]

The Present Appeal

On June 13, 2016, the Court issued a Resolution notifying the parties that they could file their respective supplemental briefs.[31] However, both Hirang and the Office of the Solicitor General, as counsel for plaintiff-appellee People of the Philippines, manifested that they would no longer file supplemental briefs, as their respective briefs filed with the CA sufficiently addressed their particular arguments.[32]

Based on the parties' contentions as raised before the CA, the Court is called upon to resolve the following issues: (1) whether the prosecution was able to prove beyond reasonable doubt the guilt of Hirang for the crime charged; and (2) whether Hirang

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[27] *Id.* at 60.

[28] *Id.* at 131-148.

[29] *Id.* at 148.

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

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

[32] *Id.* at 33-35, 27-29.

should be acquitted in view of the failure of the arresting officers to observe R.A. No. 7438.

Ruling of the Court

The Court affirms Hirang's conviction.

Hirang was charged and convicted for qualified trafficking in persons under Section 4(a), in relation to Section 6(a) and (c), and Section 3(a), (b) and (c) of R.A. No. 9208, which read:

Section 4. *Acts of Trafficking in Persons*. – It shall be unlawful for any person, natural or juridical, to commit any of the following acts:

(a) To recruit, transport, transfer; harbor, provide, or receive a person by any means, including those done under the pretext of domestic or overseas employment or training or apprenticeship, for the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage;

Section 6. *Qualified Trafficking in Persons*. – The following are considered as qualified trafficking:

(a) When the trafficked person is a child;

x x x x x x x x x

(c) When the crime is committed by a syndicate, or in large scale. Trafficking is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring or confederating with one another. It is deemed committed in large scale if committed against three (3) or more persons, individually or as a group;

Section 3. *Definition of Terms*. – As used in this Act:

(a) *Trafficking in Persons* – refers to the recruitment, transportation, transfer or harboring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders by means of threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation which includes at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs.

The recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall also be considered as "trafficking in persons" even if it does not involve any of the means set forth in the preceding paragraph.

(b) *Child* – refers to a person below eighteen (18) years of age or one who is over eighteen (18) but is unable to fully take care of or protect himself/herself from abuse, neglect, cruelty, exploitation, or discrimination because of a physical or mental disability or condition.

(c) *Prostitution* – refers to any act, transaction, scheme or design involving the use of a person by another, for sexual intercourse or lascivious conduct in exchange for money, profit or any other consideration.

In *People v. Casio*,[33] the Court defined the elements of trafficking in persons, as derived from the aforequoted Section 3(a), to wit:

(1) The *act* of "recruitment, transportation, transfer or harbouring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders";

(2) The *means* used which include "threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another"; and

(3) The *purpose* of trafficking is exploitation which includes "exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs."[34] (Citation omitted and italics in the original)

The information filed against Hirang sufficiently alleged the recruitment and transportation of the minor victims for sexual activities and exploitation, with the offender taking advantage

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[33] G.R. No. 211465, December 3, 2014, 744 SCRA 113.

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

of the vulnerability of the young girls through the guarantee of a good time and financial gain. Pursuant to Section 6 of R.A. No. 9208, the crime committed by Hirang was qualified trafficking, as it was committed in a large scale and his four victims were under 18 years of age.

The presence of the crime's elements was established by the prosecution witnesses who testified during the trial. The young victims themselves testified on their respective ages, and how they were lured by Hirang to participate in the latter's illicit sex trade. Hirang recruited the girls to become victims of sexual abuse and exploitation. Mainly upon a promise of financial benefit, the girls agreed and, thus, joined him on June 27, 2007 in meeting with the Korean customers in search for prostitutes. Police authorities personally, witnessed Hirang's unlawful activity, as they conducted the entrapment operations and arrested him after Hirang transacted with the supposed customers and received payment therefor.

Hirang still sought an acquittal by claiming that the prosecution witnesses' testimonies were conflicting and improbable. Such alleged inconsistencies pertained to the supposed participation of Ka Lolet in the recruitment of the victims, how the IJM agents came to personally know of Hirang, and other incidents that involved prior surveillance and the entrapment operation itself. It is evident, however, that the supposed inconsistencies in the witnesses' testimonies pertained to minor details that, in any case, could not negate Hirang's unlawful activity and violation of R.A. No. 9208. Moreover, the Court has ruled time and again that factual findings of the trial court, its assessment of the credibility of witnesses and the probative weight of their testimonies and the conclusions based on these factual findings are to be given the highest respect. As a rule, the Court will not weigh anew the evidence already passed on by the trial court and affirmed by the CA.[35]

Hirang argued that he was merely instigated to commit the offense, but even such defense deserves scant consideration. It

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[35] *People v. Mamaruncas, et al.*, 680 Phil. 192, 211 (2012).

has been established by the prosecution that Hirang has been engaged in the illegal activities leading young women to prostitution, and the police officers merely employed means for his capture. Trafficking of women was his habitual trade; he was merely entrapped by authorities.[36] Entrapment is an acceptable means to capture a wrongdoer. In *People v. Bartolome*,[37] the Court distinguished between entrapment and instigation, as it explained:

> Instigation is the means by which the accused is lured into the commission of the offense charged in order to prosecute him. On the other hand, entrapment is the employment of such ways and means for the purpose of trapping or capturing a lawbreaker. Thus, in instigation, officers of the law or their agents incite, induce, instigate or lure an accused into committing an offense which he or she would otherwise not commit and has no intention of committing. But in entrapment, the criminal intent or design to commit the offense charged originates in the mind of the accused, and law enforcement officials merely facilitate the apprehension of the criminal by employing ruses and schemes; thus, the accused cannot justify his or her conduct. In instigation, where law enforcers act as co-principals, the accused will have to be acquitted. But entrapment cannot bar prosecution and conviction. As has been said, instigation is a "trap for the unwary innocent" while entrapment is a "trap for the unwary criminal."[38]

In this case, it was established during trial that Hirang had been recruiting and deploying young girls for customers in the sex trade. The IJM personnel approached him for girls precisely because of his illicit activities. Also, Hirang was not first approached for prostitutes by police or government authorities, but by investigators of IJM, which is a non-profit and non-governmental organization. IJM only sought coordination with the police officers after Hirang, Sarmiento and Villagracia had determined to meet on June 27, 2007 for the transaction with the purported Korean customers. Clearly, there could be no instigation by officers, as barred by law, to speak of.

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[36] CA *rollo*, pp. 143-144.

[37] 703 Phil. 148 (2013).

[38] *Id.* at 161, citing *People v. Bayani*, 577 Phil. 607, 616-617 (2008).

Even as the Court considers the alleged failure of the apprehending police officers to inform Hirang of the Miranda rights upon his arrest, there is no sufficient ground for the Court to acquit him. The CA correctly explained that any defect in the arrest of the accused was cured by his voluntary act of entering a plea and participating in the trial without raising the issue.[39] In *People v. Vasquez*,[40] the Court held:

> [T]he Court rules that the appellant can no longer assail the validity of his arrest. We reiterated in *People v. Tampis* that [a]ny objection, defect or irregularity attending an arrest must be made before the accused enters his plea on arraignment. Having failed to move for the quashing of the information against them before their arraignment, appellants are now estopped from questioning the legality of their arrest. Any irregularity was cured upon their voluntary submission to the trial court's jurisdiction. x x x.[41] (Citations omitted)

Given the foregoing, there is no cogent reason for the Court to reverse Hirang's conviction for qualified trafficking under R.A. No. 9208. The RTC and CA correctly imposed the penalty of life imprisonment and fine of ₱2,000,000.00, applying Section 10(c) of R.A. No. 9208, to wit:

> **Section 10.** *Penalties and Sanctions*. — The following penalties and sanctions are hereby established for the offenses enumerated in this Act:
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> x x x x x x x x x
>
> c) Any person found guilty of qualified trafficking under Section 6 shall suffer the penalty of life imprisonment and a fine of not less than Two million pesos (₱2,000,000.00) but not more than Five million pesos (₱5,000,000.00)[.]

Damages in favor of the victims should, however, also be awarded. In line with prevailing jurisprudence,[42] each victim

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[39] CA *rollo*, p. 146.

[40] 724 Phil. 713 (2014).

[41] *Id.* at 730-731.

[42] *People v. Casio*, *supra* note 33, citing *People v. Lalli, et al.*, 675 Phil. 126, 157-159 (2011).

is entitled to ₱500,000.00 as moral damages, and ₱100,000.00 as exemplary damages. This is supported by Article 2219 of the New Civil Code, which reads:

> Article 2219. Moral damages may be recovered in the following and analogous cases:
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> (1) A criminal offense resulting in physical injuries;
> (2) Quasi-delicts causing physical injuries;
> (3) Seduction, abduction, rape, or other lascivious acts;
> (4) Adultery or concubinage;
> (5) Illegal or arbitrary detention or arrest;
> (6) Illegal search;
> (7) Libel, slander or any other form of defamation;
> (8) Malicious prosecution;
> (9) Acts mentioned in Article 309;
> (10) Acts and actions referred to in Articles 21, 26, 27, 28, 29, 30, 32, 34 and 35.
>
> x x x x x x x x x

The criminal case of Trafficking in Persons as a Prostitute is an analogous case to the crimes of seduction, abduction, rape, or other lascivious acts. In fact, it is worse, thereby justifying the award of moral damages. When the crime is aggravated, the award of exemplary damages is also justified.[43]

WHEREFORE, the appeal is **DISMISSED**. The Decision dated March 9, 2015 of the Court of Appeals in CA-G.R. CR-HC No. 05129 is **AFFIRMED** with **MODIFICATION** in that victims AAA, BBB, CCC and DDD are each entitled to ₱500,000.00 as moral damages and ₱100,000.00 as exemplary damages.

SO ORDERED.

Velasco, Jr. (Chairperson), Leonardo-de Castro,[*] *Bersamin*, and *Caguioa,*[**] *JJ.*, concur.

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[43] *People v. Casio, supra* note 33, at 140, citing *People v. Lalli, et al., id.* at 159.

[*] Additional Member per Raffle dated May 18, 2016 *vice* Associate Justice Francis H. Jardeleza.

[**] Designated Fifth Member of the Third Division per Special Order No. 2417 dated January 4, 2017.

FIRST DIVISION

[G.R. No. 191636. January 16, 2017]

PRUDENTIAL BANK (nowBANK OF THE PHILIPPINE ISLANDS), *petitioner, vs.* **RONALD RAPANOT and HOUSING & LAND USE REGULATORY BOARD,** *respondents*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITIONS UNDER RULE 45; ONLY QUESTIONS OF LAW MAY BE RAISED THEREIN; EXCEPTIONS.— Time and again, the Court has emphasized that review of appeals under Rule 45 is "not a matter of right, but of sound judicial discretion." Thus, a petition for review on *certiorari* shall only be granted on the basis of special and important reasons. As a general rule, only questions of law may be raised in petitions filed under Rule 45. However, there are recognized exceptions to this general rule, namely: (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**. x x x The Bank avers that the second, fourth and eleventh exceptions above are present in this case. However, after a judicious examination of the records of this case and the

respective submissions of the parties, the Court finds that none of these exceptions apply.

2. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; DUE PROCESS IN ADMINISTRATIVE PROCEEDINGS ENTAILS A FAIR AND REASONABLE OPPORTUNITY TO EXPLAIN ONE'S SIDE, OR AN OPPORTUNITY TO SEEK A RECONSIDERATION OF THE ACTION OR RULING COMPLAINED OF.— "The essence of due process is to be heard." In administrative proceedings, due process entails "a fair and reasonable opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of. Administrative due process cannot be fully equated with due process in its strict judicial sense, for in the former a formal or trial-type hearing is not always necessary, and technical rules of procedure are not strictly applied." As correctly pointed out by the CA in the questioned Decision, the Bank was able to set out its position by participating in the preliminary hearing and the scheduled conferences before the Arbiter. The Bank was likewise able to assert its special and affirmative defenses in its Answer to Rapanot's Complaint.

3. CIVIL LAW; PRESIDENTIAL DECREE NO. 957; MORTGAGES; A MORTGAGE CONSTITUTED IN VIOLATION OF SECTION 18 OF THE LAW IS NULL AND VOID.— [U]nder Presidential Decree No. 957 (PD 957), no mortgage on any condominium unit may be constituted by a developer without prior written approval of the National Housing Authority, now HLURB. PD 957 further requires developers to notify buyers of the loan value of their corresponding mortgaged properties before the proceeds of the secured loan are released. x x x In *Far East Bank & Trust Co. v. Marquez*, the Court clarified the legal effect of a mortgage constituted in violation of the foregoing provision, thus: "The lot was mortgaged in violation of Section 18 of PD 957. Respondent, who was the buyer of the property, was not notified of the mortgage before the release of the loan proceeds by petitioner. Acts executed against the provisions of mandatory or prohibitory laws shall be void. Hence, **the mortgage over the lot is null and void insofar as private respondent is concerned.**" The Court reiterated the foregoing pronouncement in the recent case of *Philippine National Bank v. Lim* and again in *United Overseas Bank of the Philippines, Inc. v. Board of*

Commissioners-HLURB. Thus, the Mortgage Agreement cannot have the effect of curtailing Rapanot's right as buyer of Unit 2308-B2, precisely because of the Bank's failure to comply with PD 957.

4. ID.; CIVIL CODE; OBLIGATIONS AND CONTRACTS; MORTGAGES; MORTGAGEE IN GOOD FAITH; THE BANK'S FAILURE TO EXERCISE THE DILIGENCE REQUIRED OF IT CONSTITUTES NEGLIGENCE, AND NEGATES THE ASSERTION THAT IT IS A MORTGAGEE IN GOOD FAITH.— [B]anks are required to exercise the highest degree of diligence in the conduct of their affairs. The Court explained this exacting requirement in the recent case of *Philippine National Bank v. Vila* x x x. In loan transactions, banks have the particular obligation of ensuring that clients comply with all the documentary requirements pertaining to the approval of their loan applications and the subsequent release of their proceeds. If only the Bank exercised the highest degree of diligence required by the nature of its business as a financial institution, it would have discovered that (i) Golden Dragon did not comply with the approval requirement imposed by Section 18 of PD 957, and (ii) that Rapanot already paid a reservation fee and had made several installment payments in favor of Golden Dragon, with a view of acquiring Unit 2308-B2. The Bank's failure to exercise the diligence required of it constitutes negligence, and negates its assertion that it is a mortgagee in good faith.

5. ID.; ID.; ID.; ID.; ID.; A PERSON WHO DELIBERATELY IGNORES A SIGNIFICANT FACT THAT COULD CREATE A SUSPICION IN AN OTHERWISE REASONABLE PERSON CANNOT BE DEEMED A MORTGAGEE IN GOOD FAITH.— The Court can surely take judicial notice of the fact that commercial banks extend credit accommodations to real estate developers on a regular basis. In the course of its everyday dealings, the Bank has surely been made aware of the approval and notice requirements under Section 18 of PD 957. At this juncture, this Court deems it necessary to stress that a person who deliberately ignores a significant fact that could create suspicion in an otherwise reasonable person cannot be deemed a mortgagee in good faith. The nature of the Bank's business precludes it from feigning ignorance of the need to confirm that such requirements are

complied with prior to the release of the loan in favor of Golden Dragon, in view of the exacting standard of diligence it is required to exert in the conduct of its affairs.

APPEARANCES OF COUNSEL

Benedicto Versoza & Burkley Law Offices for petitioner.
Ermitaño Manzano & Tolosa for respondent R. Rapanot.

D E C I S I O N

CAGUIOA, *J.*:

Only questions of law may be raised in petitions for review on *certiorari* brought before this Court under Rule 45, since this Court is not a trier of facts. While there are recognized exceptions which warrant review of factual findings, mere assertion of these exceptions does not suffice. It is incumbent upon the party seeking review to overcome the burden of demonstrating that review is justified under the circumstances prevailing in his case.

The Case

Before the Court is an Appeal by *Certiorari*[1] under Rule 45 of the Rules of Court (Petition) of the Decision[2] dated November 18, 2009 (questioned Decision) rendered by the Court of Appeals - Seventh Division (CA). The questioned Decision stems from a complaint filed by herein private respondent Ronald Rapanot (Rapanot) against Golden Dragon Real Estate Corporation (Golden Dragon), Golden Dragon's President Ma. Victoria M. Vazquez[3] and herein petitioner, Bank of the Philippine Islands, formerly known as Prudential Bank[4] (Bank) for Specific

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[1] *Rollo*, pp. 8-23.

[2] *Id.* at 28-41. Penned by Associate Justice Antonio L. Villamor, with Associate Justices Bienvenido L. Reyes (now a Member of this Court) and Japar B. Dimaampao, concurring.

[3] Also spelled as "Vasquez" elsewhere in the records.

[4] *Rollo*, p. 30.

Performance and Damages (Complaint) before the Housing and Land Use Regulatory Board (HLURB).[5]

The Petition seeks to reverse the questioned Decision insofar as it found that the Bank (i) was not deprived of due process when the Housing and Land Use Arbiter (Arbiter) issued his Decision dated July 3, 2002 without awaiting submission of the Bank's position paper and draft decision, and (ii) cannot be deemed a mortgagee in good faith with respect to Unit 2308-B2 mortgaged by Golden Dragon in its favor as collateral.[5-a]

The Facts

Golden Dragon is the developer of Wack-Wack Twin Towers Condominium, located in Mandaluyong City. On May 9, 1995, Rapanot paid Golden Dragon the amount of ₱453,329.64 as reservation fee for a 41.1050-square meter unit in said condominium, particularly designated as Unit 2308-B2,[6] and covered by Condominium Certificate of Title (CCT) No. 2383 in the name of Golden Dragon.[7]

On September 13, 1995, the Bank extended a loan to Golden Dragon amounting to ₱50,000,000.00[8] to be utilized by the latter as additional working capital.[9] To secure the loan, Golden Dragon executed a Mortgage Agreement in favor of the Bank, which had the effect of constituting a real estate mortgage over several condominium units owned and registered under Golden Dragon's name. Among the units subject of the Mortgage Agreement was Unit 2308-B2.[10] The mortgage was annotated on CCT No. 2383 on September 13, 1995.[11]

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[5] *Id.* at 31.

[5-a] *Id.* at 16-20.

[6] *Id.* at 29.

[7] *Id.* at 48.

[8] *Id.* at 29.

[9] *Id.* at 44.

[10] *Id.* at 44-46.

[11] *Id.* at 48 (dorsal portion).

On May 21, 1996, Rapanot and Golden Dragon entered into a Contract to Sell covering Unit 2308-B2. On April 23, 1997, Rapanot completed payment of the full purchase price of said unit amounting to ₱1,511,098.97.[12] Golden Dragon executed a Deed of Absolute Sale in favor of Rapanot of the same date.[13] Thereafter, Rapanot made several verbal demands for the delivery of Unit 2308-B2.[14]

Prompted by Rapanot's verbal demands, Golden Dragon sent a letter to the Bank dated March 17, 1998, requesting for a substitution of collateral for the purpose of replacing Unit 2308-B2 with another unit with the same area. However, the Bank denied Golden Dragon's request due to the latter's unpaid accounts.[15] Because of this, Golden Dragon failed to comply with Rapanot's verbal demands.

Thereafter, Rapanot, through his counsel, sent several demand letters to Golden Dragon and the Bank, formally demanding the delivery of Unit 2308-B2 and its corresponding CCT No. 2383, free from all liens and encumbrances.[16] Neither Golden Dragon nor the Bank complied with Rapanot's written demands.[17]

Proceedings before the HLURB

On April 27, 2001, Rapanot filed a Complaint with the Expanded National Capital Region Field Office of the HLURB.[18] The Field Office then scheduled the preliminary hearing and held several conferences with a view of arriving at an amicable settlement. However, no settlement was reached.[19]

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[12] *Id.* at 30, 68. ₱1,511,098.87 as reflected on page 68.

[13] See *id.* at 11, 30.

[14] *Id.* at 30.

[15] *Id.*

[16] *Id.* at 30-31, 69.

[17] *Id.* at 31, 69.

[18] *Id.* at 31, 70.

[19] *Id.* at 12, 31.

Despite service of summons to all the defendants named in the Complaint, only the Bank filed its Answer.[20] Thus, on April 5, 2002, the Arbiter issued an order declaring Golden Dragon and its President Maria Victoria Vazquez in default, and directing Rapanot and the Bank to submit their respective position papers and draft decisions (April 2002 Order).[21] Copies of the April 2002 Order were served on Rapanot and the Bank *via* registered mail.[22] However, the envelope bearing the copy sent to the Bank was returned to the Arbiter, bearing the notation "refused to receive".[23]

Rapanot complied with the April 2002 Order and personally served copies of its position paper and draft decision on the Bank on May 22, 2002 and May 24, 2002, respectively.[24] In the opening statement of Rapanot's position paper, Rapanot made reference to the April 2002 Order.[25]

On July 3, 2002, the Arbiter rendered a decision (Arbiter's Decision) in favor of Rapanot, the dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

1. Declaring the mortgage over the condominium unit No. 2308-B2 covered by Condominium Certificate of Title No. 2383 in favor of respondent Bank as null and void for violation of Section 18 of Presidential Decree No. 957[;]

2. Ordering respondent Bank to cancel the mortgage on the subject condominium unit, and accordingly, release the title thereof to the complainant;

3. Ordering respondents to pay jointly and severally the complainant the following sums:

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[20] *Id.* at 70.

[21] *Id.*

[22] *Id.* at 34, 75.

[23] *Id.* at 75.

[24] *Id.*

[25] *Id.*

a. ₱100,000.00 as moral damages,
b. ₱100,000.00 as exemplary damages,
c. ₱50,000.00 as attorney's fees,
d. The costs of litigations (sic), and
e. An administrative fine of TEN THOUSAND PESOS (₱10,000.00) payable to this Office fifteen (15) days upon receipt of this decision, for violation of Section 18 in relation to Section 38 of PD 957;

4. Directing the Register of Deeds of Mandaluyong City to cancel the aforesaid mortgage on the title of the subject condominium unit; and

5. Immediate[ly] upon receipt by the complainant of the owner's duplicate Condominium Certificate of Title of Unit 2308-B2, delivery of CCT No. 2383 over Unit 2308-B2 in favor of the complainant free from all liens and encumbrances.

SO ORDERED.[26]

On July 25, 2002, the Bank received a copy of Rapanot's Manifestation dated July 24, 2002, stating that he had received a copy of the Arbiter's Decision.[27] On July 29, 2002, the Bank filed a Manifestation and Motion for Clarification,[28] requesting for the opportunity to file its position paper and draft decision, and seeking confirmation as to whether a decision had indeed been rendered notwithstanding the fact that it had yet to file such submissions.

Subsequently, the Bank received a copy of Rapanot's Motion for Execution dated September 2, 2002,[29] to which it filed an Opposition dated September 4, 2002.[30]

Meanwhile, the Bank's Manifestation and Motion for Clarification remained unresolved despite the lapse of five (5)

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

[27] *Id.* at 12.

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

[29] *Id.* at 55-58.

[30] *Id.* at 59-62. Based on the records, it appears that Rapanot's Motion for Execution and the Bank's Opposition thereto remain unresolved.

months from the date of filing. This prompted the Bank to secure a certified true copy of the Arbiter's Decision from the HLURB.[31]

On January 16, 2003, the Bank filed a Petition for Review with the HLURB Board of Commissioners (HLURB Board) alleging, among others, that it had been deprived of due process when the Arbiter rendered a decision without affording the Bank the opportunity to submit its position paper and draft decision.

The HLURB Board modified the Arbiter's Decision by: (i) reducing the award for moral damages from ₱100,000.00 to ₱50,000.00, (ii) deleting the award for exemplary damages, (iii) reducing the award for attorney's fees from ₱50,000.00 to ₱20,000.00, and (iv) directing Golden Dragon to pay the Bank all the damages the latter is directed to pay thereunder, and settle the mortgage obligation corresponding to Unit 2308-B2.[32]

Anent the issue of due process, the HLURB Board held, as follows:

x x x x x x x x x

With respect to the first issue, we find the same untenable. Records show that prior to the rendition of its decision, the office below has issued and duly sent an Order to the parties declaring respondent GDREC in default and directing respondent Bank to submit its position paper. x x x[33] (Underscoring omitted)

Proceedings before the Office of the President

The Bank appealed the decision of the HLURB Board to the Office of the President (OP). On October 10, 2005, the OP issued a resolution denying the Bank's appeal. In so doing, the OP adopted the HLURB's findings.[34] The Bank filed a Motion for Reconsideration, which was denied by the OP in an Order dated March 3, 2006.[35]

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[31] *Id.* at 13.

[32] *Id.* at 32-33.

[33] *Id.* at 14.

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

[35] *Id.* at 15.

Proceedings before the CA

The Bank filed a Petition for Review with the CA on April 17, 2006 assailing the resolution and subsequent order of the OP. The Bank argued, among others, that the OP erred when it found that the Bank (i) was not denied due process before the HLURB, and (ii) is jointly and severally liable with Golden Dragon for damages due Rapanot.[36]

After submission of the parties' respective memoranda, the CA rendered the questioned Decision dismissing the Bank's Petition for Review. On the issue of due process, the CA held:

> Petitioner asserts that it was denied due process because it did not receive any notice to file its position paper nor a copy of the Housing Arbiter's Decision. Rapanot, meanwhile, contends that the Housing Arbiter sent petitioner a copy of the April 5, 2002 Order to file position paper by registered mail, as evidenced by the list of persons furnished with a copy thereof. However, according to Rapanot, petitioner "refused to receive" it.
>
> x x x x x x x x x
>
> In the instant case, there is no denial of due process. Petitioner filed its Answer where it was able to explain its side through its special and affirmative defenses. Furthermore, it participated in the preliminary hearing and attended scheduled conferences held to resolve differences between the parties. Petitioner was also served with respondent's position paper and draft decision. Having received said pleadings of respondent, petitioner could have manifested before the Housing Arbiter that it did not receive, if correct, its order requiring the submission of its pleadings and therefore prayed that it be given time to do so. Or, it could have filed its position paper and draft decision without awaiting the order to file the same. Under the circumstances, petitioner was thus afforded and availed of the opportunity to present its side. It cannot make capital of the defense of denial of due process as a screen for neglecting to avail of opportunities to file other pleadings.[37]

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[36] *Id.* at 34.

[37] *Id.* at 34-36.

With respect to the Bank's liability for damages, the CA held thus:

Section 18 of PD 957, requires prior written authority of the HLURB before the owner or developer of a subdivision lot or condominium unit may enter into a contract of mortgage. Hence, the jurisdiction of the HLURB is broad enough to include complaints for annulment of mortgage involving violations of PD 957.

Petitioner argues that, as a mortgagee in good faith and for value, it must be accorded protection and should not be held jointly and severally liable with Golden Dragon and its President, Victoria Vasquez.

It is true that a mortgagee in good faith and for value is entitled to protection, as held in ***Rural Bank of Compostela vs. Court of Appeals*** but petitioner's dependence on this ruling is misplaced as it cannot be considered a mortgagee in good faith.

The doctrine of "mortgagee in good faith" is based on the rule that all persons dealing with property covered by a certificate of title, as mortgagees, are not required to go beyond what appears on the face of the title.

However, while a mortgagee is not under obligation to look beyond the certificate of title, the nature of petitioner's business requires it to take further steps to assure that there are no encumbrances or liens on the mortgaged property, especially since it knew that it was dealing with a condominium developer. It should have inquired deeper into the status of the properties offered as collateral and verified if the HLURB's authority to mortgage was in fact previously obtained. This it failed to do.

It has been ruled that a bank, like petitioner, cannot argue that simply because the titles offered as security were clean of any encumbrances or lien, it was relieved of taking any other step to verify the implications should the same be sold by the developer. While it is not expected to conduct an exhaustive investigation of the mortgagor's title, it cannot be excused from the duty of exercising the due diligence required of banking institutions, for banks are expected to exercise more care and prudence than private individuals in their dealings, even those involving registered property, for their business is affected with public interest.

As aforesaid, petitioner should have ascertained that the required authority to mortgage the condominium units was obtained from the HLURB before it approved Golden Dragon's loan. It cannot feign

lack of knowledge of the sales activities of Golden Dragon since, as an extender of credit, it is aware of the practices, both good or bad, of condominium developers. Since petitioner was negligent in its duty to investigate the status of the properties offered to it as collateral, it cannot claim that it was a mortgagee in good faith.[38]

The Bank filed a Motion for Reconsideration, which was denied by the CA in a Resolution dated March 17, 2010.[39] The Bank received a copy of the resolution on March 22, 2010.[39-a]

On April 6, 2010, the Bank filed with the Court a motion praying for an additional period of 30 days within which to file its petition for review on *certiorari*.[39-b]

On May 6, 2010, the Bank filed the instant Petition.

Rapanot filed his Comment to the Petition on September 7, 2010.[40] Accordingly, the Bank filed its Reply on January 28, 2011.[41]

Issues

Essentially, the Bank requests this Court to resolve the following issues:

1. Whether or not the CA erred when it affirmed the resolution of the OP finding that the Bank had been afforded due process before the HLURB; and
2. Whether or not the CA erred when it affirmed the resolution of the OP holding that the Bank cannot be considered a mortgagee in good faith.

The Court's Ruling

In the instant Petition, the Bank avers that the CA misappreciated material facts when it affirmed the OP's resolution

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[38] *Id.* at 37-40.

[39] *Id.* at 42-43.

[39-a] *Id.* at 8.

[39-b] *Id.*

[40] *Id.* at 65-89.

[41] *Id.* at 92-99.

which denied its appeal. The Bank contends that the CA committed reversible error when it concluded that the Bank was properly afforded due process before the HLURB, and when it failed to recognize the Bank as a mortgagee in good faith. The Bank concludes that these alleged errors justify the reversal of the questioned Decision, and ultimately call for the dismissal of the Complaint against it.

The Court disagrees.

Time and again, the Court has emphasized that review of appeals under Rule 45 is "not a matter of right, but of sound judicial discretion."[42] Thus, a petition for review on *certiorari* shall only be granted on the basis of special and important reasons.[43]

As a general rule, only questions of law may be raised in petitions filed under Rule 45.[44] However, there are recognized exceptions to this general rule, namely:

(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**. x x x[45] (Emphasis supplied)

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[42] RULES OF COURT, Rule 45, Section 6.

[43] *Id.*

[44] *Id.* at Section 1.

[45] *Ambray and Ambray, Jr. v. Tsourous, et al.*, G.R. No. 209264, July 5, 2016, pp. 6-7.

The Bank avers that the second, fourth and eleventh exceptions above are present in this case. However, after a judicious examination of the records of this case and the respective submissions of the parties, the Court finds that none of these exceptions apply.

The Bank was not deprived of due process before the HLURB.

The Bank asserts that it never received the April 2002 Order. It claims that it was taken by surprise on July 25, 2002, when it received a copy of Rapanot's Manifestation alluding to the issuance of the Arbiter's Decision on July 3, 2002. Hence, the Bank claims that it was deprived of due process, since it was not able to set forth its "valid and meritorious" defenses for the Arbiter's consideration through its position paper and draft decision.[46]

The Court finds these submissions untenable.

"The essence of due process is to be heard."[47] In administrative proceedings, due process entails "a fair and reasonable opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of. Administrative due process cannot be fully equated with due process in its strict judicial sense, for in the former a formal or trial-type hearing is not always necessary, and technical rules of procedure are not strictly applied."[48]

As correctly pointed out by the CA in the questioned Decision, the Bank was able to set out its position by participating in the preliminary hearing and the scheduled conferences before the Arbiter.[49] The Bank was likewise able to assert its special and affirmative defenses in its Answer to Rapanot's Complaint.[50]

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[46] *Rollo*, p. 17.

[47] *San Miguel Properties, Inc. v. BF Homes, Inc.*, G.R. No. 169343, August 5, 2015, 765 SCRA 131, 166.

[48] *Id.*

[49] *Rollo*, p. 35.

[50] *Id.*

The fact that the Arbiter's Decision was rendered without having considered the Bank's position paper and draft decision is of no moment. An examination of the 1996 Rules of Procedure of the HLURB[51] then prevailing shows that the Arbiter merely acted in accordance therewith when he rendered his decision on the basis of the pleadings and records submitted by the parties thus far. The relevant rules provide:

RULE VI - PRELIMINARY CONFERENCE AND RESOLUTION

x x x x x x x x x

Section 4. *Position Papers*. – If the parties fail to settle within the period of preliminary conference, **then they will be given a period of not more than thirty (30) calendar days to file their respective verified position papers, attaching thereto the affidavits of their witnesses and documentary evidence**.

In addition, as provided for by Executive Order No. 26, Series of 1992, the parties shall be required to submit their respective draft decisions within the same thirty (30)-day period.

Said draft decision shall state clearly and distinctly the findings of facts, the issues and the applicable law and jurisprudence on which it is based. The arbiter may adopt in whole or in part either of the parties' draft decision, or reject both and prepare his own decision.

The party who fails to submit a draft decision shall be fined ₱2,000.00.

Section 5. *Summary Resolution* – **With or without the position paper and draft decision[,] the Arbiter shall summarily resolve the case on the basis of the verified pleadings and pertinent records of the Board.** (Emphasis and underscoring supplied)

Clearly, the Arbiter cannot be faulted for rendering his Decision, since the rules then prevailing required him to do so.

The Bank cannot likewise rely on the absence of proof of service to further its cause. Notably, while the Bank firmly contends that it did not receive the copy of the April 2002 Order, it did not assail the veracity of the notation "refused to receive"

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[51] Board of Commissioners Resolution No. R-586, series of 1996.

inscribed on the envelope bearing said order. In fact, the Bank only offered the following explanation respecting said notation:

> 9. The claim that the Bank "refused to receive" the envelope that bore the Order cannot be given credence and is belied by the Bank's act of immediately manifesting before the Housing Arbiter that it had not yet received an order for filing the position paper and draft decision.[52]

This is specious, at best. More importantly, the records show that the Bank gained actual notice of the Arbiter's directive to file their position papers and draft decisions as early as May 22, 2002, when it was personally served a copy of Rapanot's position paper which made reference to the April 2002 Order.[53] This shows as mere pretense the Bank's assertion that it learned of the Arbiter's Decision only through Rapanot's Manifestation.[54] Worse, the Bank waited until the lapse of five (5) months before it took steps to secure a copy of the Arbiter's Decision directly from the HLURB for the purpose of assailing the same before the OP.

The Mortgage Agreement is null and void as against Rapanot, and thus cannot be enforced against him.

The Bank avers that contrary to the CA's conclusion in the questioned Decision, it exercised due diligence before it entered into the Mortgage Agreement with Golden Dragon and accepted Unit 2308-B2, among other properties, as collateral.[55] The Bank stressed that prior to the approval of Golden Dragon's loan, it deployed representatives to ascertain that the properties being offered as collateral were in order. Moreover, it confirmed that the titles corresponding to the properties offered as collateral were free from existing liens, mortgages and other encumbrances.[56]

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[52] *Rollo*, p. 94.

[53] *Id.* at 70, 94.

[54] *Id.* at 52.

[55] *Id.* at 18.

[56] *Id.* at 19.

Proceeding from this, the Bank claims that the CA overlooked these facts when it failed to recognize the Bank as a mortgagee in good faith.

The Court finds the Bank's assertions indefensible.

First of all, under Presidential Decree No. 957 (PD 957), no mortgage on any condominium unit may be constituted by a developer without prior written approval of the National Housing Authority, now HLURB.[57] PD 957 further requires developers to notify buyers of the loan value of their corresponding mortgaged properties before the proceeds of the secured loan are released. The relevant provision states:

> Section 18. *Mortgages*. – No mortgage on any unit or lot shall be made by the owner or developer without prior written approval of the Authority. Such approval shall not be granted unless it is shown that the proceeds of the mortgage loan shall be used for the development of the condominium or subdivision project and effective measures have been provided to ensure such utilization. The loan value of each lot or unit covered by the mortgage shall be determined and the buyer thereof, if any, shall be notified before the release of the loan. The buyer may, at his option, pay his installment for the lot or unit directly to the mortgagee who shall apply the payments to the corresponding mortgage indebtedness secured by the particular lot or unit being paid for, with a view to enabling said buyer to obtain title over the lot or unit promptly after full payment thereof.

In *Far East Bank & Trust Co. v. Marquez*,[58] the Court clarified the legal effect of a mortgage constituted in violation of the foregoing provision, thus:

> The lot was mortgaged in violation of Section 18 of PD 957. Respondent, who was the buyer of the property, was not notified of the mortgage before the release of the loan proceeds by petitioner. Acts executed against the provisions of mandatory or prohibitory

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[57] The regulatory functions of the National Housing Authority was transferred to the Human Settlements Regulatory Commission (later HLURB) by virtue of Executive Order No. 648, series of 1981, which took effect on February 7, 1981.

[58] 465 Phil. 276 (2004).

laws shall be void. Hence, **the mortgage over the lot is null and void insofar as private respondent is concerned**.[59] (Emphasis supplied)

The Court reiterated the foregoing pronouncement in the recent case of *Philippine National Bank v. Lim*[60] and again in *United Overseas Bank of the Philippines, Inc. v. Board of Commissioners-HLURB*.[61]

Thus, the Mortgage Agreement cannot have the effect of curtailing Rapanot's right as buyer of Unit 2308-B2, precisely because of the Bank's failure to comply with PD 957.

Moreover, contrary to the Bank's assertions, it cannot be considered a mortgagee in good faith. The Bank failed to ascertain whether Golden Dragon secured HLURB's prior written approval as required by PD 957 before it accepted Golden Dragon's properties as collateral. It also failed to ascertain whether any of the properties offered as collateral already had corresponding buyers at the time the Mortgage Agreement was executed.

The Bank cannot harp on the fact that the Mortgage Agreement was executed before the Contract to Sell and Deed of Absolute Sale between Rapanot and Golden Dragon were executed, such that no amount of verification could have revealed Rapanot's right over Unit 2308-B2.[62] The Court particularly notes that Rapanot made his initial payment for Unit 2308-B2 as early as May 9, 1995, four (4) months prior to the execution of the Mortgage Agreement. Surely, the Bank could have easily verified such fact if it had simply requested Golden Dragon to confirm if Unit 2308-B2 already had a buyer, given that the nature of the latter's business inherently involves the sale of condominium units on a commercial scale.

It bears stressing that banks are required to exercise the highest degree of diligence in the conduct of their affairs. The Court

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[59] *Id.* at 289.

[60] 702 Phil. 461 (2013).

[61] G.R. No. 182133, June 23, 2015, 760 SCRA 300.

[62] See *rollo*, p. 96.

explained this exacting requirement in the recent case of *Philippine National Bank v. Vila*,[63] thus:

In *Land Bank of the Philippines v. Belle Corporation*, the Court exhorted banks to exercise the highest degree of diligence in its dealing with properties offered as securities for the loan obligation:

> When the purchaser or the mortgagee is a bank, the rule on innocent purchasers or mortgagees for value is applied more strictly. Being in the business of extending loans secured by real estate mortgage, banks are presumed to be familiar with the rules on land registration. Since the banking business is impressed with public interest, they are expected to be more cautious, to exercise a higher degree of diligence, care and prudence, than private individuals in their dealings, even those involving registered lands. Banks may not simply rely on the face of the certificate of title. Hence, they cannot assume that, x x x the title offered as security is on its face free of any encumbrances or lien, they are relieved of the responsibility of taking further steps to verify the title and inspect the properties to be mortgaged. As expected, the ascertainment of the status or condition of a property offered to it as security for a loan must be a standard and indispensable part of the bank's operations. x x x (Citations omitted)

We never fail to stress the remarkable significance of a banking institution to commercial transactions, in particular, and to the country's economy in general. The banking system is an indispensable institution in the modern world and plays a vital role in the economic life of every civilized nation. Whether as mere passive entities for the safekeeping and saving of money or as active instruments of business and commerce, banks have become an ubiquitous presence among the people, who have come to regard them with respect and even gratitude and, most of all, confidence. Consequently, the highest degree of diligence is expected, and high standards of integrity and performance are even required, of it.[64] (Emphasis and underscoring supplied)

In loan transactions, banks have the particular obligation of ensuring that clients comply with all the documentary

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[63] G.R. No. 213241, August 1, 2016.

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

requirements pertaining to the approval of their loan applications and the subsequent release of their proceeds.[65]

If only the Bank exercised the highest degree of diligence required by the nature of its business as a financial institution, it would have discovered that (i) Golden Dragon did not comply with the approval requirement imposed by Section 18 of PD 957, and (ii) that Rapanot already paid a reservation fee and had made several installment payments in favor of Golden Dragon, with a view of acquiring Unit 2308-B2.[66]

The Bank's failure to exercise the diligence required of it constitutes negligence, and negates its assertion that it is a mortgagee in good faith. On this point, this Court's ruling in the case of *Far East Bank & Trust Co. v. Marquez*[67] is instructive:

> Petitioner argues that it is an innocent mortgagee whose lien must be respected and protected, since the title offered as security was clean of any encumbrance or lien. We do not agree.
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> > "x x x As a general rule, where there is nothing on the certificate of title to indicate any cloud or vice in the ownership of the property, or any encumbrance thereon, the purchaser is not required to explore further than what the *Torrens* Title upon its face indicates in quest for any hidden defect or inchoate right that may subsequently defeat his right thereto. This rule, however, admits of an exception as where the purchaser or mortgagee has knowledge of a defect or lack of title in the vendor, or that he was aware of sufficient facts to induce a reasonably prudent man to inquire into the status of the property in litigation."
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> Petitioner bank should have considered that it was dealing with a town house project that was already in progress. A reasonable person should have been aware that, to finance the project, sources of funds

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[65] *Far East Bank and Trust Co. (now Bank of the Philippines Islands) v. Tentmakers Group, Inc.*, 690 Phil. 134, 146 (2012).

[66] *Rollo*, p. 69.

[67] *Supra* note 58, at 287-288.

could have been used other than the loan, which was intended to serve the purpose only partially. Hence, there was need to verify whether any part of the property was already the subject of any other contract involving buyers or potential buyers. **In granting the loan, petitioner bank should not have been content merely with a clean title, considering the presence of circumstances indicating the need for a thorough investigation of the existence of buyers like respondent.** Having been wanting in care and prudence, the latter cannot be deemed to be an innocent mortgagee.

Petitioner cannot claim to be a mortgagee in good faith. Indeed it was negligent, as found by the Office of the President and by the CA. Petitioner should not have relied only on the representation of the mortgagor that the latter had secured all requisite permits and licenses from the government agencies concerned. The former should have required the submission of certified true copies of those documents and verified their authenticity through its own independent effort.

Having been negligent in finding out what respondent's rights were over the lot, petitioner must be deemed to possess constructive knowledge of those rights. (Emphasis supplied)

The Court can surely take judicial notice of the fact that commercial banks extend credit accommodations to real estate developers on a regular basis. In the course of its everyday dealings, the Bank has surely been made aware of the approval and notice requirements under Section 18 of PD 957. At this juncture, this Court deems it necessary to stress that a person who deliberately ignores a significant fact that could create suspicion in an otherwise reasonable person cannot be deemed a mortgagee in good faith.[68] The nature of the Bank's business precludes it from feigning ignorance of the need to confirm that such requirements are complied with prior to the release of the loan in favor of Golden Dragon, in view of the exacting standard of diligence it is required to exert in the conduct of its affairs.

Proceeding from the foregoing, we find that neither mistake nor misapprehension of facts can be ascribed to the CA in

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[68] *Land Bank of the Philippines v. Belle Corporation*, G.R. No. 205271, September 2, 2015, p. 13.

rendering the questioned Decision. The Court likewise finds that contrary to the Bank's claim, the CA did not overlook material facts, since the questioned Decision proceeded from a thorough deliberation of the facts established by the submissions of the parties and the evidence on record.

For these reasons, we resolve to deny the instant Petition for lack of merit.

WHEREFORE, premises considered, the Petition for Review on Certiorari is **DENIED**. The Decision dated November 18, 2009 and Resolution dated March 17, 2010 of the Court of Appeals in CA-G.R. SP No. 93862 are hereby **AFFIRMED**.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, del Castillo, and *Perlas-Bernabe, JJ.,* concur.

FIRST DIVISION

[G.R. No. 207156. January 16, 2017]

TURKS SHAWARMA COMPANY/GEM ZEÑAROSA, *petitioners, vs.* **FELICIANO Z. PAJARON and LARRY A. CARBONILLA,** *respondents*.

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; NATIONAL LABOR RELATIONS COMMISSION (NLRC); APPEAL FROM THE LABOR ARBITER'S MONETARY AWARD PERFECTED ONLY UPON THE POSTING OF CASH OR SURETY BOND; REDUCTION OF APPEAL BOND ALLOWED BASED ON MERITORIOUS GROUNDS AND ON THE POSTING OF REASONABLE AMOUNT IN RELATION TO MONETARY AWARD.— Article 223

of the Labor Code, which sets forth the rules on appeal from the Labor Arbiter's monetary award, provides [among others] x x x **In case of a judgment involving a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Commission in the amount equivalent to the monetary award in the judgment appealed from.** x x x [This requirement was reiterated under] Sections 4 and 6 of Rule VI of the 2005 Revised Rules of Procedure of the NLRC, which were in effect when petitioners filed their appeal, x x x "It is clear from both the Labor Code and the NLRC Rules of Procedure that there is legislative and administrative intent to strictly apply the appeal bond requirement, and the Court should give utmost regard to this intention." x x x However, the Court, in special and justified circumstances, has relaxed the requirement of posting a supersedeas bond for the perfection of an appeal on technical considerations to give way to equity and justice. Thus, under Section 6 of Rule VI of the 2005 NLRC Revised Rules of Procedure, the reduction of the appeal bond is allowed, subject to the following conditions: (1) the motion to reduce the bond shall be based on meritorious grounds; and (2) a reasonable amount in relation to the monetary award is posted by the appellant. Compliance with these two conditions will stop the running of the period to perfect an appeal. x x x The "reduction of the bond is not a matter of right on the part of the movant [but] lies within the sound discretion of the NLRC x x x."

2. ID.; EMPLOYMENT; ILLEGAL DISMISSAL; LACK OF ANY CLEAR, VALID, AND JUST CAUSE IN TERMINATING EMPLOYMENT.— After scrupulously examining the contrasting positions and arguments of the parties, we find that the Labor Arbiter's Decision declaring Pajaron and Carbonilla illegally dismissed was supported by substantial evidence. x x x "In termination cases, the burden of proof rests on the employer to show that the dismissal is for a just cause." For lack of any clear, valid, and just cause in terminating Pajaron and Carbonilla's employment, petitioners are indubitably guilty of illegal dismissal.

APPEARANCES OF COUNSEL

Jeffrey P. Omadto for petitioners.
UP Office of Legal Aid for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

The liberal interpretation of the rules applies only to justifiable causes and meritorious circumstances.

By this Petition for Review on *Certiorari*,[1] petitioner Turks Shawarma Company and its owner, petitioner Gem Zeñarosa (Zeñarosa), assail the May 8, 2013 Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 121956, which affirmed the Orders dated March 18, 2011[3] and September 29, 2011[4] of the National Labor Relations Commission (NLRC) dismissing their appeal on the ground of non-perfection for failure to post the required bond.

Factual Antecedents

Petitioners hired Feliciano Z. Pajaron (Pajaron) in May 2007 as service crew and Larry A. Carbonilla (Carbonilla) in April 2007 as head crew. On April 15, 2010, Pajaron and Carbonilla filed their respective Complaints[5] for constructive and actual illegal dismissal, non-payment of overtime pay, holiday pay, holiday premium, rest day premium, service incentive leave pay and 13th month pay against petitioners. Both Complaints were consolidated.

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[1] *Rollo*, pp. 3-28.

[2] CA *rollo*, pp. 454-459; penned by Associate Justice Romeo F. Barza and concurred in by Associate Justices Noel G. Tijam and Ramon A. Cruz.

[3] NLRC records, pp. 222-226; penned by Commissioner Perlita B. Velasco and concurred in by Presiding Commissioner Gerardo C. Nograles and Commissioner Romeo L. Go.

[4] *Id.* at 276-279; penned by Commissioner Perlita B. Velasco and concurred in by Presiding Commissioner Gerardo C. Nograles.

[5] *Id.* at 1-3 and 7-9.

Pajaron alleged that on April 9, 2010, Zeñarosa asked him to sign a piece of paper[6] stating that he was receiving the correct amount of wages and that he had no claims whatsoever from petitioners. Disagreeing to the truthfulness of the statements, Pajaron refused to sign the paper prompting Zeñarosa to fire him from work. Carbonilla, on the other hand, alleged that sometime in June 2008, he had an altercation with his supervisor Conchita Marcillana (Marcillana) while at work. When the incident was brought to the attention of Zeñarosa, he was immediately dismissed from service. He was also asked by Zeñarosa to sign a piece of paper acknowledging his debt amounting to ₱7,000.00.

Both Pajaron and Carbonilla claimed that there was no just or authorized cause for their dismissal and that petitioners also failed to comply with the requirements of due process. As such, they prayed for separation pay in lieu of reinstatement due to strained relations with petitioners and backwages as well as nominal, moral and exemplary damages. Petitioners also claimed for non-payment of just wages, overtime pay, holiday pay, holiday premium, service incentive leave pay and 13th month pay.

Petitioners denied having dismissed Pajaron and Carbonilla; they averred that they actually abandoned their work. They alleged that Pajaron would habitually absent himself from work for an unreasonable length of time without notice; and while they rehired him several times whenever he returned, they refused to rehire him this time after he abandoned work in April 2009. As for Carbonilla, he was reprimanded and admonished several times for misbehavior and disobedience of lawful orders and was advised that he could freely leave his work if he could not follow instructions. Unfortunately, he left his work without any reason and without settling his unpaid obligation in the amount of ₱78,900.00, which compelled them to file a criminal case[7] for estafa against him. In addition, criminal complaints[8]

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[6] *Id.* at 49.

[7] *Id.* at 66-67.

[8] *Id.* at 73-74 and 77-78.

for slander were filed against both Pajaron and Carbonilla for uttering defamatory words that allegedly compromised Zeñarosa's reputation as a businessman. Petitioners, thus, insisted that their refusal to rehire Pajaron and Carbonilla was for valid causes and did not amount to dismissal from employment. Finally, petitioners claimed that Pajaron and Carbonilla failed to substantiate their claims that they were not paid labor standards benefits.

Proceedings before the Labor Arbiter

In a Decision[9] dated December 10, 2010, the Labor Arbiter found credible Pajaron and Carbonilla's version and held them constructively and illegally dismissed by petitioners. The Labor Arbiter found it suspicious for petitioners to file criminal cases against Pajaron and Carbonilla only after the complaints for illegal dismissal had been filed. Pajaron and Carbonilla were thus awarded the sum of ₱148,753.61 and ₱49,182.66, respectively, representing backwages, separation pay in lieu of reinstatement, holiday pay, service incentive leave pay and 13th month pay, The dispositive portion of the Labor Arbiter's Decision reads:

> WHEREFORE, in light of the foregoing, judgment is hereby rendered declaring respondent TURKS SHAWARMA COMPANY, [liable] to pay complainants as follows:
>
> I. FELICIANO Z. PAJARON, JR.
>
> 1. Limited backwages computed from April 9, 2010 up to the date of this Decision, in the amount of SIXTY EIGHT THOUSAND NINE HUNDRED NINETY EIGHT PESOS & 74/100 (Php68,998.74)
>
> 2. Separation pay, in lieu of reinstatement equivalent to one month's salary for every year of service computed from May 1, 2007 up to the date of this decision, in the amount of THIRTY ONE THOUS[A]ND FIVE HUNDRED TWELVE PESOS (Php31,512.00);
>
> 3. Holiday pay, in the amount of TWELVE THOUSAND SIX HUNDRED EIGHTY ONE PESOS (Php12,681.00);

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[9] *Id.* at 110-116; penned by Labor Arbiter Lutricia F. Quitevis-Alconcel.

4. Service incentive leave pay, in the amount of FIVE THOUSAND FOUR HUNDRED THREE PESOS & 46/100 (Php5,403.46); and

5. Thirteenth month pay, in the amount of THIRTY THOUSAND ONE HUNDRED FIFTY EIGHT PESOS & 41/100 (Php30,158.41).

II. LARRY A. CARBONILLA

1. Separation pay, in lieu of reinstatement equivalent to one month's salary for every year of service computed from April 1, 2007 up to the date of this decision, in the amount of FORTY TWO THOUSAND AND SIXTEEN PESOS (Php42,016.00);

2. Holiday pay, in the amount of TWO THOUSAND PESOS (Php2,000.00);

3. Service incentive leave pay, in the amount of EIGHT HUNDRED THIRTY THREE PESOS & 33/100 (Php833.33); and

4. Thirteenth month pay, in the amount of FOUR THOUSAND THREE HUNDRED THIRTY THREE PESOS & 33/100 (Php4,333.33).

Other claims herein sought and prayed for are hereby denied for lack of legal and factual bases.

SO ORDERED.[10]

Proceedings before the National Labor Relations Commission

Due to alleged non-availability of counsel, Zeñarosa himself filed a Notice of Appeal with Memorandum and Motion to Reduce Bond[11] with the NLRC. Along with this, Zeñarosa posted a partial cash bond in the amount of ₱15,000.00,[12] maintaining that he cannot afford to post the full amount of the award since he is a mere backyard micro-entrepreneur. He begged the NLRC to reduce the bond.

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

[11] *Id.* at 120-139.

[12] *Id.* at 268.

The NLRC, in an Order[13] dated March 18, 2011, denied the motion to reduce bond. It ruled that financial difficulties may not be invoked as a valid ground to reduce bond; at any rate, it was not even substantiated by proof. Moreover, the partial bond in the amount of ₱15,000.00 is not reasonable in relation to the award which totalled to ₱197,936.27. Petitioners' appeal was thus dismissed by the NLRC for non-perfection.

On April 7, 2011, petitioners, through a new counsel, filed a Motion for Reconsideration (with plea to give due course to the appeal)[14] averring that the outright dismissal of their appeal was harsh and oppressive considering that they had substantially complied with the Rules through the posting of a partial bond and their willingness to post additional bond if necessary. Moreover, their motion to reduce bond was meritorious since payment of the full amount of the award will greatly affect the company's operations; besides the appeal was filed by Zeñarosa without the assistance of a counsel. Petitioners thus implored for a more liberal application of the Rules and prayed that their appeal be given due course. Along with this motion for reconsideration, petitioners tendered the sum of ₱207,435.53 representing the deficiency of the appeal bond.[15]

In an Order[16] dated September 29, 2011, the NLRC denied the Motion for Reconsideration, reiterating that the grounds for the reduction of the appeal bond are not meritorious and that the partial bond posted is not reasonable. The NLRC further held that the posting of the remaining balance on April 7, 2011 or three months and eight days from receipt of the Labor Arbiter's Decision on December 30, 2010 cannot be allowed, otherwise, it will be tantamount to extending the period to appeal which is limited only to 10 days from receipt of the assailed Decision.

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[13] *Id.* at 222-226.

[14] *Id.* at 232-246.

[15] *Id.* at 269.

[16] *Id.* at 276-279.

Proceedings before the Court of Appeals

Petitioners filed a Petition for *Certiorari* with application for Writ of Preliminary Injunction and Temporary Restraining Order[17] with the CA. They insisted that the NLRC gravely abused its discretion in dismissing the appeal for failure to post the required appeal bond.

On May 8, 2013, the CA rendered a Decision[18] dismissing the Petition for *Certiorari*. It held that the NLRC did not commit any grave abuse of discretion in dismissing petitioners' appeal for non-perfection because petitioners failed to comply with the requisites in filing a motion to reduce bond, namely, the presence of a meritorious ground and the posting of a reasonable amount of bond. The CA stated that financial difficulties is not enough justification to dispense with the mandatory posting of a bond inasmuch as there is an option of posting a surety bond from a reputable bonding company duly accredited by the NLRC, which, unfortunately, petitioners failed to do. The CA noted that the lack of assistance of a counsel is not an excuse because petitioners ought to know the Rules in filing an appeal; moreover, ignorance of the law does not excuse them from compliance therewith.

Hence, this present Petition.

Issue

Petitioners insist that the CA erred in affirming the NLRC's dismissal of their appeal for the following reasons: first, there was substantial compliance with the Rules on perfection of appeal; second, the surrounding facts and circumstances constitute meritorious grounds to reduce the appeal bond; third, they exhibited willingness and good faith by posting a partial bond during the reglementary period; and lastly, a liberal interpretation of the requirement of an appeal bond would serve the desired objective of resolving controversies on the merits.

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[17] CA *rollo*, pp. 3-25.

[18] *Id.* at 454-459.

Petitioners claim that there is a necessity to resolve the merits of their appeal since the Labor Arbiter's Decision declaring Pajaron and Carbonilla illegally terminated from employment was not based on substantial evidence.

Our Ruling

The Petition has no merit.

The Court has time and again held that "[t]he right to appeal is neither a natural right nor is it a component of due process. It is a mere statutory privilege, and may be exercised only in the manner and in accordance with the provisions of the law."[19] "The party who seeks to avail of the same must comply with the requirements of the rules. Failing to do so the right to appeal is lost."[20]

Article 223 of the Labor Code, which sets forth the rules on appeal from the Labor Arbiter's monetary award, provides:

ART. 223. Appeal.– Decisions, awards, or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards, or orders. Such appeal may be entertained only on any of the following grounds:

(a) If there is prima facie evidence of abuse of discretion on the part of the Labor Arbiter;

(b) If the decision, order or award was secured through fraud or coercion, including graft and corruption;

(c) If made purely on questions of law; and

(d) If serious errors in the finding of facts are raised which would cause grave or irreparable damage or injury to the appellant.

In case of a judgment involving a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly

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[19] *Boardwalk Business Ventures, Inc. v. Elvira A. Villareal (deceased)*, 708 Phil. 443, 452 (2013).

[20] *Ong v. Court of Appeals*, 482 Phil. 170, 177 (2004).

accredited by the Commission in the amount equivalent to the monetary award in the judgment appealed from.

x x x x x x x x x.
(Emphasis supplied)

Meanwhile, Sections 4 and 6 of Rule VI of the 2005 Revised Rules of Procedure of the NLRC, which were in effect when petitioners filed their appeal, provide:

Section 4. Requisites for perfection of appeal. — (a) The Appeal shall be: 1) filed within the reglementary period as provided in Section 1 of this Rule; 2) verified by the appellant himself in accordance with Section 4, Rule 7 of the Rules of Court, as amended; 3) in the form of a memorandum of appeal which shall state the grounds relied upon and the arguments in support thereof, the relief prayed for, and with a statement of the date the appellant received the appealed decision, resolution or order; 4) in three (3) legibly typewritten or printed copies; and 5) accompanied by i) proof of payment of the required appeal fee; ii) posting of a cash or surety bond as provided in Section 6 of this Rule; iii) a certificate of non-forum shopping; and iv) proof of service upon the other parties.

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

x x x x x x x x x

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

x x x x x x x x x

No motion to reduce bond shall be entertained except on meritorious grounds, and upon the posting of a bond in a reasonable amount. The mere filing of a motion to reduce bond without complying with the requisites in the preceding paragraphs shall not stop the running of the period to perfect an appeal.

"It is clear from both the Labor Code and the NLRC Rules of Procedure that there is legislative and administrative intent

to strictly apply the appeal bond requirement, and the Court should give utmost regard to this intention."[21] The posting of cash or surety bond is therefore mandatory and jurisdictional; failure to comply with this requirement renders the decision of the Labor Arbiter final and executory.[22] This indispensable requisite for the perfection of an appeal "is to assure the workers that if they finally prevail in the case[,] the monetary award will be given to them upon the dismissal of the employer's appeal [and] is further meant to discourage employers from using the appeal to delay or evade payment of their obligations to the employees."[23]

However, the Court, in special and justified circumstances, has relaxed the requirement of posting a supersedeas bond for the perfection of an appeal on technical considerations to give way to equity and justice.[24] Thus, under Section 6 of Rule VI of the 2005 NLRC Revised Rules of Procedure, the reduction of the appeal bond is allowed, subject to the following conditions: (1) the motion to reduce the bond shall be based on meritorious grounds; and (2) a reasonable amount in relation to the monetary award is posted by the appellant. Compliance with these two conditions will stop the running of the period to perfect an appeal.

In the case at bar, petitioners filed a Motion to Reduce Bond together with their Notice of Appeal and posted a cash bond of ₱15,000.00 within the 10-day reglementary period to appeal. The CA correctly found that the NLRC did not commit grave abuse of discretion in denying petitioners' motion to reduce bond as such motion was not predicated on meritorious and

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[21] *Colby Construction and Management Corporation v. National Labor Relations Commission,* 564 Phil. 145, 156 (2007).

[22] *Quiambao v. National Labor Relations Commission*, 324 Phil. 455, 461, 463 (1996).

[23] *Coral Point Development Corporation v. National Labor Relations Commission*, 383 Phil. 456, 463-464 (2000).

[24] *Nueva Ecija I Electric Cooperative, Inc. v. National Labor Relations Commission*, 380 Phil. 44, 54-55 (2000).

reasonable grounds and the amount tendered is not reasonable in relation to the award. The NLRC correctly held that the supposed ground cited in the motion is not well-taken for there was no evidence to prove Zeñarosa's claim that the payment of the full amount of the award would greatly affect his business due to financial setbacks. Besides, "the law does not require outright payment of the total monetary award; [the appellant has the option to post either a cash or surety bond. In the latter case, appellant must pay only a] moderate and reasonable sum for the premium to ensure that the award will be eventually paid should the appeal fail."[25] Moreover, the absence of counsel is not a valid excuse for non-compliance with the rules. As aptly observed by the CA, Zeñarosa cannot feign ignorance of the law considering that he was able to post a partial bond and ask for a reduction of the appeal bond. At any rate, petitioners did not advance any reason for the alleged absence of counsel except that they were simply abandoned. Neither did petitioners explain why they failed to procure a new counsel to properly assist them in filing the appeal. Moreover, the partial bond posted was not reasonable. In the case of *McBurnie v. Ganzon*,[26] the Court has set a provisional percentage of 10% of the monetary award (exclusive of damages and attorney's fees) as reasonable amount of bond that an appellant should post pending resolution by the NLRC of a motion for a bond's reduction. Only after the posting of this required percentage shall an appellant's period to perfect an appeal be suspended. Applying this parameter, the ₱15,000.00 partial bond posted by petitioners is not considered reasonable in relation to the total monetary award of ₱197,936.27.

Petitioners, nevertheless, rely on a number of cases wherein the Court allowed the relaxation of the stringent requirement of the rule. In *Nicol v. Footjoy Industrial Corporation*,[27] the Court reversed the NLRC's denial of the appellant's motion to

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[25] *Times Transportation Co., Inc. v. Sotelo*, 491 Phil. 756, 769 (2005).

[26] 719 Phil. 680, 713-714 (2013).

[27] 555 Phil. 275 (2007).

reduce bond upon finding adequate evidence to justify the reduction. In *Rada v. National Labor Relations Commission*[28] and *Blancaflor v. National Labor Relations Commission*,[29] the NLRC allowed the late payment of the bond because the appealed Decision of the Labor Arbiter did not state the exact amount to be awarded, hence there could be no basis for determining the amount of the bond to be filed. It was only after the amount of superseades bond was specified by the NLRC that the appellants filed the bond. In *YBL (Your Bus Line) v. National Labor Relations Commission*,[30] the Court was propelled to relax the requirements relating to appeal bonds as there were valid issues raised in the appeal. In *Dr. Postigo v. Philippine Tuberculosis Society, Inc.*,[31] the respondent therein deferred the posting of the bond and instead filed a motion to reduce bond on the ground that the Labor Arbiter's computation of the award is erroneous which circumstance justified the relaxation of the appeal bond requirement. In all of these cases, though, there were meritorious grounds that warranted the reduction of the appeal bond, which, as discussed, is lacking in the case at bench.

Petitioners, furthermore, claim that the NLRC's outright dismissal of their appeal was harsh and oppressive since they should still be given opportunity to complete the required bond upon the filing of their motion for reconsideration. Thus, they insist that their immediate posting of the deficiency when they filed a motion for reconsideration constituted substantial compliance with the Rules.

The contention is untenable.

The NLRC exercises full discretion in resolving a motion for the reduction of bond[32] in accordance with the standards of

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[28] 282 Phil. 80 (1992).

[29] 291-A Phil. 398 (1993).

[30] 268 Phil. 169 (1990).

[31] 515 Phil. 601 (2006).

[32] *Ramirez v. Court of Appeals*, 622 Phil. 782, 798 (2009).

meritorious grounds and reasonable amount. The "reduction of the bond is not a matter of right on the part of the movant [but] lies within the sound discretion of the NLRC x x x."[33]

In order to give full effect to the provisions on motion to reduce bond, the appellant must be allowed to wait for the ruling of the NLRC on the motion even beyond the 10-day period to perfect an appeal. If the NLRC grants the motion and rules that there is indeed meritorious ground and that the amount of the bond posted is reasonable, then the appeal is perfected. If the NLRC denies the motion, the appellant may still file a motion tor reconsideration as provided under Section 15, Rule VII of the Rules. If the NLRC grants the motion for reconsideration and rules that there is indeed meritorious ground and that the amount of the bond posted is reasonable, then the appeal is perfected. If the NLRC denies the motion, then the decision of the Labor Arbiter becomes final and executory.[34]

The rulings in *Garcia v. KJ Commercial*[35] and *Mendoza v. HMS Credit Corporation*[36] cannot dissuade this Court from relaxing the rules. In *Garcia*, the NLRC initially denied the appeal of respondent therein due to the absence of meritorious grounds in its motion to reduce bond and unreasonable amount of partial bond posted. However, upon the posting of the full amount of bond when respondent filed its motion for reconsideration, the NLRC granted the motion for reconsideration on the ground of substantial compliance with the rules after considering the merits of the appeal. Likewise, in *Mendoza*, the NLRC initially denied respondents' Motion to Reduce Appeal Bond with a partial bond. Respondents thereafter promptly complied with the NLRC's directive to post the differential amount between the judgment award and the sum previously tendered by them. The Court held that the appeal was filed timely on account of respondents' substantial compliance with the requirements on appeal bond. In both *Garcia* and *Mendoza*,

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[33] *Nicol v. Footjoy Industrial Corporation*, *supra* note 27 at 287.

[34] *Garcia v. KJ Commercial*, 683 Phil. 376, 389 (2012).

[35] *Id.* at 392.

[36] 709 Phil. 756, 765-766 (2013).

however, the NLRC took into consideration the substantial merits of the appealed cases in giving due course to the appeals. It, in fact, reversed the Labor Arbiters' rulings in both cases. In contrast, petitioners in the case at bench have no meritorious appeal as would convince this Court to liberally apply the rule.

Stated otherwise, petitioners' case will still fail on its merits even if we are to allow their appeal to be given due course. After scrupulously examining the contrasting positions and arguments of the parties, we find that the Labor Arbiter's Decision declaring Pajaron and Carbonilla illegally dismissed was supported by substantial evidence. While petitioners vehemently argue that Pajaron and Carbonilla abandoned their work, the records are devoid of evidence to show that there was intent on their part to forego their employment. In fact, petitioners adamantly admitted that they refused to rehire Pajaron and Carbonilla despite persistent requests to admit them to work. Hence, petitioners essentially admitted the fact of dismissal. However, except for their empty and general allegations that the dismissal was for just causes, petitioners did not proffer any evidence to support their claim of misconduct or misbehavior on the part of Pajaron and Carbonilla. "In termination cases, the burden of proof rests on the employer to show that the dismissal is for a just cause."[37] For lack of any clear, valid, and just cause in terminating Pajaron and Carbonilla's employment, petitioners are indubitably guilty of illegal dismissal.

All told, we find no error on the part of the CA in ruling that the NLRC did not gravely abused its discretion in dismissing petitioners' appeal for non-perfection due to non compliance with the requisites of filing a motion to reduce bond.

[T]he merit of [petitioners'] case does not warrant the liberal application of the x x x rules x x x. While it is true that litigation is not a game of technicalities and that rules of procedure shall not be strictly enforced at the cost of substantial justice, it must be emphasized that procedural rules should not likewise be belittled or dismissed simply because

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[37] *FLP Enterprises, Inc.-Francesco Shoes v. Dela Cruz*, G.R. No. 198093, July 28, 2014, 731 SCRA 168, 177.

their non-observance might result in prejudice to a party's substantial rights. Like all rules, they are required to be followed, except only for the most persuasive of reasons.[38]

WHEREFORE, the Petition is **DENIED**. The May 8, 2013 Decision of the Court of Appeals in CA-G.R SP No. 121956 is **AFFIRMED**.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 207277. January 16, 2017]

MALAYAN INSURANCE CO., INC., YVONNE S. YUCHENGCO, ATTY. EMMANUEL G. VILLANUEVA, SONNY RUBIN,[1] ENGR. FRANCISCO MONDELO, and MICHAEL REQUIJO,[2] *petitioners, vs.* **EMMA CONCEPCION L. LIN,[3]** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; MOTION TO DISMISS; DENIAL THEREOF IS MERELY

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[38] *Colegio de San Juan de Letran v. Dela Rosa-Meris*, G.R. No. 178837, September 1, 2014, 734 SCRA 21, 37-38.

[1] Also referred to as "Antonio M. Rubin" in some parts of the records.

[2] Also referred to as "Michael Angelo Requijo" in some parts of the records.

[3] Hon. Antonio M. Rosales, in his capacity as Presiding Judge of the Regional Trial Court of Manila, Branch 52 is dropped as a party in this case pursuant to Section 4, Rule 45 of the Rules of Court.

INTERLOCUTORY AND NOT APPEALABLE.— "[A]n order denying a motion to dismiss is merely interlocutory and, therefore, not appealable, x x x to x x x 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."

2. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; WHEN THE ACT WAS PERFORMED IN A CAPRICIOUS OR WHIMSICAL EXERCISE OF JUDGMENT EQUIVALENT TO LACK OR EXCESS OF JURISDICTION.— "It is well-settled that an act of a court or tribunal may only be considered to have been done in grave abuse of discretion when the same was performed in a capricious or whimsical exercise of judgment which is equivalent to lack or excess of jurisdiction." "[F]or grave abuse of discretion to exist, the abuse of discretion must be patent and gross so as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law."

3. ID.; CIVIL PROCEDURE; PLEADING; PROSCRIPTION AGAINST FORUM SHOPPING; ESSENCE OF FORUM SHOPPING AND THE CONSTITUTIVE ELEMENTS THEREOF, *VIZ*., THE COGNATE CONCEPTS OF *LITIS PENDENTIA* AND *RES JUDICATA*.— The proscription against forum shopping is found in Section 5, Rule 7 of the Rules of Court, x x x The x x x rule covers the very essence of forum shopping itself, and the constitutive elements thereof *viz*., the cognate concepts of litis *pendentia* and *res judicata* x x x [T]he essence of forum shopping is the filing of multiple suits involving the same parties for the same cause of action, either simultaneously or successively, for the purpose of obtaining a favorable judgment. It exists where the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in another. On the other hand, for *litis pendentia* to be a ground for the dismissal of an action, the following requisites must concur: (a) identity of parties, or at least such parties who represent the same interests in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity with respect to the two preceding particulars in the two cases is such that any judgment that may be rendered in

the pending case, regardless of which party is successful, would amount to *res judicata* in the other case. *Res judicata*, in turn, has the following requisites: "(1) the former judgment must be final; (2) it must have been rendered by a court having jurisdiction over the subject matter and over the parties; (3) it must be a judgment on the merits; and (4) there must be, between the first and second actions, (a) identity of parties, (b) identity of subject matter, and (c) identity of cause of action."

4. ID.; ID.; ID.; ID.; ID.; CRIMINAL AND CIVIL CASES ARE ALTOGETHER DIFFERENT FROM ADMINISTRATIVE MATTERS, SUCH THAT THE DISPOSITION IN THE FIRST TWO WILL NOT INEVITABLY GOVERN THE THIRD AND VICE VERSA.— "The settled rule is that criminal and civil cases are altogether **different** from administrative matters, such that the disposition in the first two will not inevitably govern the third and *vice versa*." In the context of the case at bar, matters handled by the [Insurance Commission (IC)] are delineated as either regulatory or adjudicatory, both of which have distinct characteristics, as postulated in *Almendras Mining Corporation v. Office of the Insurance Commission:* x x x *Go v. Office of the Ombudsman* reiterated the x x x distinctions *vis-a-vis* the principles enunciating that a civil case before the trial court involving recovery of payment of the insured's insurance claim plus damages, can proceed simultaneously with an administrative case before the IC. x x x As the aforecited cases are analogous in many aspects to the present case, both in respect to their factual backdrop and in their jurisprudential teachings, the case law ruling in the *Almendras* and in the *Go* cases must apply with implacable force to the present case.

APPEARANCES OF COUNSEL

Poblador Bautista & Reyes for petitioners.
Carag Zaballero San Pablo Calica & Abiera for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

Assailed in this Petition for Review on *Certiorari*[4] are the December 21, 2012 Decision[5] of the Court of Appeals (CA) and its May 22, 2013 Resolution[6] in CA-G.R. SP No. 118894, both of which found no grave abuse of discretion in the twin Orders issued by the Regional Trial Court (RTC) of Manila, Branch 52, on September 29, 2010[7] and on January 25, 2011[8] in Civil Case No. 10-122738.

Factual Antecedents

On January 4, 2010, Emma Concepcion L. Lin (Lin) filed a Complaint[9] for Collection of Sum of Money with Damages against Malayan Insurance Co., Inc. (Malayan), Yvonne Yuchengco (Yvonne), Atty. Emmanuel Villanueva, Sonny Rubin, Engr. Francisco Mondelo, Michael Angelo Requijo (collectively, the petitioners), and the Rizal Commercial and Banking Corporation (RCBC). This was docketed as Civil Case No. 10-122738 of Branch 52 of the Manila RTC.

Lin alleged that she obtained various loans from RCBC secured by six clustered warehouses located at Plaridel, Bulacan; that the five warehouses were insured with Malayan against fire for ₱56 million while the remaining warehouse was insured for ₱2 million; that on February 24, 2008, the five warehouses

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[4] *Rollo,* pp. 33-72.

[5] CA *rollo,* pp. 467-484; penned by Associate Justice Nina G. Antonio-Valenzuela and concurred in by Associate Justices Jane Aurora C. Lantion and Michael P. Elbinias.

[6] *Id.* at 532-533; penned by Associate Justice Nina G. Antonio-Valenzuela and concurred in by Associate Justices Jane Aurora C. Lantion and Socorro B. Inting.

[7] Records (Vol. II), pp. 940-941; penned by Judge Antonio M. Rosales.

[8] *Id.* at 1064-1065.

[9] Records (Vol. I), pp. 1-15.

were gutted by fire; that on April 8, 2008 the Bureau of Fire Protection (BFP) issued a Fire Clearance Certication to her (April 8, 2008 FCC) after having determined that the cause of fire was accidental; that despite the foregoing, her demand for payment of her insurance claim was denied since the forensic investigators hired by Malayan claimed that the cause of the fire was arson and not accidental; that she sought assistance from the Insurance Commission (IC) which, after a meeting among the parties and a conduct of reinvestigation into the cause/s of the fire, recommended that Malayan pay Lin's insurance claim and/or accord great weight to the BFP's findings; that in defiance thereof, Malayan still denied or refused to pay her insurance claim; and that for these reasons, Malayan's corporate officers should also be held liable for acquiescing to Malayan's unjustified refusal to pay her insurance claim.

As against RCBC, Lin averred that notwithstanding the loss of the mortgaged properties, the bank refused to go after Malayan and instead insisted that she herself must pay the loans to RCBC, otherwise, foreclosure proceedings would ensue; and that to add insult to injury, RCBC has been compounding the interest on her loans, despite RCBC's failure or refusal to go after Malayan.

Lin thus prayed in Civil Case No. 10-122738 that judgment be rendered ordering petitioners to pay her insurance claim plus interest on the amounts due or owing her; that her loans and mortgage to RCBC be deemed extinguished as of February 2008; that RCBC be enjoined from foreclosing the mortgage on the properties put up as collaterals; and that petitioners be ordered to pay her ₱l,217,928.88 in the concept of filing fees, costs of suit, ₱l million as exemplary damages, and ₱500,000.00 as attorney's fees.

Some five months later, or on June 17, 2010, Lin filed before the IC an administrative case[10] against Malayan, represented this time by Yvonne. This was docketed as Administrative Case No. 431.

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[10] Records (Vol. II), pp. 820-829.

In this administrative case, Lin claimed that since it had been conclusively found that the cause of the fire was "accidental," the only issue left to be resolved is whether Malayan should be held liable for unfair claim settlement practice under Section 241 in relation to Section 247 of the Insurance Code due to its unjustified refusal to settle her claim; and that in consequence of the foregoing failings, Malayan's license to operate as a non-life insurance company should be revoked or suspended, until such time that it fully complies with the IC Resolution ordering it to accord more weight to the BFP's findings.

On August 17, 2010, Malayan filed a motion to dismiss Civil Case No. 10-122738 based on forum shopping. It argued that the administrative case was instituted to prompt or incite IC into ordering Malayan to pay her insurance claim; that the elements of forum shopping are present in these two cases because there exists identity of parties since Malayan's individual officers who were impleaded in the civil case are also involved in the administrative case; that the same interests are shared and represented in both the civil and administrative cases; that there is identity of causes of action and reliefs sought in the two cases since the administrative case is merely disguised as an unfair claim settlement charge, although its real purpose is to allow Lin to recover her insurance claim from Malayan; that Lin sought to obtain the same reliefs in the administrative case as in the civil case; that Lin did not comply with her sworn undertaking in the Certification on Non-Forum Shopping which she attached to the civil case, because she deliberately failed to notify the RTC about the pending administrative case within five days from the filing thereof.

This motion to dismiss drew a Comment/Opposition,[11] which Lin filed on August 31, 2010.

Ruling of the Regional Trial Court

In its Order of September 29, 2010,[12] the RTC denied the Motion to Dismiss, thus:

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[11] Records, Vol. II, pp. 890-896.

[12] *Id.* at 940-941; penned by Judge Antonio M. Rosales.

WHEREFORE, the *MOTION TO DISMISS* filed by [petitioners] is hereby DENIED for lack of merit.

Furnish the parties through their respective [counsels] with a copy each [of] the Order.

SO ORDERED.[13]

The RTC held that in the administrative case, Lin was seeking a relief clearly distinct from that sought in the civil case; that while in the administrative case Lin prayed for the suspension or revocation of Malayan's license to operate as a non-life insurance company, in the civil case Lin prayed for the collection of a sum of money with damages; that it is abundantly clear that any judgment that would be obtained in either case would not be *res judicata* to the other, hence, there is no forum shopping to speak of.

In its Order of January 25, 2011,[14] the RTC likewise denied, for lack of merit, petitioners' Motion for Reconsideration.

Ruling of the Court of Appeals

Petitioners thereafter sued out a Petition for *Certiorari* and Prohibition[15] before the CA. However, in a Decision[16] dated December 21, 2012, the CA upheld the RTC, and disposed as follows:

WHEREFORE absent grave abuse of discretion on the part of respondent Judge, the Petition for Certiorari and Prohibition (with Temporary Restraining Order and Preliminary Injunction) is DISMISSED.

SO ORDERED.[17]

The CA, as did the RTC, found that Lin did not commit forum shopping chiefly for the reason that the issues raised and the reliefs prayed for in the civil case were essentially

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[13] *Id.* at 941.

[14] *Id.* at 1064-1065.

[15] CA *rollo*, pp. 3-33.

[16] *Id.* at 467-484.

[17] *Id.* at 484.

different from those in the administrative case, hence Lin had no duty at all to inform the RTC about the institution or pendency of the administrative case.

The CA ruled that forum shopping exists where the elements of *litis pendentia* concurred, and where a final judgment in one case will amount to *res judicata* in the other. The CA held that of the three elements of forum shopping *viz.*, (l) identity of parties, or at least such parties as would represent the same interest in both actions, (2) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts, and (3) identity of the two proceedings such that any judgment rendered in one action will, regardless of which party is successful, amount to *res judicata* in the other action under consideration, only the rst element may be deemed present in the instant case. The CA held that there is here identity of parties in the civil and administrative cases because Lin is the complainant in both the civil and administrative cases, and these actions were filed against the same petitioners, the same RCBC and the same Malayan, represented by Yvonne, respectively. It held that there is however no identity of rights asserted and reliefs prayed for because in the civil case, it was Lin's assertion that petitioners had violated her rights to recover the full amount of her insurance claim, which is why she prayed/demanded that petitioners pay her insurance claim plus damages; whereas in the administrative case, Lin's assertion was that petitioners were guilty of unfair claim settlement practice, for which reason she prayed that Malayan's license to operate as an insurance company be revoked or suspended; that the judgment in the civil case, regardless of which party is successful, would not amount to *res judicata* in the administrative case in view of the different issues involved, the dissimilarity in the quantum of evidence required, and the distinct mode or procedure to be observed in each case.

Petitioners moved for reconsideration[18] of the CA's Decision, but this motion was denied by the CA in its Resolution of May 22, 2013.[19]

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[18] *Id.* at 496-505.

[19] *Id.* at 532-533.

Issues

Before this Court, petitioners instituted the present Petition,[20] which raises the following issues:

> The [CA] not only decided questions of substance contrary to law and the applicable decisions of this Honorable Court, it also sanctioned a flagrant departure from the accepted and usual course of judicial proceedings.
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> A.
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> The [CA] erred in not dismissing the Civil Case on the ground of willful and deliberate [forum shopping] despite the fact that the civil case and the administrative case both seek the payment of the same fire insurance claim.
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> B.
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> The [CA] erred in not dismissing the civil case for failure on the part of [Lin] to comply with her undertaking in her verification and certification of non-forum shopping appended to the civil complaint.[21]

Petitioners' Arguments

In praying for the reversal of the CA Decision, petitioners argue that regardless of nomenclature, it is Lin and no one else who filed the administrative case, and that she is not a mere complaining witness therein; that it is settled that only substantial identity of parties is required for *res judicata* to apply; that the sharing of the same interest is sufficient to constitute identity of parties; that Lin has not denied that the subject of both the administrative case and the civil case involved the same fire insurance claim; that there is here identity of causes of action, too, because the ultimate objective of both the civil case and the administrative case is to compel Malayan to pay Lin's fire insurance claim; that although the reliefs sought in the civil case and those in the administrative case are worded differently, Lin was actually asking for the payment of her insurance claim in both cases; that it is well-entrenched that a party cannot escape

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[20] *Rollo,* pp. 33-72.

[21] *Id*. at 43-44.

the operation of the principle in *res judicata* that a cause of action cannot be litigated twice just by varying the form of action or the method of presenting the case; that *Go v. Office of the Ombudsman*[22] is inapplicable because the issue in that case was whether there was unreasonable delay in withholding the insured's claims, which would warrant the revocation or suspension of the insurers' licenses, and not whether the insurers should pay the insured's insurance claim; that *Almendras Mining Corporation v. Office of the Insurance Commission*[23] does not apply to this case either, because the parties in said case agreed to submit the case for resolution on the sole issue of whether the revocation or suspension of the insurer's license was justified; and that petitioners will suffer irreparable injury as a consequence of having to defend themselves in a case which should have been dismissed on the ground of forum shopping.

Respondents Arguments

Lin counters that as stressed in *Go v. Office of the Ombudsman*,[24] an administrative case for unfair claim settlement practice may proceed simultaneously with, or independently of, the civil case for collection of the insurance proceeds filed by the same claimant since a judgment in one will not amount to *res judicata* to the other, and *vice versa*, due to the variance or differences in the issues, in the quantum of evidence, and in the procedure to be followed in prosecuting the cases; that in this case the CA cited the teaching in *Go v. Office of the Ombudsman* that there was no grave abuse of discretion in the RTC's dismissal of petitioners' motion to dismiss; that the CA correctly held that the RTC did not commit grave abuse of discretion in denying petitioners' motion to dismiss because the elements of forum shopping were absent; that there is here no identity of parties because while she (respondent) is the plaintiff in the civil case, she is only a complaining witness in the administrative case since it is the IC that is the real party

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[22] 460 Phil. 14 (2003).

[23] 243 Phil. 805 (1988).

[24] *Supra* note 22.

in interest in the administrative case; that the cause of action in the civil case consists of Malayan's failure or refusal to pay her insurance claim, whereas in the administrative case, it consists of Malayan's unfair claim settlement practice; that the issue in the civil case is whether Malayan is liable to pay Lin's insurance claim, while the issue in the administrative case is whether Malayan's license to operate should be revoked or suspended for engaging in unfair claim settlement practice; and that the relief sought in the civil case consists in the payment of a sum of money plus damages, while the relief in the administrative case consists of the revocation or suspension of Malayan's license to operate as an insurance company. According to Lin, although in the administrative case she prayed that the IC Resolution ordering Malayan to accord weight to the BFP's findings be declared final, this did not mean that she was therein seeking payment of her insurance claim, but rather that the IC can now impose the appropriate administrative sanctions upon Malayan; that if Malayan felt compelled to pay Lin's insurance claim for fear that its license to operate as an insurance firm might be suspended or revoked, then this is just a logical result of its failure or refusal to pay the insurance claim; that the judgment in the civil case will not amount to *res judicata* in the administrative case, and *vice versa*, pursuant to the case law ruling in *Go v. Office of the Ombudsman*[25] and in *Almendras v. Office of the Insurance Commission*,[26] both of which categorically allowed the insurance claimants therein to file both a civil and an administrative case against insurers; that the rule against forum shopping was designed to serve a noble purpose, *viz.*, to be an instrument of justice, hence, it can in no way be interpreted to subvert such a noble purpose.

Our Ruling

We deny this Petition. We hold that the case law rulings in the *Go* and *Almendras* cases[27] control and govern the case at bench.

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[25] *Supra* note 22.

[26] *Supra* note 23.

[27] *Supra* notes 22 and 23.

First off, it is elementary that "an order denying a motion to dismiss is merely interlocutory and, therefore, not appealable, x x x to x x x 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."[28]

Secondly, petitioners herein utterly failed to prove that the RTC, in issuing the assailed Orders, acted with grave abuse of discretion amounting to lack or excess of jurisdiction. "It is well-settled that an act of a court or tribunal may only be considered to have been done in grave abuse of discretion when the same was performed in a capricious or whimsical exercise of judgment which is equivalent to lack or excess of jurisdiction."[29] "[F]or grave abuse of discretion to exist, the abuse of discretion must be patent and gross so as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law."[30]

In the present case, petitioners basically insist that Lin committed willful and deliberate forum shopping which warrants the dismissal of her civil case because it is not much different from the administrative case in terms of the parties involved, the causes of action pleaded, and the reliefs prayed for. Petitioners also posit that another ground warranting the dismissal of the civil case was Lin's failure to notify the RTC about the pendency of the administrative case within five days from the filing thereof.

These arguments will not avail. The proscription against forum shopping is found in Section 5, Rule 7 of the Rules of Court, which provides:

SEC. 5. *Certification against forum shopping.* — The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith; (a) that he has not theretofore commenced any action or filed any claim involving

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[28] *P/Chief Inspector Billedo v. Judge Wagan,* 669 Phil. 221, 230 (2011).

[29] *Spouses Carlos v. Court of Appeals,* 562 Phil. 834, 839 (2007).

[30] *Unicapital, Inc. v. Consing, Jr.,* 717 Phil. 689, 705-706 (2013).

the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certication or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions. (n)

The above-stated rule covers the very essence of forum shopping itself, and the constitutive elements thereof *viz.*, the cognate concepts of litis *pendentia* and *res judicata* —

x x x [T]he essence of forum shopping is the filing of multiple suits involving the same parties for the same cause of action, either simultaneously or successively, for the purpose of obtaining a favorable judgment. It exists where the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in another. On the other hand, for *litis pendentia* to be a ground for the dismissal of an action, the following requisites must concur: (a) identity of parties, or at least such parties who represent the same interests in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity with respect to the two preceding particulars in the two cases is such that any judgment that may be rendered in the pending case, regardless of which party is successful, would amount to *res judicata* in the other case.[31]

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[31] *Bradford United Church of Christ, Inc. v. Ando,* G.R. No. 195669, May 30, 2016, citing *Spouses Melo v. Court of Appeals,* 376 Phil. 204, 211 (1999).

Res judicata, in turn, has the following requisites: "(1) the former judgment must be final; (2) it must have been rendered by a court having jurisdiction over the subject matter and over the parties; (3) it must be a judgment on the merits; and (4) there must be, between the first and second actions, (a) identity of parties, (b) identity of subject matter, and (c) identity of cause of action."[32]

"The settled rule is that criminal and civil cases are altogether **different** from administrative matters, such that the disposition in the first two will not inevitably govern the third and *vice versa.*"[33] In the context of the case at bar, matters handled by the IC are delineated as either regulatory or adjudicatory, both of which have distinct characteristics, as postulated in *Almendras Mining Corporation v. Office of the Insurance Commission:*[34]

> The provisions of the Insurance Code (Presidential Decree [P.D.] No. 1460), as amended, clearly indicate that the Office of the [IC] is an administrative agency vested with *regulatory* power as well as with *adjudicatory* authority. Among the several regulatory or non-quasi-judicial duties of the Insurance Commissioner under the Insurance Code is the authority to issue, or refuse issuance of, a Certificate of Authority to a person or entity desirous of engaging in insurance business in the Philippines, and to revoke or suspend such Certificate of Authority upon a finding of the existence of statutory grounds for such revocation or suspension. The grounds for revocation or suspension of an insurer's Certificate of Authority are set out in Section 241 and in Section 247 of the Insurance Code as amended. The general regulatory authority of the Insurance Commissioner is described in Section 414 of the Insurance Code, as amended, in the following terms:
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> 'Section 414. *The Insurance Commissioner shall have the duty to see that all laws relating to insurance, insurance companies and other insurance matters, mutual benefit*

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[32] *Id.,* citing *Custodio v. Corrado,* 479 Phil. 415, 424 (2004).

[33] *Suzuki v. Atty. Tiamson,* 508 Phil. 130, 142 (2005). Emphasis and italics supplied

[34] *Supra* note 23.

> *associations, and trusts for charitable uses are faithfully executed and to perform the duties imposed upon him by this Code,* and shall, notwithstanding any existing laws to the contrary, have sole and exclusive authority to regulate the issuance and sale of variable contracts as defined in section two hundred thirty-two and to provide for the licensing of persons selling such contracts, and to issue such reasonable rules and regulations governing the same.
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> *The Commissioner may issue such rulings, instructions, circulars, orders[,] and decisions as he may deem necessary to secure the enforcement of the provisions of this Code, subject to the approval of the Secretary of Finance [DOF Secretary]. Except as otherwise specified, decisions made by the Commissioner shall be appealable to the [DOF Secretary].'* (Italics supplied)

which Section also specifies the authority to which a decision of the Insurance Commissioner rendered in the exercise of its regulatory function may be appealed.

The adjudicatory authority of the Insurance Commissioner is generally described in Section 416 of the Insurance Code, as amended, which reads as follows:

> 'Sec. 416. *The Commissioner shall have the power to adjudicate claims and complaints involving any loss, damage or liability for which an insurer may be answerable under any kind of policy or contract of insurance,* or for which such insurer may be liable under a contract of suretyship, or for which a reinsurer may be sued under any contract or reinsurance it may have entered into, or for which a mutual benefit association may be held liable under the membership certificates it has issued to its members, *where the amount of any such loss, damage or liability, excluding interests, cost and* attorney's *fees, being claimed or sued upon any kind of insurance, bond, reinsurance contract, or membership certificate does not exceed in any single claim one hundred thousand pesos.*
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> *The authority to adjudicate granted to the Commissioner under this section shall be concurrent with that of the civil courts,* but the filing of a complaint with the Commissioner

> shall preclude the civil courts from taking cognizance of a suit involving the same subject matter.' (Italics supplied)

Continuing, Section 416 (as amended by Batas Pambansa (B.P.) Blg. 874) also specifies the authority to which appeal may be taken from a final order or decision of the Commissioner given in the exercise of his adjudicatory or quasi-judicial power:

> 'Any decision, order or ruling rendered by the Commissioner after a hearing shall have the force and effect of a judgment. *Any party may appeal from a final order, ruling or decision of the Commissioner by filing with the Commissioner within thirty days from receipt of copy of such order, ruling or decision a notice of appeal to the Intermediate Appellate Court (now the Court of Appeals*) in the manner provided for in the Rules of Court for appeals from the Regional Trial Court to the Intermediate Appellate Court (now the Court of Appeals)
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It may be noted that under Section 9 (3) of B.P. Blg. 129, appeals from a final decision of the Insurance Commissioner rendered in the exercise of his adjudicatory authority now fall within the *exclusive appellate jurisdiction* of the *Court of Appeals.*[35]

Go v. Office of the Ombudsman[36] reiterated the above-stated distinctions *vis-a-vis* the principles enunciating that a civil case before the trial court involving recovery of payment of the insured's insurance claim plus damages, can proceed simultaneously with an administrative case before the IC.[37]

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[35] *Id.* at 811-814; Citations omitted; italics in the original. Section 241 (now 247) is still worded similarly in Republic Act No. 10607 entitled "An Act Strengthening the Insurance Industry, further amending P.D. No. 612, otherwise known as 'The Insurance Code', as amended by P.D. Nos. 1141, 1280, 1455, 1460, 1814, and 1981, and B.P. Blg. 874, and for other purposes," which was approved on August 15, 2013 (RA 10607); Sections 247 (now 254), 414 (now 437), and 416 (now 439) have been modified by RA 10607 but are still substantially similar to the previous version of said provisions.

[36] *Supra* note 22.

[37] *Id.* at 30-36.

Expounding on the foregoing points, this Court said —

The findings of the trial court will not necessarily foreclose the administrative case before the [IC], or [*vice versa*]. True, the parties are the same, and both actions are predicated on the same set of facts, and will require identical evidence. But the issues to be resolved, the quantum of evidence, the procedure to be followed[,] and the reliefs to be adjudged by these two bodies are different.

Petitioner's causes of action in Civil Case No. Q-95-23135 are predicated on the insurers' refusal to pay her fire insurance claims despite notice, proofs of losses and other supporting documents. Thus, petitioner prays in her complaint that the insurers be ordered to pay the full-insured value of the losses, as embodied in their respective policies. Petitioner also sought payment of interests and damages in her favor caused by the alleged delay and refusal of the insurers to pay her claims. The principal issue then that must be resolved by the trial court is whether or not petitioner is entitled to the payment of her insurance claims and damages. The matter of whether or not there is unreasonable delay or denial of the claims is merely an incident to be resolved by the trial court, necessary to ascertain petitioner's right to claim damages, as prescribed by Section 244 of the Insurance Code.

On the other hand, the core, if not the sole bone of contention in Adm. Case No. RD-156, is the issue of whether or not there was unreasonable delay or denial of the claims of petitioner, and if in the affirmative, whether or not that would justify the suspension or revocation of the insurers' licenses.

Moreover, in Civil Case No. Q-95-23135, petitioner must establish her case by a *preponderance of evidence*, or simply put, such evidence that is of greater weight, or more convincing than that which is offered in opposition to it. In Adm. Case No. RD-156, the degree of proof required of petitioner to establish her claim is *substantial evidence*, which has been defined as that amount of relevant evidence that a reasonable mind might accept as adequate to justify the conclusion.

In addition, the procedure to be followed by the trial court is governed by the Rules of Court, while the [IC] has its own set of rules and it is not bound by the rigidities of technical rules of procedure. These two bodies conduct independent means of ascertaining the ultimate facts of their respective cases that will serve as basis for their respective decisions.

If, for example, the trial court finds that there was no unreasonable delay or denial of her claims, it does not automatically mean that there was in fact no such unreasonable delay or denial that would justify the revocation or suspension of the licenses of the concerned insurance companies. It only means that petitioner failed to prove by preponderance of evidence that she is entitled to damages. Such finding would not restrain the [IC], in the exercise of its regulatory power, from making its own finding of unreasonable delay or denial as long as it is supported by substantial evidence.

While the possibility that these two bodies will come up with conflicting resolutions on the same issue is not far-fetched, the finding or conclusion of one would not necessarily be binding on the other given the difference in the issues involved, the quantum of evidence required and the procedure to be followed.

Moreover, public interest and public policy demand the speedy and inexpensive disposition of administrative cases.

Hence, Adm. Case No. RD-156 may proceed alongside Civil Case No. Q-95-23135.[38]

As the aforecited cases are analogous in many aspects to the present case, both in respect to their factual backdrop and in their jurisprudential teachings, the case law ruling in the *Almendras* and in the *Go* cases must apply with implacable force to the present case. Consistency alone demands — because justice cannot be inconsistent — that the final authoritative mandate in the cited cases must produce an end result not much different from the present case.

All told, we find that the CA did not err in holding that the petitioners utterly failed to prove that the RTC exhibited grave abuse of discretion, amounting to lack or excess of jurisdiction, which would justify the issuance of the extraordinary writ of *certiorari*.[39]

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[38] *Id.* at 33-36; citations omitted; Section 244 (now 250) is still worded similarly in Republic Act No. 10607.

[39] See *General Milling Corporation v. Uytengsu III*, 526 Phil. 722, 727 (2006).

WHEREFORE, the Petition is **DENIED**. The December 21, 2012 Decision and the May 22, 2013 Resolution of the Court of Appeals in CA-GR. SP No. 118894 are hereby **AFFIRMED.**

Costs against petitioners.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 213209. January 16, 2017]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **GERTRUDES V. SUSI,** *respondent.*

SYLLABUS

1. CIVIL LAW; LAND TITLES; SPECIAL PROCEDURE FOR RECONSTITUTION OF LOST OR DESTROYED CERTIFICATES OF TITLE (RA 26); THE REPUBLIC IS NOT ESTOPPED FROM ASSAILING THE PROPRIETY OF THE ORDER OF RECONSTITUTION.— [I]t is well to emphasize that the State cannot be put in estoppel by the mistakes or errors of its officials or agents, absent any showing that it had dealt capriciously or dishonorably with its citizens. Thus, whether or not the OSG's motion to vacate was the proper remedy under the Rules of Court (Rules) does not bar the Republic from assailing the propriety of the reconstitution ordered by the RTC which it claimed to have acted without jurisdiction in hearing and, thereafter, resolving the case. Moreover, it bears to emphasize that even assuming that no opposition was filed by the Republic or a private party, the person seeking reconstitution is not relieved of his burden of

proving not only the loss or destruction of the title sought to be reconstituted, but that also at that time, she was the registered owner thereof. As such, the Republic is not estopped from assailing the decision granting the petition if, on the basis of the law and the evidence on record, such petition has no merit.

2. ID.; ID.; ID.; PROCEDURES AND REQUIREMENTS; NON-COMPLIANCE DEPRIVES THE TRIAL COURT OF JURISDICTION AND CONSEQUENTLY, ALL ITS PROCEEDINGS ARE RENDERED NULL AND VOID.— The judicial reconstitution of a Torrens title under RA 26 means the restoration in the original form and condition of a lost or destroyed Torrens certificate attesting the title of a person to registered land. The purpose of the reconstitution is to enable, **after observing the procedures prescribed by law**, the reproduction of the lost or destroyed Torrens certificate in the same form and in exactly the same way it was at the time of the loss or destruction. RA 26 provides two procedures and sets of requirements in the reconstitution of lost or destroyed certificates of title depending on the **source** of the petition for reconstitution. x x x Thus, before the court can properly act, assume, and acquire jurisdiction or authority over the petition and grant the reconstitution prayed for, petitioner must observe the procedures and requirements prescribed by the law. In numerous cases, the Court has held that the non-compliance with the prescribed procedure and requirements deprives the trial court of jurisdiction over the subject matter or nature of the case and, consequently, all its proceedings are rendered null and void. The rationale underlying this rule concerns the nature of the conferment in the trial court of the authority to undertake reconstitution proceedings. In all cases where the authority to proceed is conferred by a statute and the manner of obtaining jurisdiction is mandatory, the same must be strictly complied with, or the proceedings will be utterly void. As such, the court upon which the reconstitution petition is filed is duty-bound to examine thoroughly the same, and review the record and the legal provisions laying down the germane jurisdictional requirements.

3. ID.; ID.; ID.; ACTUAL AND PERSONAL NOTICE OF THE DATE OF HEARING OF THE RECONSTITUTION PETITION TO ACTUAL OWNERS AND POSSESSORS

OF THE LAND INVOLVED IS INDISPENSABLE TO VEST THE TRIAL COURT WITH JURISDICTION.— Jurisprudence is replete with cases underscoring the indispensability of **actual and personal notice of the date of hearing of the reconstitution petition to actual owners and possessors of the land involved in order to vest the trial court with jurisdiction** thereon. If no notice of the date of hearing of a reconstitution case is served on a possessor or one having interest in the property involved, he is deprived of his day in court and the order of reconstitution is null and void. Thus, in light of the LRA's report of the subsistence of other certificates of title over the subject land, it behooved the RTC to notify the registered land owners of the reconstitution proceedings, in observance of diligence and prudence; x x x In view of the failure to comply with the requirements of Sections 12 and 13 of RA 26, particularly, on the service of notices of hearing on the registered owners and/or actual possessors of the land subject of the reconstitution case, the RTC, did not acquire jurisdiction over the case, and all proceedings held thereon are null and void.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Amorin Law Offices for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is a petition for review on *certiorari*[1] assailing the Decision[2] dated February 13, 2014 and the Resolution[3] dated June 25, 2014 of the Court of Appeals (CA) in CA-G.R. SP

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[1] *Rollo,* pp. 11-37.

[2] *Id.* at 42-49. Penned by Associate Justice Francisco P. Acosta with Associate Justices Fernanda Lampas Peralta and Myra V. Garcia-Fernandez concurring.

[3] *Id.* at 84-85.

No. 127144, which upheld the Order[4] dated July 5, 2012 of the Regional Trial Court of Quezon City, Branch 77 (RTC): *(a)* denying petitioner Republic of the Philippines' (Republic) Motion to Vacate Judgment in LRC Case No. Q-20493(05); and *(b)* upholding the Decision[5] dated January 12, 2011, granting respondent Gertrudes V. Susi's (Susi) petition for reconstitution of Transfer Certificate of Title (TCT) No. 118999.

The Facts

On September 27, 2005 Susi filed before the RTC a verified Petition[6] for reconstitution of TCT No. 118999 purportedly registered in her name, Covering Lot 25[7] of plan Psu-32606 located in Barrio (now Barangay) Talanay, Quezon City (QC), with an area of 240,269 square meters (subject land). She claimed that the original copy of TCT No. 118999 was destroyed by the fire that gutted the Registry of Deeds of Quezon City (RD-QC) on June 11, 1988;[8] hence, the petition based on the owner's duplicate copy of TCT No. 118999,[9] docketed as LRC Case No. Q-20493(05).

Finding the petition to be sufficient in form and substance, the RTC issued an Order[10] dated October 13, 2005: *(a)* setting the case for initial hearing on February 2, 2006; *(b)* directing that the concerned government offices be furnished a copy thereof; and *(c)* directing that the said order be published in the Official Gazette once a week for two (2) consecutive weeks and posted at least thirty (30) days prior to the scheduled hearing at the main entrance of the Quezon City Hall, the bulletin boards

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[4] *Id*. at 169-170. Penned by Acting Presiding Judge Ma. Belen Ringpis-Liban.

[5] *Id*. at 125-128. Penned by Judge Vivencio S. Baclig.

[6] Dated September 12, 2005. *Id.* at 107-112.

[7] Mentioned as "Lot 35" in the said reconstitution petition; *id*. at 108.

[8] See *id*. at 110.

[9] *Id.* at 80-81.

[10] Records, Vol. 1, pp. 24-25.

of the RTC, as well as the Sheriffs Office of the RTC of QC, and the Barangay Hall of the barangay where the subject land is situated.[11] The notice was published in the December 19 and 26, 2005 issues of the Official Gazette (Vol. 101, Nos. 51 and 52),[12] and posted as required.[13]

On January 16, 2006, the Land Registration Authority (LRA) filed with the RTC a Manifestation[14] dated December 5, 2005 stating that respondent filed similar petitions for reconstitution covering the subject land before Branches 88 and 220 of the same RTC, for which it had previously issued Reports dated March 1, 1995[15] and December 12, 1995,[16] respectively.

On February 2, 2006, Susi presented proof of the jurisdictional requirements without any opposition.[17] The City Government of QC (QC Government) thereafter filed an Opposition[18] dated February 3, 2006 on the ground of *res judicata*.[19] However, the latter was subsequently declared to be without any *locus standi* to oppose the reconstitution petition.[20]

After Susi was allowed to formally offer her evidence,[21] the Office of the Solicitor General (OSG) entered its appearance in the case, and manifested that it had deputized the Office of

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[11] *Id.* at 25.

[12] See Certificate of Publication dated December 28, 2005 of the National Printing Office; *id*. at 34.

[13] See Certification dated October 24, 2005 issued by RTC's Sheriff IV, Angel L. Dorini; *id*. at 28.

[14] See records, Vol. l, p. 29 and *rollo*, p. 115.

[15] *Rollo*, pp. 272-273.

[16] *Id.* at 274.

[17] See Order dated February 2, 2006; records, Vol. 1, p. 38.

[18] See records, Vol. I, pp. 39-46 and *rollo*, pp. 226-232.

[19] See records, Vol. I, pp. 39-40 and *rollo*, pp. 226-227.

[20] See Order dated December 13, 2010; records, Vol. I, pp. 243-244.

[21] See Order dated May 14, 2008; *id*. at 143.

the City Prosecutor of QC to appear on its behalf, subject to its supervision and control.[22]

The RTC Ruling

In a Decision[23] dated January 12, 2011 (January 12, 2011 Decision), the RTC granted Susi's petition, and directed the RD-QC to reconstitute the lost/destroyed original copy of TCT No. 118999.[24]

The RTC ruled that the presentation of the owner's copy of TCT No. 118999[25] and the Certification[26] from the RD-QC that the original of TCT No. 118999 was burned during the fire that razed the QC Hall on June 11, 1988 were sufficient to warrant the reconstitution sought. It held that the subject petition was not barred by the dismissal by Branch 220 of the same RTC of a similar petition anchored on her failure to: *(a)* comply with the technical requirements of the law, specifically, her omission to allege matters required under Sections 11 and 12 of Republic Act No. (RA) 26;[27] and *(b)* convince the court that TCT No. 118999 sought to be reconstituted was valid and existing at the time it was destroyed, holding that both objections have been sufficiently overcome in the present case.[28]

Dissatisfied, the QC Government filed a motion for reconsideration,[29] while the Republic, through the OSG,

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[22] See Notice of Appearance dated May 6, 2008; *id*. at 147.

[23] *Rollo,* pp. 125-128.

[24] See *id*. at 128.

[25] *Id.* at 80-81.

[26] Dated March 31, 1997 issued by Register of Deeds Samuel C. Cleofe. *Id.* at 114.

[27] Entitled "AN ACT PROVIDING A SPECIAL PROCEDURE FOR THE RECONSTITUTION OF TORRENS CERTIFICATES OF TITLE LOST OR DESTROYED" (September 25, 1946).

[28] *Rollo,* pp. 127-128.

[29] Dated January 27, 2010. Records, Vol. 1, pp. 352-365.

filed its Notice of Appeal,[30] which were both denied in an Order[31] dated July 8, 2011. The QC Government's subsequent Notice of Appeal[32] was also denied in an Order[33] dated September 15, 2011, on the grounds that *(a)* it has no authority to appear or to bring or defend actions on behalf of the Republic; and *(b)* the appeal was belatedly filed, hence, not perfected. The RTC likewise declared the January 12, 2011 Decision as having attained finality.

On October 25, 2011, the Republic, through the OSG, filed a Motion to Vacate Judgment,[34] insisting that the January 12, 2011 Decision should be set aside and vacated on the ground of *res judicata*.[35] On March 8, 2012, Sunnyside Heights Homeowner's Association, Inc. moved[36] to join the OSG's motion, claiming to be registered owners and occupants of various portions of the subject land.

Meanwhile, on March 31, 2011, the LRA filed a Manifestation[37] *(a)* expressing its unwillingness to comply with the directive contained in the January 12, 2011 Decision; and *(b)* praying that the RTC set aside the same and dismiss Susi's petition on the ground that her owner's duplicate of TCT No. 118999 is of doubtful authenticity.[38] Consequently, the LRA maintained that there was a need to comply with the mandatory and jurisdictional requirements under Sections 3 (f), 12, and 13 of

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[30] Dated January 28, 2011. *Rollo,* pp. 129-130.

[31] *Id.* at 140-141. Issued by Acting Presiding Judge Ma. Belen Ringpis-Liban.

[32] Dated August 15, 2011. Records, Vol. 2, pp. 436-437.

[33] *Rollo,* pp. 142-143.

[34] Dated October 21, 2011. *Id.* at 144-152.

[35] See *id.* at 148-149.

[36] See Motion to Join the OSG in its Motion to Vacate Judgment (dated October 21, 2011) dated March 5, 2012; records, Vol. 2, pp. 519-525.

[37] Dated March 24, 2011. See records, Vol. 2, pp. 410-418 and *rollo,* pp. 131-139.

[38] See *rollo,* p. 138.

RA 26, without which the RTC did not have jurisdiction over the subject petition.[39]

In an Order[40] dated July 5, 2012 (July 5, 2012 Order), the RTC denied the Motion to Vacate Judgment, considering that the January 12, 2011 Decision had become final and executory after the Republic's appeal had been denied due course. Thereafter, the corresponding Writ of Execution[41] was issued on July 20, 2012.

Unperturbed, the Republic filed a Petition for *certiorari* with prayer for Temporary Restraining Order and Writ of Preliminary Injunction[42] before the CA, docketed as CA-G.R. SP No. 127144.

The CA Ruling

In a Decision[43] dated February 13, 2014, the CA found no reversible error, much less, grave abuse of discretion on the part of the RTC in granting the petition for reconstitution, considering that Susi was able to sufficiently establish that the certificate of title sought to be reconstituted was valid and existing under her name at the time it was destroyed.[44]

The CA found the principle of *res judicata* to be inapplicable to this case since the dismissal of the prior similar petition was based on Susi's failure to comply with the technical requirements of the law. Hence, the latter was not precluded from filing another petition to prove the necessary allegations for the reconstitution of the subject title, which the RTC correctly found to have been fully established.[45]

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[39] See *id*. at 133-137.

[40] *Id.* at 169-170.

[41] Records, Vol. 2, pp. 693-695. Issued by Branch Clerk of Court Virgilio R. Follosco.

[42] Dated October 22, 2012. *Rollo,* pp. 171-198.

[43] *Id.* at 42-49.

[44] *Id*. at 47.

[45] See *id*. at 46.

The Republic filed a motion for reconsideration,[46] attaching therewith a copy of a Resolution [47] issued by the LRA *en consulta,* stating, among others, that: *(a)* the subject land is also covered by subsisting titles and occupied by a number of persons;[48] and *(b)* Susi has two (2) uncertified reproduced owner's duplicate copies of TCT No. 118999, but bearing different serial numbers[49] — *i.e.,* a copy bearing serial number 1775634[50] which was earlier presented before Branch 220, and another one with serial number 1121955[51] adduced in evidence *a quo.*

In a Resolution[52] dated June 25, 2014, the CA denied the said motion; hence, this petition.

The Issue Before the Court

The essential issue for the Court's resolution is whether or not the CA erred in finding that the RTC committed no grave abuse of discretion in: *(a)* issuing the Order dated July 5, 2012 denying the Republic's Motion to Vacate Judgment in LRC Case No. Q-20493(05); and *(b)* upholding the January 12, 2011 Decision granting Susi's petition for reconstitution.

The Court's Ruling

The petition is impressed with merit.

A. The Republic is not estopped from assailing the propriety of the order of reconstitution.

At the outset, it is well to emphasize that the State cannot be put in estoppel by the mistakes or errors of its officials or agents,

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[46] Dated February 28, 2014. *Id.* at 50-67.

[47] Signed by Administrator Eulalio C. Diaz III on December 20, 2013; *id*. at 68-75.

[48] *Id.* at 74.

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

[50] *Id.* at 81.

[51] *Id.* at 80.

[52] *Id.* at 84-85.

absent any showing that it had dealt capriciously or dishonorably with its citizens.[53] Thus, whether or not the OSG's motion to vacate was the proper remedy under the Rules of Court (Rules) does not bar the Republic from assailing the propriety of the reconstitution ordered by the RTC which it claimed to have acted without jurisdiction in hearing and, thereafter, resolving the case. Moreover, it bears to emphasize that even assuming that no opposition was filed by the Republic or a private party, the person seeking reconstitution is not relieved of his burden of proving not only the loss or destruction of the title sought to be reconstituted, but that also at that time, she was the registered owner thereof. As such, the Republic is not estopped from assailing the decision granting the petition if, on the basis of the law and the evidence on record, such petition has no merit.[54]

B. Procedures and requirements for reconstitution of lost or destroyed certificates of title; effect of non-compliance.

The judicial reconstitution of a Torrens title under RA 26 means the restoration in the original form and condition of a lost or destroyed Torrens certificate attesting the title of a person to registered land. The purpose of the reconstitution is to enable, **after observing the procedures prescribed by law,** the reproduction of the lost or destroyed Torrens certificate in the same form and in exactly the same way it was at the time of the loss or destruction.[55]

RA 26 provides two procedures and sets of requirements in the reconstitution of lost or destroyed certificates of title depending on the **source** of the petition for reconstitution.[56] Section 10 in relation to Section 9 provides the procedure and requirements for sources falling under Sections 2 (a), 2 (b), 3 (a),

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[53] *Republic of the Phils. v. Verzosa*, 573 Phil. 503, 508 (2008).

[54] *Republic of the Phils. v. Tuastumban,* 604 Phil. 491, 509 (2009).

[55] See *Republic of the Phils. v. Mancao,* G.R. No. 174185, July 22, 2015, 763 SCRA 475, 480; emphasis supplied.

[56] *Republic of the Phils. v. Domingo,* 697 Phil. 265, 271 (2012); emphasis supplied.

3 (b), and 4 (a). On the other hand, Sections 12 and 13 lay down the procedure and requirements for sources falling under Sections 2 (c), 2 (d), 2 (e), 2 (f), 3 (c), 3 (d), 3 (e), and 3 (f).[57] Thus, before the court can properly act, assume, and acquire jurisdiction or authority over the petition and grant the reconstitution prayed for, petitioner must observe the above procedures and requirements prescribed by the law.[58]

In numerous cases, the Court has held that the non-compliance with the prescribed procedure and requirements deprives the trial court of jurisdiction over the subject matter or nature of the case and, consequently, all its proceedings are rendered null and void. The rationale underlying this rule concerns the nature of the conferment in the trial court of the authority to undertake reconstitution proceedings. In all cases where the authority to proceed is conferred by a statute and the manner of obtaining jurisdiction is mandatory, the same must be strictly complied with, or the proceedings will be utterly void.[59] As such, the court upon which the reconstitution petition is filed is duty-bound to examine thoroughly the same, and review the record and the legal provisions laying down the germane jurisdictional requirements.[60]

C. The petition for reconstitution failed to comply with the applicable procedures and requirements for reconstitution.

The present reconstitution petition was anchored on a purported owner's duplicate copy of TCT No. 118999 (questioned certificate) which is a source for reconstitution of title under Section 3 (a)[61]

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[57] See *id.*

[58] See *Sta. Lucia Realty and Development, Inc. v. Cabrigas*, 411 Phil. 369, 388 (2001).

[59] See *id.* at 389. See also *Castillo v. Republic of the Phils.*, 667 Phil. 729, 745-746 (2011); and *Dordas v. CA*, 337 Phil. 59, 66-67 (1997).

[60] *Heirs of Navarro v. Go*, 577 Phil. 523, 532 (2008).

[61] Section. 3. Transfer certificates of title shall be reconstituted from such of the sources hereunder enumerated as may be available, in the following order:

(a) The owner's duplicate of the certificate of title[.]

of RA 26, prompting Branch 77 to follow the procedure outlined in Sections 9[62] and 10[63] of the said law.

However, records show that as early as January 16, 2006, the LRA, in a Manifestation[64] dated December 5, 2005, had already called the court's attention to its Report[65] dated March 1, 1995 in the previous reconstitution petition before Branch 88,

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[62] Section 9. A registered owner desiring to have his reconstituted certificate of title freed from the encumbrance mentioned in section seven of this Act, may file a petition to that end with the proper Court of First Instance, giving his reason or reasons therefor. A similar petition may, likewise, be filed by a mortgagee, lessees or other lien holder whose interest is annotated in the reconstituted certificate of title. Thereupon, the court shall cause a notice of the petition to be published, at the expense of the petitioner, twice in successive issues of the Official Gazette, and to be posted on the main entrance of the provincial building and of the municipal building of the municipality or city in which the land lies, at least thirty days prior to the date of hearing, and after hearing, shall determine the petition and render such judgment as justice and equity may require. The notice shall specify, among other things, the number of the certificate of title, the name of the registered owner, the names of the interested parties appearing in the reconstituted certificate of title, the location of the property, and the date on which all persons having an interest in the property must appear and file such claim as they may have. The petitioner shall, at the hearing, submit proof of the publication and posting of the notice: *Provided, however,* That after the expiration of two years from the date of the reconstitution of a certificate of title, if no petition has been filed within that period under the preceding section, the court shall, on motion *ex parte* by the registered owner or other person having registered interest in the reconstituted certificate of title, order the register of deeds to cancel, proper annotation, the encumbrance mentioned in section seven hereof.

[63] Section 10. Nothing hereinbefore provided shall prevent any registered owner or person in interest from filing the petition mentioned in section five of this Act directly with the proper Court of First Instance, based on sources enumerated in Sections 2(a), 2(b), 3(a), 3(b), and/or 4(a) of this Act: *Provided, however,* That the court shall cause a notice of the petition, before hearing and granting the same, to be published in the manner stated in section nine hereof: *And provided, further,* That certificates of title reconstituted pursuant to this section shall not be subject to the encumbrance referred to in section seven of this Act.

[64] See records, Vol. 1, p. 29; and *rollo,* p. 115.

[65] The said report was submitted in the earlier reconstitution petition filed by Susi before Branch 88 of the same RTC. See *rollo*, pp. 72-273.

expressing serious doubts on the authenticity of Susi's duplicate title, and informing it of the existence of other titles over the subject land.[66]

It is well to point out that **trial courts hearing reconstitution petitions under RA 26 are duty-bound to take into account the LRA's report.**[67] Notably, both the RTC and the CA overlooked the fact that while the petition for reconstitution before Branch 77 was filed on the basis of Susi's purported owner's duplicate copy of TCT No. 118999 bearing **Serial No. 1121955,** Susi's prior reconstitution petitions, as stated in the LRA's Report, were anchored on an owner's duplicate certificate bearing a different serial number, *i.e.,* **Serial No. 1775634**. Indeed, a perusal of the said certificates[68] of title, which were attached to the Republic's motion for reconsideration of the CA's Decision dated February 13, 2014, reveals that save for the serial number, all the entries therein are the same. The Court notes that Susi did not refute the existence of the said certicates bearing different serial numbers in her comment[69] to the said motion.

In cases where the LRA challenges the authenticity of the applicant's purported owner's duplicate certificate of title, the reconstitution petition should be treated as falling

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[66] The said report stated, *inter alia,* that: *(a)* the owner's duplicate of TCT No. 118999 bearing **Serial No. 1775634** is of doubtful authenticity as it could not have been issued by the RD-QC on June 16, 1967 because the judicial form bearing the said serial number was issued by the LRA to the RD-San Carlos, Negros Occidental only on October 13, 1970; and *(b)* the subject land, *i.e.,* "Lot 25, Psu-32606, when plotted in MIS 2754 appears to have been originally **subdivided** into parcels A to L where TCT Nos. 40476 and 49480 were among the titles issued. It also appears that sub-lots 25-A to 25-L were subsequently subjected to several subdivisions and/or consolidations, one of which is Pcs-13-000571, as surveyed for Filinvest Land Inc. (now Filinvest Dev. Corp.) being a consolidation and subdivision of the parcels covered by TCT Nos. 304657, 304785, 305195, 305203, 385220, and 306097 covering a total area of 187,523 square meters." (See *id.* at 272.)

[67] See *Republic of the Phils. v. Sps. Sanchez,* 527 Phil. 571, 592 (2006).

[68] *Rollo,* pp. 80-81 and records, Vol. 2, pp. 894-895.

[69] See Comments on the Petitioner's Motion for Reconsideration (Dated February 28, 2014) dated April 1, 2014; records, Vol. 2, pp. 898-901.

under Section 3 (f)[70] of RA 26, and the trial court should require compliance with the requisites under Sections 12[71] and 13[72] of RA 26.[73]

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[70] Section 3. Transfer certificates of title shall be reconstituted from such of the sources hereunder enumerated as may be available, in the following order:

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(f) Any other document which, in the judgment of the court, is sufficient and proper basis for reconstituting the lost or destroyed certificate of title.

[71] Section 12. Petitions for reconstitution from sources enumerated in Sections 2(c), 2(d), 2(e), 2(f), 3(c), 3(d), 3(e), and/or 3(f) of this Act, shall be filed with the proper Court of First Instance, by the registered owner, his assigns, or any person having an interest in the property. The petition shall state or contain, among other things, the following: (a) that the owners duplicate of the certificate of title had been lost or destroyed; (b) that no co-owner's, mortgagee's or lessee's duplicate had been issued, or, if any had been issued, the same had been lost or destroyed; (c) the location, area, and boundaries of the property; **(d) the nature and description of the buildings or improvements, if any, which do not belong to the owner of the land, and the names and addresses of the owners of such buildings or improvements; (e) the names and addresses of the occupants or persons in possession of the property, of the owners of the adjoining properties and of all persons who may have interest in the property;** (f) a detailed description of the encumbrances, if any, affecting the property; and **(g) a statement that no deeds or other instruments affecting the property have been presented for registration, or, if there be any, the registration thereof has not been accomplished, as yet**. All the documents, or authenticated copies thereof, to be introduced in evidence in support of the petition for reconstitution shall be attached thereto and filed with the same: Provided, That in case the reconstitution is to be made exclusively from sources enumerated in Section 2(f) or 3(f) of this Act, the petition shall be further accompanied with a plan and technical description of the property duly approved by the Chief of the General Land Registration, or with a certified copy of the description taken from a prior certificate of title covering the same property. (Emphases supplied)

[72] Section 13. The court shall cause a notice of the petition, filed under the preceding section, to be published, at the expense of the petitioner, twice in successive issues of the Official Gazette, and to be posted on the main entrance of the provincial building and of the municipal building of the municipality or city in which the land is situated, at least thirty days prior to the date of hearing. The court shall likewise cause a copy of the notice to be sent, by registered mail or otherwise, at the expense of the petitioner, to every person named therein whose address is known, at least thirty days prior to the date of hearing. Said notice shall state, among other things, the number of the lost or destroyed certificate of title, if known, the name of the registered owner, the names of the occupants or persons in possession of the property, the owners of the adjoining properties and all other interested parties, the location, area, and boundaries of the property, and the date on which all persons having any interest therein must appear and file their claim or objections to the petition. The petitioner shall, at the hearing, submit proof of the publication, posting and service of the notice as directed by the court.

[73] See *Republic of the Phils. v. Sps. Sanchez, supra* note 67 at 591.

In particular, the reconstitution petition and the published and posted notice of hearing in compliance with the October 13, 2005 Order failed to show that notices were sent to the other occupants, possessors, and persons who may have an interest in, or who have buildings or improvements on the land covered by the certificate of title sought to be reconstituted, as well as the owners of adjoining properties.[74]

Jurisprudence is replete with cases underscoring the indispensability of **actual and personal notice of the date of hearing of the reconstitution petition to actual owners and possessors of the land involved in order to vest the trial court with jurisdiction** thereon.[75] If no notice of the date of hearing of a reconstitution case is served on a possessor or one having interest in the property involved, he is deprived of his day in court and the order of reconstitution is null and void.[76]

Thus, in light of the LRA's report of the subsistence of other certificates of title over the subject land, it behooved the RTC to notify the registered land owners of the reconstitution proceedings, in observance of diligence and prudence;[77] however, it failed to act accordingly. But more than this, courts have the inherent power to correct fatal infirmities in its proceedings in order to maintain the integrity thereof.[78]

In view of the failure to comply with the requirements of Sections 12 and 13 of RA 26, particularly, on the service of

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[74] The Court notes that while the RTC issued an Order dated October 7, 2005 requiring Susi to: *(a)* amend her petition to state the necessary information; and *(b)* submit a technical description of the subject land pending the issuance of the Notice of Hearing (records, Vol. 1, p. 19), it subsequently set aside the said order upon a finding that the petition falls under Sections 9 and 10 of RA 26 (see *id.* at 23) in view of Susi's representation that the petition is anchored on her owner's duplicate original of TCT No. 118999.

[75] See *Opriasa v. The City Government of Quezon City*, 540 Phil. 256, 265-266 (2006); *Republic of the Phils. v. CA*, 368 Phil. 412, 424 (1999); and *Republic of the Phils. v. Marasigan*, 275 Phil. 243, 253 (1991).

[76] See *Manila Railroad Co. v. Moya*, 121 Phil. 1122, 1128 (1965).

[77] See *Republic of the Phils. v. De Asis, Jr.*, 715 Phil. 245, 258 (2013).

[78] See *Republic of the Phils. v. Sps. Sanchez, supra* note 67 at 593.

notices of hearing on the registered owners and/or actual possessors of the land subject of the reconstitution case, the RTC, did not acquire jurisdiction over the case, and all proceedings held thereon are null and void. That being said, the Court finds it unnecessary to delve on the other matters raised in the petition.

WHEREFORE, the petition is **GRANTED**. The Decision dated February 13, 2014 and the Resolution dated June 25, 2014 of the Court of Appeals in CA-G.R. SP No. 127144, upholding the Order dated July 5, 2012 of the Regional Trial Court of Quezon City, Branch 77 in LRC Case No. Q-20493(05) which denied the Motion to Vacate Judgment filed by petitioner Republic of the Philippines, and sustained the grant of the petition for reconstitution filed by respondent Gertrudes V. Susi, are hereby **SET ASIDE**. A new judgment is entered **DISMISSING** the petition for reconstitution for lack of jurisdiction.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 213224. January 16, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROQUE DAYADAY *y* DAGOOC,**[1] *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURT, RESPECTED.

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[1] Also spelled as "Dago-oc" in some parts of the records.

— Time and again, the Court has held that when the issues involve matters of credibility of witnesses, the findings of the trial court, its calibration of the testimonies, and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings, are accorded high respect, if not conclusive effect. This is so because the trial court has the unique opportunity to observe the demeanor of witnesses and is in the best position to discern whether they are telling the truth. Hence, it is a settled rule that appellate courts will not overturn the factual findings of the trial court unless there is a showing that the latter overlooked facts or circumstances of weight and substance that would affect the result of the case. The foregoing rule finds an even more stringent application where the findings of the RTC are sustained by the CA.

2. ID.; ID.; ID.; NOT NEGATED BY THE TESTIMONY OF WITNESS WHO IS RELATED TO THE VICTIM.— The imputation of bias to Alex because of his relationship with the victim must necessarily fail. In *People v. Montemayor*, the Court ruled that relationship by itself does not give rise to any presumption of bias or ulterior motive, nor does it impair the credibility of witnesses or tarnish their testimonies. The relationship of a witness to the victim would even make his testimony more credible, as it would be unnatural for a relative who is interested in vindicating the crime to charge and prosecute another person other than the real culprit. Relatives of victims of crimes have a natural knack for remembering the faces of the attacker and they, more than anybody else, would be concerned with obtaining justice for the victim by having the felon brought to justice and meted the proper penalty. Where there is no showing of an improper motive on the part of the prosecution's witnesses for testifying against the appellant, their relationship to the victim does not render their testimony less credible. In this case, since there is no showing of any ill or improper motive on the part of Alex to testify against the accused, his relationship with the victim even made his testimony more credible and truthful.

3. ID.; ID.; ID.; NOT AFFECTED BY INCONSISTENCY BETWEEN THE WITNESS' AFFIDAVIT AND TESTIMONY ON IMMATERIAL ISSUE.— The Court also agrees with the CA that the inconsistency between Alex's affidavit and his testimony in open court as to whether there are other witnesses to the crime is immaterial to affect his credibility, because it

does not detract from the fact that Alex saw and identified Roque as the assailant of his father.

4. CRIMINAL LAW; MURDER; ELEMENTS.— Under Article 248 of the Revised Penal Code (RPC), murder is committed when: (1) a person was killed; (2) the accused killed him; (3) the killing was with the attendance of any of the qualifying circumstances enumerated in Article 248; and (4) the killing neither constitutes parricide nor infanticide.

5. ID.; ID.; QUALIFYING CIRCUMSTANCES; TREACHERY; PRESENT AS THE ATTACK WHICH CAME FROM BEHIND, WAS SUDDEN, DELIBERATE AND UNEXPECTED.— [T]he evidence unequivocally shows that the attack against Basilio, which came from behind, was sudden, deliberate and unexpected. The victim was completely unaware of any threat to his life as he was merely walking home with his son. The use of a firearm showed deliberate intent to kill Basilio and the location and number of gunshot wounds rendered him defenseless and incapable of retaliation. Hence, treachery was evident in the case at bar, sufficient to qualify the crime to Murder.

6. ID.; ID.; PENALTY, CIVIL INDEMNITY AND DAMAGES.— Under Article 248 of the RPC, the penalty for murder qualified by treachery is *reclusion perpetua* to death. Considering that, apart from treachery, the aggravating circumstances of evident premeditation and illegal possession of firearms, as alleged in the Information, were not duly proven, the RTC correctly held that the proper imposable penalty is *reclusion perpetua*. As to the award of damages, x x x in addition to the amount of ₱30,000.00 as reasonable actual expenses for the wake and burial and the costs of suit, the victim's heirs are entitled to ₱75,000.00 as civil indemnity; ₱75,000.00 as moral damages; and ₱75,000.00 as exemplary damages. All damages awarded shall earn interest at the rate of 6% *per annum* from date of finality of this judgment until fully paid.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CAGUIOA, *J.*:

On appeal is the May 26, 2014 Decision[2] of the Court of Appeals (CA), Special Twenty-Third Division in CA-G.R. CR-HC No. 00887-MIN, which affirmed the Decision[3] dated September 27, 2010 of the Regional Trial Court (RTC) of Surallah, South Cotabato, Branch 26, in Criminal Case No. 4005-N.

The Facts

In an Information[4] filed with the RTC, accused-appellant Roque Dayaday y Dagooc (Roque) was charged with the crime of Murder, the accusatory portion of which reads:

> "That on or about the 27th day of October 2005 at around 10:00 o'clock in the evening thereof, at Barangay Esperanza, Municipality of Norala, Province of South Cotabato, Philippines, within the jurisdiction of this Honorable Court, the above-named accused, while armed with a handgun and a knife, with intent to kill, attended by treachery and evident premeditation, did then and there, willfully, unlawfully and feloniously attack, assault and shoot for several times and stab one BASILIO GALLENERO, hitting and inflicting upon the latter several mortal gunshot wounds on the different parts of his body, and stab wound at the epigastric area of the victim's abdomen, which caused his death shortly thereafter."
>
> CONTRARY TO LAW, attended by aggravating circumstance of Illegal Possession of Firearms.[5]

Upon arraignment, Roque pleaded not guilty to the offense charged.

Thereafter, trial on the merits ensued. The prosecution presented Alex Gallenero (Alex), the son of the victim, and

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[2] *Rollo*, pp. 3-11. Penned by Associate Justice Edward B. Contreras and concurred in by Associate Justices Romulo V. Borja and Edgardo T. Lloren.

[3] CA *rollo*, pp. 33-43. Penned by Presiding Judge Roberto L. Ayco.

[4] Records, pp. 1-2.

[5] *Id.* at 1.

Dr. Lanelita Lanaria-Amido (Dr. Amido), the Municipal Health Officer of Norala, South Cotabato, as witnesses who testified to the following facts, to wit:

On the evening of October 27, 2005 at about 10 o'clock, Alex and his father, Basilio Gallenero (Basilio), were walking home along the road in Barrio 3, Norala, South Cotabato[6] after attending a wedding celebration at the house of Rodolfo Dayaday,[7] when suddenly, Roque shot the victim in the back four (4) times, successively. Alex easily recognized Roque as the assailant because the place was well lit and he was just about ten (10) meters away from Roque when the latter fired his gun.[8] For fear of his life, Alex ran away from the place of incident.[9] He reported the incident to his uncle Petring Pinuela and to the police officers of Norala.[10]

The postmortem report of Dr. Amido showed that the victim suffered four (4) gunshot wounds and one (1) stab wound[11] and died due to cardio-pulmonary arrest, probably secondary to multiple injuries caused by the gunshot and stab wounds.[12]

Roque, on the other hand, through the testimonies of Reynald Dayaday (Reynald) and Dennis Blancada (Dennis), denied the accusation and interposed the defense of alibi.

Reynald, accused-appellant's brother, testified that on October 27, 2005, the night before the wedding of his niece, he was at the house of his older brother, Teodolfo Dayaday, at Barangay Esperanza (Barrio 3), Norala, South Cotabato.[13] He was with Roque and seven (7) other people, who were tasked to prepare the

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[6] *Rollo*, p. 4.

[7] *Id.*

[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] *Id.* at 5.

[12] *Id.*

[13] *Id.*

food for the wedding celebration. They were all together in the kitchen from 5 o'clock in the evening to 3 o'clock in the morning.[14]

Dennis testified that he was at Barangay Esperanza, Norala, South Cotabato on October 27, 2005 because he was invited to cook in the house of Teodolfo Dayaday.[15] He arrived there at 12 o'clock noon but his duty started at 5 o'clock in the evening and ended at 3 o'clock in the morning the following day.[16] He recalled that during those times that he was cooking, Roque never left the kitchen.[17]

Ruling of the RTC

Finding the positive testimony of Alex credible as against Roque's defense of alibi, the RTC convicted Roque of the crime of murder and sentenced him accordingly. The dispositive portion of the Decision[18] dated September 27, 2010 reads as follows:

> WHEREFORE, premises all considered, the court finds the evidence of the prosecution sufficient to sustain it in finding the accused criminally responsible of the crime charged.
>
> Consequently, accused Roque Dayaday y Dagooc is hereby found guilty beyond reasonable doubt of the crime of Murder as he is charged in this case.
>
> He is hereby sentenced to suffer the penalty of imprisonment of reclusion perpetua.
>
> He is further ordered to pay the heirs of his deceased victim, Basilio Gallenero, the amount of ₱75,000.00 as indemnity for his death; the amount of ₱50,000.00 as moral damages; the amount of ₱30,000.00 as exemplary damages and the amount of ₱30,000.00 as reasonable actual expenses for his wake and burial and the costs of suit.
>
> **SO ORDERED.**[19]

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[14] *Id.*

[15] *Id.*

[16] *Id.*

[17] *Id.*

[18] *Supra* note 3.

[19] *Id.* at 42-43.

Aggrieved, Roque appealed to the CA by a Notice of Appeal dated October 28, 2010.[20] Both parties accordingly filed their respective Briefs dated April 26, 2011[21] and November 22, 2011.[22]

Ruling of the CA

The CA concurred with the RTC's finding on Alex's credibility and dismissed the alleged inconsistencies in his testimony.[23] Moreover, the CA found Roque's defense of alibi very flimsy. According to the CA, while the defense witnesses claimed that Roque was cooking at the time of the commission, it was not physically impossible for Roque to be at the scene of the crime because the place where he was allegedly cooking was in the same vicinity where the crime was committed.[24]

The CA further ruled that while the prosecution failed to prove the aggravating circumstance of evident premeditation, treachery was very patent in the instant case, which is sufficient to qualify the crime to murder. Records showed that the victim was shot several times in the back while he was walking, which means that he was defenseless at the time of the attack; and the fact that the stab wound was located on the victim's abdomen would not preclude treachery because the victim was already vulnerable due to the gunshot wounds.[25]

Thus, on May 26, 2014, the CA rendered the assailed Decision[26] affirming Roque's conviction, the decretal portion of which reads:

WHEREFORE, the assailed Decision dated September 27, 2010 of the Regional Trial Court, Branch 26, Surallah, South Cotabato

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[20] Records, p. 122.

[21] CA *rollo*, pp. 14-32.

[22] *Id.* at 53-66.

[23] See *rollo*, p. 8.

[24] *Id.* at 10.

[25] *Id.* at 9.

[26] *Supra* note 2.

finding accused-appellant Roque Dayaday *y* Dagooc guilty beyond reasonable doubt of the crime of Murder in Criminal Case No. 4005-N is **AFFIRMED**.

SO ORDERED.[27]

Hence, this appeal.[28]

In the Resolution dated January 28, 2015,[29] this Court required the parties to file their supplemental briefs; but both parties manifested[30] that they would no longer file the pleadings and opted to replead and adopt the arguments submitted before the CA.

Issue

Consequently, the only issue for the Court's consideration is whether the CA erred in affirming Roque's conviction for the crime of murder.

The Court's Ruling

In the instant appeal, Roque essentially questions the credibility of Alex and the veracity of his accusations. Roque insists that Alex is a biased witness considering his relationship with the victim. He further avers that Alex exhibited a propensity to lie when he stated in his affidavit that there were other witnesses who saw the commission of the crime, and later admitted in open court that he was the sole witness to the crime. Roque also claims that the testimony of Alex that his father had been shot four (4) times runs counter to the postmortem report of Dr. Amido, which indicates that there were seven (7) gunshot wounds.

The appeal fails.

Time and again, the Court has held that when the issues involve matters of credibility of witnesses, the findings of the trial court,

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[27] *Id.* at 10.

[28] CA *rollo*, pp. 79-80.

[29] *Rollo*, pp. 24-25.

[30] *Id.* at 26-27 and 33-35.

its calibration of the testimonies, and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings, are accorded high respect, if not conclusive effect. This is so because the trial court has the unique opportunity to observe the demeanor of witnesses and is in the best position to discern whether they are telling the truth.[31] Hence, it is a settled rule that appellate courts will not overturn the factual findings of the trial court unless there is a showing that the latter overlooked facts or circumstances of weight and substance that would affect the result of the case.[32] The foregoing rule finds an even more stringent application where the findings of the RTC are sustained by the CA.[33]

In the present case, both the RTC and CA found the testimony of Alex straightforward and worthy of belief. Alex identified Roque as the one who shot his father at the back and his positive declaration was never destroyed even after cross-examination in court.[34]

For his part, Roque failed to identify any significant fact or circumstance which would justify the reversal of the RTC's and CA's findings on Alex's credibility.

The imputation of bias to Alex because of his relationship with the victim must necessarily fail. In *People v. Montemayor*,[35] the Court ruled that relationship by itself does not give rise to any presumption of bias or ulterior motive, nor does it impair the credibility of witnesses or tarnish their testimonies.[36] The relationship of a witness to the victim would even make his testimony more credible, as it would be unnatural for a relative who is interested in vindicating the crime to charge and prosecute

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[31] *People v. Nelmida*, 694 Phil. 529, 556 (2012).

[32] *People v. Gahi*, 727 Phil. 642, 658 (2014).

[33] *Id.*

[34] CA *rollo*, pp. 40-41.

[35] 452 Phil. 283 (2003).

[36] *Id.* at 299.

another person other than the real culprit.[37] Relatives of victims of crimes have a natural knack for remembering the faces of the attacker and they, more than anybody else, would be concerned with obtaining justice for the victim by having the felon brought to justice and meted the proper penalty.[38] Where there is no showing of an improper motive on the part of the prosecution's witnesses for testifying against the appellant, their relationship to the victim does not render their testimony less credible.[39] In this case, since there is no showing of any ill or improper motive on the part of Alex to testify against the accused, his relationship with the victim even made his testimony more credible and truthful.

Furthermore, the alleged discrepancy between Alex's testimony and the postmortem report of Dr. Amido as to the number of gunshot wounds is more imagined than real. As correctly pointed out by the CA, the postmortem report showing that there are four (4) entry gunshot wounds and three (3) exit wounds, which means that there are three (3) perforating gunshots and one (1) penetrating gunshot, coincides with Alex's declaration that his father was shot four (4) times.[39-a]

The Court also agrees with the CA that the inconsistency between Alex's affidavit and his testimony in open court as to whether there are other witnesses to the crime is immaterial to affect his credibility, because it does not detract from the fact that Alex saw and identified Roque as the assailant of his father.[40] In *People v. Yanson*,[41] the Court held:

x x x [T]his Court had consistently ruled that the **alleged inconsistencies between the testimony of a witness in open court**

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[37] *Id.*

[38] *Id.*

[39] *Id.*

[39-a] CA *rollo*, p. 74.

[40] See *rollo*, p. 8.

[41] 674 Phil. 169 (2011).

and his sworn statement before the investigators are not fatal defects to justify a reversal of judgment. Such discrepancies do not necessarily discredit the witness since *ex parte* affidavits are almost always incomplete. A sworn statement or an affidavit does not purport to contain a complete compendium of the details of the event narrated by the affiant. Sworn statements taken *ex parte* are generally considered to be inferior to the testimony given in open court.

x x x x x x x x x

The discrepancies in [the witness]'s testimony do not damage the essential integrity of the prosecution's evidence in its material whole. Instead, **the discrepancies only erase suspicion that the testimony was rehearsed or concocted. These honest inconsistencies serve to strengthen rather than destroy [the witness]'s credibility**.[42]

Under Article 248[43] of the Revised Penal Code (RPC), murder is committed when: (1) a person was killed; (2) the accused killed him; (3) the killing was with the attendance of any of the qualifying circumstances enumerated in Article 248; and (4) the killing neither constitutes parricide nor infanticide.[44]

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[42] *Id.* at 180, citing *Mercado v. People*, 615 Phil. 434, 448 (2009), further citing *Decasa v. Court of Appeals*, 554 Phil. 160 (2007).

[43] ART. 248. *Murder*. – Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua* to death if committed with any of the following attendant circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.

2. In consideration of a price, reward or promise.

3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, or by means of motor vehicles, or with the use of any other means involving great waste and ruin.

4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic or other public calamity.

5. With evident premeditation.

6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

[44] *People v. De Castro*, G.R. No. 205316, June 29, 2015, 760 SCRA 566, 573.

All elements of the crime of murder have been established in this case beyond reasonable doubt.

Through the testimony of Alex, the eyewitness to the crime, it was established that Basilio was killed and it was Roque who had killed him. As to the presence of qualifying circumstances, the Court sustains the CA's finding that treachery attended the killing of Basilio. There is treachery when a victim is set upon by the accused without warning, as when the accused attacks the victim from behind, or when the attack is sudden and unexpected and without the slightest provocation on the part of the victim, or is, in any event, so sudden and unexpected that the victim is unable to defend himself, thus insuring the execution of the criminal act without risk to the assailant.[45]

Here, the evidence unequivocally shows that the attack against Basilio, which came from behind, was sudden, deliberate and unexpected. The victim was completely unaware of any threat to his life as he was merely walking home with his son. The use of a firearm showed deliberate intent to kill Basilio and the location and number of gunshot wounds rendered him defenseless and incapable of retaliation. Hence, treachery was evident in the case at bar, sufficient to qualify the crime to Murder.

Penalty, Civil Indemnity and Damages

Under Article 248 of the RPC, the penalty for murder qualified by treachery is *reclusion perpetua* to death. Considering that, apart from treachery, the aggravating circumstances of evident premeditation and illegal possession of firearms, as alleged in the Information, were not duly proven, the RTC correctly held that the proper imposable penalty is *reclusion perpetua*.

As to the award of damages, the Court deems it proper to modify the CA's award pursuant to the Court's recent ruling in *People v. Jugueta*.[46] Therefore, in addition to the amount of

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[45] *People v. Carpio*, 346 Phil. 703, 716-717 (1997).

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

₱30,000.00 as reasonable actual expenses for the wake and burial and the costs of suit, the victim's heirs are entitled to ₱75,000.00 as civil indemnity; ₱75,000.00 as moral damages; and ₱75,000.00 as exemplary damages. All damages awarded shall earn interest at the rate of 6% *per annum* from date of finality of this judgment until fully paid.

WHEREFORE, in view of the foregoing, the Appeal is **DISMISSED** for lack of merit. The Decision dated May 26, 2014 of the Court of Appeals in CA-G.R. CR-HC No. 00887-MIN, finding accused-appellant Roque Dayaday *y* Dagooc **GUILTY** beyond reasonable doubt of the crime of Murder is hereby **AFFIRMED** with **MODIFICATIONS** in that the award of civil indemnity, moral damages and exemplary damages are each increased to Seventy-Five Thousand Pesos (₱75,000.00) and all monetary awards shall earn interest at the legal rate of six percent (6%) *per annum* from the date of finality of this Decision until fully paid.

SO ORDERED.

Sereno, C. J. (Chairperson), Leonardo-de Castro, del Castillo, and *Perlas-Bernabe, JJ.,* concur.

FIRST DIVISION

[G.R. No. 184256. January 18, 2017]

MAERSK FILIPINAS CREWING INC., and MAERSK CO. IOM LTD., *petitioners, vs.* **JOSELITO R. RAMOS,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; RULES OF COURT; AUTHORITY OF ATTORNEY TO APPEAR; PRESUMPTION OF AUTHORITY

TO REPRESENT A CLIENT INCLUDES PRESUMPTION OF CLIENT'S KNOWLEDGE AND CONSENT TO BE REPRESENTED.— Section 21, Rule 138 of the Rules of Court provides a presumption on a lawyer's appearance on behalf of a client: SEC. 21. *Authority of attorney to appear*. – An attorney is **presumed to be properly authorized to represent any cause in which he appears, and no written power of attorney is required to authorize him to appear in court for his client**, x x x Aside from the presumption of authority to represent a client in all stages of litigation, an attorney's appearance is also presumed to be with the previous knowledge and consent of the litigant until the contrary is shown. This presumption is strong, as the "mere denial by a party that he has authorized an attorney to appear for him, in the absence of a compelling reason, is insufficient to overcome the presumption, especially when denial comes after the rendition of an adverse judgment."

2. ID.; ID.; COURTS HAVE PREROGATIVE TO RELAX PROCEDURAL RULES.— [P]etitioners argue that respondent did not perfect his appeal before the NLRC, considering his failure to file copies of the Notice of Appeal with Memorandum of Appeal and to pay the necessary fees to the NLRC on time. We disagree. The failure of respondent to file his appeal before the NLRC must be contextualized [considering the circumstances]. x x x In any case, we have always held that the "[c]ourts have the prerogative to relax procedural rules of even the most mandatory character, mindful of the duty to reconcile both the need to speedily put an end to litigation and the parties' right to due process."

3. ID.; EVIDENCE; FINDINGS OF FACT OF QUASI-JUDICIAL BODIES, WHEN AFFIRMED BY THE COURT OF APPEALS, ARE GENERALLY RESPECTED.— [T]his Court is not a trier of facts. It is not our function to weigh and try the evidence all over again. Findings of fact of quasi-judicial bodies, especially when affirmed by the CA, are generally accorded finality and respect. As long as these findings are supported by substantial evidence, they must be upheld.

4. LABOR AND SOCIAL LEGISLATION; EMPLOYMENT; DISABILITY REFERS TO THE LOSS OR IMPAIRMENT OF EARNING CAPACITY; PERMANENT PARTIAL DISABILITY OCCURS WHEN AN EMPLOYEE LOSES THE USE OF ANY PARTICULAR ANATOMICAL PART

OF HIS BODY WHICH DISABLES HIM TO CONTINUE WITH HIS FORMER WORK.— Disability does not refer to the injury or the pain that it has occasioned, but to the loss or impairment of earning capacity. There is disability when there is a diminution of earning power because of actual absence from work. This absence must be due to the injury or illness arising from, and in the course of, employment. Thus, the basis of compensation is reduction of earning power. Section 2 of Rule VII of the Amended Rules on Employees' Compensation provides: (c) A disability is partial and permanent if as a result of the injury or sickness the employee suffers a permanent partial loss of the use of any part of his body. Permanent partial disability occurs when an employee loses the use of any particular anatomical part of his body which disables him to continue with his former work. In this case, while petitioners' own company-designated physician, Dr. Dolor, certified that respondent was still fit to work, the former admitted in the same breath that respondent's left eye could no longer be improved by medical treatment.

5. ID.; POEA STANDARD EMPLOYMENT CONTRACT; DISABILITY BENEFITS; LIBERALLY CONSTRUED IN THE SEAMEN'S FAVOR.— As to the extent and amount of compensation, petitioners stress that Section 32 of the POEA Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean Going Vessels (Standard Employment Contract) only provides disability compensation benefits for at least 50% loss of vision in one eye. Since the schedule does not include the injury suffered by respondent, they assert that the award of disability benefits is unwarranted. The Court finds no merit in this argument. The POEA Standard Employment Contract was designed primarily for the protection and benefit of Filipino seamen in the pursuit of their employment on board ocean-going vessels. In resolving disputes regarding disability benefits, its provisions must be "construed and applied fairly, reasonably, and liberally in the seamen's favor, because only then can the provisions be given full effect." Besides, the schedule of disabilities under Section 32 is in no way exclusive. Section 20.B.4 of the same POEA Standard Employment Contract clearly provides that "[t]hose illnesses not listed in Section 32 of this Contract are disputably presumed as work related." This provision only means that the disability schedule also contemplates injuries not explicitly listed under it.

6. CIVIL LAW; ATTORNEY'S FEES; JUSTIFIED IN ACTIONS FOR INDEMNITY UNDER WORKMEN'S COMPENSATION AND EMPLOYER'S LIABILITY LAWS. — With respect to the award of attorney's fees, this Court affirms the findings of the CA *in toto*. Respondent is entitled to attorney's fees pursuant to Article 2208(2) of the Civil Code, which justifies the award of attorney's fees in actions for indemnity under workmen's compensation and employer liability laws.

APPEARANCES OF COUNSEL

Ortega Del Castillo Bacorro Odulio Calma & Carbonell for petitioners.

D E C I S I O N

SERENO, *C.J.*:

The Petition for Review[1] before us assails the Decision[2] and Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 94964, affirming with modification the Resolution[4] of the National Labor Relations Commission (NLRC). The CA affirmed the findings of the NLRC that petitioners Maersk Filipinas Crewing, Inc. (Maersk Inc.) and the Maersk Co. IOM, Ltd. (Maersk Ltd.) were liable to private respondent Joselito Ramos for disability benefits. The appellate court, however, deleted the awards for moral and exemplary damages.[5]

As culled from the records of the CA, the antecedent facts are as follows:

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

[2] *Id.* at 48-58. Dated 31 July 2007. Penned by Associate Justice Hakim S. Abdulwahid and concurred in by Associate Justices Rodrigo V. Cosico and Arturo G. Tayag.

[3] *Id.* at 60-63. Dated 8 August 2008.

[4] *Id.* at 155-168. Dated 31 January 2006. Penned by Commissioner Victoriano R. Calaycay with Presiding Commissioner Raul T. Aquino and Commissioner Angelita A. Gacutan concurring.

[5] *Id.* at 58.

The facts of the case from which the present petition arose show that on October 3, 2001, petitioner Maersk Ltd., through its local manning agent petitioner Maersk Inc., employed private respondent as able-seaman of M/V NKOSSA II for a period of four (4) months. Within the contract period and while on board the vessel, on November 14, 2001, private respondent's left eye was hit by a screw. He was repatriated to Manila on November 21, 2001 and was referred to Dr. Salvador Salceda, the company-designated physician, for [a] check-up.

Private respondent was examined by Dr. Anthony Martin S. Dolor at the Medical Center Manila on November 26, 2001 and was diagnosed with "corneal scar and cystic macula, left, post-traumatic." On November 29, 2001, he underwent a "repair of corneal perforation and removal of foreign body to anterior chamber, left eye." He was discharged on December 2, 2001 with prescribed home medications and had regular check-ups. He was referred to another ophthalmologist who opined that "no more improvement can be attained on the left eye but patient can return back to duty with the left eye disabled by 30%."

On May 22, 2002, he was examined by Dr. Angel C. Aliwalas, Jr. at the Ospital ng Muntinlupa (ONM), Alabang, Muntinlupa City, and was diagnosed with "corneal scar with post-traumatic cataract formation, left eye." On May 28, 2002, he underwent [an] eye examination and glaucoma test at the Philippine General Hospital (PGH), Manila.

Since private respondent's demand for disability benefit[s] was rejected by petitioners, he then filed with the NLRC a complaint for total permanent disability, illness allowance, moral and exemplary damages and attorney's fees. The parties filed with the NLRC their respective position papers, reply, and rejoinder.

Meanwhile, in his medical report dated July 31, 2002, Dr. Dolor stated that although private respondent's left eye cannot be improved by medical treatment, he can return to duty and is still fit to work. His normal right eye can compensate for the discrepancy with the use of correctional glasses. On August 30, 2002, petitioners paid private respondent's illness allowance equivalent to one hundred twenty (120) days salary.

On October 5, 2002, private respondent was examined by Dr. Roseny Mae Catipon-Singson of Casa Medica, Inc. (formerly MEDISERV Southmall, Inc.), Alabang, Muntinlupa City and was diagnosed to have ''traumatic cataract with corneal scaring, updrawn pupil of the anterior segment of maculapathy OS. His best corrected

vision is 20/400 with difficulty." Dr. Catipon-Singson opined that private respondent "cannot be employed for any work requiring good vision unless condition improves."

On November 19, 2002, private respondent visited again the ophthalmologist at the Medical Center Manila who recommended "cataract surgery with intra-ocular lens implantation," after evaluation of the retina shall have been done."

In his letter dated January 13, 2003 addressed to Jerome de los Angeles, General Manager of petitioner Maersk Inc., Dr. Dolor answered that the evaluation of the physician from ONM could not have progressed in such a short period of time, which is approximately one month after he issued the medical report dated April 13, 2002, and a review of the medical reports from PGH and the tonometry findings on the left and right eye showed that they were within normal range, hence, could not be labeled as glaucoma.[6]

On 15 May 2003, the labor arbiter (LA) rendered a Decision[7] dismissing the Complaint:

WHEREFORE, premises considered, the instant complaint is DISMISSED for being prematurely filed. The parties are enjoined to comply with the provisions of the POEA Standard Contract in relation to the AMOSUP-MAERSK Company CSA. In the meantime, respondents Maersk Filipinas Crewing, Inc., and The Maersk Co., Ltd., are directed to provide continued medical assistance to complainant Joselito Ramos until he is declared fit to work, or the degree of his disability has been assessed in accordance with the terms of the contract and the CBA.

SO ORDERED.[8]

The LA held that the Philippine Overseas Employment Administration (POEA)-approved contract and Collective Bargaining Agreement expressly provided for a situation in which the seafarer's appointed doctor disagrees with the company-designated physician. In this case, both parties may

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

[7] *Id.* at 124-131. Penned by Labor Arbiter Veneranda C. Guerrero.

[8] *Id.* at 130-131.

agree to the appointment of a third doctor, whose assessment would then be final on both parties.[9] According to the LA, both failed to avail themselves of this remedy.

On 28 July 2003, respondent filed a Manifestation[10] stating that on 21 July 2003, his counsel's messenger tried to file with the NLRC a Notice of Appeal with Memorandum of Appeal.[11] However, upon arriving at around four o' clock in the afternoon, the messenger found that the NLRC office was already closed due to a jeepney strike. He then decided to file and serve copies of the notice with memorandum by registered mail. It was only on the next day, 22 July 2003, that the filing of the rest of the copies and the payment of fees were completed.[12]

In reply to respondent's Manifestation, petitioners filed a Motion for Outright Dismissal on the ground that the appeal had been filed out of time.

In the meantime, on 30 July and 12 September 2003, respondent underwent cataract extraction on both eyes.[13] On 7 January 2004, he was fitted with correctional glasses and evaluated. Dr. Dolor found that the former's "right eye is 20/20, the left eye is 20/70, and when both eyes are being used, his best corrected vision is 20/20." On the basis of that report, respondent was pronounced fit to work.[14]

On 31 January 2006, the NLRC issued a Resolution[15] granting respondent's appeal and setting aside the LA's decision:

WHEREFORE, premises considered, Complainant's appeal is partly GRANTED. The Labor Arbiter's Assailed Decision in the above-

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[9] *Id.* at 129.

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

[11] *Id.* at 132-147.

[12] *Id.* at 148.

[13] *Id.* at 51.

[14] *Id.*

[15] *Id.* at 155-168.

entitled case is hereby VACATED and SET ASIDE. A new one is entered ordering Respondents to jointly and severally pay Complainant the following: 1) disability compensation benefit in the amount of US $6,270.00; 2) moral and exemplary damages in the form of interest at 12% of US $6,270.00 per annum, reckoned from April 13, 2002, up to the time of payment of said disability compensation benefit; and 3) attorney's fees equivalent to 10% of his total monetary award.

SO ORDERED.[16]

The NLRC found that it was not "[respondent's] fault that he was not able to perfect his appeal on July 21, 2003, the latter part of said day having been declared non-working by NLRC NCR, itself. It is only just and fair, therefore, that Complainant should be given until the next working day to perfect his appeal."[17]

As regards the need to appoint a third doctor, the NLRC found it unnecessary considering that "there is really no disagreement between respondents' company-designated physician and Complainant's physicians as to the percentage [30%] of visual impairment of his left eye."[18] Thus, respondent was awarded disability compensation benefit in the amount of USD6,270 for Grade 12 impediment, moral and exemplary damages, and attorney's fees.[19]

On 17 February 2006, petitioners filed a Motion for Reconsideration,[20] which the NLRC denied in its Resolution dated 31 March 2006.[21]

Upon intermediate appellate review, the CA rendered a Decision[22] on 31 July 2007, the dispositive portion of which reads:

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[16] *Id.* at 167-168.

[17] *Id.* at 163.

[18] *Id.* at 164.

[19] *Id.* at 166-168.

[20] *Id.* at 169-181.

[21] *Id.* at 185.

[22] *Id.* at 48-58.

WHEREFORE, the assailed resolutions dated January 31, 2006 and March 31, 2006 of public respondent NLRC, 2nd Division, in NLRC NCR CA No. 037183-03 (NLRC NCR Case No. OFW-M-02-06- 1591-00) are AFFIRMED with the MODIFICATION that the awards for moral and exemplary damages are DELETED.

SO ORDERED.[23]

The CA affirmed all the findings of the NLRC on both procedural and substantive issues, but deleted the award of moral and exemplary damages, because there was no "sufficient factual legal basis for the awards x x x."[24] Here, the appellate court held that respondent "presented no proof of his moral suffering, mental anguish, fright or serious anxiety and/or any fraud, malice or bad faith on the part of the petitioner."[25] Consequently, there being no moral damages, the award of exemplary damages did not lie.[26] However, because respondent was compelled to litigate to protect his interests, the CA sustained the award for attorney's fees.[27]

On 24 August 2007, petitioners filed a Motion for Partial Reconsideration,[28] arguing for the first time that respondent's appeal filed with the NLRC was not perfected within the reglementary period.[29] They alleged that they received a copy of the Manifestation of respondent denying that he had authorized the Sapalo Velez Bundang & Bulilan Law Offices (SVBB) to continue representing him after the issuance of the LA's Decision on 15 May 2003.[30] Hence, they argued respondent was not bound by the notice of appeal or by the decisions rendered by the NLRC.[31]

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[23] *Id.* at 58.

[24] *Id.* at 57.

[25] *Id.*

[26] *Id.*

[27] *Id.*

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

[29] *Id.* at 248.

[30] *Id.*

[31] *Id.* at 62.

On 8 August 2008, the CA issued a Resolution[32] denying the aforementioned motion.[33]

The CA held that respondent did not present any proof in support of his Manifestation that the SVBB had no authority to represent him before the NLRC or in the continuation of the case in court. The appellate court then ruled that the "presumption that SVBB is authorized to represent him before the NLRC and in the case at bar stands."[34]

Hence, this appeal.[35]

ISSUES

From the foregoing, the issues may be reduced to the following:

1. Whether counsel of respondent was authorized to represent the latter after the LA had rendered its Decision on 15 May 2003;
2. Whether respondent perfected his appeal to the NLRC; and
3. Whether respondent is partially disabled and therefore entitled to disability compensation.

THE COURT'S RULING

We shall deal with the issues *seriatim.*

The SVBB law firm is presumed to have authority to represent respondent.

Anent the first procedural issue, petitioners allege that although the authority of an attorney to appear for and on behalf of a party may be assumed, it can still be challenged by the adverse

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[32] *Id.* at 60-63.

[33] *Id.* at 63.

[34] *Id*.

[35] On 3 December 2008, the Court required respondent to file his comment within 10 days from receipt of notice. However, due to his failure to file a comment, his right to file it was considered to have been waived according to the Court's Resolution dated 18 March 2009.

party concerned.[36] In this case, petitioners argue that the presumption of the SVBB's authority to continue representing respondent was "destroyed upon his filing of the Manifestation" precisely denying that authority.[37] It then follows that the appeal filed by the law firm was unauthorized. As such, the appeal did not prevent the LA Decision dated 15 May 2003 from attaining finality.[38]

We disagree.

Section 21, Rule 138 of the Rules of Court[39] provides a presumption on a lawyer's appearance on behalf of a client:

> SEC. 21. *Authority of attorney to appear*. – An attorney **is presumed to be properly authorized to represent any cause in which he appears, and no written power of attorney is required to authorize him to appear in court for his client,** but the presiding judge may, on motion of either party and on reasonable grounds therefor being shown, require any attorney who assumes the right to appear in a case to produce or prove the authority under which he appears, and to disclose, whenever pertinent to any issue, the name of the person who employed him, and may thereupon make such order as justice requires. An attorney willfully appearing in court for a person without being employed, unless by leave of the court, may be punished for contempt as an officer of the court who has misbehaved in his official transactions. (Emphasis ours)

Aside from the presumption of authority to represent a client in all stages of litigation, an attorney's appearance is also presumed to be with the previous knowledge and consent of the litigant until the contrary is shown.[40]

This presumption is strong, as the "mere denial by a party that he has authorized an attorney to appear for him, in the

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[36] *Id.* at 25-29.

[37] *Id.* at 28.

[38] *Id.* at 29.

[39] Rules of Court, Rule 138, Sec. 21.

[40] Agpalo, *Legal and Judicial Ethics* (8th ed. 2009), p. 328, citing *Mercado v. Ubay*, 265 Phil. 763 (1990); *Azotes v. Blanco*, 78 Phil. 739 (1947).

absence of a compelling reason, is insufficient to overcome the presumption, especially when denial comes after the rendition of an adverse judgment."[41]

In his Manifestation, private respondent averred that he ceased communications with the SVBB after 15 May 2003; that he did not cause the re-filing of his case; and that he did not sign any document for the continuation of his case. However, he gave no cogent reason for this disavowal. As pointed out by the CA, he presented no evidence other than the denial in his Manifestation.

Moreover, respondent only sent his Manifestation disclaiming the SVBB's authority on 1 February 2007. It was submitted almost four years after the LA had dismissed his complaint for having been prematurely filed. By that time, through the SVBB's efforts, the NLRC had already rendered a Decision favorable to respondent.

It puzzles us why respondent would renounce the authority of his supposed counsel at this late stage. The attempt of petitioners to use this circumstance to their advantage — in order to avoid payment of liability — should not be given any weight by this Court.

Respondent perfected his appeal before the NLRC.

As to the second procedural issue, petitioners argue that respondent did not perfect his appeal before the NLRC, considering his failure to file copies of the Notice of Appeal with Memorandum of Appeal and to pay the necessary fees to the NLRC on time.

We again disagree.

The failure of respondent to file his appeal before the NLRC must be contextualized. We quote with favor its findings, as affirmed by the CA:

As regards the first issue, there is no question that July 21, 2003 was supposed to be the last day for the filing by Complainant of his

[41] Agpalo, *Legal and Judicial Ethics* (8th ed. 2009), pp. 328-329.

appeal form the Labor Arbiter's Decision. Incidentally, a working "day" at the NLRC NCR consists of eight (8) hours of work from 8:00 a.m. to 5:00 p.m. Complainant, therefore, had until 5:00 p.m. of July 21, 2003 to perfect his appeal. Notably, his counsel's messenger reached the NLRC NCR at 4:00 p.m. of that day for the sole purpose of perfecting Complainant's appeal. Unfortunately, however, the NLRC NCR closed its Office at 3:30 p.m., earlier than the normal closing time of 5:00 p.m., because of a jeepney strike. Clearly, it was not Complainant's fault that he was not able to perfect his appeal on July 21, 2003, the latter part of said day having been declared non-working by NLRC NCR, itself. It is only just and fair, therefore, that Complainant should be given until the next working day to perfect his appeal.[42]

In any case, we have always held that the "[c]ourts have the prerogative to relax procedural rules of even the most mandatory character, mindful of the duty to reconcile both the need to speedily put an end to litigation and the parties' right to due process."[43]

Respondent suffers from permanent partial disability and is entitled to disability compensation.

On the substantive issue, petitioners submit that the award of disability compensation is not warranted, because the injury suffered by respondent cannot be considered permanent. It is curable or can be corrected,[44] since his continued fitness to work was certified by the company-designated physician in two medical reports.[45]

On the other hand, respondent asserts that no less than the company-designated physician had established the extent of the former's visual impairment at 30%. Respondent posits that because of the injury to his left eye and loss of vision, he has

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[42] *Rollo,* p. 163.

[43] *Negros Slashers, Inc. v. Teng,* 682 Phil. 593 (2012), citing *Ong Lim Sing, Jr. v. FEB Leasing and Finance Corporation,* G.R. No. 168115, 8 June 2007, 524 SCRA 333, 343 / 551 Phil. 768.

[44] *Id.* at 54.

[45] *Id.* at 114-121.

suffered the impairment of his earning capacity and can no longer practice his profession as a seaman.[46]

We rule for respondent.

Preliminarily, it must be emphasized that this Court is not a trier of facts. It is not our function to weigh and try the evidence all over again. Findings of fact of quasi-judicial bodies, especially when affirmed by the CA, are generally accorded finality and respect.[47] As long as these findings are supported by substantial evidence, they must be upheld.[48]

Disability does not refer to the injury or the pain that it has occasioned, but to the loss or impairment of earning capacity. There is disability when there is a diminution of earning power because of actual absence from work. This absence must be due to the injury or illness arising from, and in the course of, employment. Thus, the basis of compensation is reduction of earning power.[49]

Section 2 of Rule VII of the Amended Rules on Employees' Compensation provides:

(c) A disability is partial and permanent if as a result of the injury or sickness the employee suffers a permanent partial loss of the use of any part of his body.

Permanent partial disability occurs when an employee loses the use of any particular anatomical part of his body which disables him to continue with his former work.[50]

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[46] *Id.* at 54.

[47] *Career Philippines v. Serna,* G.R. No. 172086, 3 December 2012, 686 SCRA 676 / 700 Phil. 1 (2012), citing *Cootauco v. MMS Phil. Maritime Services, Inc.,* G.R. No. 184722, 15 March 2010, 615 SCRA 529, 541 / 629 Phil. 506 (2010).

[48] *Stolt-Nielsen Transportation Group, Inc. v. Medequillo, Jr.,* G.R. No. 177498, 18 January 2012 / 679 Phil. 297 (2012).

[49] Azucena, *The Labor Code with Comments and Cases*, Vol. 1 (7th ed. 2010) Vol. 1, p. 554.

[50] *GSIS v. Court of Appeals*, 363 Phil. 585 (1999), citing *Vicente vs. Employees Compensation Commission*, G.R. No. 85024, 23 January 1991, 193 SCRA 190.

In this case, while petitioners' own company-designated physician, Dr. Dolor, certified that respondent was still fit to work, the former admitted in the same breath that respondent's left eye could no longer be improved by medical treatment. As early as 13 April 2002, Dr. Dolor had in fact diagnosed respondent's left eye as permanently disabled, to wit:

> Present ophthalmologic examination showed corneal scar and a cystic macula at the left eye. Vision on the right eye is 20/20 and JI while the left showed only 20/60 and J6. Our ophthalmologist opined that no more improvement can be attained on the left eye but patient can return back to duty with left eye disabled by 30%.[51]

Petitioners' argument that the injury was curable because respondent underwent cataract extraction in on both eyes in 2003, and Dr. Dolor issued a medical evaluation finding that respondent's best corrected vision for both eyes was 20/20 (with correctional glasses),[52] are thus inconsequential. The curability of the injury "does not preclude an award for disability because, in labor laws, disability need not render the seafarer absolutely helpless or feeble to be compensable; it is enough that it incapacitates him to perform his customary work."[53]

Indeed, the operation, which supposedly led to the correction of respondent's vision, took place in 2003. Respondent sustained his injury way back in 2001. **During the span of roughly two years, he was not able to reassume work as a seaman, resulting in the loss and impairment of his earning capacity. It is also interesting to note that despite petitioners' contentions that respondent had been diagnosed as fit to return to work, no reemployment offer was ever extended to him.**

As to the extent and amount of compensation, petitioners stress that Section 32[54] of the POEA Standard Terms and

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[51] *Rollo*, p. 55.

[52] *Id*. at 35.

[53] *Esguerra v. United Philippines Lines, Inc.*, 713 Phil. 487 (2013), citing *Seagull Maritime Corp. v. Dee*, 548 Phil. 660, 671 (2007).

[54] Previously Sec. 30, as cited in the NLRC Decision dated 31 January 2006.

Conditions Governing the Employment of Filipino Seafarers on Board Ocean Going Vessels (Standard Employment Contract) only provides disability compensation benefits for at least 50% loss of vision in one eye. Since the schedule does not include the injury suffered by respondent, they assert that the award of disability benefits is unwarranted.

SECTION 32. SCHEDULE OF DISABILITY OR IMPEDIMENT FOR INJURIES SUFFERED AND DISEASES INCLUDING OCCUPATIONAL DISEASES OR ILLNESS CONTRACTED

x x x x x x x x x

EYES

1. Blindness or total and permanent loss of vision of both eyes Gr.1
2. Total blindness of one (1) eye and fifty percent (50%) loss of vision of the other eye Gr.5
3. Loss of one eye or total blindness of one eye Gr.7
4. Fifty percent (50%) loss of vision of one eye Gr.10
5. Lagopthalmos, one eye Gr.12
6. Ectropion, one eye Gr.12
7. Ephiphora, one eye Gr.12
8. Ptosis, one eye Gr.12

x x x x x x x x x

SCHEDULE OF DISABILITY ALLOWANCES

Impediment Grade		Impediment	
1	$50,000.00	x	120.00%
2	”	x	88.81%
3	”	x	78.36%
4	”	x	68.66%
5	”	x	58.96%
6	”	x	50.00%
7	”	x	41.80%
8	”	x	33.59%
9	”	x	26.12%
10	”	x	20.15%
11	”	x	14.93%
12	**”**	**x**	**10.45%**
13	”	x	6.72%
14	”	x	3.74%

(Emphasis ours)

To be paid in Philippine currency equivalent at the exchange rate prevailing during the time of payment.

The Court finds no merit in this argument.

The POEA Standard Employment Contract was designed primarily for the protection and benefit of Filipino seamen in the pursuit of their employment on board ocean-going vessels. In resolving disputes regarding disability benefits, its provisions must be "construed and applied fairly, reasonably, and liberally in the seamen's favor, because only then can the provisions be given full effect."[55]

Besides, the schedule of disabilities under Section 32 is in no way exclusive. Section 20.B.4 of the same POEA Standard Employment Contract clearly provides that "[t]hose illnesses not listed in Section 32 of this Contract are disputably presumed as work related." This provision only means that the disability schedule also contemplates injuries not explicitly listed under it.

We therefore sustain the computational findings of the NLRC as affirmed by the CA, to wit:

> Relative to the amount of disability compensation, Section 20.1.4.4 of the applicable CBA between AMOSUP and Maersk Company (IOM) provides that the rate of compensation for 100% disability for Ratings is US$60,000.00, with any differences, including less than 10% disability, to be pro-rata. Section 20.1.5 of said CBA further provides that "x x x any seafarer assessed at less than 50% disability under the Contract but certified as permanently unfit for further sea service in any capacity by the company doctor, shall also be entitled to 100% compensation" (Pages 48-49, Records). **It is clear from the latter provision that for a seafarer to be entitled under said CBA to 100% compensation for less than 50% disability, it must be the company doctor who should certify that the seafarer is permanently unfit for further sea service in any capacity.**
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> **In the case at bar, Complainant had corneal scar, a cystic macula and 30% loss of vision on his left eye. Thus, applying Section 30**[56]

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[55] *Maersk Filipinas v. Mesina,* 710 Phil. 531 (2013), citing *Seagull Maritime Corp. v. Dee,* 548 Phil. 660, 671-672 (2007).

[56] Now Section 32, as per the 2010 amendment to the POEA Standard Employment Contract.

of the standard contract, We hold that Complainant's impediment grade is Grade 12. Under Section 30-A[57] **of the standard contract, a seafarer who suffered an impediment grade of Grade 12 is entitled to 10.45% of the maximum rate. Significantly, the company physician did not certify Complainant as permanently unfit for further sea service in any capacity. The company physician certified that "x x x patient can return back to duty with the left eye disabled by 30%" (Page 39, Records). Complainant, therefore, is not entitled to 100% disability compensation benefit, but merely 10.45% of US$60,000.00, which is computed as follows: US$60,000.00 x 10.45% = US$6,270.00. Respondents, therefore, are liable to Complainant for US$6,270.00 as compensation benefit for his permanent partial disability,** to be paid in Philippine Currency equivalent at the exchange rate prevailing during the time of payment.[58] (Emphases ours)

With respect to the award of attorney's fees, this Court affirms the findings of the CA *in toto.* Respondent is entitled to attorney's fees pursuant to Article 2208(2) of the Civil Code,[59] which justifies the award of attorney's fees in actions for indemnity under workmen's compensation and employer liability laws.

WHEREFORE, the Petition for Review on Certiorari is hereby **DENIED**. The assailed Decision[60] and Resolution[61] of the Court of Appeals in CA-G.R. SP No. 94964 are hereby **AFFIRMED.**

SO ORDERED.

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

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[57] *Id.*

[58] *Rollo,* pp. 165-166.

[59] Civil Code, Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

x x x x x x x x x

(8) In actions for indemnity under workmen's compensation and employer's liability laws;

x x x x x x x x x

[60] *Rollo,* pp. 48-58.

[61] *Id.* at 60-63.

SECOND DIVISION

[G.R. No. 186967. January 18, 2017]

DIVINA PALAO, *petitioner, vs.* **FLORENTINO III INTERNATIONAL, INC.,** *respondent.*

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; INTELLECTUAL PROPERTY OFFICE'S UNIFORM RULES ON APPEAL; NEED FOR CERTIFICATION OF NON-FORUM SHOPPING; LIBERALLY CONSTRUED.— Section 3 of the Intellectual Property Office's Uniform Rules on Appeal specifies the form through which appeals may be taken to the Director General: x x x Section 4(e) specifies the need for a certification of non-forum shopping. x x x These requirements notwithstanding, the Intellectual Property Office's own Regulations on Inter Partes Proceedings (which governs petitions for cancellations of a mark, patent, utility model, industrial design, opposition to registration of a mark and compulsory licensing, and which were in effect when respondent filed its appeal) specify that the Intellectual Property Office "shall not be bound by the strict technical rules of procedure and evidence." x x x This rule is in keeping with the general principle that administrative bodies are not strictly bound by technical rules of procedure: x x x In conformity with this liberality, Section 5(b) of the Intellectual Property Office's Uniform Rules on Appeal expressly enables appellants, who failed to comply with Section 4's formal requirements, to subsequently complete their compliance.

APPEARANCES OF COUNSEL

Padlan Salvador Coloma & Associates for petitioner.
Balgos & Perez for respondent.

D E C I S I O N

LEONEN, *J.*:

This resolves a Petition for Review on Certiorari[1] filed by petitioner Divina Palao (Palao) praying that the assailed January 8, 2009 Decision[2] and the March 2, 2009 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 105595 be reversed and set aside.

In its assailed Decision, the Court of Appeals reversed and set aside the September 22, 2008 Order[4] of Intellectual Property Office Director General Adrian S. Cristobal, Jr. and reinstated respondent Florentino III International, Inc.'s (Florentino) appeal from Decision No. 2007-31[5] dated March 5, 2007, of the Bureau of Legal Affairs of the Intellectual Property Office.

Decision No. 2007-31 denied Florentino's Petition for Cancellation of Letters Patent No. UM-7789, which the Intellectual Property Office had issued in favor of Palao.[6]

Letters Patent No. UM-7789 pertained to "A Ceramic Tile Installation on Non-Concrete Substrate Base Surfaces Adapted to Form Part of Furniture, Architectural Components and the Like."[7]

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[1] *Rollo*, pp. 3-19. The Petition was filed under Rule 45 of the Rules of Court.

[2] *Id.* at 24-42. The Decision was penned by Associate Justice Celia C. Librea-Leagogo and concurred in by Associate Justices Mariano C. Del Castillo (now Associate Justice of this Court) and Apolinario D. Bruselas, Jr. of the Twelfth Division, Court of Appeals, Manila.

[3] *Id.* at 21-22. The Resolution was penned by Associate Justice Celia C. Librea-Leagogo and concurred in by Associate Justices Mariano C. Del Castillo (now Associate Justice of this Court) and Apolinario D. Bruselas, Jr. of the Twelfth Division, Court of Appeals, Manila.

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

[5] *Id.* at 48-62. The Decision was penned by Director Estrellita Beltran-Abelardo.

[6] *Id.* at 62.

[7] *Id.* at 48.

In its Petition for Cancellation, Florentino claimed that the utility model covered by Letters Patent No. UM-7789 was not original, new, or patentable, as it had been publicly known or used in the Philippines and had even been the subject of several publications.[8] It added that it, as well as many others, had been using the utility model well before Palao's application for a patent.[9]

In its Decision No. 2007-31,[10] the Bureau of Legal Affairs of the Intellectual Property Office denied Florentino's Petition for Cancellation. It noted that the testimony and pictures, which Florentino offered in evidence, failed to establish that the utility model subject of Letters Patent No. UM- 7789 was publicly known or used before Palao's application for a patent.[11]

In its Resolution No. 2008-14[12] dated July 14, 2008, the Bureau of Legal Affairs of the Intellectual Property Office denied Florentino's Motion for Reconsideration.

On July 30, 2008, Florentino appealed to the Office of the Director General of the Intellectual Property Office.[13] This appeal's Verification and Certification of Non-Forum Shopping was signed by Atty. John Labsky P. Maximo (Atty. Maximo) of the firm Balgos and Perez.[14] However, Florentino failed to attach to its appeal a secretary's certificate or board resolution authorizing Balgos and Perez to sign the Verification and Certification of Non-Forum Shopping.[15] Thus, on August 14, 2008, the Office of the Director General issued the Order requiring Florentino to submit proof that Atty. Maximo or Balgos

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[8] *Id.* at 25.

[9] *Id.*

[10] *Id.* at 48-62.

[11] *Id.* at 58.

[12] *Id.* at 87-89. The Resolution was penned by Director Estrellita Beltran-Abelardo.

[13] *Id.* at 44.

[14] *Id.*

[15] *Id.*

and Perez was authorized to sign the Verification and Certification of Non-Forum Shopping.[16]

On August 19, 2008, Florentino filed a Compliance.[17] It submitted a copy of the Certificate executed on August 15, 2008 by Florentino's Corporate Secretary, Melanie Marie A. C. Zosa-Tan, supposedly showing its counsel's authority to sign.[18] This Certificate stated:

> [A]t a meeting of the Board of Directors of the said corporation on 14 August 2008, during which a majority of the Directors were present, the following resolution was unanimously adopted:
>
> 'RESOLVED, as it is hereby resolved, that BALGOS & PEREZ, or any of its associates, be, as they are hereby, authorized to sign for and on behalf of the corporation, the Verification and Certification on Non-Forum Shopping and/or all other documents relevant to the Appeal filed by the Corporation with the Office of the Director General of the Intellectual Property Office entitled "Philippine Chambers of Stonecraft Industries, Inc. and Florentino III International, Inc. vs. Divina Palao".'
>
> IN WITNESS WHEREOF, I have hereunto set my hand on these presents, this 15 August 2008 in Cebu City, Cebu.[19]

In his Order dated September 22, 2008, Intellectual Property Office Director General Adrian S. Cristobal, Jr. (Director General Cristobal) dismissed Florentino's appeal.[20] He noted that the Secretary's Certificate pertained to an August 14, 2008 Resolution issued by Florentino's Board of Directors, and reasoned that the same Certificate failed to establish the authority of Florentino's counsel to sign the Verification and Certification of Non-Forum Shopping as of the date of the filing of Florentino's appeal (i.e., on July 30, 2008).[21]

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[16] *Id.*

[17] *Id.*

[18] *Id.*

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

[20] *Id.* at 45.

[21] *Id.*

Florentino then filed before the Court of Appeals a Petition for Review under Rule 43 of the 1997 Rules of Civil Procedure. In its assailed January 8, 2009 Decision,[22] the Court of Appeals faulted Director General Cristobal for an overly strict application of procedural rules. Thus, it reversed Director General Cristobal's September 22, 2008 Order and reinstated Florentino's appeal.[23]

In its assailed March 2, 2009 Resolution,[24] the Court of Appeals denied Palao's Motion for Reconsideration.

Hence, this Petition was filed.

For resolution is the sole issue of whether the Court of Appeals erred in reversing the September 22, 2008 Order of Intellectual Property Office Director General Adrian S. Cristobal, Jr., and in reinstating respondent Florentino III International, Inc.'s appeal.

We deny the Petition and sustain the ruling of the Court of Appeals.

The need for a certification of non-forum shopping to be attached to respondent's appeal before the Office of the Director General of the Intellectual Property Office is established.

Section 3 of the Intellectual Property Office's Uniform Rules on Appeal[25] specifies the form through which appeals may be taken to the Director General:

> Section 3. Appeal Memorandum. – The appeal shall be perfected by filing an appeal memorandum in three (3) legible copies with proof of service to the Bureau Director and the adverse party, if any, and upon payment of the applicable fee, Reference Code 127 or 128, provided in the IPO Fee Structure.

Section 4(e) specifies the need for a certification of non-forum shopping. Section 4 reads in full:

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[22] *Id.* at 24-42.

[23] *Id.* at 40.

[24] *Id.* at 21-22.

[25] IPO Office O. No. 12 (2002).

Section 4. Contents of the Appeal Memorandum. – The appeal memorandum shall:

a) State the full name or names, capacity and address or addresses of the appellant or appellants;

b) Indicate the material dates showing that it was filed on time;

c) Set forth concisely a statement of the matters involved, the issues raised, the specification of errors of fact or law, or both, allegedly committed by the Bureau Director and the reasons or arguments relied upon for the allowance of the appeal;

d) Be accompanied by legible copies of the decision or final order of the Bureau Director and of the material portions of the record as would support the allegations of the appeal; and

e) *Contain a certification of non-forum-shopping*. (Emphasis supplied)

These requirements notwithstanding, the Intellectual Property Office's own Regulations on Inter Partes Proceedings (which governs petitions for cancellations of a mark, patent, utility model, industrial design, opposition to registration of a mark and compulsory licensing, and which were in effect when respondent filed its appeal) specify that the Intellectual Property Office "shall not be bound by the strict technical rules of procedure and evidence."[26]

Rule 2, Section 6 of these Regulations provides:

Section 6 Rules of Procedure to be Followed in the Conduct of Hearing of Inter Partes Cases

In the conduct of hearing of inter partes cases, the rules of procedure herein contained shall be primarily applied. The Rules of Court, unless inconsistent with these rules, may be applied in suppletory character, provided, however, that *the Director or Hearing Officer shall not be bound by the strict technical rules of procedure and evidence* therein contained but may adopt, in the absence of any applicable rule herein, such mode of proceedings which is consistent with the requirements of fair play and conducive to the just, speedy and

[26] REGULATIONS ON INTER PARTES PROCEEDINGS (1998), Rule 2, Sec. 6.

inexpensive disposition of cases, and which will give the Bureau the greatest possibility to focus on the technical grounds or issues before it. (Emphasis supplied)

This rule is in keeping with the general principle that administrative bodies are not strictly bound by technical rules of procedure:

[A]dministrative bodies are not bound by the technical niceties of law and procedure and the rules obtaining in courts of law. Administrative tribunals exercising quasi-judicial powers are unfettered by the rigidity of certain procedural requirements, subject to the observance of fundamental and essential requirements of due process in justiciable cases presented before them. In administrative proceedings, technical rules of procedure and evidence are not strictly applied and administrative due process cannot be fully equated with due process in its strict judicial sense.[27]

In conformity with this liberality, Section 5(b) of the Intellectual Property Office's Uniform Rules on Appeal expressly enables appellants, who failed to comply with Section 4's formal requirements, to subsequently complete their compliance:

Section 5. Action on the Appeal Memorandum – The Director General shall:

a) Order the adverse party if any, to file comment to the appeal memorandum within thirty (30) days from notice and/or order the Bureau Director to file comment and/or transmit the records within thirty (30) days from notice; or

b) *Order the appellant/appellants to complete the formal requirements mentioned in Section 4 hereof*;

c) Dismiss the appeal for being patently without merit, Provided, that the dismissal shall be outright if the appeal is not filed within the prescribed period or for failure of the appellant

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[27] *Samalio v. Court of Appeals*, 494 Phil. 456, 464 (2005) [Per *J.* Corona, *En Banc*], citing *Bantolino, et al. v. Coca-Cola Bottlers Phils., Inc.*, 451 Phil. 839, 846 (2003) [Per *J.* Bellosillo, Second Division]; *De los Santos v. National Labor Relations Commission, et al.*, 423 Phil. 1020, 1034 (2001) [Per *J.* Bellosillo, Second Division]; and *Emin v. De Leon, et al.*, 428 Phil. 172, 186-187 (2002) [Per *J.* Quisumbing, *En Banc*].

> to pay the required fee within the period of appeal. (Emphasis supplied)

Given these premises, it was an error for the Director General of the Intellectual Property Office to have been so rigid in applying a procedural rule and dismissing respondent's appeal.

Petitioner — in her pleadings before this Court—and Director General Cristobal—in his September 2, 2008 Order—cite Decisions of this Court (namely: *Philippine Public School Teachers Association v. Heirs of Iligan*[28] and *Philippine Airlines, Inc. v. Flight Attendants & Stewards Association of the Philippines*[29]) to emphasize the need for precise compliance with the rule on appending a certification of non-forum shopping.

Philippine Public School Teachers Association states:

> Under Section 3 of the same Rule, failure to comply shall be sufficient ground for the dismissal of the petition. The rule on certification against forum shopping is intended to prevent the actual filing of multiple petitions/complaints involving identical causes of action, subject matter and issues in other tribunals or agencies as a form of forum shopping. This is rooted in the principle that a party-litigant should not be allowed to pursue simultaneous remedies in different forums, as this practice is detrimental to orderly judicial procedure. Although not jurisdictional, the requirement of a certification of non-forum shopping is mandatory. The rule requires that a certification against forum shopping should be appended to or incorporated in the initiatory pleading filed before the court. The rule also requires that the party, not counsel, must certify under oath that he has not commenced any other action involving the same issue in the court or any other tribunal or agency.
>
> The requirement that the certification of non-forum shopping should be executed and signed by the plaintiff or principal means that counsel cannot sign said certification unless clothed with special authority to do so. The reason for this is that the plaintiff or principal knows better than anyone else whether a petition has previously been filed involving the same case or substantially the same issues. Hence, a

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[28] 528 Phil. 1197 (2006) [Per *J.* Callejo, Sr., First Division].

[29] 515 Phil. 579 (2006) [Per *J.* Azcuna, Second Division].

certification signed by counsel alone is defective and constitutes a valid cause for dismissal of the petition. In the case of natural persons, the Rule requires the parties themselves to sign the certificate of non-forum shopping. However, in the case of the corporations, the physical act of signing may be performed, on behalf of the corporate entity, only by specifically authorized individuals for the simple reason that corporations, as artificial persons, cannot personally do the task themselves. It cannot be gainsaid that obedience to the requirements of procedural rules is needed if we are to expect fair results therefrom. Utter disregard of the rules cannot justly be rationalized by harking on the policy of liberal construction.[30]

Philippine Airlines, for its part, states that:

> The required certification of non-forum shopping must be valid at the time of filing of the petition. An invalid certificate cannot be remedied by the subsequent submission of a Secretary's Certificate that vests authority only after the petition had been filed.[31]

As pointed out by the Court of Appeals,[32] however, the strict posturing of these Decisions are not entirely suitable for this case. Both *Philippine Public School Teachers Association* and *Philippine Airlines* involved petitions filed before the Court of Appeals, that is, petitions in judicial proceedings. What is involved here is a quasi-judicial proceeding that is "unfettered by the strict application of the technical rules of procedure imposed in judicial proceedings."[33]

In any case, even in judicial proceedings, this Court has rebuked an overly strict application of the rules pertaining to certifications of non-forum shopping.

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[30] *Philippine Public School Teachers Association v. Heirs of Iligan*, 528 Phil. 1197, 1209-1210 (2006) [Per *J.* Callejo, Sr., First Division], *citing* RULES OF COURT, Rule 42, Sec. 3; *Republic v. Carmel Development, Inc.*, 427 Phil. 723, 743 (2002) [Per *J.* Carpio, Third Division]; and *Hydro Resources Contractors Corporation v. National Irrigation Administration*, 484 Phil. 581, 597-598 (2004) [Per *J.* Ynares-Santiago, First Division].

[31] *Philippine Airlines, Inc. v. Flight Attendants & Stewards Association of the Philippines*, 515 Phil. 579, 582-583 (2006) [Per *J.* Azcuna, Second Division].

[32] *Rollo*, p. 39.

[33] *Id.*

In *Pacquing v. Coca-Cola Philippines, Inc.*:[34]

> [T]he rules on forum shopping, which were designed to promote and facilitate the orderly administration of justice, should not be interpreted with such absolute literalness as to subvert its own ultimate and legitimate objective. Strict compliance with the provision regarding the certificate of non-forum shopping underscores its mandatory nature in that the certification cannot be altogether dispensed with or its requirements completely disregarded. It does not, however, prohibit substantial compliance therewith under justifiable circumstances, considering especially that although it is obligatory, it is not jurisdictional.[35]

Thus, in *Pacquing*, this Court held that while, as a rule, "the certificate of non-forum shopping must be signed by all the plaintiffs in a case and the signature of only one of them is insufficient,"[36] still, "when all the petitioners share a common interest and invoke a common cause of action or defense, the signature of only one of them in the certification against forum shopping substantially complies with the rules."[37]

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[34] 567 Phil. 323 (2008) [Per *J.* Austria-Martinez, Third Division].

[35] *Id.* at 332-333, citing *Iglesia ni Cristo v. Ponferrada*, 536 Phil. 705, 718-719 (2006) [Per *J.* Callejo, Sr., First Division]; *HLC Construction and Development Corporation v. Emily Homes Subdivision Homeowners Association*, 458 Phil. 392, 398-400 (2003) [Per *J.* Corona, Third Division]; *Bank of the Philippine Islands v. Court of Appeals*, 450 Phil. 532, 540 (2003) [Per *J.* Panganiban, Third Division]; *Cavile v. Heirs of Cavile*, 448 Phil. 302, 311 (2003) [Per *J.* Puno, Third Division]; *Twin Towers Condominium Corporation v. Court of Appeals*, 446 Phil. 280, 298 (2003) [Per *J.* Carpio, First Division]; *Solmayor v. Arroyo*, 520 Phil. 854, 869-870 (2006) [Per *J.* Chico-Nazario, First Division]; *Cua v. Vargas*, 536 Phil. 1082, 1096 (2006) [Per *J.* Azcuna, Second Division]; *Heirs of Dicman v. Cariño*, 523 Phil. 630, 651-653 (2006) [Per *J.* Austria-Martinez, First Division]; and *Heirs of Agapito T. Olarte v. Office of the President of the Philippines*, 499 Phil. 562, 651-653 (2005) [Per *J.* Ynares-Santiago, First Division].

[36] *Id.* at 332.

[37] *Id.* at 333, citing *Cua v. Vargas*, 536 Phil. 1082, 1096 (2006) (Per *J.* Azcuna, Second Division]; *San Miguel Corporation v. Aballa*, 500 Phil. 170, 190-194 (2005) [Per *J.* Carpio Morales, Third Division]; and *Espina v. Court of Appeals*, 548 Phil. 255, 270-271 (2007) (Per *J.* Chico-Nazario, Third Division].

Likewise, in *Peak Ventures Corp. v. Heirs of Villareal*,[38] we did not consider as fatally defective the fact that a petition for review on certiorari's verification and certification of non-forum shopping was dated November 6, 2008, while the petition itself was dated November 10, 2008.[39] We state:

> With respect to the requirement of a certification of non-forum shopping, "[t]he fact that the [Rules] require strict compliance merely underscores its mandatory nature that it cannot be dispensed with or its requirements altogether disregarded, but it does not thereby interdict substantial compliance with its provisions under justifiable circumstances."[40]

Even petitioner's own cited case, *Philippine Public School Teachers Association v. Heirs of Iligan*,[41] repudiates her position. The case involved a petition for review filed before the Court of Appeals by the Philippine Public School Teachers Association.[42] The verification and certification of non-forum shopping of the petition was signed by a certain Ramon G. Asuncion, Jr. without an accompanying board resolution or secretary's certificate attesting to his authority to sign. The petition for review was dismissed by the Court of Appeals "for being 'defective in substance,' there being no proof that Asuncion had been duly authorized by [the Philippine Public School Teachers Association] to execute and file a certification of non-forum shopping in its behalf."[43]

This Court acknowledged that, in the strict sense, the Court of Appeals was correct: "The ruling of the [Court of Appeals]

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[38] G.R. No. 184618, November 19, 2014, 741 SCRA 43 [Per *J.* Del Castillo, Second Division].

[39] *Id.* at 53-55.

[40] *Id.* at 54, citing *Huntington Steel Products, Inc. v. National Labor Relations Commission*, 485 Phil. 227, 235 (2004) [Per *J.* Quisumbing, First Division].

[41] 528 Phil. 1197 (2006) [Per *J.* Callejo, Sr., First Division].

[42] *Id.* at 1203.

[43] *Id.* at 1204, as cited in *rollo*, p. 44.

that [the Philippine Public School Teachers Association] was negligent when it failed to append in its petition a board resolution authorizing petitioner Asuncion to sign the certification of non-forum shopping in its behalf is correct."[44]

However, this Court did not end at that. It went on to state that "a strict application of [the rule] is not called for":[45]

> We have reviewed the records, however, and find that a strict application of Rule 42, in relation to Section 5, Rule 7 of the Revised Rules of Court is not called for. As we held in *Huntington Steel Products, Inc. v. National Labor Relations Commission*, while the requirement of strict compliance underscores the mandatory nature of the rule, it does not necessarily interdict substantial compliance with its provisions under justifiable circumstances. The rule should not be interpreted with such absolute literalness as to subvert its own ultimate and legitimate objective which is the goal of all rules of procedure, that is, to achieve justice as expeditiously as possible. A liberal application of the rule may be justified where special circumstances or compelling reasons are present.
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> Admittedly, the authorization of petitioner PPSTA's corporate secretary was submitted to the appellate court only after petitioners received the comment of respondents. However, *in view of the peculiar circumstances of the present case* and in the interest of substantial justice, and considering further that petitioners submitted such authorization before the [Court of Appeals] resolved to dismiss the petition on the technical ground, we hold that, *the procedural defect may be set aside pro hac vice*. Technical rules of procedure should be rules enjoined to facilitate the orderly administration of justice. The liberality in the application of rules of procedure may not be invoked if it will result in the wanton disregard of the rules or cause needless delay in the administration of justice. Indeed, it cannot be gainsaid that obedience to the requirements of procedural rule is needed if we are to expect fair results therefrom.[46] (Emphasis supplied)

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[44] *Id.* at 1211.

[45] *Id.*

[46] *Id.* at 1211-1212, citing *Huntington Steel Products, Inc. v. National Labor Relations Commission*, 485 Phil. 227, 235 (2004) [Per J. Quisumbing, First Division]; *Marcopper Mining Corporation v. Solidbank Corporation*,

The "peculiar circumstances"[47] in *Philippine Public School Teachers Association* pertained to a finding that the signatory of the verification and certification of non-forum shopping, Ramon G. Asuncion, Jr., was "the former Acting General Manager"[48] of the Philippine Public School Teachers Association and was, thus, previously "authorized to sign a verification and certification of non-forum shopping"[49] on behalf of the Association. By the time the Association actually filed its petition before the Court of Appeals, however, his authority as the Acting General Manager had ceased, and the Association's Board of Directors needed to give him specific authority to sign a certification of non-forum shopping:

> We agree with respondents' contention that when they filed their complaint in the MTC, they impleaded petitioner Asuncion as party--defendant in his capacity as the Acting General Manager of petitioner PPSTA. As such officer, he was authorized to sign a verification and certification of non-forum shopping. However, he was no longer the Acting General Manager when petitioners filed their petition in the CA, where he was in fact referred to as "the former Acting General Manager." Thus, at the time the petition was filed before the CA, petitioner Asuncion's authority to sign the verification and certification of non-forum shopping for and in behalf of petitioner PPSTA ceased to exist. There was a need for the board of directors of petitioner PPSTA to authorize him to sign the requisite certification of non-forum shopping, and to append the same to their petition as Annex thereof.[50]

We find this case to be attended by analogous circumstances. As pointed out by the Court of Appeals, respondent's counsel,

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476 Phil. 415, 443-441 (2004) [Per *J.* Callejo, Sr., Second Division]; and *Pet Plans, Inc. v. Court of Appeals*, 486 Phil. 112, 121 (2004) [Per *J.* Austria-Martinez, Second Division].

[47] *Id.* at 1212.

[48] *Id.* at 1210.

[49] *Id.*

[50] *Id.*, citing *Novelty Philippines, Inc. v. Court of Appeals*, 458 Phil. 36, 44-45 (2003) [Per *J.* Panganiban, Third Division].

Balgos and Perez, has been representing respondent (and signing documents for it) "since the [original] Petition for Cancellation of Letter Patent No. UM-7789 was filed."[51] Thus, its act of signing for respondent, on appeal before the Director General of the Intellectual Property Office, was not an aberration. It was a mere continuation of what it had previously done.

It is reasonable, therefore—consistent with the precept of liberally applying procedural rules in administrative proceedings, and with the room allowed by jurisprudence for substantial compliance with respect to the rule on certifications of non-forum shopping—to construe the error committed by respondent as a venial lapse that should not be fatal to its cause. We see here no "wanton disregard of the rules or [the risk of] caus[ing] needless delay in the administration of justice."[52] On the contrary, construing it as such will enable a full ventilation of the parties' competing claims. As with *Philippine Public School Teachers Association*, we consider it permissible to set aside, *pro hac vice*, the procedural defect.[53] Thus, we sustain the ruling of the Court of Appeals.

WHEREFORE, the Petition is **DENIED**. The assailed January 8, 2009 Decision and the March 2, 2009 Resolution of the Court of Appeals in CA-G.R. SP No. 105595 are **AFFIRMED**.

SO ORDERED.

Carpio (Chairperson), Peralta, Mendoza, and *Jardeleza, JJ.*, concur.

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[51] *Rollo,* p. 38.

[52] *Philippine Public School Teachers Association v. Heirs of Iligan*, 528 Phil. 1197, 1212 (2006) [Per *J.* Callejo, Sr., First Division].

[53] *Id.*

THIRD DIVISION

[G.R. No. 192602. January 18, 2017]

SPOUSES MAY S. VILLALUZ and JOHNNY VILLALUZ, JR., *petitioners, vs.* **LAND BANK OF THE PHILIPPINES and the REGISTER OF DEEDS FOR DAVAO CITY,** *respondents*.

SYLLABUS

1. CIVIL LAW; SPECIAL CONTRACTS; AGENCY; APPOINTMENT OF A SUBSTITUTE BY AN AGENT; DISCUSSED.— Articles 1892 and 1893 of the Civil Code provide the rules regarding the appointment of a substitute by an agent: x x x The law creates a presumption that an agent has the power to appoint a substitute. The consequence of the presumption is that, upon valid appointment of a substitute by the agent, there *ipso jure* arises an agency relationship between the principal and the substitute, *i.e.*, the substitute becomes the agent of the principal. As a result, the principal is bound by the acts of the substitute as if these acts had been performed by the principal's appointed agent. Concomitantly, the substitute assumes an agent's obligations to act within the scope of authority, to act in accordance with the principal's instructions, and to carry out the agency, among others. In order to make the presumption inoperative and relieve himself from its effects, it is incumbent upon the principal to prohibit the agent from appointing a substitute. Although the law presumes that the agent is authorized to appoint a substitute, it also imposes an obligation upon the agent to exercise this power conscientiously. To protect the principal, Article 1892 allocates responsibility to the agent for the acts of the substitute when the agent was not expressly authorized by the principal to appoint a substitute; and, if so authorized but a specific person is not designated, the agent appoints a substitute who is notoriously incompetent or insolvent. In these instances, the principal has a right of action against both the agent and the substitute if the latter commits acts prejudicial to the principal.

2. CIVIL LAW; OBLIGATIONS AND CONTRACTS; VOID AND INEXISTENT CONTRACTS; THOSE WHOSE

CAUSE OR OBJECT DID NOT EXIST AT THE TIME OF THE TRANSACTION REFERS TO CAUSE OR OBJECT IMPOSSIBLE OF EXISTING AT THE TIME OF THE TRANSACTION.— [Spouses Villaluz] seek to invalidate the Real Estate Mortgage for want of consideration. Citing Article 1409(3), which provides that obligations "whose cause or object did not exist at the time of the transaction" are void *ab initio*, the Spouses Villaluz posit that the mortgage was void because the loan was not yet existent when the mortgage was executed on June 21, 1996. Since the loan was released only on June 25, 1996, the mortgage executed four days earlier was without valuable consideration. Article 1347 provides that "[a]ll things which are not outside the commerce of men, *including future things*, may be the object of a contract." Under Articles 1461 and 1462, things having a potential existence and "future goods," *i.e.*, those that are yet to be manufactured, raised, or acquired, may be the objects of contracts of sale. x x x One of the basic rules in statutory interpretation is that all parts of a statute are to be harmonized and reconciled so that effect may be given to each and every part thereof, and that conflicting intentions in the same statute are never to be supposed or so regarded. Thus, in order to give effect to Articles 1347, 1461, and 1462, Article 1409(3) must be interpreted as referring to contracts whose cause or object is impossible of existing at the time of the transaction.

3. ID.; ID.; EXTINGUISHMENT OF OBLIGATIONS; DATION IN PAYMENT; DEED OF ASSIGNMENT INTENDED AS SECURITY RATHER THAN SATISFACTION OF INDEBTEDNESS IS NOT DATION IN PAYMENT AND DID NOT EXTINGUISH THE LOAN OBLIGATION.— Although the validity of the Real Estate Mortgage is dependent upon the validity of the loan, what is essential is that the loan contract intended to be secured is actually perfected, not at the time of the execution of the mortgage contract *vis-a-vis* the loan contract. In loan transactions, it is customary for the lender to require the borrower to execute the security contracts prior to initial drawdown. This is understandable since a prudent lender would not want to release its funds without the security agreements in place. On the other hand, the borrower would not be prejudiced by mere execution of the security contract, because unless the loan proceeds are delivered, the obligations under the security contract will not arise. In other words, the security contract—in this case, the Real Estate Mortgage—is

conditioned upon the release of the loan amount. x x x The [deed of] assignment, being intended to be a mere security rather than a satisfaction of indebtedness, is not a dation in payment under Article 1245 and did not extinguish the loan obligation. "Dation in payment extinguishes the obligation to the extent of the value of the thing delivered, either as agreed upon by the parties or as may be proved, unless the parties by agreement—express or implied, or by their silence—consider the thing as equivalent to the obligation, in which case the obligation is totally extinguished." As stated in the second condition of the Deed of Assignment, the "Assignment shall in no way release the ASSIGNOR from liability to pay the Line/Loan and other obligations, except only up to the extent of any amount actually collected and paid to ASSIGNEE by virtue of or under this Assignment." Clearly, the assignment was not intended to substitute the payment of sums of money. It is the delivery of cash proceeds, not the execution of the Deed of Assignment, that is considered as payment.

4. ID.; ID.; ID.; PAYMENT BY CESSION; DEED OF ASSIGNMENT COULD NOT HAVE CONSTITUTED PAYMENT BY CESSION AS THERE WAS ONLY ONE CREDITOR.— Neither could the assignment have constituted payment by cession under Article 1255 for the plain and simple reason that there was only one creditor, Land Bank. Article 1255 contemplates the existence of two or more creditors and involves the assignment of all the debtor's property.

APPEARANCES OF COUNSEL

Oscar R. Gonzales for petitioners.

D E C I S I O N

JARDELEZA, *J.*:

The Civil Code sets the default rule that an agent may appoint a substitute if the principal has not prohibited him from doing so. The issue in this petition for review on *certiorari*,[1] which

[1] *Rollo*, pp. 30-44.

seeks to set aside the Decision[2] dated September 22, 2009 and Resolution[3] dated May 26, 2010 of the Court of Appeals (CA) in CA-G.R. CV No. 01307, is whether the mortgage contract executed by the substitute is valid and binding upon the principal.

I

Sometime in 1996, Paula Agbisit (Agbisit), mother of petitioner May S. Villaluz (May), requested the latter to provide her with collateral for a loan. At the time, Agbisit was the chairperson of Milflores Cooperative and she needed ₱600,000 to ₱650,000 for the expansion of her backyard cut flowers business.[4] May convinced her husband, Johnny Villaluz (collectively, the Spouses Villaluz), to allow Agbisit to use their land, located in Calinan, Davao City and covered by Transfer Certificate of Title (TCT) No. T-202276, as collateral.[5] On March 25, 1996, the Spouses Villaluz executed a Special Power of Attorney[6] in favor of Agbisit authorizing her to, among others, "negotiate for the sale, mortgage, or other forms of disposition a parcel of land covered by Transfer Certificate of Title No. T-202276" and "sign in our behalf all documents relating to the sale, loan or mortgage, or other disposition of the aforementioned property."[7] The one-page power of attorney neither specified the conditions under which the special powers may be exercised nor stated the amounts for which the subject land may be sold or mortgaged.

On June 19, 1996, Agbisit executed her own Special Power of Attorney,[8] appointing Milflores Cooperative as attorney-in-fact in obtaining a loan from and executing a real mortgage in favor of Land Bank of the Philippines (Land Bank). On June 21, 1996,

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[2] *Id.* at 10-18. Penned by Associate Justice Leoncia R. Dimagiba, with Associate Justices Edgardo A. Camello and Edgardo T. Lloren, concurring.

[3] *Id.* at 19.

[4] *Id.* at 11.

[5] *Id.*

[6] *Rollo*, p. 55.

[7] *Id.*

[8] *Rollo*, pp. 56-57.

Milflores Cooperative, in a representative capacity, executed a Real Estate Mortgage[9] in favor of Land Bank in consideration of the ₱3,000,000 loan to be extended by the latter. On June 24, 1996, Milflores Cooperative also executed a Deed of Assignment of the Produce/Inventory[10] as additional collateral for the loan. Land Bank partially released one-third of the total loan amount, or ₱995,500, to Milflores Cooperative on June 25, 1996. On the same day, Agbisit borrowed the amount of ₱604,750 from Milflores Cooperative. Land Bank released the remaining loan amount of ₱2,000,500 to Milflores Cooperative on October 4, 1996.[11]

Unfortunately, Milflores Cooperative was unable to pay its obligations to Land Bank. Thus, Land Bank filed a petition for extra-judicial foreclosure sale with the Office of the Clerk of Court of Davao City. Sometime in August, 2003, the Spouses Villaluz learned that an auction sale covering their land had been set tor October 2, 2003. Land Bank won the auction sale as the sole bidder.[12]

The Spouses Villaluz filed a complaint with the Regional Trial Court (RTC) of Davao City seeking the annulment of the foreclosure sale. The sole question presented before the RTC was whether Agbisit could have validly delegated her authority as attorney-in-fact to Milflores Cooperative. Citing Article 1892 of the Civil Code, the RTC held that the delegation was valid since the Special Power of Attorney executed by the Spouses Villaluz had no specific prohibition against Agbisit appointing a substitute. Accordingly, the RTC dismissed the complaint.[13]

On appeal, the CA affirmed the RTC Decision. In its Decision[14] dated September 22, 2009, the CA similarly found Article 1892

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[9] *Id.* at 58-61.

[10] *Id.* at 62-66.

[11] *Id.* at 13.

[12] *Id.*

[13] *Rollo*, pp. 69-72.

[14] *Supra* note 2.

to be squarely applicable. According to the CA, the rule is that an agent is allowed to appoint a sub-agent in the absence of an express agreement to the contrary and that "a scrutiny of the Special Power of Attorney dated March 25, 1996 executed by appellants in favor of [Agbisit] contained no prohibition for the latter to appoint a sub-agent."[15] Therefore, Agbisit was allowed to appoint Milflores Cooperative as her sub-agent.

After the CA denied their motion for reconsideration, the Spouses Villaluz filed this petition for review. They argue that the Real Estate Mortgage was void because there was no loan yet when the mortgage contract was executed and that the Special Power of Attorney was extinguished when Milflores Cooperative assigned its produce and inventory to Land Bank as additional collateral.[16] In response, Land Bank maintains that the CA and RTC did not err in applying Article 1892, that the Real Estate Mortgage can only be extinguished after the amount of the secured loan has been paid, and that the additional collateral was executed because the deed of assignment was meant to cover any deficiency in the Real Estate Mortgage.[17]

II

Articles 1892 and 1893 of the Civil Code provide the rules regarding the appointment of a substitute by an agent:

> Art. 1892. The agent may appoint a substitute if the principal has not prohibited him from doing so; but he shall be responsible for the acts of the substitute:
>
> (1) When he was not given the power to appoint one;
>
> (2) When he was given such power, but without designating the person, and the person appointed was notoriously incompetent or insolvent.
>
> All acts of the substitute appointed against the prohibition of the principal shall be void.
>
> Art. 1893. In the cases mentioned in Nos. 1 and 2 of the preceding article, the principal may furthermore bring an action against the

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[15] *Rollo*, pp. 14-15.

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

[17] *Id.* at 93-105.

substitute with respect to the obligations which the latter has contracted under the substitution.

The law creates a presumption that an agent has the power to appoint a substitute. The consequence of the presumption is that, upon valid appointment of a substitute by the agent, there *ipso jure* arises an agency relationship between the principal and the substitute, *i.e.*, the substitute becomes the agent of the principal. As a result, the principal is bound by the acts of the substitute as if these acts had been performed by the principal's appointed agent. Concomitantly, the substitute assumes an agent's ob1igations to act within the scope of authority,[18] to act in accordance with the principal's instructions,[19] and to carry out the agency,[20] among others. In order to make the presumption inoperative and relieve himself from its effects, it is incumbent upon the principal to prohibit the agent from appointing a substitute.

Although the law presumes that the agent is authorized to appoint a substitute, it also imposes an obligation upon the agent to exercise this power conscientiously. To protect the principal, Article 1892 allocates responsibility to the agent for the acts of the substitute when the agent was not expressly authorized by the principal to appoint a substitute; and, if so authorized but a specific person is not designated, the agent appoints a substitute who is notoriously incompetent or insolvent. In these instances, the principal has a right of action against both the agent and the substitute if the latter commits acts prejudicial to the principal.

The case of *Escueta v. Lim*[21] illustrates the prevailing rule. In that case, the father, through a special power of attorney, appointed his daughter as his attorney-in-fact for the purpose of selling real properties. The daughter then appointed a substitute or sub-agent to sell the properties. After the properties were sold,

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[18] CIVIL CODE, Art. 1881.

[19] CIVIL CODE, Art. 1887.

[20] CIVIL CODE, Art. 1884.

[21] G.R. No. 137162, January 24, 2007, 512 SCRA 411.

the father sought to nullify the sale effected by the sub-agent on the ground that he did not authorize his daughter to appoint a sub-agent. We refused to nullify the sale because it is clear from the special power of attorney executed by the father that the daughter is not prohibited from appointing a substitute. Applying Article 1892, we held that the daughter "merely acted within the limits of the authority given by her father, but she will have to be 'responsible for the acts of the sub-agent,' among which is precisely the sale of the subject properties in favor of respondent."[22]

In the present case, the Special Power of Attorney executed by the Spouses Villaluz contains no restrictive language indicative of an intention to prohibit Agbisit from appointing a substitute or sub-agent. Thus, we agree with the findings of the CA and the RTC that Agbisit's appointment of Milflores Cooperative was valid.

III

Perhaps recognizing the correctness of the CA and the RTC's legal position, the Spouses Villaluz float a new theory in their petition before us. They now seek to invalidate the Real Estate Mortgage for want of consideration. Citing Article 1409(3), which provides that obligations "whose cause or object did not exist at the time of the transaction" are void *ab initio*, the Spouses Villaluz posit that the mortgage was void because the loan was not yet existent when the mortgage was executed on June 21, 1996. Since the loan was released only on June 25, 1996, the mortgage executed four days earlier was without valuable consideration.

Article 1347 provides that "[a]ll things which are not outside the commerce of men, *including future things*, may be the object of a contract." Under Articles 1461 and 1462, things having a potential existence and "future goods," *i.e.*, those that are yet to be manufactured, raised, or acquired, may be the objects of contracts of sale. The narrow interpretation advocated by the Spouses Villaluz would create a dissonance between Articles 1347, 1461, and 1462, on the one hand, and Article 1409(3), on the other. A literal interpretation of the phrase "did not exist

[22] *Id.* at 423-424. Citation omitted.

at the time of the transaction" in Article 1409(3) would essentially defeat the clear intent and purpose of Articles 1347, 1461, and 1462 to allow future things to be the objects of contracts. To resolve this apparent conflict, Justice J.B.L. Reyes commented that the phrase "did not exist" should be interpreted as "could not come into existence" because the object may legally be a future thing.[23] We adopt this interpretation.

One of the basic rules in statutory interpretation is that all parts of a statute are to be harmonized and reconciled so that effect may be given to each and every part thereof, and that conflicting intentions in the same statute are never to be supposed or so regarded.[24] Thus, in order to give effect to Articles 1347, 1461, and 1462, Article 1409(3) must be interpreted as referring to contracts whose cause or object is impossible of existing at the time of the transaction.[25]

The cause of the disputed Real Estate Mortgage is the loan to be obtained by Milflores Cooperative. This is clear from the terms of the mortgage document, which expressly provides that it is being executed in "consideration of certain loans, advances, credit lines, and other credit facilities or accommodations obtained from [Land Bank by Milflores Cooperative] x x x in the principal amount of [₱3,000,000]."[26] The consideration is certainly not an impossible one because Land Bank was capable of granting the ₱3,000,000 loan, as it in fact released one-third of the loan a couple of days later.

Although the validity of the Real Estate Mortgage is dependent upon the validity of the loan,[27] what is essential is that the loan

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[23] The Lawyers Journal, Vol. XVI, January 31, 1951, p. 50, as cited by Tolentino, *Commentaries and Jurisprudence on the Civil Code of the Philippines*, Vol. IV, 1991, p. 629; and Paras, *Civil Code of the Philippines Annotated*, Vol. IV, 2012, p. 818.

[24] *People v. Garcia*, 85 Phil. 651, 654-655 (1950).

[25] CIVIL CODE, Art. 1348 provides: Impossible things or services cannot be the object of contracts.

[26] *Rollo*, p. 58.

[27] CIVIL CODE, Art. 2086.

contract intended to be secured is actually perfected,[28] not at the time of the execution of the mortgage contract *vis-a-vis* the loan contract. In loan transactions, it is customary for the lender to require the borrower to execute the security contracts prior to initial drawdown. This is understandable since a prudent lender would not want to release its funds without the security agreements in place. On the other hand, the borrower would not be prejudiced by mere execution of the security contract, because unless the loan proceeds are delivered, the obligations under the security contract will not arise.[29] In other words, the security contract — in this case, the Real Estate Mortgage — is conditioned upon the release of the loan amount. This suspensive condition was satisfied when Land Bank released the first tranche of the ₱3,000,000 loan to Milflores Cooperative on June 25, 1996, which consequently gave rise to the Spouses Villaluz's obligations under the Real Estate Mortgage.

IV

The Spouses Villaluz claim that the Special Power of Attorney they issued was mooted by the execution of the Deed of Assignment of the Produce/Inventory by Milflores Cooperative in favor of Land Bank. Their theory is that the additional security on the same loan extinguished the agency because the Deed of Assignment "served as payment of the loan of the [Milflores] Cooperative."[30]

The assignment was for the express purpose of "securing the payment of the Line/Loan, interest and charges thereon."[31] Nowhere in the deed can it be reasonably deduced that the collaterals assigned by Milflores Cooperative were intended to substitute the payment of sum of money under the loan. It

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[28] A loan contract is a real contract, not consensual, and, as such, is perfected only upon the delivery of the object of the contract. See *Naguiat v. Court of Appeals*, G.R. No. 118375, October 3, 2003, 412 SCRA 591, 597.

[29] *Id.* at 599.

[30] *Rollo*, pp. 38-39.

[31] *Rollo*, p. 62.

was an accessory obligation to secure the principal loan obligation.

The assignment, being intended to be a mere security rather than a satisfaction of indebtedness, is not a dation in payment under Article 1245[32] and did not extinguish the loan obligation.[33] "Dation in payment extinguishes the obligation to the extent of the value of the thing delivered, either as agreed upon by the parties or as may be proved, unless the parties by agreement — express or implied, or by their silence — consider the thing as equivalent to the obligation, in which case the obligation is totally extinguished."[34] As stated in the second condition of the Deed of Assignment, the "Assignment shall in no way release the ASSIGNOR from liability to pay the Line/Loan and other obligations, except only up to the extent of any amount actually collected and paid to ASSIGNEE by virtue of or under this Assignment."[35] Clearly, the assignment was not intended to substitute the payment of sums of money. It is the delivery of cash proceeds, not the execution of the Deed of Assignment, that is considered as payment. Absent any proof of delivery of such proceeds to Land Bank, the Spouses Villaluz's claim of payment is without basis.

Neither could the assignment have constituted payment by cession under Article 1255[36] for the plain and simple reason

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[32] Art. 1245. Dation in payment, whereby property is alienated to the creditor in satisfaction of a debt in money, shall be governed by the law of sales.

[33] *Development Bank of the Philippines v. Court of Appeals*, G.R. No. 118342, January 5, 1998, 284 SCRA 14, 25.

[34] *Philippine National Bank v. Dee*, G.R. No. 182128, February 19, 2014, 717 SCRA 14, 27-28.

[35] *Rollo*, p. 63.

[36] Art. 1255. The debtor may cede or assign his property to his creditors in payment of his debts. This cession, unless there is stipulation to the contrary, shall only release the debtor from responsibility for the net proceeds of the thing assigned. The agreements which, on the effect of the cession, are made between the debtor and his creditors shall be governed by special laws.

that there was only one creditor, Land Bank. Article 1255 contemplates the existence of two or more creditors and involves the assignment of all the debtor's property.[37]

The Spouses Villaluz understandably feel shorthanded because their property was foreclosed by reason of another person's inability to pay. However, they were not coerced to grant a special power of attorney in favor of Agbisit. Nor were they prohibited from prescribing conditions on how such power may be exercised. Absent such express limitations, the law recognizes Land Bank's right to rely on the terms of the power of attorney as written.[38] "Courts cannot follow one every step of his life and extricate him from bad bargains, protect him from unwise investments, relieve him from one-sided contracts, or annul the effects of [unwise] acts."[39] The remedy afforded by the Civil Code to the Spouses Villaluz is to proceed against the agent and the substitute in accordance with Articles 1892 and 1893.

WHEREFORE, the petition is **DENIED**. The Decision dated September 22, 2009 and Resolution dated May 26, 2010 of the Court of Appeals in CA-G.R. CV No. 01307 are **AFFIRMED**.

SO ORDERED.

Velasco, Jr. (Chairperson), Bersamin, Reyes, and *Caguioa*,[*] *JJ.*, concur.

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[37] *Yulim International Company Ltd. v. International Exchange Bank (now Union Bank of the Philippines)*, G.R. No. 203133, February 18, 2015, 751 SCRA 129, 143. Citation omitted.

[38] Art. 1900. So far as third persons are concerned, an act is deemed to have been performed within the scope of the agent's authority, if such act is within the terms of the power of attorney, as written, even if the agent has in fact exceeded the limits of his authority according to an understanding between the principal and the agent.

[39] *Vales v. Villa*, 35 Phil. 769, 788 (1916).

[*] Designated as Fifth Member of the Third Division per Special Order No. 2417 dated January 4, 2017.

FIRST DIVISION

[G.R. No. 193156. January 18, 2017]

IVQ LANDHOLDINGS, INC., *petitioner, vs.* **REUBEN BARBOSA,** *respondent.*

SYLLABUS

REMEDIAL LAW; SPECIAL CIVIL ACTIONS; QUIETING OF TITLES; AS THE NEW PIECES OF DOCUMENTARY EVIDENCE ADDUCED TENDED TO CAST DOUBT ON THE VERACITY OF CLAIM OF OWNERSHIP, THE COURT DEEMED IT PROPER THAT FURTHER PROCEEDINGS BE UNDERTAKEN TO VERIFY THE AUTHENTICITY OF THE PARTIES' CERTIFICATES OF TITLE AND OTHER DOCUMENTARY EVIDENCE.— In this petition for review on *certiorari* under Rule 45 of the Rules of Court, petitioner IVQ Landholdings, Inc. (IVQ) assails the Decision x x x of the Court of Appeals x x x [affirming] the decision x x x of the Regional Trial Court (RTC) of Quezon City x x x [adjudicating] in favor of herein respondent Reuben Barbosa (Barbosa) the ownership of the property subject of this case and ordered the cancellation of IVQ's certificate of title thereto. x x x Before this Court, however, IVQ adduced new pieces of documentary evidence that tended to cast doubt on the veracity of Barbosa's claim of ownership. x x x After reviewing the factual and procedural antecedents of this case, the Court deems it appropriate that further proceedings be undertaken in order to verify the authenticity and veracity of the parties' certificates of title and other documentary evidence. For sure, the Court is aware that the aforesaid evidence belatedly introduced by IVQ are not technically newly-discovered evidence, given that the same could have been discovered and produced at the trial of the case had IVQ exercised reasonable diligence in obtaining them. Nonetheless, we find that the above evidence cannot simply be brushed aside on this ground alone. The same are too material to ignore and are relevant in ultimately resolving the question of ownership of the subject property. x x x Given that the Court is not a trier of facts and there still are factual matters that need to be evaluated, the proper recourse is to remand the case to the Court of Appeals for the conduct of further proceedings.

> x x x Aside from receiving and evaluating evidence relating to the pieces of documentary evidence submitted by IVQ to this Court, the Court of Appeals may likewise receive any other additional evidence that the parties herein may submit on their behalf.

APPEARANCES OF COUNSEL

Daniel Y. Laogan Law Office for petitioner.
Egmedio J. Castillon, Jr. for respondent.

R E S O L U T I O N

LEONARDO-DE CASTRO, *J.*:

In this petition for review on *certiorari*[1] under Rule 45 of the Rules of Court, petitioner IVQ Landholdings, Inc. (IVQ) assails the Decision[2] dated December 9, 2009 and the Resolution[3] dated July 30, 2010 of the Court of Appeals in CA-G.R. CV No. 90609. The decision of the appellate court affirmed the Decision[4] dated June 15, 2007 of the Regional Trial Court (RTC) of Quezon City, Branch 222 in Civil Case No. Q04-52842, which adjudicated in favor of herein respondent Reuben Barbosa (Barbosa) the ownership of the property subject of this case and ordered the cancellation of IVQ's certificate of title thereto. The resolution of the appellate court denied the Motion for Reconsideration[5] and the Supplemental Motion for Reconsideration[6] filed by IVQ regarding the Court of Appeals' decision.

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[1] *Rollo*, pp. 3-63.

[2] *Id.* at 64-76; penned by Associate Justice Amelita G. Tolentino with Associate Justices Estela M. Perlas-Bernabe (now a member of this Court) and Stephen C. Cruz concurring.

[3] *Id.* at 77-80.

[4] *Id.* at 129-136; penned by Judge Rogelio M. Pizarro.

[5] CA *rollo*, pp. 168-183.

[6] *Id.* at 189-199.

The Facts

On June 10, 2004, Barbosa filed a **Petition for Cancellation and Quieting of Titles**[7] against Jorge Vargas III, Benito Montinola, IVQ, and the Register of Deeds of Quezon City, which case was docketed as Civil Case No. Q04-52842 in the RTC of Quezon City, Branch 222.

Barbosa averred that on October 4, 1978, he bought from Therese Vargas a parcel of land identified as Lot 644-C-5 located on Visayas Avenue, Culiat, Quezon City (subject property). Thereafter, Therese Vargas surrendered to Barbosa the owner's duplicate copy of her title, Transfer Certificate of Title (TCT) No. 159487. In the Deed of Absolute Sale in favor of Barbosa and in the copy of Therese Vargas's TCT No. 159487, the subject property was described as:

> A parcel of land (Lot 644-C-5 of the subdivision plan, LRC, Psd-14038, being a portion of Lot 644-C, Fls-2544-D, LRC, Record No. 5975); situated in the District of Culiat, Quezon City, Island of Luzon. x x x containing an area of THREE THOUSAND FOUR HUNDRED FIFTY-TWO (3,452) square meters, more or less.[8]

Barbosa said that he took possession of the subject property and paid real estate taxes thereon in the name of Therese Vargas. Sometime in 2003, Barbosa learned that Therese Vargas's name was cancelled and replaced with that of IVQ in the tax declaration of the subject property.

Upon investigation, Barbosa found out that the subject property was previously registered in the name of Kawilihan Corporation under TCT No. 71507. Therese Vargas acquired the subject property from Kawilihan Corporation and the date of entry of her TCT No. 159487 was November 6, 1970. On the other hand, IVQ supposedly bought the subject property from Jorge Vargas III who, in turn, acquired it also from Kawilihan Corporation. The date of entry of Jose Vargas III's TCT No. 223019 was

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[7] *Rollo*, pp. 105-109.

[8] Records, Vol. I, pp. 7-8.

October 14, 1976. This title was later reconstituted and re-numbered as TCT No. RT-76391. The title of IVQ, TCT No. 253434, was issued on August 6, 2003.

Barbosa argued that even without considering the authenticity of Jorge Vargas III's title, Therese Vargas's title bore an earlier date. Barbosa, thus, prayed for the trial court to issue an order directing the Office of the Register of Deeds of Quezon City to cancel Jorge Vargas III's TCT No. 223019 and IVQ's TCT No. 253434 and adjudicating ownership of the subject property to him.[9]

In their Answer[10] to the above petition, Jose Vargas III, Benito Montinola, and IVQ (respondents in the court *a quo*) countered that the alleged title from where Barbosa's title was allegedly derived from was the one that was fraudulently acquired and that Barbosa was allegedly part of a syndicate that falsified titles for purposes of "land grabbing." They argued that it was questionable that an alleged lot owner would wait for 30 years before filing an action to quiet title. They prayed for the dismissal of the petition and, by way of counterclaim, sought the award of moral and exemplary damages, attorney's fees and costs of suit.

The Register of Deeds of Quezon City neither filed an answer to Barbosa's petition nor participated in the trial of the case.

During trial, Barbosa testified, *inter alia*, that he is the owner of the subject property that he bought from Therese Vargas. The property was at that time registered in her name under TCT No. 159487. Barbosa took possession of the subject property

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[9] Barbosa attached to his petition (1) a photocopy of the Deed of Absolute Sale in his favor (*Annex "A"*); (2) a photocopy of Therese Vargas's TCT No. 159487 (*Annex "B"*); (3) a photocopy of a tax declaration of the subject property in the name of IVQ (*Annex "C"*); (4) a photocopy of Jose Vargas III's TCT No. 223019 (*Annex "D"*); (5) a photocopy of a *Barangay* Certification, stating that Therese Vargas is the owner of the subject property (*Annex "E"*); and (6) a photocopy of a tax declaration of the subject property in the name of Therese Vargas (*Annex "F"*). (Records, Vol. I, pp. 7-16.)

[10] Records, Vol. I, pp. 39-42.

seven days after he bought the same and he employed a caretaker to live therein. Before Therese Vargas, the owner of the property was Kawilihan Corporation, which company was owned by Jorge Vargas.[11] Barbosa stated that the subject property remained registered in the name of Therese Vargas as he entrusted her title to another person for custody but the said person went to Canada. Barbosa paid real estate taxes on the subject property in the name of Kawilihan Corporation from 1978 until 2002. From 2003 to 2006, he paid real estate taxes thereon in the name of Therese Vargas.[12]

Barbosa added that in the year 2000, Santiago Sio Soy Une, allegedly the president of Lisan Realty and Development Corporation (Lisan Realty), presented to Barbosa's caretaker a Deed of Sale with Assumption of Mortgage,[13] which was allegedly executed by Jorge Vargas III and Lisan Realty involving the subject property. Barbosa then went on to compile documents on the transactions relating to the subject property.

Barbosa testified that in the Deed of Sale with Assumption of Mortgage of Jorge Vargas III and Santiago Sio Soy Une, the Friar Land Survey (FLS) number was denominated as FLS-2554-D, while in the title of Therese Vargas it was FLS-2544-D. Barbosa obtained a certification from the Lands Management Bureau that FLS-2554-D was not listed in their electronic data processing (EDP) listing, as well as a certification from the DENR that FLS-2554-D had no records in the Land Survey Records Section of said office. On the other hand, he obtained a certification from the Lands Management Bureau that Lot 644 subdivided under FLS-2544-D was listed in their records.[14] Barbosa also learned that IVQ was registered with the Securities and Exchange Commission only on June 5, 1998. Moreover,

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[11] Jorge Vargas is also referred to as "Jorge Vargas, Sr." and "Jorge B. Vargas" in other parts of the records.

[12] TSN, June 29, 2006, pp. 7-25.

[13] *Id.* at 31. Santiago Sio Soy Une was also referred to as "Santiago Suysusuni" in other parts of the records.

[14] TSN, June 29, 2006, pp. 47-51.

on January 7, 2004, IVQ filed Civil Case No. Q-17499(04), which is a petition for the cancellation of an adverse claim filed by Santiago Sio Soy Une (*Exhibit "RR"*). In a portion of the transcript of stenographic notes (TSN) in said case, it was stated that IVQ bought the property from Therese Vargas, not from Jorge Vargas III.[15]

Barbosa furthermore secured a certification from the EDP Division of the Office of the City Assessor in Quezon City that there were no records of real property assessments in the name of Jorge Vargas III as of August 15, 2006. Moreover, Barbosa stated that Atty. Jesus C. Apelado, Jr., the person who notarized the March 3, 1986 Deed of Absolute Sale between Jorge Vargas III and IVQ, was not authorized to do so as Atty. Apelado was only admitted as a member of the Philippine Bar in 1987. Also, the notarial register entries, *i.e.*, the document number, page number, book number and series number, of the Deed of Absolute Sale in favor of IVQ were exactly the same as those in the special power of attorney (SPA) executed by Jorge Vargas III in favor of Benito Montinola, who signed the Deed of Absolute Sale on behalf of Jorge Vargas III. The Deed of Absolute Sale and the SPA were notarized by different lawyers but on the same date.[16]

On the part of the respondents in the court *a quo*, they presented a lone witness, Atty. Erlinda B. Espejo. Her testimony was offered to prove that she was the legal consultant of IVQ; that IVQ's TCT No. 253434 was acquired from Jorge Vargas III through TCT No. RT-76391; that Jorge Vargas III's title was mortgaged at Philippine National Bank (PNB), Bacolod; that Benito Montinola, the attorney-in-fact of Jorge Vargas III, sold the subject property to Lisan Realty who in turn assigned its rights to IVQ and; that IVQ redeemed the property from PNB. Barbosa's counsel offered to stipulate on the offer so that the witness' testimony could already be dispensed with.[17]

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[15] TSN, August 22, 2006, pp. 13-17.

[16] *Id.* at 19-32.

[17] TSN, February 15, 2007, pp. 3-4.

As to the supposed sale to Lisan Realty and Lisan Realty's assignment of rights to IVQ, the counsel for Barbosa agreed to stipulate on the same if the transactions were annotated in Jorge Vargas III's title. The counsel for IVQ said that they were so annotated. Upon inquiry of the trial court judge, the counsel for IVQ clarified that the transfers or assignment of rights were done at the time that the subject property was mortgaged with PNB. The property was then redeemed by IVQ on behalf of Jorge Vargas III.[18]

The Decision of the RTC

On June 15, 2007, the RTC granted Barbosa's petition and ordered the cancellation of IVQ's TCT No. 253434.[19] The trial court noted that while the original copy of the Deed of Absolute Sale in favor of Barbosa was not presented during trial, Barbosa presented secondary evidence by submitting to the court a photocopy of said deed and the deed of sale in favor of his predecessor-in-interest Therese Vargas, as well as his testimony. The RTC ruled that Barbosa was able to establish the existence and due execution of the deeds of sale in his favor and that of Therese Vargas.

The Certification[20] dated February 12, 2004 from the Office of the Clerk of Court and Ex-Officio Sheriff of the RTC, Manila stated that the page on which the Deed of Sale dated October 4, 1978 in favor of Barbosa might have been probably entered was torn. This, however, did not discount the possibility that said deed was actually notarized and recorded in the missing notarial records page. Moreover, the RTC found that Barbosa adduced evidence that proved the payment[21] of Therese Vargas to Jorge Vargas, as well as the payment of Barbosa to Therese Vargas.

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

[19] *Rollo*, p. 136.

[20] Records, Vol. I, p. 105.

[21] *Id.* at 121.

The RTC further observed that Therese Vargas's TCT No. 159487 and Jorge Vargas III's TCT No. 223019 bear more or less identical technical descriptions of Lot 644-C-5, except for their friar survey plan numbers. However, the Lands Management Bureau and Land Survey Records Section of the DENR, NCR issued certifications attesting that their respective offices had no record of FLS-2554-D, the land survey number in the certificates of title held by Jorge Vargas III and IVQ. On the other hand, Barbosa presented a certified true copy of the subdivision survey plan FLS-2544-D from the Lands Management Bureau, thereby bolstering his claim that the title of Therese Vargas was an authentic transfer of the title of Kawilihan Corporation.

Therese Vargas's TCT No. 159487 was also issued earlier in time than Jorge Vargas III's TCT No. 223019. Not only was the original of Therese Vargas's TCT No. 159487 presented in court, but the same was also proven to have existed according to the Certification from the LRA dated October 6, 2003 that Judicial Form No. 109-D with Serial No. 1793128 — pertaining to TCT No. 159487 — was issued by an authorized officer of the Register of Deeds of Quezon City.

In contrast, the RTC noted that IVQ was not able to prove its claim of ownership over the subject property. The deed of sale in favor of IVQ, which was supposedly executed in 1986, was inscribed only in 2003 on Jorge Vargas III's TCT No. RT-76391 that was reconstituted back in 1993. Instead of substantiating their allegations, respondents in the court *a quo* opted to offer stipulations, such as on the matter of Lisan Realty's assignment of its rights of ownership over the subject property in favor of IVQ. However, the said assignment was not reflected in the title of Jorge Vargas III. The RTC likewise found it perplexing that when IVQ filed a petition for cancellation of encumbrance in Jorge Vargas III's title, docketed as LRC No. Q-17499 (04), it alleged therein that it acquired the subject property from Therese Vargas, not Jorge Vargas III.

The trial court added that while there is no record of tax declarations and payment of real estate taxes in the name of

Jorge Vargas III, Therese Vargas declared the subject property for taxation purposes in her name and, thereafter, Barbosa paid real estate taxes thereon in her name. On the other hand, the only tax declaration that IVQ presented was for the year 2006. The RTC also opined that while Barbosa was not able to sufficiently establish his possession of the subject property as he failed to put on the witness stand the caretaker he had authorized to occupy the property, IVQ also did not gain control and possession of the subject property because the same continued to be in the possession of squatters.

To impugn the above decision of the trial court, IVQ, alone, filed a **Motion for Reconsideration/New Trial/Reopening of Trial**[22] under the representation of a new counsel.[23] In its Motion for Reconsideration, IVQ argued that the RTC erred in concluding that Barbosa's title is superior to its title.[24] IVQ alleged that Barbosa submitted forged and spurious evidence before the trial court. On the other hand, in its Motion for New Trial, IVQ alleged that it was defrauded by its former counsel, Atty. Leovigildo Mijares, which fraud prevented it from fully presenting its case in court. IVQ also averred that it found newly-discovered evidence, which it could not have discovered and produced during trial.

In an **Order**[25] dated November 28, 2007, the trial court denied IVQ's Motion for Reconsideration/New Trial/Reopening of Trial for lack of merit.

IVQ's Appeal in the Court of Appeals

IVQ interposed an appeal[26] to the Court of Appeals. In its Appellant's Brief, IVQ first laid down its version of the facts, to wit:

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[22] *Rollo*, pp. 137-160.

[23] Records, Vol. I, pp. 696-698.

[24] *Rollo*, p. 139.

[25] *Id.* at 182-185.

[26] Records, Vol. II, pp. 812-813.

On 12 March 1976, Kawilihan Corporation, represented by its President and Chairman of the Board Jorge B. Vargas, executed a Deed of Absolute Sale x x x, whereby he sold the subject property to appellant Vargas, III.

On 14 October 1976, TCT No. 71507 was cancelled and in lieu thereof TCT No. 223019 x x x was issued in the name of appellant Vargas, III who on 23 December 1976 executed a Special Power of Attorney x x x in favor of appellant Benito C. Montinola, Jr. with power among other things to mortgage the subject property for and in behalf of appellant Vargas, III.

On 25 December 1976, appellant Vargas, III mortgaged the subject property to the Philippine National Bank (PNB), Victorias Branch, Negros Occidental as security for a loan in the principal amount of ₱506,000.00.

On 04 October 1978, Therese Vargas executed a Deed of Absolute Sale x x x wherein she sold the subject property to appellee Barbosa who however did not register the said sale with the Registry of Deeds of Quezon City. It appears that Therese Vargas was able to secure TCT No. 159487 x x x in her name on 06 November 1970 covering the subject property.

Meanwhile, appellant Vargas, III executed another Special Power of Attorney x x x in favor of appellant Montinola, Jr. with power among other things to sell the subject property for and in behalf of appellant Vargas, III. Thus, on 03 March 1986, during the effectivity of the mortgage contract with PNB, appellant Montinola sold the subject property to appellant IVQ for and in consideration of the amount of ₱450,000.00.[27]

After the alleged sale of the subject property to IVQ, the following incidents transpired:

When appellant Vargas, III failed to pay his loan, PNB foreclosed the mortgage and in the public auction that followed, the subject property was sold to PNB.

A Certificate of Sale was issued in favor of PNB but the latter did not cause the registration of the certificate of sale right away.

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[27] CA *rollo*, pp. 40-41.

Sometime in 1991, appellant Montinola, Jr. caused the filing of a Petition for Reconstitution of TCT No. 223019 which was granted in 1993. Consequently, TCT No. RT-76391 was issued, in the name of appellant Vargas, III, in lieu of TCT No. 223019. On 13 July 1993, the Certificate of Sale in favor of PNB was inscribed on appellant Vargas, III's new title.

On 17 February 1994, appellant Vargas, III executed a Deed of Sale with Assumption of Mortgage x x x wherein he sold to Lisan Realty and Development Corporation (Lisan Realty) the subject property with the latter assuming the loan balance with PNB.

On 23 June 1994, appellant IVQ, for and in behalf of defendant Vargas, III, redeemed the subject property from PNB and on 24 June 1994, the Certificate of Redemption was annotated at the dorsal portion of TCT No. RT-76390.

On 21 August 2000, Lisan Realty caused the annotation of an Affidavit of Adverse Claim x x x on TCT No. RT-76390.

Thereafter, appellant IVQ filed a Petition for Cancellation of Encumbrance x x x with the Regional Trial Court of Quezon City, Branch 220, docketed as LRC Case No. Q-17499 (04).

On 06 August 2003, the Register of Deeds of Quezon City cancelled TCT No. RT-76390 and in lieu thereof TCT No. 253434 was issued in the name of appellant IVQ.

On 11 February 2004, the Regional Trial Court of Quezon City, Branch 220 rendered a Decision x x x granting appellant IVQ's Petition for Cancellation of Encumbrance and ordering the cancellation of the annotation of the adverse claim on TCT No. 253434.

In August 2004, appellant IVQ instituted [a] Complaint x x x for unlawful detainer with the Metropolitan Trial Court of Quezon City, Branch 38 against several persons who were occupying the subject property without any right whatsoever. The case was docketed as Civil Case No. 38-33264.

On 26 October 2004, the Metropolitan Trial Court of Quezon City, Branch 38 rendered a Decision x x x in favor of appellant IVQ ordering the defendants therein to vacate the subject property.[28]

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[28] *Id.* at 41-43.

The Court of Appeals, however, paid no heed to IVQ's appeal as it affirmed the ruling of the RTC. The appellate court held that Barbosa was able to prove his ownership over the subject property, while IVQ presented a rather flimsy account on the transfer of the subject property to its name.

IVQ filed a Motion for Reconsideration and a Supplemental Motion for Reconsideration on the above judgment, but the Court of Appeals denied the same in its assailed Resolution dated July 30, 2010.

IVQ's Petition for Review on Certiorari

IVQ instituted before this Court the instant petition for review on *certiorari* on August 20, 2010, which prayed for the reversal of the above rulings of the Court of Appeals. In a **Resolution**[29] **dated September 29, 2010**, the Court initially denied IVQ's petition for its failure to show that the Court of Appeals committed any reversible error in its assailed rulings.

IVQ filed a **Motion for Reconsideration**[30] on the denial of its petition. To prove that its title to the subject property is genuine, IVQ averred that the Deed of Absolute Sale in favor of Jorge Vargas III was notarized by Atty. Jejomar C. Binay, then a notary public for Mandaluyong. IVQ attached to its motion for reconsideration, among others, a photocopy of a Certification[31] dated October 8, 2010 from the Office of the Clerk of Court of the RTC of Pasig City that "ATTY. JEJOMAR C. BINAY was appointed Notary Public for and in the Province of Rizal for the year 1976" and that he "submitted his notarial reports for the period January, 1976 up to December, 1976." IVQ also attached a photocopy of the Deed of Absolute Sale in favor of Jorge Vargas III obtained from the records of the National Archives on October 14, 2010.[32]

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[29] *Rollo*, p. 192.

[30] *Id.* at 199-249.

[31] *Id.* at 250.

[32] *Id.* at 251-254.

To prove that Barbosa's claim of ownership is spurious, IVQ attached to its motion for reconsideration the following documents:

(1) a photocopy of a Certification dated October 27, 2010 from the Office of the Bar Confidant of the Supreme Court that Espiridion J. Dela Cruz, the notary public who supposedly notarized the Deed of Absolute Sale in favor of Therese Vargas, is not a member of the Philippine Bar;[33]

(2) a photocopy of the Certification dated October 19, 2010 from the National Archives of the Philippines that a copy of the Deed of Absolute Sale in favor of Therese Vargas is not extant in the files of said office;[34]

(3) a Certification dated October 12, 2010 from the Office of the Clerk of Court and Ex-Officio Sheriff of the RTC of Manila, stating that the notarial entries of Atty. Santiago R. Reyes in the Deed of Absolute Sale between Therese Vargas and Barbosa — Doc. No. 1947, Page 92, Book No. XIV, Series of 1978 — actually pertained to a different deed of sale;[35]

(4) photocopies of pages 90, 91 and 92, Book XIV, Series of 1978 of Atty. Santiago R. Reyes's notarial records, which were reproduced from the National Archives on October 14, 2010, showing that the Deed of Absolute Sale between Therese Vargas and Barbosa was not found therein;[36]

(5) a photocopy of a Certification dated October 14, 2010 of the City Treasurer's Office of the City of Manila, stating that Residence Certificate No. A-423263 — the residence certificate number of Therese Vargas in the Deed of Absolute Sale in favor of Barbosa — was not among those allotted to the City of Manila;[37] and

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[33] *Id.* at 268.

[34] *Id.* at 269.

[35] *Id.* at 273.

[36] *Id.* at 275-280.

[37] *Id.* at 281.

(6) a letter dated October 20, 2010 from Director Porfirio R. Encisa, Jr. of the LRA Department on Registration, explaining that the land survey number of FLS-2554-D in IVQ's TCT No. 253434 was a mere typographical error and it should have been FLS-2544-D.[38]

In a Resolution[39] dated December 15, 2010, the Court denied IVQ's Motion for Reconsideration.

Undaunted, IVQ filed a Second Motion for Reconsideration,[40] arguing that it was able to submit new pieces of documentary evidence that surfaced for the first time when its Motion for Reconsideration was submitted by its new counsel. IVQ entreated the Court to consider the same in the higher interest of justice.

Barbosa opposed[41] the above motion, countering that the same is a prohibited pleading. Barbosa maintained that it was impossible for IVQ to acquire ownership over the subject property as the latter was only incorporated on June 5, 1998. Thus, IVQ could not have bought the property from Jorge Vargas III on March 3, 1986 or subsequently redeemed the property in 1994.

In a Resolution[42] dated June 6, 2011, the Court reinstated IVQ's petition and required Barbosa to comment thereon.

Barbosa moved for a reconsideration[43] of the said resolution, citing IVQ's lack of legal personality when it supposedly purchased the subject property and IVQ's inconsistent statements as to how it acquired the same. The Court treated the above motion of Barbosa as his comment to IVQ's petition and required IVQ to file a reply thereto.[44]

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[38] *Id.* at 282.

[39] *Id.* at 283-284.

[40] *Id.* at 299-348.

[41] *Id.* at 350-351.

[42] *Id.* at 360.

[43] *Id.* at 353-359.

[44] *Id.* at 364.

In its Reply,[45] IVQ primarily argued that Barbosa did not bother to refute the allegations and the evidence on the spuriousness of his title and instead sought to divert the issue by attacking IVQ's corporate existence.

The Court, thereafter, gave due course to the petition and required the parties to submit their respective memoranda.[46]

In its memorandum,[47] IVQ avers that while the evidence supporting its case surfaced for the first time after its petition was filed with this Court, peculiar circumstances involving the actuations of IVQ's former counsel and Barbosa's introduction of spurious documents warrant the suspension of procedural rules in the interest of justice. IVQ insists that Barbosa was not able to prove his claim by preponderance of evidence.

Upon the other hand, Barbosa contends that IVQ could not legally claim ownership of the subject property as this claim is anchored on a Deed of Absolute Sale executed by Jorge Vargas III on March 3, 1986 while IVQ was incorporated only on June 5, 1998. Barbosa also points out that the Deed of Absolute Sale in favor of IVQ was signed only by Jorge Vargas III's representative, Benito Montinola. There is no corresponding signature on the part of the vendee. Barbosa adopts entirely the findings of the RTC and the Court of Appeals that the sale in favor of Therese Vargas is the one to be legally sustained.

The Ruling of the Court

Without ruling on the merits of this case, the Court finds that there is a need to reassess the evidence adduced by the parties to this case and thereafter reevaluate the findings of the lower courts.

To recall, Barbosa initiated this case before the trial court *via* a petition for cancellation and quieting of titles. As held in *Secuya v. De Selma*,[48]

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[45] *Id.* at 368-381.

[46] *Id.* at 414-415.

[47] *Id.* at 416-469.

[48] 383 Phil. 126, 134 (2000).

In an action to quiet title, the plaintiffs or complainants must demonstrate a legal or an equitable title to, or an interest in, the subject real property. Likewise, they must show that the deed, claim, encumbrance or proceeding that purportedly casts a cloud on their title is in fact invalid or inoperative despite its *prima facie* appearance of validity or legal efficacy. This point is clear from Article 476 of the Civil Code, which reads:

> "Whenever there is 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 title."
>
> "An action may also be brought to prevent a cloud from being cast upon title to real property or any interest therein." (Emphasis supplied; citations omitted.)

The Court also stressed in *Santiago v. Villamor*[49] that in civil cases, the plaintiff must establish his cause of action by preponderance of evidence; otherwise, his suit will not prosper.

In the instant case, the trial court and the Court of Appeals adjudicated the subject property in favor of Barbosa and directed the cancellation of IVQ's certificate of title.

The trial court found that Barbosa was able to substantiate the transfer of ownership of the subject property from Kawilihan Corporation to Therese Vargas and then to Barbosa. Specifically, Barbosa established the existence and execution of the Deed of Absolute Sale dated September 11, 1970 between Kawilihan Corporation and Therese Vargas, as well as the Deed of Absolute Sale dated October 4, 1978 between Therese Vargas and Barbosa. In like manner, the trial court ruled that Barbosa adduced evidence that purportedly proved the payment of Therese Vargas to Kawilihan Corporation, and the payment of Barbosa to Therese Vargas. Also, the trial court found that Barbosa was able to prove the validity of Therese Vargas's TCT No. 159487. Moreover, the friar land survey number in Therese Vargas's

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[49] 699 Phil. 297, 303-304 (2012).

TCT No. 159487— FLS-2544-D — was the one found to be extant in the records of Lands Management Bureau, not FLS-2554-D, the survey number in the certificates of title of Jorge Vargas III and IVQ.

On the other hand, the trial court found that IVQ failed to establish its claim of ownership over the subject property, given the inconsistent statements on how the property was transferred from Kawilihan Corporation to Jorge Vargas III and eventually to IVQ.

Before this Court, however, IVQ adduced new pieces of documentary evidence that tended to cast doubt on the veracity of Barbosa's claim of ownership.

To impugn the validity of the Deed of Absolute Sale between Kawilihan Corporation and Therese Vargas, IVQ submitted a copy of the Certification from the Office of the Bar Confidant that Espiridion J. Dela Cruz, the notary public who supposedly notarized the said deed, is not a member of the Philippine Bar. IVQ also submitted a copy of the Certification from the National Archives, stating that the Deed of Absolute Sale in favor of Therese Vargas was not found in their records.

Anent the Deed of Absolute Sale between Therese Vargas and Barbosa, IVQ presented a Certification from the Office of the Clerk of Court and Ex-Officio Sheriff of the RTC of Manila, stating that the notarial entries of Atty. Santiago R. Reyes in said deed, *i.e.*, Doc. No. 1947, Page 92, Book No. XIV, Series of 1978, pertained to a deed of sale between other individuals. Also, the Deed of Absolute Sale in favor of Barbosa was not found in the photocopies of pages 90, 91, and 92 of the aforesaid notarial records of Atty. Santiago R. Reyes, which pages were reproduced from the National Archives. IVQ also submitted a Certification from the City Treasurer's Office of the City of Manila, stating that Therese Vargas's Residence Certificate No. A-423263 in the Deed of Absolute Sale in favor of Barbosa was not among those allotted to the City of Manila.

Furthermore, IVQ submitted a letter from Director Porfirio R. Encisa, Jr. of the LRA Department of Registration, stating that

the survey number FLS-2554-D in IVQ's TCT No. 253434 was a typographical error and the same should have been FLS-2544-D.

On the other hand, to bolster its claim of ownership over the subject property, IVQ presented a copy of the Deed of Absolute Sale[50] dated March 12, 1976 between Kawilihan Corporation and Jorge Vargas III that was obtained from the records of the National Archives. IVQ also submitted a copy of the Certification from the Office of the Clerk of Court of the RTC of Pasig City that Atty. Jejomar C. Binay, the officer who notarized the said deed, was indeed appointed as a notary public for the province of Rizal for the year 1976 and the latter submitted his notarial reports for the said year.

Interestingly, despite the claim of both parties that their respective titles could be traced to TCT No. 71507 in the name of Kawilihan Corporation, neither of them thought to submit a certified true copy of the cancelled TCT No. 71507, which would have indicated to whom the subject property had in fact been transferred.

The parties likewise admit in their pleadings that there is an on-going investigation being conducted by the LRA on the authenticity and genuineness of the certificates of title involved in the present case and to date, the LRA has not issued any official report pertaining to said investigation.

After reviewing the factual and procedural antecedents of this case, the Court deems it appropriate that further proceedings be undertaken in order to verify the authenticity and veracity of the parties' certificates of title and other documentary evidence.

For sure, the Court is aware that the aforesaid evidence belatedly introduced by IVQ are not technically newly-discovered evidence, given that the same could have been discovered and produced at the trial of the case had IVQ exercised reasonable diligence in obtaining them.[51] Nonetheless, we find that the above evidence cannot simply be brushed aside on this ground

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[50] *Rollo*, pp. 251-254.

[51] See *Custodio v. Sandiganbayan*, 493 Phil. 194 (2005).

alone. The same are too material to ignore and are relevant in ultimately resolving the question of ownership of the subject property. In *Mangahas v. Court of Appeals*,[52] we recognized the long line of jurisprudence that:

> [I]t is always in the power of this Court to suspend its own rules, or to except a particular case from its operation, whenever the purposes of justice require it. This Court is mindful of the policy of affording litigants the amplest opportunity for the determination of their cases on the merits and of dispensing with technicalities whenever compelling reasons so warrant or when the purpose of justice requires it. (Citations omitted.)

Indeed, the alleged defects in the notarization of the Deed of Absolute Sale dated September 11, 1970 between Kawilihan Corporation and Therese Vargas and the Deed of Absolute Sale dated October 4, 1978 between Therese Vargas and Barbosa are by no means trivial.

As the Court stressed in *Vda. De Rosales v. Ramos*:[53]

> The importance attached to the act of notarization cannot be overemphasized. Notarization is not an empty, meaningless, routinary act. It is invested with substantive public interest, such that only those who are qualified or authorized may act as notaries public. Notarization converts a private document into a public document thus making that document admissible in evidence without further proof of its authenticity. A notarial document is by law entitled to full faith and credit upon its face. Courts, administrative agencies and the public at large must be able to rely upon the acknowledgment executed by a notary public and appended to a private instrument.
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> x x x x x x x x x
>
> The notary public is further enjoined to record in his notarial registry the necessary information regarding the document or instrument notarized and retain a copy of the document presented to him for acknowledgment and certification especially when it is a contract. The notarial registry is a record of the notary public's official acts.

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[52] 588 Phil. 61, 82 (2008).

[53] 433 Phil. 8, 15-16 (2002).

Acknowledged documents and instruments recorded in it are considered public document. If the document or instrument does not appear in the notarial records and there is no copy of it therein, doubt is engendered that the document or instrument was not really notarized, so that it is not a public document and cannot bolster any claim made based on this document. x x x. (Citations omitted.)

Furthermore, in *Bitte v. Jonas*,[54] the Court had occasion to discuss the consequence of an improperly notarized deed of absolute sale. Thus —

Article 1358 of the New Civil Code requires that the form of a contract transmitting or extinguishing real rights over immovable property should be in a public document. x x x.

x x x x x x x x x

Not having been properly and validly notarized, the deed of sale cannot be considered a public document. It is an accepted rule, however, that the failure to observe the proper form does not render the transaction invalid. It has been settled that a sale of real property, though not consigned in a public instrument or formal writing is, nevertheless, valid and binding among the parties, for the time-honored rule is that even a verbal contract of sale or real estate produces legal effects between the parties.

Not being considered a public document, the deed is subject to the requirement of proof under Section 20, Rule 132, which reads:

> 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:
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> (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.

Accordingly, the party invoking the validity of the deed of absolute sale had the burden of proving its authenticity and due execution. x x x. (Emphasis supplied; citations omitted.)

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[54] G.R. No. 212256, December 9, 2015.

In the instant case, should the Deeds of Absolute Sale in favor of Therese Vargas and Barbosa, respectively, be found to be indeed improperly notarized, the trial court would have erred in admitting the same in evidence without proof of their authenticity and in relying on the presumption regarding the regularity of their execution. Barbosa would then have the additional burden of proving the authenticity and due execution of both deeds before he can invoke their validity in establishing his claim of ownership.

Therefore, IVQ should be allowed to formally offer in evidence the documents it belatedly submitted to this Court and that Barbosa should equally be given all the opportunity to refute the same or to submit controverting evidence.

Given that the Court is not a trier of facts and there still are factual matters that need to be evaluated, the proper recourse is to remand the case to the Court of Appeals for the conduct of further proceedings.

In *Manotok IV v. Heirs of Homer L. Barque*,[55] the Court explained the propriety of resorting to the above procedure in this wise:

> At the same time, the Court recognizes that there is not yet any sufficient evidence for us to warrant the annulment of the Manotok title. All that the record indicates thus far is evidence not yet refuted by clear and convincing proof that the Manotok's claim to title is flawed. **To arrive at an ultimate determination, the formal reception of evidence is in order. This Court is not a trier of fact or otherwise structurally capacitated to receive and evaluate evidence *de novo*. However, the Court of Appeals is sufficiently able to undertake such function.**
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> The remand of cases pending with this Court to the Court of Appeals for reception of further evidence is not a novel idea. It has been undertaken before — in *Republic v. Court of Appeals* and more recently in our 2007 Resolution in *Manotok v. Court of Appeals*. Our following explanation in Manotok equally applies to this case:

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[55] 595 Phil. 87, 148-149 (2008).

> Under Section 6 of Rule 46, which is applicable to original cases for *certiorari*, the Court may, whenever necessary to resolve factual issues, delegate the reception of the evidence on such issues to any of its members or to an appropriate court, agency or office. The delegate need not be the body that rendered the assailed decision.
>
> **The Court of Appeals generally has the authority to review findings of fact. Its conclusions as to findings of fact are generally accorded great respect by this Court. It is a body that is fully capacitated and has a surfeit of experience in appreciating factual matters, including documentary evidence.**
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> In fact, the Court had actually resorted to referring a factual matter pending before it to the Court of Appeals. In *Republic v. Court of Appeals*, this Court commissioned the former Thirteenth Division of the Court of Appeals to hear and receive evidence on the controversy, x x x. The Court of Appeals therein received the evidence of the parties and rendered a "Commissioner's Report" shortly thereafter. Thus, resort to the Court of Appeals is not a deviant procedure.
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> The provisions of Rule 32 should also be considered as governing the grant of authority to the Court of Appeals to receive evidence in the present case. Under Section 2, Rule 32 of the Rules of Court, a court may, *motu proprio*, direct a reference to a commissioner when a question of fact, other than upon the pleadings, arises upon motion or otherwise, in any stage of a case, or for carrying a judgment or order into effect. The order of reference can be limited exclusively to receive and report evidence only, and the commissioner may likewise rule upon the admissibility of evidence. The commissioner is likewise mandated to submit a report in writing to the court upon the matters submitted to him by the order of reference. In *Republic*, the commissioner's report formed the basis of the final adjudication by the Court on the matter. The same result can obtain herein. (Emphasis supplied; citations omitted.)

Aside from receiving and evaluating evidence relating to the pieces of documentary evidence submitted by IVQ to this Court, the Court of Appeals may likewise receive any other

additional evidence that the parties herein may submit on their behalf.

The Court, in particular, deems it necessary for the parties to submit a certified true copy of TCT No. 71507 that is registered in the name of Kawilihan Corporation, if possible. As previously discussed, neither of the parties submitted the same before the trial court and no explanation was likewise offered for this omission. As TCT No. 71507 is ultimately the title from which the certificates of title of Therese Vargas and Jorge Vargas III supposedly emanated, the same may indicate which of the two subsequent titles cancelled it.

It would likewise be expedient for the parties to submit evidence as to the character of their possession of the subject property, given that the trial court ruled that neither of them were able to prove their possession thereof.

The Court further reiterates its directive to the parties to submit information as to the results of the investigation of the Task Force *Titulong Malinis* of the LRA regarding the authenticity of TCT No. 159487 registered in the name of Therese Vargas and TCT No. 223019 registered in the name of Jorge Vargas III.

After the conclusion of its proceedings, the Court of Appeals is directed to submit to this Court a detailed Report on its findings and conclusions within three months from notice of this Resolution. Said report, along with all the additional evidence that will be offered by the parties, shall be thoroughly considered in order to determine with finality the issue of ownership of the subject property.

WHEREFORE, the case is **REMANDED** to the Court of Appeals for the purpose of hearing and receiving evidence, including but not limited to, those specifically required by the Court in this Resolution. The Court of Appeals is directed to conclude the proceedings and submit to this Court a Report on its findings and recommended conclusions within three (3) months from notice of this Resolution. The Court of Appeals is further directed to raffle this case immediately upon receipt of this Resolution.

This Resolution is immediately executory.

SO ORDERED.

Sereno, C.J. (Chairperson), Velasco, Jr.,[*] *del Castillo*, and *Caguioa, JJ.*, concur.

THIRD DIVISION

[G.R. No. 197492. January 18, 2017]

CHATEAU ROYALE SPORTS and COUNTRY CLUB, INC., *petitioner, vs.* **RACHELLE G. BALBA and MARINEL N. CONSTANTE,** *respondents*.

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; EMPLOYMENT; TRANSFER OF EMPLOYEE FROM ONE AREA OF OPERATION TO ANOTHER; VALIDITY THEREOF REQUIRES BALANCE BETWEEN MANAGEMENT PREROGATIVE AND EMPLOYEE'S RIGHT TO SECURITY OF TENURE.— In the resolution of whether the transfer of the respondents from one area of operation to another was valid, finding a balance between the scope and limitation of the exercise of management prerogative and the employees' right to security of tenure is necessary. We have to weigh and consider, on the one hand, that management has a wide discretion to regulate all aspects of employment, including the transfer and re-assignment of employees according to the exigencies of the business; and, on the other, that the transfer constitutes constructive dismissal when it is unreasonable, inconvenient or prejudicial to the employee, or involves a demotion in rank or diminution of salaries, benefits and other privileges, or when

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[*] Per Raffle dated January 16, 2017.

the acts of discrimination, insensibility or disdain on the part of the employer become unbearable for the employee, forcing him to forego her employment.

2. ID.; ID.; ID.; MANAGEMENT PREROGATIVE, UPHELD IN THE PRESENCE OF VALID GROUND AND ABSENCE OF ILL-MOTIVE.— [T]he burden of proof lies in the petitioner as the employer to prove that the transfer of the employee from one area of operation to another was for a valid and legitimate ground, like genuine business necessity. x x x [A]s held in *Benguet Electric Cooperative v. Fianza*, management had the prerogative to determine the place where the employee is best qualified to serve the interests of the business given the qualifications, training and performance of the affected employee. Secondly, although the respondents' transfer might be potentially inconvenient for them, x x x it was neither unreasonable nor oppressive. The petitioner rightly points out that the transfer would be without demotion in rank, or without diminution of benefits and salaries. x x x Thirdly, the respondents did not show by substantial evidence that the petitioner was acting in bad faith or had ill-motive in ordering their transfer. x x x Lastly, the respondents, by having voluntarily affixed their signatures on their respective letters of appointment, acceded to the terms and conditions of employment incorporated therein. One of the terms and conditions thus incorporated was the prerogative of management to transfer and re-assign its employees from one job to another "as it may deem necessary or advisable," x x x Verily, the right of the employee to security of tenure does not give her a vested right to her position as to deprive management of its authority to transfer or re-assign her where she will be most useful.

APPEARANCES OF COUNSEL

De Sagun Law Office for petitioner.
FFW Legal Center for respondents.

D E C I S I O N

BERSAMIN, *J.*:

The petitioner appeals the decision promulgated on January 10, 2011,[1] whereby the Court of Appeals (CA) annulled and set aside the December 14, 2009 decision[2] and February 26, 2010 resolution[3] of the National Labor Relations Commission (NLRC) dismissing the respondents' complaint for constructive dismissal.

Antecedents

On August 28, 2004, the petitioner, a domestic corporation operating a resort complex in Nasugbu, Batangas, hired the respondents as Account Executives on probationary status.[4] On June 28, 2005, the respondents were promoted to Account Managers effective July 1, 2005, with the monthly salary rate of ₱9,000.00 plus allowances totaling to ₱5,500.[5] As part of their duties as Account Managers, they were instructed by the Director of Sales and Marketing to forward all proposals, event orders and contracts for an orderly and systematic bookings in the operation of the petitioner's business. However, they failed to comply with the directive. Accordingly, a notice to explain was served on them,[6] to which they promptly responded.[7]

On October 4, 2005, the management served notices of administrative hearing[8] on the respondents. Thereupon, they sent a letter of said date asking for a postponement of the

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[1] *Rollo*, pp. 31-40; penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justice Cecilia C. Librea-Leagogo and Associate Justice Michael P. Elbinias concurring.

[2] *Id.* at 152-160.

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

[4] *Id.* at 44-47.

[5] *Id.* at 48-49.

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

[7] *Id.* at 57-58

[8] *Id.* at 59.

hearing.[9] Their request was, however, denied by the letter dated October 7, 2005, and at the same time informed them that the petitioner's Corporate Infractions Committee had found them to have committed acts of insubordination, and that they were being suspended for seven days from October 10 to 17, 2005, inclusive.[10]

The suspension order was lifted even before its implementation on October 10, 2005.[11]

On October 10, 2005, the respondents filed a complaint for illegal suspension and non-payment of allowances and commissions.[12]

On December 1, 2005, the respondents amended their complaint to include constructive dismissal as one of their causes of action based on their information from the Chief Financial Officer of the petitioner on the latter's plan to transfer them to the Manila Office.[13] The proposed transfer was prompted by the shortage of personnel at the Manila Office as a result of the resignation of three account managers and the director of sales and marketing. Despite attempts to convince them to accept the transfer to Manila, they declined because their families were living in Nasugbu, Batangas.

The respondents received the notice of transfer[14] dated December 13, 2005 on December 28, 2005[15] directing them to report to work at the Manila Office effective January 9, 2006. They responded by letter addressed to Mr. Rowell David, the Human Resource Consultant of the petitioner,[16] explaining their

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

[10] *Id*. at 62.

[11] *Id*. at 63.

[12] *Id*. at 33.

[13] *Id*.

[14] *Id*. at 64-65.

[15] *Supra* note 12.

[16] *Rollo*, pp. 66-67.

reasons for declining the order of transfer. Consequently, another request for incident report[17] was served on them regarding their failure to comply with the directive to report at the Manila office. Following respondents' respective responses,[18] the petitioner sent a notice imposing on them the sanction of written reprimand for their failure to abide by the order of transfer.[19]

Ruling of the Labor Arbiter

On February 14, 2008, Labor Arbiter Arthur L. Amansec rendered his decision declaring that the respondents had been constructively dismissed, and disposing thusly:[20]

> WHEREFORE, judgment is hereby made finding respondent Chateau Royale Sports and Country Club, Inc. to have constructively dismissed the complainants Rachelle G. Balba and Marinel N. Constante from employment. Concomitantly, the respondent company is hereby ordered to pay each complainant one (1) year backwages plus a separation pay, computed at a full month's pay for every year of service.
>
> The respondent company is also ordered to pay each complainant ₱50,000.00 moral damages and ₱10,000.00 exemplary damages.
>
> Ten (10%) attorney's fees are also awarded.
>
> Other claims are dismissed for lack of merit.
>
> SO ORDERED.[21]

Labor Arbiter Amansec opined that the respondents' transfer to Manila would not only be physically and financially inconvenient, but would also deprive them of the psychological comfort that their families provided; that being the top sales performers in Nasugbu, they should not be punished with the

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[17] *Id*. at 68.

[18] *Id*. at 69-70.

[19] *Id*. at 71-72.

[20] *Id*. at 130-134.

[21] *Id*. at 133-134.

transfer; and that their earnings would considerably diminish inasmuch as sales in Manila were not as lively as those in Nasugbu.[22]

Ruling of the NLRC

On appeal,[23] the NLRC reversed the ruling of the Labor Arbiter, and dismissed the complaint for lack of merit, to wit:

> **WHEREFORE**, the appeal of respondents Chateau Royale Sports and Country Club, Inc. is Granted. Accordingly, the assailed February 14, 2008 decision is Set-Aside dismissing the complaint for lack of merit.
>
> **SO ORDERED.**[24]

The NLRC found that the respondents had been informed through their respective letters of appointment of the possibility of transfer in the exigency of the service; that the transfer was justified due to the shortage of personnel at the Manila office; that the transfer of the respondents, being bereft of improper motive, was a valid exercise of management prerogative; and that they could not as employees validly decline a lawful transfer order on the ground of parental obligations, additional expenses, and the anxiety of being away from his family.

The respondents filed their motion for reconsideration,[25] but the NLRC denied their motion on February 26, 2010.[26]

Decision of the CA

On January 10, 2011, the CA promulgated its decision granting the respondents' petition for *certiorari*, and setting aside the decision of the NLRC, *viz*.:

> **WHEREFORE**, premises considered, the assailed Decision dated December 14, 2009 and Resolution dated February 26, 2010 of the

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[22] *Id*. at 132.

[23] *Id*. at 135-148.

[24] *Id*. at 160.

[25] *Id*. at 161-189.

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

NLRC, Second Division in NLRC LAC No. 07-002551-08 (NLRC-RAB-IV Case No. 10-21558-05B) (NLRC-RAB-IV Case No. 02-22153-06B) are hereby **REVERSED** and **SET ASIDE**. Private respondent Chateau Royale is hereby ordered to **REINSTATE** petitioners Balba and Constante to their former positions without loss of seniority rights and other privileges, and to pay said petitioners full **BACKWAGES** inclusive of allowances and other benefits from the time their employment was severed up to the time of actual reinstatement.

SO ORDERED.[27]

The CA ruled that the transfer of the respondents from the office in Nasugbu, Batangas to the Manila office was not a legitimate exercise of management prerogative and constituted constructive dismissal; that the transfer to the Manila office was not crucial as to cause serious disruption in the operation of the business if the respondents were not transferred thereat; that the directive failed to indicate that the transfer was merely temporary; that the directive did not mention the shortage of personnel that would necessitate such transfer; and that the transfer would be inconvenient and prejudicial to the respondents.[28]

On June 22, 2011,[29] the CA denied the petitioner's motion for reconsideration.

Issues

Hence, this appeal by the petitioner via petition for review on *certiorari*,[30] citing the following grounds:

A

THE HONORABLE COURT OF APPEALS GRIEVOUSLY ERRED IN CONCLUDING THAT THE SHORTAGE OF PERSONNEL IN THE MANILA OFFICE IS A MERE SUBTERFUGE RATHER THAN AN EXIGENCY IN THE BUSINESS THEREBY TREATING THE TRANSFER OF RESPONDENTS AS UNREASONABLE

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[27] *Supra* note 1, at 40.

[28] *Rollo*, pp. 38-39.

[29] *Id*. at 42-43.

[30] *Id*. at 3-24.

B

THE HONORABLE COURT OF APPEALS GRIEVOUSLY ERRED IN CONCLUDING THAT THE INTENDED TRANSFER OF THE RESPONDENTS FROM NASUGBU, BATANGAS TO MANILA OFFICE CONSTITUTES CONSTRUCTIVE DISMISSAL.[31]

The petitioner argues that the resignations of the Account Managers and the Director of Sales and Marketing caused serious disruptions in the operations of the Manila office, thereby making the immediate transfer of the respondents crucial and indispensable; that through their respective letters of appointment, the possibility of their transfer to the Manila office had been made known to them even prior to their regularization; that if its intention had been to expel them from the company, it would not have rehired them as regular employees after the expiration of their probationary contract and even promoted them as Account Managers; that there was no diminution of income and benefits as a result of the transfer; and that their immediate rejection of the transfer directive prevented the parties from negotiating for additional allowances beyond their regular salaries.

The respondents counter that there was no valid cause for their transfer; that they were forced to transfer to the Manila office without consideration of the proximity of the place and without improvements in the employment package; that the alleged shortage of personnel in the Manila office due to the resignation of the account managers was merely used to conceal the petitioner's illegal acts; and that notwithstanding their negative response upon being informed of their impending transfer to Manila by Chief Finance Officer Marquez, the petitioner still issued the transfer order directing them to report to the Manila office effective January 9, 2006.

The sole issue for resolution is whether or not the respondents were constructively dismissed.

Ruling of the Court

We find merit in the appeal.

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[31] *Id*. at 15.

In the resolution of whether the transfer of the respondents from one area of operation to another was valid, finding a balance between the scope and limitation of the exercise of management prerogative and the employees' right to security of tenure is necessary.[32] We have to weigh and consider, on the one hand, that management has a wide discretion to regulate all aspects of employment, including the transfer and re-assignment of employees according to the exigencies of the business;[33] and, on the other, that the transfer constitutes constructive dismissal when it is unreasonable, inconvenient or prejudicial to the employee, or involves a demotion in rank or diminution of salaries, benefits and other privileges, or when the acts of discrimination, insensibility or disdain on the part of the employer become unbearable for the employee, forcing him to forego her employment.[34]

In this case of constructive dismissal, the burden of proof lies in the petitioner as the employer to prove that the transfer of the employee from one area of operation to another was for a valid and legitimate ground, like genuine business necessity.[35] We are satisfied that the petitioner duly discharged its burden, and thus established that, contrary to the claim of the respondents that they had been constructively dismissed, their transfer had been an exercise of the petitioner's legitimate management prerogative.

To start with, the resignations of the account managers and the director of sales and marketing in the Manila office brought about the immediate need for their replacements with personnel having commensurate experiences and skills. With the positions held by the resigned sales personnel being undoubtedly crucial to the operations and business of the petitioner, the resignations

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[32] *Benguet Electric Cooperative v. Fianza*, G.R. No. 158606, March 9, 2004, 425 SCRA 41, 50.

[33] *Id*.

[34] *Tinio v. Court of Appeals*, G.R. No. 171764, June 8, 2007, 524 SCRA 533, 541.

[35] *Id*.

gave rise to an urgent and genuine business necessity that fully warranted the transfer from the Nasugbu, Batangas office to the main office in Manila of the respondents, undoubtedly the best suited to perform the tasks assigned to the resigned employees because of their being themselves account managers who had recently attended seminars and trainings as such. The transfer could not be validly assailed as a form of constructive dismissal, for, as held in *Benguet Electric Cooperative v. Fianza*,[36] management had the prerogative to determine the place where the employee is best qualified to serve the interests of the business given the qualifications, training and performance of the affected employee.

Secondly, although the respondents' transfer to Manila might be potentially inconvenient for them because it would entail additional expenses on their part aside from their being forced to be away from their families, it was neither unreasonable nor oppressive. The petitioner rightly points out that the transfer would be without demotion in rank, or without diminution of benefits and salaries. Instead, the transfer would open the way for their eventual career growth, with the corresponding increases in pay. It is noted that their prompt and repeated opposition to the transfer effectively stalled the possibility of any agreement between the parties regarding benefits or salary adjustments.

Thirdly, the respondents did not show by substantial evidence that the petitioner was acting in bad faith or had ill-motive in ordering their transfer. In contrast, the urgency and genuine business necessity justifying the transfer negated bad faith on the part of the petitioner.

Lastly, the respondents, by having voluntarily affixed their signatures on their respective letters of appointment, acceded to the terms and conditions of employment incorporated therein. One of the terms and conditions thus incorporated was the prerogative of management to transfer and re-assign its employees from one job to another "as it may deem necessary or advisable," to wit:

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[36] *Supra* note at 55.

The company reserves the right to transfer you to any assignment from one job to another, or from one department/section to another, as it may deem necessary or advisable.

Having expressly consented to the foregoing, the respondents had no basis for objecting to their transfer. According to *Abbot Laboratories (Phils.), Inc. v. National Labor Relations Commission*,[37] the employee who has consented to the company's policy of hiring sales staff willing to be assigned anywhere in the Philippines as demanded by the employer's business has no reason to disobey the transfer order of management. Verily, the right of the employee to security of tenure does not give her a vested right to her position as to deprive management of its authority to transfer or re-assign her where she will be most useful.[38]

In view of the foregoing, the NLRC properly appreciated the evidence and merits of the case in reversing the decision of the Labor Arbiter. As such, the CA gravely erred in declaring that the NLRC had gravely abused its discretion amounting to lack or excess of jurisdiction.

WHEREFORE, the Court **REVERSES AND SETS ASIDE** the decision of the Court of Appeals promulgated on January 10, 2011; **REINSTATES** the decision issued on December 14, 2009 by the National Labor Relations Commission; and **ORDERS** the respondents to pay the costs of suit.

SO ORDERED.

Velasco, Jr. (Chairperson), Reyes, Jardeleza, and *Caguioa,*[*] *JJ.,* concur.

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[37] No. 76959, October 12, 1987, 154 SCRA 713, 719.

[38] *Tinio v. Court of Appeals, supra* note 34 at 540; *Mendoza v. Rural Bank of Lucban*, G.R. No. 155421, July 7, 2004, 433 SCRA 756, 766.

[*] Designated as Fifth Member of the Third Division per Special Order No. 2417 dated January 4, 2017.

THIRD DIVISION

[G.R. No. 198968. January 18, 2017]

STATUS MARITIME CORPORATION, and ADMIBROS SHIPMANAGEMENT CO., LTD., *petitioners, vs.* **RODRIGO C. DOCTOLERO,** *respondent*.

SYLLABUS

LABOR AND SOCIAL LEGISLATION; LABOR CODE; PERMANENT AND TOTAL DISABILITY; PERIOD OF ENTITLEMENT; COMPLAINT FILED FOR DISABILITY BENEFITS BEFORE THE NATURE AND EXTENT OF DISABILITY COULD BE DETERMINED OR EVEN BEFORE THE LAPSE OF THE INITIAL 120-DAY PERIOD, IS PREMATURE.— Permanent and total disability is defined in Article 198(c)(1) of the *Labor Code*, to wit: x x x (c) The following disabilities shall be deemed total and permanent: (1) Temporary total disability lasting continuously for more than one hundred twenty days, except as otherwise provided for in the Rules. x x x The relevant rule is Section 2, Rule X, of the *Rules and Regulations implementing Book IV of the Labor Code*, which states: *Period of entitlement*. – (a) The income benefit shall be paid beginning the first day of such disability. If caused by an injury or sickness it shall not be paid longer than 120 consecutive days except where such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days from onset of disability in which case benefit for temporary total disability shall be paid. However, the System may declare the total and permanent status at anytime after 120 days of continuous temporary total disability as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System. These provisions have to be read together with the POEA-SEC, whose Section 20(3) states: Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one hundred twenty (120) days. x x x While the fact

that Doctolero suffered the disability during the term of his contract was undisputed, it was evident that he had filed his complaint for disability benefits *before the company-designated physician could determine the nature and extent of his disability, or before even the lapse of the initial 120-day period*. With Doctolero still undergoing further tests, the company-designated physician had no occasion to determine the nature and extent of his disability upon which to base Doctolero's "fit to work" certification or disability grading. Consequently, the petitioners correctly argued that Doctolero had no cause of action for disability pay and sickness allowance at the time of the filing of his complaint.

APPEARANCES OF COUNSEL

Tarriela Tagao Ona & Associates for petitioners.
Linsangan Linsangan and Linsangan Law Office for respondent.

D E C I S I O N

BERSAMIN, *J.*:

Petitioners Status Maritime Corporation (Status Maritime) and Admibros Shipmanagement Co., Ltd. (Admibros) appeal to assail the March 17, 2011 decision[1] and October 6, 2011 resolution[2] promulgated in CA-G.R. SP No. 113206, whereby the Court of Appeals (CA), modifying the decision[3] rendered on August 18, 2009 by the National Labor Relations Commission (NLRC), awarded permanent and total disability benefits in favor of respondent Rodrigo C. Doctolero.

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[1] *Rollo*, pp. 28-36; penned by Associate Justice Ricardo R. Rosario, with Associate Justice Hakim S. Abdulwahid (retired) and Associate Justice Samuel H. Gaerlan concurring.

[2] *Id.* at 38-41; penned by Associate Justice Rosario, with Associate Justice Marlene Gonzales-Sison and Associate Justice Gaerlan concurring.

[3] *Id.* at 281-287; penned by Presiding Commissioner Benedicto R. Palacol, with Commissioner Isabel G. Panganiban-Ortiguerra and Commissioner Nieves Vivar-De Castro concurring.

Antecedents

On July 28, 2006, Status Maritime, acting for and in behalf of Admibros as its principal, hired Doctolero as Chief Officer on board the vessel M/V Dimitris Manios II for a period of nine months with a basic monthly salary of US$1,250.00. Doctolero underwent the required Pre-Employment Medical Examination (PEME) prior to his embarkation, and was declared "fit to work." He boarded the vessel in August 2006.

On October 28, 2006, while M/V Dimitris Manios II was in Mexico, Doctolero experienced chest and abdominal pains. He was brought to a medical clinic in Vera Cruz, Mexico. When no clear diagnosis could be made, he resumed work on board the vessel. In the evening of the same day, however, he was brought to Clinic San Luis, also in Mexico, because he again complained of abdominal pains. He was then diagnosed to be suffering from "Esophago-Gastritis-Duodenitis." The attending physician, Dr. Jorge Hernandez Bustos, recommended his repatriation.

On October 29, 2006, Doctolero again experienced difficulty of breathing while waiting for his return flight schedule. He informed the ship's agent of his condition and requested assistance, but the latter extended no assistance to him. Thus, he, by himself, went to the Hospitales Nacionales, where he was admitted. He paid the hospital bills amounting to MXN$7,032.17 on his own.[4] Upon discharge, he sought assistance from the Philippine Embassy until his repatriation to the Philippines in the second week of November 2006.[5]

On November 16, 2006, the company-designated physician evaluated Doctolero's condition and found normal upper gastro-intestinal endoscopy and negative H. pylori test.[6] Doctolero was recommended for several other tests that were, however, not administered.

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[4] *Id.* at 30.

[5] *Id.* at 166.

[6] *Id.*

On January 22, 2007, on account of the illness suffered while working on board the M/V Dimitris Manios II, Doctolero filed in the NLRC his complaint demanding payment of total and permanent disability benefits, reimbursement of medical and hospital expenses, sickwage allowance, moral and exemplary damages, and legal interest on his claims.[7]

Ruling of the Labor Arbiter

On July 18, 2008, Labor Arbiter Pablo C. Espiritu, Jr. rendered his decision dismissing the complaint for lack of merit.[8] He opined that the initial diagnosis of gastritis-duodenitis was not one of those listed as an occupational illness in the Philippine Overseas Employment Administration Standard Employment Contract (POEA-SEC); and that no evidence was adduced to establish that such illness had been caused or aggravated by the working conditions on board the vessel.[9]

Decision of the NLRC

On appeal, the NLRC affirmed the Labor Arbiter's finding no basis for the award of sickness allowance and disability pay but held the petitioners liable to reimburse to Doctolero the cost of his medical treatment in the amount of $7,040.65. It ratiocinated and disposed as follows:

> x x x The illness was clearly suffered during the term of his contract and insofar as work relatedness is concerned, there being no contrary evidence adduced by the respondents-appellees of the non-existence of causative circumstances of complainant-appellant's illness, We are constrained to rule in the latter's favor. The latter finding is likewise supported by the consistent ruling that it is not required that the employment be the sole factor in the growth, development or acceleration of the illness to entitle the claimant to the benefits incident thereto. It is enough that the employment had contributed, even in a small measure, to the development of the disease.

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[7] *Id.* at 163-B.

[8] *Id.* at 171-177.

[9] *Id.*

That said, complainant-appellant is thus entitled to reimbursement of his medical expenses in Veracruz, Mexico equivalent to $7,040.65. (Records, p. 28) However, with respect to his claims for sickness allowance and disability pay, there being no declaration as yet of complainant-appellant's fitness to return to work or degree of disability made by the company designated physician, entitlement thereto has not attached. We take note of the fact that the initial evaluation of the company designated physician was that the Gastroscopy was normal and after such evaluation there had been no other assessment on his condition made. We also note that there had been no other assessment made by any other doctor of complainant-appellant's condition that would controvert the findings of the company designated physician and that this complaint has been filed before the 120 days period given to company designated physician to make a fitness to return to work assessment or a disability grading in the latter case. It is clear therefore that the instant case has been prematurely filed and that the cause of action for disability claims has not arisen.

Moreover, to this date there had been no evidence showing that complainant-appellant is permanently and totally disabled.

WHEREFORE, premises considered, judgment is hereby rendered finding no basis for award of sickness allowance and disability pay. However, respondents-appellees are hereby ordered to reimburse complainant-appellant the cost of his medical treatment in the amount of $7,040.65. Accordingly, the decision of the Labor Arbiter dated July 18, 2008 is hereby **MODIFIED**.

SO ORDERED.[10]

Doctolero moved for reconsideration, but the NLRC denied his motion for reconsideration on January 8, 2010.[11]

Decision of the CA

By petition for *certiorari*, Doctolero assailed the adverse decision of the NLRC in the CA, insisting that the NLRC thereby committed grave abuse of discretion amounting to lack or excess of jurisdiction.

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[10] *Id.* at 168-170.

[11] *Id.* at 185-187.

On March 17, 2011,[12] the CA granted the petition for *certiorari*, and declared Doctolero's illness as work-related because it had been contracted by him while on board the vessel; that he had undergone rigid pre-employment medical examinations by virtue of which the company physicians had declared him fit to work; that he was entitled to disability benefits because he had been unable to perform his customary job for more than 120 days; and that he was further entitled to moral and exemplary damages because the petitioners had failed to shoulder the expenses he had incurred while he was awaiting his repatriation.

The CA decision disposed thusly:

WHEREFORE, judgment is hereby rendered **MODIFYING** the assailed Decision of public respondent in that private respondents are ordered to pay petitioner the following:

1. US $60,000.00 or its equivalent in Philippine peso at the time of actual payment, as permanent and total disability benefits:
2. Moral and exemplary damages in the amount of ₱100,000.00.
3. US$7,040.65 by way of reimbursement of the cost of medical treatment in Mexico City;
4. Legal interest on the monetary awards to be computed from the time of this decision up to the actual payment thereof;
5. Sick wage allowance equivalent to 120 days of his basic salary;
6. Attorney's fees equivalent to 10% of the total awards.

SO ORDERED.[13]

Upon the petitioners' motion for reconsideration, the CA amended the dispositive portion of its decision through the resolution promulgated on October 6, 2011, to wit:

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[12] *Supra* note 1.

[13] *Id.* at 35.

WHEREFORE, judgment is hereby rendered **MODIFYING** the assailed Decision of public respondent in that private respondents are ordered to pay petitioner the following:

1. US $60,000.00 or its equivalent in Philippine peso at the time of actual payment, as permanent and total disability benefits;
2. Moral and exemplary damages in the amount of ₱100,000.00;
3. **$7,040.65 (MXN) by way of reimbursement of the cost of medical treatment in Mexico City;**
4. Legal interest on the monetary awards to be computed from the time of this decision up to the actual payment thereof;
5. Sick wage allowance equivalent to 120 days of his basic salary;
6. Attorney's fees equivalent to 10% of the total awards.

SO ORDERED.

In all other respects, the motion for reconsideration is **DENIED** for lack of merit.

SO ORDERED.[14]

Issues

In this appeal, the petitioners argue that the PEME did not reveal the real state of health of Doctolero; that he did not show that his illness had occurred during the term of his contract and had been work-related or had been aggravated by the conditions of his work; and that his illness was not listed either as a disability or as an occupational disease under Section 32 and Section 32-A, respectively, of the 2000 POEA-SEC.

Doctolero counters that the CA did not err because its assailed decision was based on law and jurisprudence.

It their reply, the petitioners stress that there was no finding by an independent physician that Doctolero's illness had been

[14] *Supra* note 2.

work-related or had been aggravated by his working conditions; and that Doctolero's complaint was premature for being filed before the expiration of the 120-day period of treatment by the company-designated physician and in the absence of the disability grading.

Based on the foregoing, the issue to be determined is whether Doctolero was entitled to claim permanent and total disability benefits from the petitioners.

Ruling of the Court

The appeal is meritorious.

Permanent and total disability is defined in Article 198(c)(1) of the *Labor Code*, to wit:

x x x x x x x x x

(c) The following disabilities shall be deemed total and permanent:

(1) Temporary total disability lasting continuously for more than one hundred twenty days, except as otherwise provided for in the Rules.

x x x x x x x x x

The relevant rule is Section 2, Rule X, of the *Rules and Regulations implementing Book IV of the Labor Code*, which states:

Period of entitlement. – (a) The income benefit shall be paid beginning the first day of such disability. If caused by an injury or sickness it shall not be paid longer than 120 consecutive days except where such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days from onset of disability in which case benefit for temporary total disability shall be paid. However, the System may declare the total and permanent status at anytime after 120 days of continuous temporary total disability as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System.

These provisions have to be read together with the POEA-SEC, whose Section 20(3) states:

Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one hundred twenty (120) days.[15]

Applying the aforementioned provisions, we find the filing of the respondent's claim to be premature.

In order for a seafarer's claim for total and permanent disability benefits to prosper, any of the following conditions should be present:

(a) The company-designated physician failed to issue a declaration as to his fitness to engage in sea duty or disability even after the lapse of the 120-day period and there is no indication that further medical treatment would address his temporary total disability, hence, justify an extension of the period to 240 days;

(b) 240 days had lapsed without any certification issued by the company designated physician;

(c) The company-designated physician declared that he is fit for sea duty within the 120-day or 240-day period, as the case may be, but his physician of choice and the doctor chosen under Section 20-B(3) of the POEA-SEC are of a contrary opinion;

(d) The company-designated physician acknowledged that he is partially permanently disabled but other doctors who he consulted, on his own and jointly with his employer, believed that his disability is not only permanent but total as well;

(e) The company-designated physician recognized that he is totally and permanently disabled but there is a dispute on the disability grading;

(f) The company-designated physician determined that his medical condition is not compensable or work-related under the POEA-SEC but his doctor-of-choice and the third doctor

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[15] *Vergara v. Hammonia Maritime Services, Inc.*, G.R. No. 172933, October 6, 2008, 567 SCRA 610, 627.

selected under Section 20-B(3) of the POEA-SEC found otherwise and declared him unfit to work;

(g) The company-designated physician declared him totally and permanently disabled but the employer refuses to pay him the corresponding benefits; and

(h) The company-designated physician declared him partially and permanently disabled within the 120-day or 240-day period but he remains incapacitated to perform his usual sea duties after the lapse of said periods.[16]

Although the degree and extent of the seafarer's disability constitute a factual question that this Court should not re-assess on review, the conflict between the factual findings of the Labor Arbiter and NLRC, on one hand, and those of the CA, on the other hand, compel the Court to dwell on the factual matters and to re-examine the evidence adduced by the parties.[17] Upon its re-evaluation of the records, therefore, the Court concludes that the CA's findings in favor of entitling Doctolero to permanent and total disability benefits were erroneous. While the fact that Doctolero suffered the disability during the term of his contract was undisputed, it was evident that he had filed his complaint for disability benefits *before the company-designated physician could determine the nature and extent of his disability, or before even the lapse of the initial 120-day period*. With Doctolero still undergoing further tests, the company-designated physician had no occasion to determine the nature and extent of his disability upon which to base Doctolero's "fit to work" certification or disability grading. Consequently, the petitioners correctly argued that Doctolero had no cause of action for disability pay and sickness allowance at the time of the filing of his complaint.

WHEREFORE, the Court **REVERSES** and **SETS ASIDE** the March 17, 2011 decision and October 6, 2011 resolution of

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[16] *C.F. Sharp Crew Management, Inc. v. Taok*, G.R. No. 193679, July 18, 2012, 677 SCRA 296, 315.

[17] *Madrigalejos v. Geminilou Trucking Service*, G.R. No. 179174, December 24, 2008, 575 SCRA 570, 573.

the Court of Appeals awarding permanent disability benefits to respondent Rodrigo C. Doctolero; **REINSTATES** the decision rendered on August 18, 2009 by the National Labor Relations Commission; and **ORDERS** the respondent to pay the costs of suit.

SO ORDERED.

Velasco, Jr. (Chairperson), Reyes, Jardeleza, and *Caguioa,*[*] *JJ.,* concur.

FIRST DIVISION

[G.R. No. 205727. January 18, 2017]

RUTCHER T. DAGASDAS, *petitioner, vs.* **GRAND PLACEMENT AND GENERAL SERVICES CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; APPEALS; ONLY QUESTIONS OF LAW MAY BE RAISED.— As a rule, only questions of law may be raised in a petition under Rule 45 of the Rules of Court. However, this rule allows certain exceptions, including a situation where the findings of fact of the courts or tribunals below are conflicting.

2. LABOR AND SOCIAL LEGISLATION; LABOR CODE; EMPLOYMENT; SECURITY OF TENURE; APPLICABLE EVEN TO FILIPINOS WORKING ABROAD.— [I]t is well-settled that employers have the prerogative to impose standards on the work quantity and quality of their employees and provide measures to ensure compliance therewith. Non-compliance with

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[*] Designated as additional Member of the Third Division per Special Order No. 2417 dated January 4, 2017.

work standards may thus be a valid cause for dismissing an employee. Nonetheless, to ensure that employers will not abuse their prerogatives, the same is tempered by security of tenure whereby the employees are guaranteed substantive and procedural due process before they are dismissed from work. Security of tenure remains even if employees, particularly the overseas Filipino workers (OFW), work in a different jurisdiction. Since the employment contracts of OFWs are perfected in the Philippines, and following the principle of *lex loci contractus* (the law of the place where the contract is made), these contracts are governed by our laws, primarily the Labor Code of the Philippines and its implementing rules and regulations. At the same time, our laws generally apply even to employment contracts of OFWs as our Constitution explicitly provides that the State shall afford full protection to labor, whether local or overseas. Thus, even if a Filipino is employed abroad, he or she is entitled to security of tenure, among other constitutional rights.

3. **ID.; ID.; ID.; TERMINATION; JUST CAUSES.—** Under the Labor Code of the Philippines the following are the just causes for dismissing an employee: ARTICLE 297. [282] Termination by Employer. — An employer may terminate an employment for any of the following causes: (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work; (b) Gross and habitual neglect by the employee of his duties; (c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative; (d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and (e) Other causes analogous to the foregoing.

4. **ID.; ID.; ID.; ID.; RIGHT TO TERMINATE EMPLOYEES WITHOUT CAUSE IS VIOLATIVE OF SECURITY OF TENURE; JUST CAUSE ALSO REQUIRED TO TERMINATE PROBATIONARY EMPLOYEE.—** [P]er the notice of termination given to Dagasdas, ITM terminated him for violating clause 17.4.3 of his new contract, *viz.*: 17.4 The Company reserves the right to terminate this agreement without serving any notice to the Consultant in the following cases: x x x 17.4.3 If the Consultant is terminated by company or its client within the probation period of 3 months. Based on the foregoing, there is no clear justification for the dismissal of

Dagasdas other than the exercise of ITM's right to terminate him within the probationary period. While our Civil Code recognizes that parties may stipulate in their contracts such terms and conditions as they may deem convenient, these terms and conditions must not be contrary to law, morals, good customs, public order or policy. The above-cited clause is contrary to law because as discussed, our Constitution guarantees that employees, local or overseas, are entitled to security of tenure. To allow employers to reserve a right to terminate employees without cause is violative of this guarantee of security of tenure. Moreover, even assuming that Dagasdas was still a probationary employee when he was terminated, his dismissal must still be with a valid cause. As regards a probationary employee, his or her dismissal may be allowed only if there is just cause or such reason to conclude that the employee fails to qualify as regular employee pursuant to reasonable standards made known to the employee at the time of engagement.

5. ID.; ID.; OVERSEAS FILIPINO WORKERS (OFW); EMPLOYMENT CONTRACT NOT PROCESSED THROUGH THE PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION (POEA) DOES NOT BIND THE CONCERNED OFW.— [T]he new contract was not shown to have been processed through the POEA. Under our Labor Code, employers hiring OFWs may only do so through entities authorized by the Secretary of the Department of Labor and Employment. Unless the employment contract of an OFW is processed through the POEA, the same does not bind the concerned OFW because if the contract is not reviewed by the POEA, certainly the State has no means of determining the suitability of foreign laws to our overseas workers. This new contract also breached Dagasdas' original contract as it was entered into even before the expiration of the original contract approved by the POEA. Therefore, it cannot supersede the original contract; its terms and conditions, including reserving in favor of the employer the right to terminate an employee without notice during the probationary period, are void.

6. ID.; ID.; TERMINATION OF EMPLOYMENT; PROCEDURAL DUE PROCESS; TWIN NOTICE REQUIREMENT AND OPPORTUNITY TO BE HEARD.— [U]nder this new contract, Dagasdas was not afforded procedural due process when he was dismissed from work. x x x [A] valid dismissal requires substantive and procedural due process. As regards the latter,

the employer must give the concerned employee at least two notices before his or her termination. Specifically, the employer must inform the employee of the cause or causes for his or her termination, and thereafter, the employer's decision to dismiss him. Aside from the notice requirement, the employee must be accorded the opportunity to be heard. Here, no prior notice of purported infraction, and such opportunity to explain on any accusation against him was given to Dagasdas. He was simply given a notice of termination.

7. ID.; ID.; ID.; WAIVER OR QUITCLAIM CANNOT PREVENT THE EMPLOYEE FROM DEMANDING WARRANTED BENEFITS AND FROM FILING AN ILLEGAL DISMISSAL CASE.— [W]hile it is shown that Dagasdas executed a waiver in favor of his employer, the same does not preclude him from filing this suit. Generally, the employee's waiver or quitclaim cannot prevent the employee from demanding benefits to which he or she is entitled, and from filing an illegal dismissal case. This is because waiver or quitclaim is looked upon with disfavor, and is frowned upon for being contrary to public policy. Unless it can be established that the person executing the waiver voluntarily did so, with full understanding of its contents, and with reasonable and credible consideration, the same is not a valid and binding undertaking. Moreover, the burden to prove that the waiver or quitclaim was voluntarily executed is with the employer.

APPEARANCES OF COUNSEL

Miguel C. Inocencio, Jr. for petitioner.
Neal J. Chua for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

Before us is a Petition for Review on *Certiorari* assailing the September 26, 2012 Decision[1] of the Court of Appeals (CA)

[1] CA *rollo*, pp. 312-320; penned by Associate Justice Manuel M. Barrios and concurred in by Associate Justices Remedios A. Salazar-Fernando and Normandie B. Pizarro.

in CA-G.R. SP No. 115396, which annulled and set aside the March 29, 2010[2] and June 2, 2010[3] Resolutions of the National Labor Relations Commission (NLRC) in NLRC LAC OFW-L-02-000071-10, and concomitantly reinstated the November 27, 2009 Decision[4] of the Labor Arbiter (LA) dismissing the Complaint for lack of merit.

Also challenged is the January 28, 2013 Resolution[5] denying the Motion for Reconsideration filed by Rutcher T. Dagasdas (Dagasdas).

Factual Antecedents

Grand Placement and General Services Corp. (GPGS) is a licensed recruitment or placement agency in the Philippines while Saudi Aramco (Aramco) is its counterpart in Saudi Arabia. On the other hand, Industrial & Management Technology Methods Co. Ltd. (ITM) is the principal of GPGS, a company existing in Saudi Arabia.[6]

In November 2007, GPGS, for and on behalf of ITM, employed Dagasdas as Network Technician. He was to be deployed in Saudi Arabia under a one-year contract[7] with a monthly salary of Saudi Riyal (SR) 5,112.00. Before leaving the Philippines, Dagasdas underwent skill training[8] and pre-departure orientation as Network Technician.[9] Nonetheless, his Job Offer[10] indicated that he was accepted by Aramco and ITM for the position of "Supt."

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[2] *Id.* at 128-135; penned by Commissioner Napoleon M. Menese and concurred in by Presiding Commissioner Raul T. Aquino and Commissioner Teresita D. Castillon-Lora.

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

[4] *Id.* at 103-108; penned by Labor Arbiter Virginia T. Luyas-Azarraga.

[5] *Id.* at 353-355.

[6] *Id.* at 21, 38.

[7] *Id.* at 62-65.

[8] *Id.* at 66.

[9] *Id.* at 67.

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

Dagasdas contended that although his position under his contract was as a Network Technician, he actually applied for and was engaged as a Civil Engineer considering that his transcript of records,[11] diploma[12] as well as his curriculum vitae[13] showed that he had a degree in Civil Engineering, and his work experiences were all related to this field. Purportedly, the position of Network Technician was only for the purpose of securing a visa for Saudi Arabia because ITM could not support visa application for Civil Engineers.[14]

On February 8, 2008, Dagasdas arrived in Saudi Arabia.[15] Thereafter, he signed with ITM a new employment contract[16] which stipulated that the latter contracted him as Superintendent or in any capacity within the scope of his abilities with salary of SR5,112.00 and allowance of SR2,045.00 per month. Under this contract, Dagasdas shall be placed under a three-month probationary period; and, this new contract shall cancel all contracts prior to its date from any source.

On February 11, 2008, Dagasdas reported at ITM's worksite in Khurais, Saudi Arabia.[17] There, he was allegedly given tasks suited for a Mechanical Engineer, which were foreign to the job he applied for and to his work experience. Seeing that he would not be able to perform well in his work, Dagasdas raised his concern to his Supervisor in the Mechanical Engineering Department. Consequently, he was transferred to the Civil Engineering Department, was temporarily given a position as Civil Construction Engineer, and was issued an identification card good for one month. Dagasdas averred that on March 9, 2008, he was directed to exit the worksite but Rashid H. Siddiqui

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[11] *Id*. at 54-57.

[12] *Id*. at 58.

[13] *Id.* at 49-52.

[14] *Id*. at 39.

[15] *Id*. at 75.

[16] *Id*. at 68-72.

[17] *Id*. at 75.

(Siddiqui), the Site Coordinator Manager, advised him to remain in the premises, and promised to secure him the position he applied for. However, before Dagasdas' case was investigated, Siddiqui had severed his employment with ITM.[18]

In April 2008, Dagasdas returned to Al-Khobar and stayed at the ITM Office.[19] Later, ITM gave him a termination notice[20] indicating that his last day of work was on April 30, 2008, and he was dismissed pursuant to clause 17.4.3 of his contract, which provided that ITM reserved the right to terminate any employee within the three-month probationary period without need of any notice to the employee.[21]

Before his repatriation, Dagasdas signed a Statement of Quitclaim[22] with Final Settlement[23] stating that ITM paid him all the salaries and benefits for his services from February 11, 2008 to April 30, 2008 in the total amount of SR7,156.80, and ITM was relieved from all financial obligations due to Dagasdas.

On June 24, 2008, Dagasdas returned to the Philippines.[24] Thereafter, he filed an illegal dismissal case against GPGS, ITM, and Aramco.

Dagasdas accused GPGS, ITM, and Aramco of misrepresentation, which resulted in the mismatch in the work assigned to him. He contended that such claim was supported by exchanges of electronic mail (e-mail) establishing that GPGS, ITM, and Aramco were aware of the job mismatch that had befallen him.[25] He also argued that although he was engaged as a project employee, he was still entitled to security of tenure

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

[19] *Id.* at 40.

[20] *Id.* at 81.

[21] *Id.* at 70.

[22] *Id.* at 82.

[23] *Id.* at 83-84.

[24] *Id.* at 21.

[25] *Id.* at 92-93.

for the duration of his contract. He maintained that GPGS, ITM, and Aramco merely invented "imaginary cause/s" to terminate him. Thus, he claimed that he was dismissed without cause and due process of law.[26]

GPGS, ITM, and Aramco countered that Dagasdas was legally dismissed. They explained that Dagasdas was aware that he was employed as Network Technician but he could not perform his work in accordance with the standards of his employer. They added that Dagasdas was informed of his poor performance, and he conformed to his termination as evidenced by his quitclaim.[27] They also stressed that Dagasdas was only a probationary employee since he worked for ITM for less than three months.[28]

Ruling of the Labor Arbiter

On November 27, 2009, the LA dismissed the case for lack of merit.

The LA pointed out that when Dagasdas signed his new employment contract in Saudi Arabia, he accepted its stipulations, including the fact that he had to undergo probationary status. She declared that this new contract was more advantageous for Dagasdas as his position was upgraded to that of a Superintendent, and he was likewise given an allowance of SR2,045.00 aside from his salary of SR5,112.00 per month. According to the LA, for being more favorable, this new contract was not prohibited by law. She also decreed that Dagasdas fell short of the expected work performance; as such, his employer dismissed him as part of its management prerogative.

Consequently, Dagasdas appealed to the NLRC.

Ruling of the National Labor Relations Commission

On March 29, 2010, the NLRC issued a Resolution finding Dagasdas' dismissal illegal. The decretal portion of the NLRC Resolution reads:

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[26] *Id.* at 42.

[27] *Id.* at 22-24.

[28] *Id.* at 88.

WHEREFORE, the decision appealed from is hereby REVERSED, and the respondent[s] are hereby ordered to pay the complainant the salaries corresponding to the unexpired portion of his contract amounting to SR46,008 (SR5112 x 9 months, or from May 1, 2008 to January 31, 2009), plus ten percent (10%) thereof as attorney's fees. The respondents are jointly and severally liable for the judgment awards, which are payable in Philippine currency converted on the basis of the exchange rate prevailing at the time of actual payment.

SO ORDERED.[29]

The NLRC stated that Dagasdas, who was a Civil Engineering graduate, was "recruited on paper" by GPGS as Network Technician but the real understanding between the parties was to hire him as Superintendent. It held that GPGS erroneously recruited Dagasdas, and failed to inform him that he was hired as a "Mechanical Superintendent" meant for a Mechanical Engineer. It declared that while ITM has the prerogative to continue the employment of individuals only if they were qualified, Dagasdas' dismissal amounted to illegal termination since the mismatch between his qualications and the job given him was no fault of his.

The NLRC added that Dagasdas should not be made to suffer the consequences of the miscommunication between GPGS and ITM considering that the government obligates employment agencies recruiting Filipinos for overseas work to "select only medically and technically qualified recruits."[30]

On June 2, 2010, the NLRC denied the Motion for Reconsideration of its Resolution dated March 29, 2010.

Undeterred, GPGS filed a Petition for *Certiorari* with the CA ascribing grave abuse of discretion on the part of the NLRC in ruling that Dagasdas was illegally dismissed.

Ruling of the Court of Appeals

On September 26, 2012, the CA set aside the NLRC Resolutions and reinstated the LA Decision dismissing the case for lack of merit.

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[29] *Id.* at 134.

[30] *Id.* at 133.

The CA could not accede to the conclusion that the real agreement between the parties was to employ Dagasdas as Superintendent. It stressed that Dagasdas left the Philippines pursuant to his employment contract indicating that he was to work as a Network Technician; when he arrived in Saudi Arabia and signed a new contract for the position of a Superintendent, the agreement was with no participation of GPGS, and said new contract was only between Dagasdas and ITM. It emphasized that after commencing work as Superintendent, Dagasdas realized that he could not perform his tasks, and "[s]eemingly, it was [Dagasdas] himself who voluntarily withdrew from his assigned work for lack of competence."[31] It faulted the NLRC for failing to consider that Dagasdas backed out as Superintendent on the excuse that the same required the skills of a Mechanical Engineer.

In holding that Dagasdas' dismissal was legal, the CA gave credence to Dagasdas' Statement of Quitclaim and Final Settlement. It ruled that for having voluntarily accepted money from his employer, Dagasdas accepted his termination and released his employer from future financial obligations arising from his past employment with it.

On January 28, 2013, the CA denied Dagasdas' Motion for Reconsideration.

Hence, Dagasdas filed this Petition raising these grounds:

[1] THE HONORABLE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR WHEN IT REVERSED THE FACTUAL FINDINGS OF THE NATIONAL LABOR RELATIONS COMMISSION.[32]

[2] THE HONORABLE COURT OF APPEALS PATENTLY ERRED WITH ITS FINDINGS THAT THE CONTRACT SIGNED BY DAGASDAS IN ALKHOBAR IS MORE ADVANTAGEOUS TO THE LATTER AND THAT IT WAS [H]IS PERSONAL ACT OR DECISION [TO SIGN] THE SAME.[33]

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[31] *Id.* at 318.

[32] *Rollo,* p. 26.

[33] *Id.* at 29.

[3] THE HONORABLE COURT OF APPEALS ALSO GRAVELY ERRED IN FAULTING THE NLRC FOR ITS FAILURE TO INVALIDATE OR DISCUSS THE FINAL SETTLEMENT AND STATEMENT OF QUITCLAIM SIGNED BY [DAGASDAS].[34]

Dagasdas reiterates that he was only recruited "on paper" as a Network Technician but the real agreement between him and his employer was to engage him as Superintendent in the field of Civil Engineering, he being a Civil Engineering graduate with vast experience in said field. He stresses that he was terminated because of a "discipline mismatch" as his employer actually needed a Mechanical (Engineer) Superintendent, not a Civil Engineer.

In addition, Dagasdas insists that he did not voluntarily back out from his work. If not for the discipline mismatch, he could have performed his job as was expected of him. He also denies that the new employment contract he signed while in Saudi Arabia was more advantageous to him since the basic salary and allowance stipulated therein are just the same with that in his Job Offer. He argues that the new contract was even disadvantageous because it was inserted therein that he still had to undergo probationary status for three months.

Finally, Dagasdas contends that the new contract he signed while in Saudi Arabia was void because it was not approved by the Philippine Overseas Employment Administration (POEA). He also claims that CA should have closely examined his quitclaim because he only signed it to afford his plane ticket for his repatriation.

On the other hand, GPGS maintains that Dagasdas was fully aware that he applied for and was accepted as Network Technician. It also stresses that it was Dagasdas himself who decided to accept from ITM a new job offer when he arrived in Saudi Arabia. It further declares that Dagasdas' quitclaim is valid as there is no showing that he was compelled to sign it.

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[34] *Id.* at 32.

Issue

Was Dagasdas validly dismissed from work?

Our Ruling

The Petition is with merit.

As a rule, only questions of law may be raised in a petition under Rule 45 of the Rules of Court. However, this rule allows certain exceptions, including a situation where the findings of fact of the courts or tribunals below are conflicting.[35] In this case, the CA and the NLRC arrived at divergent factual findings anent Dagasdas' termination. As such, the Court deems it necessary to re-examine these findings and determine whether the CA has sufficient basis to annul the NLRC Decision, and set aside its finding that Dagasdas was illegally dismissed from work.

Moreover, it is well-settled that employers have the prerogative to impose standards on the work quantity and quality of their employees and provide measures to ensure compliance therewith. Non-compliance with work standards may thus be a valid cause for dismissing an employee. Nonetheless, to ensure that employers will not abuse their prerogatives, the same is tempered by security of tenure whereby the employees are guaranteed substantive and procedural due process before they are dismissed from work.[36]

Security of tenure remains even if employees, particularly the overseas Filipino workers (OFW), work in a different jurisdiction. Since the employment contracts of OFWs are perfected in the Philippines, and following the principle of *lex loci contractus* (the law of the place where the contract is made), these contracts are governed by our laws, primarily the Labor Code of the Philippines and its implementing rules and regulations.[37] At the same time, our laws generally apply even to employment contracts

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[35] *Unicol Management Services, Inc. v. Malipot,* G.R. No. 206562, January 21, 2015, 747 SCRA 191, 202-203.

[36] *Sameer Overseas Placement Agency, Inc. v. Cabiles,* G.R. No. 170139, August 5, 2014, 732 SCRA 22, 41-42.

[37] *Id.* at 42.

of OFWs as our Constitution explicitly provides that the State shall afford full protection to labor, whether local or overseas.[38] Thus, even if a Filipino is employed abroad, he or she is entitled to security of tenure, among other constitutional rights.[39]

In this case, prior to his deployment and while still in the Philippines, Dagasdas was made to sign a POEA-approved contract with GPGS, on behalf of ITM; and, upon arrival in Saudi Arabia, ITM made him sign a new employment contract. Nonetheless, this new contract, which was used as basis for dismissing Dagasdas, is void.

First, Dagasdas' new contract is in clear violation of his right to security of tenure.

Under the Labor Code of the Philippines the following are the just causes for dismissing an employee:

ARTICLE 297. [282] Termination by Employer. – An employer may terminate an employment for any of the following causes:

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

(b) Gross and habitual neglect by the employee of his duties;

(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and

(e) Other causes analogous to the foregoing.[40]

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[38] CONSTITUTION, Article XIII.

Section 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.

[39] *Industrial Personnel & Management Services, Inc. v. De Vera,* G.R. No. 205703, March 7, 2016.

[40] LABOR CODE OF THE PHILIPPINES, Amended and Renumbered, July 21, 2015.

However, per the notice of termination given to Dagasdas, ITM terminated him for violating clause 17.4.3 of his new contract, *viz.*:

17.4 The Company reserves the right to terminate this agreement without serving any notice to the Consultant in the following cases:

x x x x x x x x x

17.4.3 If the Consultant is terminated by company or its client within the probation period of 3 months.[41]

Based on the foregoing, there is no clear justication for the dismissal of Dagasdas other than the exercise of ITM's right to terminate him within the probationary period.

While our Civil Code recognizes that parties may stipulate in their contracts such terms and conditions as they may deem convenient, these terms and conditions must not be contrary to law, morals, good customs, public order or policy.[42] The above-cited clause is contrary to law because as discussed, our Constitution guarantees that employees, local or overseas, are entitled to security of tenure. To allow employers to reserve a right to terminate employees without cause is violative of this guarantee of security of tenure.

Moreover, even assuming that Dagasdas was still a probationary employee when he was terminated, his dismissal must still be with a valid cause. As regards a probationary employee, his or her dismissal may be allowed only if there is just cause or such reason to conclude that the employee fails to qualify as regular employee pursuant to reasonable standards made known to the employee at the time of engagement.[43]

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[41] CA *rollo*, p. 70.

[42] CIVIL CODE OF THE PHILIPPINES.

Article 1306. The contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy. (l255a)

[43] *Sameer Overseas Placement Agency, Inc. v. Cabiles, supra* note 36 at 46.

Here, ITM failed to prove that it informed Dagasdas of any predetermined standards from which his work will be gauged.[44] In the contract he signed while still in the Philippines, Dagsadas was employed as Network Technician; on the other hand, his new contract indicated that he was employed as Superintendent. However, no job description — or such duties and responsibilities attached to either position — was adduced in evidence. It thus means that the job for which Dagasdas was hired was not definite from the beginning.

Indeed, Dagasdas was not sufficiently informed of the work standards for which his performance will be measured. Even his position based on the job title given him was not fully explained by his employer. Simply put, ITM failed to show that it set and communicated work standards for Dagasdas to follow, and on which his efficiency (or the lack thereof) may be determined.

Second, the new contract was not shown to have been processed through the POEA. Under our Labor Code, employers hiring OFWs may only do so through entities authorized by the Secretary of the Department of Labor and Employment.[45] Unless the employment contract of an OFW is processed through the POEA, the same does not bind the concerned OFW because if the contract is not reviewed by the POEA, certainly the State has no means of determining the suitability of foreign laws to our overseas workers.[46]

This new contract also breached Dagasdas' original contract as it was entered into even before the expiration of the original

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[44] *Id*.

[45] Article 18. *Ban on Direct-Hiring.* — No employer may hire a Filipino worker for overseas employment except through the Boards and entities authorized by the Secretary of Labor. Direct-hiring by members of the diplomatic corps, international organizations and such other employers as may be allowed by the Secretary of Labor is exempted from this provision. (Labor Code of the Philippines, Amended & Renumbered, July 21, 2015.)

[46] *Industrial Personnel & Management Services, Inc. v. De Vera, supra* note 39.

contract approved by the POEA. Therefore, it cannot supersede the original contract; its terms and conditions, including reserving in favor of the employer the right to terminate an employee without notice during the probationary period, are void.[47]

Third, under this new contract, Dagasdas was not afforded procedural due process when he was dismissed from work.

As cited above, a valid dismissal requires substantive and procedural due process. As regards the latter, the employer must give the concerned employee at least two notices before his or her termination. Specifically, the employer must inform the employee of the cause or causes for his or her termination, and thereafter, the employer's decision to dismiss him. Aside from the notice requirement, the employee must be accorded the opportunity to be heard.[48]

Here, no prior notice of purported infraction, and such opportunity to explain on any accusation against him was given to Dagasdas. He was simply given a notice of termination. In fact, it appears that ITM intended not to comply with the twin notice requirement. As above-quoted, under the new contract, ITM reserved in its favor the right to terminate the contract without serving any notice to Dagasdas in specified cases, which included such situation where the employer decides to dismiss the employee within the probationary period. Without doubt, ITM violated the due process requirement in dismissing an employee.

Lastly, while it is shown that Dagasdas executed a waiver in favor of his employer, the same does not preclude him from filing this suit.

Generally, the employee's waiver or quitclaim cannot prevent the employee from demanding benefits to which he or she is entitled, and from filing an illegal dismissal case. This is because

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[47] *Datuman v. First Cosmopolitan Manpower and Promotion Services,* Inc., 591 Phil. 662, 673-674 (2008).

[48] *EDI-Staffbuilders International v. National Labor Relations Commission,* 563 Phil. 1, 28-29 (2007).

waiver or quitclaim is looked upon with disfavor, and is frowned upon for being contrary to public policy. Unless it can be established that the person executing the waiver voluntarily did so, with full understanding of its contents, and with reasonable and credible consideration, the same is not a valid and binding undertaking. Moreover, the burden to prove that the waiver or quitclaim was voluntarily executed is with the employer.[49]

In this case, however, neither did GPGS nor its principal, ITM, successfully discharged its burden. GPGS and/or ITM failed to show that Dagasdas indeed voluntarily waived his claims against the employer.

Indeed, even if Dagasdas signed a quitclaim, it does not necessarily follow that he freely and voluntarily agreed to waive all his claims against his employer. Besides, there was no reasonable consideration stipulated in said quitclaim considering that it only determined the actual payment due to Dagasdas from February 11, 2008 to April 30, 2008. Verily, this quitclaim, under the semblance of a final settlement, cannot absolve GPGS nor ITM from liability arising from the employment contract of Dagasdas.[50]

All told, the dismissal of Dagasdas was without any valid cause and due process of law. Hence, the NLRC properly ruled that Dagasdas was illegally dismissed. Evidently, it was an error on the part of the CA to hold that the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction when the NLRC ruled for Dagasdas.

WHEREFORE, the Petition is **GRANTED**. The Decision dated September 26, 2012 and Resolution dated January 28, 2013 of the Court of Appeals in CA-G.R. SP No. 115396 are **REVERSED** and **SET ASIDE.** Accordingly, the March 29, 2010 and June 2, 2010 Resolutions of the National Labor

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[49] *Universal Staffing Services, Inc. v. National Labor Relations Commission,* 581 Phil. 199, 209-210 (2008).

[50] *Id.*

Relations Commission in NLRC LAC OFW-L-02-000071-10 are **REINSTATED.**

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 206627. January 18, 2017]

VAN CLIFFORD TORRES *y* SALERA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ONLY QUESTIONS OF LAW MAY BE RAISED.— It is a fundamental rule that only questions of law may be raised in a petition for review on certiorari under Rule 45. The factual findings of the trial court, especially when affirmed by the Court of Appeals, are generally binding and conclusive on this Court. This Court is not a trier of facts. It is not duty-bound to analyze, review, and weigh the evidence all over again in the absence of any showing of any arbitrariness, capriciousness, or palpable error. A departure from the general rule may only be warranted in cases where the findings of fact of the Court of Appeals are contrary to the findings of the trial court or when these are unsupported by the evidence on record. The assessment of the credibility of witnesses is a function properly within the office of the trial courts. It is a question of fact not reviewable by this Court. The trial court's findings on the matter are entitled to great weight and given great respect and "may only be disregarded . . . if there are facts and circumstances which were overlooked by the trial court and which would substantially alter the results of the case[.]"

2. CRIMINAL LAW; SPECIAL PROTECTION OF CHILDREN AGAINST ABUSE, EXPLOITATION, AND DISCRIMINATION ACT (RA 7610); CHILD ABUSE.— Under Section 3(b) of Republic Act No. 7610, x x x "Child abuse" refers to the maltreatment, whether habitual or not, of the child which includes any of the following: (1) *Psychological and physical abuse*, neglect, cruelty, sexual abuse and emotional maltreatment; (2) *Any act by deeds or words which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being;*(3) Unreasonable deprivation of his basic needs for survival, such as food and shelter; or (4) Failure to immediately give medical treatment to an injured child resulting in serious impairment of his growth and development or in his permanent incapacity or death.

3. ID.; ID.; OTHER ACTS OF CHILD ABUSE; PENALTY.— We find petitioner liable for other acts of child abuse under Article VI, Section 10(a) of Republic Act No. 7610, which provides that "a person who shall commit any other acts of child abuse, cruelty or exploitation or be responsible for other conditions prejudicial to the child's development . . . shall suffer the penalty of *prision mayor* in its minimum period." x x x Petitioner's act of whipping AAA on the neck with a wet t-shirt is an act that debases, degrades, and demeans the intrinsic worth and dignity of a child. It is a form of cruelty. Being smacked several times in a public place is a humiliating and traumatizing experience for all persons regardless of age. Petitioner, as an adult, should have exercised restraint and self-control rather than retaliate against a 14-year-old child.

APPEARANCES OF COUNSEL

Victor Alfredo O. Queniahan for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

LEONEN, *J.*:

Through this Petition for Review on Certiorari,[1] petitioner Van Clifford Torres *y* Salera (Torres) challenges the Court of

[1] *Rollo*, pp. 4-18.

Appeals Decision[2] dated August 11, 2011 and Resolution[3] dated February 22, 2013 in CA-G.R. CEB-CR No. 00481. The assailed judgments affirmed the Regional Trial Court Decision dated June 5, 2006, which convicted Torres for violation of Section 10(a) of Republic Act No. 7610.[4]

In an Information dated June 9, 2004 filed before Branch 1 of the Regional Trial Court of Tagbilaran City, Bohol, Torres was charged with other acts of child abuse under Section 10(a) of Republic Act No. 7610:[5]

> That on or about the 11th day of November, 2003, in the municipality of Clarin, province of Bohol, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to harm and humiliate, did then and there, willfully, unlawfully and feloniously abuse, slap and whip AAA, a 14 year old minor (born on June 5, 1989) with a T-shirt hitting his neck and shoulder and causing him to fall down on the stairs of the barangay hall which acts are humiliating and prejudicial to the development of the victim and are covered by Article 59 of Pres. Decree 603, as amended; to the damage and prejudice of the said victim in the amount to be proved during trial.[6]

Upon arraignment, Torres pleaded not guilty.[7] Trial on the merits ensued.[8]

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[2] *Id.* at 24-34. The Decision was penned by Associate Justice Edgardo L. Delos Santos and concurred in by Associate Justices Ramon Paul L. Hernando and Victoria Isabel A. Paredes of the Twentieth Division, Court of Appeals, Cebu.

[3] *Id.* at 21-22. The Resolution was penned by Associate Justice Edgardo L. Delos Santos and concurred in by Associate Justices Ramon Paul L. Hernando and Marilyn B. Lagura-Yap of the Special Former Twentieth Division, Court of Appeals, Cebu.

[4] *Id.* at 33.

[5] Special Protection of Children Against Abuse, Exploitation, and Discrimination Act (1992).

[6] *Rollo*, p. 24.

[7] *Id.* at 25.

[8] *Id.*

The prosecution presented the victim AAA, AAA's aunt and uncle, Dr. Vicente Manalo Jr., and Barangay Captain Hermilando Miano as witnesses to testify on the alleged incident.[9] The prosecution established the following facts during trial:

CCC, AAA's uncle, previously filed a complaint for malicious mischief against Torres, who allegedly caused damage to CCC's multicab.[10] AAA witnessed the alleged incident and was brought by CCC to testify during the barangay conciliation.[11]

On November 3, 2003, CCC and AAA were at the barangay hall of Clarin, Bohol waiting for the conciliation proceedings to begin when they chanced upon Torres who had just arrived from fishing.[12] CCC's wife, who was also with them at the barangay hall, persuaded Torres to attend the conciliation proceedings to answer for his liability.[13] Torres vehemently denied damaging CCC's multicab.[14] In the middle of the brewing argument, AAA suddenly interjected that Torres damaged CCC's multicab and accused him of stealing CCC's fish nets.[15]

Torres told AAA not to pry in the affairs of adults. He warned AAA that he would whip him if he did not stop.[16] However, AAA refused to keep silent and continued to accuse Torres of damaging his uncle's multicab. Infuriated with AAA's meddling, Torres whipped AAA on the neck using a wet t-shirt.[17] Torres continued to hit AAA causing the latter to fall down from the stairs.[18] CCC came to his nephew's defense and punched Torres.

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[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] *Id.*

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

[16] *Id.*

[17] *Id.*

[18] *Id.*

They engaged in a fistfight until they were separated by Barangay Captain Hermilando Miano.[19] Torres hit AAA with a wet t-shirt three (3) times.[20]

Based on the physical examination conducted by Dr. Vicente Manalo, Jr., AAA sustained a contusion.[21]

After the prosecution rested its case, the defense presented the following version of the incident:

Torres testified that he had just arrived tired from fishing when CCC badgered him to answer for the damage he had allegedly caused to CCC's multicab. AAA abruptly interrupted the heated discussion between the two men.[22] Angered by what AAA had done, Torres told AAA to stop making unfounded accusations or he would be forced to whip him. AAA called Torres' bluff, which further provoked Torres. Torres attempted to hit AAA but was thwarted by the timely intervention of CCC, who suddenly attacked him.[23]

Torres claimed that CCC filed this case to preempt him from filing a complaint for physical injuries against CCC.[24] He also claimed that he tried to settle the matter with CCC and CCC's wife.[25] However, the parties failed to reach an agreement due to the unreasonable demands of the spouses.[26]

On June 5, 2006, the Regional Trial Court convicted Torres, thus:

WHEREFORE, premises considered, this Court finds VAN CLIFFORD TORRES *y* Salera, the accused[,] GUILTY beyond

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[19] *Id.*

[20] *Id.* at 31.

[21] *Id.* at 26.

[22] *Id.*

[23] *Id.*

[24] *Id.*

[25] *Id.*

[26] *Id.*

reasonable doubt of Other Acts of Child Abuse under Section 10, paragraph A of Republic Act No. 7610 and applying in his favor the beneficial provisions of The Indeterminate Sentence Law, he is hereby imposed the indeterminate sentence of imprisonment of SIX (6) YEARS, the maximum period of prision correccional as minimum to EIGHT (8) YEARS of prision mayor as maximum, the accessory penalties provided by law and to pay the costs. Van Clifford Torres y Salera is also imposed a penalty of FINE of FIVE THOUSAND PESOS (₱5,000) pursuant to Section 31, Letter f, RA 7610. The Court credits Van Clifford Torres y Salera his preventive imprisonment in the service of his penalty pursuant to Art. 29 [of] the Revised Penal Code as Amended.

SO ORDERED.[27]

Torres appealed before the Court of Appeals.[28] He argued that the prosecution failed to establish all the elements of child abuse and that his guilt was not proven beyond reasonable doubt.[29] He also questioned the lower court's jurisdiction over the case.[30]

In its Decision[31] dated August 11, 2011, the Court of Appeals affirmed the Regional Trial Court Decision, albeit with modification as to the penalty:

WHEREFORE, in view of the foregoing premises, the instant appeal is hereby DENIED. The Decision dated 5 June 2006 promulgated by the Regional Trial Court of Bohol, Branch 1 in Tagbilaran City in Crim. Case No. 12338 is AFFIRMED with MODIFICATION that the accused-appellant is sentenced to five (5) years, four (4) months and twenty-one (21) days of *prision correccional* as minimum, to six (6) years, eight (8) months and one (1) day of *prision mayor* as maximum.

SO ORDERED.[32] (Emphasis in the original)

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[27] *Id.* at 27.

[28] *Id.*

[29] *Id.*

[30] *Id.*

[31] *Id.* at 24-34.

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

Torres moved for reconsideration, but the Motion was denied in the Court of Appeals Resolution[33] dated February 22, 2013.

Aggrieved, Torres filed before this Court this Petition for Review on Certiorari.[34]

On October 7, 2013, respondent People of the Philippines, through the Office of the Solicitor General, filed a Comment,[35] to which petitioner filed a Reply[36] on February 7, 2014.

Petitioner raises the following issues for this Court's resolution: (1) whether the Court of Appeals erred in sustaining his conviction on a judgment premised on a misapprehension of facts; and (2) whether the Court of Appeals erred in affirming his conviction despite the failure of the prosecution to prove his guilt beyond reasonable doubt.[37]

Petitioner invites this Court to review the factual findings on the ground that the judgment was rendered based on a misapprehension of facts. He argues that both the Regional Trial Court and the Court of Appeals disregarded certain material facts, which, if properly considered, would have justified a different conclusion.[38] In particular, petitioner challenges the credibility of the prosecution's witnesses.[39] He highlights the inconsistencies in their testimonies and their failure to clearly establish the presence of CCC's wife during the incident.[40]

Petitioner also calls attention to the partiality of the prosecution's witnesses, majority of whom are relatives of the

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[33] *Id.* at 21-22.

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

[35] *Id.* at 39-51.

[36] *Id.* at 53-61.

[37] *Id.* at 7.

[38] *Id.* at 10.

[39] *Id.*

[40] *Id.* at 7-10.

victim.[41] He believes that the prosecution's witnesses could not have given a true narrative of the incident because of their obvious bias.[42] Hence, their testimonies were undeserving of any weight and credit.

On the other hand, respondent argues that the questions raised by petitioner were questions of fact, which are generally proscribed in a petition for review under Rule 45.[43]

We affirm petitioner's conviction. The act of whipping a child three (3) times in the neck with a wet t-shirt constitutes child abuse.

It is a fundamental rule that only questions of law may be raised in a petition for review on certiorari under Rule 45.[44] The factual findings of the trial court, especially when affirmed by the Court of Appeals, are generally binding and conclusive on this Court.[45] This Court is not a trier of facts.[46] It is not duty-bound to analyze, review, and weigh the evidence all over again in the absence of any showing of any arbitrariness, capriciousness, or palpable error.[47] A departure from the general rule may only be warranted in cases where the findings of fact of the Court of Appeals are contrary to the findings of the trial court or when these are unsupported by the evidence on record.[48]

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[41] *Id.* at 14.

[42] *Id.*

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

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

[45] *Manotok Realty, Inc. v. CLT Realty Development Corp.*, 512 Phil. 679, 706 (2005) [Per *J.* Sandoval-Gutierrez, Third Division].

[46] *Id.*

[47] *Fuentes v. Court of Appeals*, 335 Phil. 1163, 1168 (1997) [Per *J.* Panganiban, Third Division]; *Bautista v. Puyat*, 416 Phil. 305, 308 (2001) [Per *J.* Pardo, First Division].

[48] *Changco v. Court of Appeals*, 429 Phil. 336, 342 (2002) [Per *J.* Ynares-Santiago, First Division].

The assessment of the credibility of witnesses is a function properly within the office of the trial courts.[49] It is a question of fact not reviewable by this Court.[50] The trial court's findings on the matter are entitled to great weight and given great respect and "may only be disregarded . . . if there are facts and circumstances which were overlooked by the trial court and which would substantially alter the results of the case[.]"[51]

This Court finds no reason to disturb the factual findings of the trial court. The trial court neither disregarded nor overlooked any material fact or circumstance that would substantially alter the case. The presence or absence of one person during the incident is not substantial enough to overturn the finding that petitioner whipped AAA three (3) times with a wet t-shirt.[52]

Assuming, without admitting, that petitioner did whip AAA, petitioner argues that it should not be considered as child abuse because the law requires intent to abuse.[53] Petitioner maintains that he whipped AAA merely to discipline and restrain the child "from further intensifying the situation."[54] He also maintains that his act was justified because AAA harassed and vexed him.[55] Thus, petitioner claims that there could not have been any intent to abuse on his part.

Petitioner contends that the injuries sustained by AAA will not affect the latter's physical growth or development and mental capacity.[56] He argues that he could not be convicted of child abuse without proof that the victim's development had been

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[49] *People v. Pajares*, 310 Phil. 361, 366 (1995) [Per *J.* Melo, Third Division].

[50] *Addenbrook y Barker v. People*, 126 Phil. 854, 855 (1967) [Per *J.* J.B.L. Reyes, *En Banc*].

[51] *People v. Pajares*, 310 Phil. 361, 366 (1995) [Per *J.* Melo, Third Division].

[52] *Rollo*, pp. 30-31.

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

[54] *Id.* at 59.

[55] *Id.* at 11.

[56] *Id.* at 14.

prejudiced.[57] He begs the indulgence of this Court and claims that his conviction would only serve as a "precedent to all children to act recklessly, errantly[,] and disobediently"[58] and would then create a society ruled by juvenile delinquency and errant behavior.[59] If at all, petitioner claims that he could only be convicted of slight physical injuries under the Revised Penal Code for the contusion sustained by AAA.[60]

Respondent maintains that the act of whipping AAA is an act of child abuse.[61] Respondent argues that the act complained of need not be prejudicial to the development of the child for it to constitute a violation of Republic Act No. 7610.[62] Respondent, citing *Sanchez v. People*,[63] argues that Section 10(a)[64] of Republic Act No. 7610 defines and punishes four distinct acts.[65]

We reject petitioner's contention that his act of whipping AAA is not child abuse but merely slight physical injuries under the Revised Penal Code. The victim, AAA, was a child when the incident occurred. Therefore, AAA is entitled to protection under Republic Act No. 7610, the primary purpose of which has been defined in *Araneta v. People*:[66]

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

[58] *Id.* at 59.

[59] *Id.* at 58.

[60] *Id.* at 15.

[61] *Id.* at 48.

[62] *Id.*

[63] 606 Phil. 762 (2009) [Per *J.* Nachura, Third Division].

[64] Rep. Act No. 7610 (1992), Sec. 10(a) provides:

Sec. 10. Other Acts of Neglect, Abuse, Cruelty of Exploitation and Other Conditions Prejudicial to the Child's Development.–

(a) Any person who shall commit any other acts of child abuse, cruelty or exploitation or be responsible for other conditions prejudicial to the child's development including those covered by Article 59 of Presidential Decree No. 603, as amended, but not covered by the Revised Penal Code, as amended, shall suffer the penalty of *prision mayor* in its minimum period.

[65] *Rollo*, p. 45.

[66] 578 Phil. 876 (2008) [Per *J.* Chico-Nazario, Third Division].

Republic Act No. 7610 is a measure geared towards the implementation of a national comprehensive program for the survival of the most vulnerable members of the population, the Filipino children, in keeping with the Constitutional mandate under Article XV, Section 3, paragraph 2, that "The State shall defend the right of the children to assistance, including proper care and nutrition, and special protection from all forms of neglect, abuse, cruelty, exploitation, and other conditions prejudicial to their development."[67] (Emphasis omitted, citation omitted)

Under Section 3(b) of Republic Act No. 7610, child abuse is defined, thus:

> Section 3. Definition of Terms.
>
> . . . . . .
>
> (b) "Child abuse" refers to the maltreatment, whether habitual or not, of the child which includes any of the following:
>
> (1) *Psychological and physical abuse*, neglect, cruelty, sexual abuse and emotional maltreatment;
>
> (2) *Any act by deeds or words which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being*;
>
> (3) Unreasonable deprivation of his basic needs for survival, such as food and shelter; or
>
> (4) Failure to immediately give medical treatment to an injured child resulting in serious impairment of his growth and development or in his permanent incapacity or death. (Emphasis supplied)

As can be gleaned from this provision, a person who commits an act that debases, degrades, or demeans the intrinsic worth and dignity of the child as a human being, whether habitual or not, can be held liable for violation of Republic Act No. 7610.

Although it is true that not every instance of laying of hands on the child constitutes child abuse,[68] petitioner's intention to

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[67] *Id.* at 883.

[68] *Bongalon v. People*, 707 Phil. 11, 20-21 (2013) [Per *J.* Bersamin, First Division].

debase, degrade, and demean the intrinsic worth and dignity of a child can be inferred from the manner in which he committed the act complained of.

To note, petitioner used a wet t-shirt to whip the child not just once but three (3) times.[69] Common sense and human experience would suggest that hitting a sensitive body part, such as the neck, with a wet t-shirt would cause an extreme amount of pain, especially so if it was done several times. There is also reason to believe that petitioner used excessive force. Otherwise, AAA would not have fallen down the stairs at the third strike. AAA would likewise not have sustained a contusion.

Indeed, if the only intention of petitioner were to discipline AAA and stop him from interfering, he could have resorted to other less violent means. Instead of reprimanding AAA or walking away, petitioner chose to hit the latter.

We find petitioner liable for other acts of child abuse under Article VI, Section 10(a) of Republic Act No. 7610, which provides that "a person who shall commit any other acts of child abuse, cruelty or exploitation or be responsible for other conditions prejudicial to the child's development . . . shall suffer the penalty of *prision mayor* in its minimum period."[70]

In *Araneta*:

> [Article VI, Section 10(a) of Republic Act No. 7610] punishes not only those enumerated under Article 59 of Presidential Decree No. 603, but also four distinct acts, *i.e.*, (a) child abuse, (b) child cruelty, (c) child exploitation and (d) being responsible for conditions prejudicial to the child's development. The Rules and Regulations of the questioned statute distinctly and separately defined child abuse, cruelty and exploitation just to show that these three acts are different from one another and from the act prejudicial to the child's development. . . . *[An] accused can be prosecuted and be convicted under Section 10(a), Article VI of Republic Act No. 7610 if he commits any of the four acts therein. The prosecution need not prove that the*

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[69] *Rollo*, p. 31.

[70] Rep. Act No. 7610 (1992), Sec. 10(a).

acts of child abuse, child cruelty and child exploitation have resulted in the prejudice of the child because an act prejudicial to the development of the child is different from the former acts.

Moreover, it is a rule in statutory construction that the word "or" is a disjunctive term signifying dissociation and independence of one thing from other things enumerated. It should, as a rule, be construed in the sense which it ordinarily implies. Hence, the use of "or" in Section 10(a) of Republic Act No. 7610 before the phrase "be responsible for other conditions prejudicial to the child's development" supposes that there are four punishable acts therein. First, the act of child abuse; second, child cruelty; third, child exploitation; and fourth, being responsible for conditions prejudicial to the child's development. The fourth penalized act cannot be interpreted ... as a qualifying condition for the three other acts, because an analysis of the entire context of the questioned provision does not warrant such construal.[71] (Emphasis supplied)

Petitioner's act of whippin AAA on the neck with a wet t-shirt is an act that debases, degrades, and demeans the intrinsic worth and dignity of a child. It is a form of cruelty. Being smacked several times in a public place is a humiliating and traumatizing experience for all persons regardless of age. Petitioner, as an adult, should have exercised restraint and self-control rather than retaliate against a 14-year-old child.

WHEREFORE, the Petition is **DENIED**. The Court of Appeals Decision dated August 11, 2011 and Resolution dated February 22, 2013 in CA-G.R. CEB-CR No. 00481 affirming the conviction of petitioner Van Clifford Torres y Salera for violation of Section 10(a) of Republic Act No. 7610 are **AFFIRMED.**

SO ORDERED.

Carpio (Chairperson), Velasco, Jr.,[*] *Peralta,* and *Mendoza, JJ.,* concur.

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[71] *Araneta v. People,* 578 Phil. 876, 884-886 (2008) [Per *J.* Chico-Nazario, Third Division].

[*] Designated additional member per Special Order No. 2416-A dated January 4, 2017.

FIRST DIVISION

[G.R. No. 207914. January 18, 2017]

FCD PAWNSHOP AND MERCHANDISING COMPANY, FORTUNATO C. DIONISIO, JR., and FRANKLIN C. DIONISIO, *petitioners, vs.* **UNION BANK OF THE PHILIPPINES, ATTY. NORMAN R. GABRIEL, ATTY. ENGRACIO M. ESCASINAS, JR., and THE REGISTRY OF DEEDS FOR MAKATI CITY,** *respondents.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; FORUM SHOPPING; PRESENT WHEN A PARTY REPETITIVELY AVAILS OF SEVERAL JUDICIAL REMEDIES IN DIFFERENT COURTS, SIMULTANEOUSLY OR SUCCESSIVELY, ALL SUBSTANTIALLY FOUNDED ON THE SAME TRANSACTIONS AND THE SAME ESSENTIAL FACTS AND CIRCUMSTANCES, AND ALL RAISING SUBSTANTIALLY THE SAME ISSUES EITHER PENDING IN OR ALREADY RESOLVED ADVERSELY BY SOME OTHER COURT.— This *ponente* has had the occasion to rule on a case where a party instituted two cases against the same set of defendants — one for the annulment of a real estate mortgage, and a second for injunction and nullification of the extrajudicial foreclosure and consolidation of title, rooted in the same real estate mortgage — who moved to dismiss the second case on the ground of forum shopping, claiming that both cases relied on a determination of the same issue: that is, the validity of the real estate mortgage. The trial court dismissed the second case, but the CA ordered its reinstatement. This *ponente* affirmed the trial court, declaring as follows: There is forum shopping 'when a party repetitively avails of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in or already resolved adversely by some other court.' The different ways by which forum shopping may be committed

were explained in *Chua v. Metropolitan Bank & Trust Company:* Forum shopping can be committed in three ways: (1) filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet (where the ground for dismissal is *litis pendentia);* (2) filing multiple cases based on the same cause of action and the same prayer, the previous case having been finally resolved (where the ground for dismissal is *res judicata);* and **(3) filing multiple cases based on the same cause of action, but with different prayers (splitting causes of action, where the ground for dismissal is also either *litis pendentia* or *res judicata).***

APPEARANCES OF COUNSEL

Mackay Tuazon Pimentel Law Offices for petitioners.
Macalino & Associates for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

Assailed in this Petition for Review on *Certiorari*[1] are the February 28, 2013 Decision[2] of the Court of Appeals (CA) dismissing the herein petitioners' Petition for *Certiorari*[3] in CA-G.R. SP. No. 126075, and its June 28, 2013 Resolution[4] denying their Motion for Reconsideration[5] in said case.

Factual Antecedents

Together with Felicitas Dionisio-Juguilon and Adelaida Dionisio, petitioners Fortunato C. Dionisio, Jr, (Fortunato) and Franklin C. Dionisio (Franklin) owned FCD Pawnshop and

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[1] *Rollo,* Vol. 1, pp. 3-18.

[2] *Id.* at 28-38; penned by Associate Justice Franchito N. Diamante and concurred in by Associate Justices Celia C. Librea-Leagogo and Melchor Q. C. Sadang.

[3] *Id.* at 39-65.

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

[5] *Id.* at 196-212.

Merchandising Company, which in turn was the registered owner of a parcel of land in Makati under Transfer Certificate of Title No. (168302) S-3664, or TCT (168302) S-3664.

In 2009, Fortunato and Franklin entrusted the original owner's copy of TCT (168302) S-3664 to Atty. Rowena Dionisio. It was later discovered that the said title was used as collateral by Sunyang Mining Corporation (Sunyang) to obtain a ₱20 million loan from from respondent Union Bank of the Philippines (UBP).

Civil Case No. 11-116 — for annulment of mortgage

On February 9, 2011, Fortunato and Franklin filed against UBP, Sunyang, the Registry of Deeds of Makati, and several others Civil Case No. 11-116, a Petition[6] to annul the Sunyang mortgage and claim for damages, based on the premise that TCT (168302) S-3664 was fraudulently mortgaged. The case was assigned to Branch 57 of the Regional Trial Court (RTC) of Makati (Branch 57).

Meanwhile, UBP caused the extrajudicial foreclosure of the subject property, and it bought the same at the auction sale. In the Notice of Extrajudicial Sale[7] published prior to the auction sale, however, the title to the subject property was at one point erroneously indicated as "Transfer Certificate of Title No. 163302 (S-3664);" but elsewhere in the notice, the title was correctly indicated as "Transfer Certificate of Title No. 168302 (S-3664)." The publisher later circulated an Erratum[8] admitting its mistake, and it made the corresponding correction.

Civil Case No. 11-1192 — for annulment of foreclosure sale and certificate of sale

On account of perceived irregularities in the foreclosure and sale proceedings, Fortunato and Franklin filed in December 2011 a Complaint[9] against UBP, the Registry of Deeds of Makati,

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[6] *Id.* at 222-231.

[7] *Id.* at 325.

[8] *Id.* at 326.

[9] *Id.* at 268-283.

and several others for annulment of the extrajudicial foreclosure and certificate of sale issued, with injunctive relief. The case was docketed as Civil Case No. 11-1192 and assigned to Branch 133 of the Makati RTC (Branch 133).

In a written opposition, UBP claimed that the filing of Civil Case No. 11-1192 violated the rule against forum shopping.

Ruling of the Regional Trial Court in Civil Case No. 11-1192

On March 26, 2012, Branch 133 issued an Order[10] dismissing Civil Case No. 11-1192 on the ground of forum shopping. It held:

> The instant case involves the Annulment of Extra-Judicial Foreclosure Sale and Certificate of Sale with Prayer for Temporary Restraining Order and Preliminary Injunction, and Damages. However, a case for Annulment of Mortgage is still pending before the Regional Trial Court Makati City, Branch 57. The Annulment of Extra-Judicial Foreclosure Sale and the Annulment of Mortgage involves (sic) the same subject property described in the Transfer Certificate of Title No. (168302)-S-3664. While the plaintiffs alleged that the issue in the case before RTC 57 deals with the validity of the mortgage and the issue in the instant case deals with the validity of the foreclosure sale, this Court finds the same to be interrelated. The ruling on the validity of the Foreclosure Sale would also deal with the validity of the mortgage. Thus, there would be a possibility that the ruling on the said validity by this Court would be in conflict with ruling on the Annulment of Mortgage case which is now pending before the RTC Makati Branch 57.
>
> As the Supreme Court consistently held x x x there is forum shopping 'when a party repetitively avails of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in or already resolved adversely by some other court,' Hence, there is a clear showing of forum shopping which is a ground for the dismissal of this case.
>
> WHEREFORE, in view of the foregoing[,] the instant case is hereby DISMISSED on the ground of forum shopping.
>
> SO ORDERED.[11]

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[10] *Id.* at 333-335; penned by Presiding Judge Elpidio R. Calis.

[11] *Id.* at 334-335.

Fortunato and Franklin moved to reconsider, but the trial court, in a June 14, 2012 Order,[12] held its ground, stating among others that —

> In the present case, there is no dispute that the plaintiffs clearly violated Section 4, Rule 2, of the Rules of Court apparently for splitting a cause of action by filing separately and independently the instant action which can be best pleaded in the annulment of mortgage earlier lodged.
>
> Certainly, it would be for the best interest and benefit of the parties herein if the present action (annulment of foreclosure proceeding) is just pleaded as plaintiff's cause of action in the annulment of mortgage first lodged and now pending before RTC Branch 57, instead of being filed separately to save time and effort. x x x
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> x x x x x x x x x
>
> In the final analysis, although it may seem that the two cases contain two separate remedies that are both available to the plaintiffs, it cannot be said that the two remedies which arose from one wrongful act can be pursued in two different cases.
>
> The rule against splitting a cause of action is intended to prevent repeated litigation between the same parties in regard to the same subject of controversy, to protect the defendant from unnecessary vexation; and to avoid the costs and expenses incident to numerous suits. It comes from the old maxim *nemo debet bis vexari, pro una et eadem causa* (no man shall be twice vexed for one and the same cause).[13]

Ruling of the Court of Appeals

Petitioners filed an original Petition for *Certiorari*[14] before the CA docketed as CA-G.R. SP. No. l26075. Claiming that there is no forum shopping, they argued that Civil Case No. 11-116 (annulment of mortgage) and Civil Case No. 11- 1192 (annulment of foreclosure and sale proceedings) involve different subject matters; in the first, the subject is the mortgage constituted

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[12] *Id.* at 336-339.

[13] *Id.* at 338-339.

[14] *Id.* at 39-65.

on the property and its validity, while the second covers the foreclosure and sale thereof, as well as the validity thereof; that the evidence required to prove the first case is not the same as that which must prove the second; that judgments obtained in the two cases will not be inconsistent with each other; and that the causes of action in both cases are not the same, as in fact the cause of action in the second case did not exist yet when they filed the first, but accrued only later. They added that there is no splitting of a single cause of action, and that as between the two cases, there is no identity of reliefs sought.

On February 28, 2013, the CA rendered the assailed Decision dismissing the Petition, stating thus —

> In sum, the lone issue to be resolved is whether petitioners Fortunato and Franklin were guilty of forum-shopping when they successively filed the Annulment of Mortgage case and Annulment of Foreclosure Sale case.
>
> x x x x x x x x x
>
> Given the foregoing considerations, We hold that petitioners Fortunato and Franklin clearly violated the rule on forum-shopping as the elements of *litis pendentia* are present in the case at bench. Consider the following:
>
> *Firstly,* it is undisputed that there is identity of parties representing the same interests in the two cases, both involving petitioners x x x and private respondent Bank. Notwithstanding that in the first case, FCD Pawnshop x x x was not indicated as a party and respondent Sunyang was not impleaded therein, it is evident that the primary litigants in the two actions are the same.
>
> *Secondly,* in finding that the other elements of *litis pendentia* were present in the instant case, We deem it necessary to apply the case of *Goodland Company, Inc. vs. Asia United Bank, et al.*[15]
>
> In *Goodland,* petitioner initially filed a Complaint for Annulment of Mortgage on the ground that the Real Estate Mortgage (REM) contract was falsified and irregularly executed. Subsequently, it filed a second case where it prayed for injunctive relief and/or nullification

[15] 684 Phil. 391 (2012).

of the extrajudicial foreclosure sale by reason of, among others, defective publication of the Notice of Sale and falsification of the REM contract which was the basis of foreclosure, thus, rendering the latter as similarly null and void. The High Court found petitioner guilty of forum-shopping ratiocinating that there can be no determination of the validity of the extrajudicial foreclosure and the propriety of the injunction in the Injunction case without necessarily ruling on the validity of the REM.

We stress, however, that unlike the *Goodland* case, the instant controversy involved a situation wherein the allegations in the Complaint for Annulment of Foreclosure did not explicitly and categorically raise the falsification of the REM contract as one of the grounds for declaring the annulment of the said foreclosure sale. Here, petitioners anchored their arguments on the alleged irregularities in the foreclosure proceedings, *i.e.*, different title numbers in the documents used or issued in the auction sale and that the Petition for Extrajudicial Foreclosure Sale was filed without authority. Nonetheless, after a careful study of the *Goodland* case, We are ever more convinced that the same is still instructive on the issue at hand. Consider the following pertinent portions of the case:

> 'x x x There can be no dispute that the prayer for relief in the two cases was based on the same attendant facts in the execution of REMs over petitioner's properties in favor of AUB. **While the extrajudicial foreclosure of mortgage, consolidation of ownership in AUB and issuance of title in the latter's name were set forth only in the second case x x x, these were simply the expected consequences of the REM transaction in the first case x x x. These eventualities are precisely what petitioner sought to avert when it filed the first case. Undeniably then, the injunctive relief sought against the extrajudicial foreclosure, as well as the cancellation of the new title in the name of the creditor-mortgagee AUB, were all premised on the alleged nullity of the REM due to its allegedly fraudulent and irregular execution and registration - the same facts set forth in the first case. In both cases, petitioner asserted its right as owner of the property subject of the REM, while AUB invoked the rights of a foreclosing creditor-mortgagee**, x x x
>
> x x x **In the first case, petitioner alleged the fraudulent and irregular execution and registration of the REM which violated its right as owner who did not consent thereto, while**

> **in the second case petitioner cited further violation of its right as owner when AUB foreclosed the property, consolidated its ownership and obtained a new TCT in its name. Considering that the aforesaid violations of petitioner's right as owner in the two cases both hinge on the binding effect of the REM, i.e., both cases will rise or fall on the issue of the validity of the REM, it follows that the same evidence will support and establish the first and second causes of action.** The procedural infirmities or non-compliance with legal requirements for extrajudicial foreclosure raised in the second case were but additional grounds in support of the injunctive relief sought against the foreclosure which was, in the first place, illegal on account of the mortgage contract's nullity. Evidently, petitioner never relied solely on the alleged procedural irregularities in the extrajudicial foreclosure when it sought the reliefs in the second case. x x x'

While in the instant case, the Annulment of Foreclosure Sale was merely founded on irregularities in the foreclosure proceedings, without deliberately raising the alleged nullity of the REM, the foregoing clearly suggests that in resolving the said Annulment of Foreclosure Sale case, its determination will still be anchored upon and premised on the issue of the validity of REM. Parenthetically, should it be found that the mortgage contract is null and void, the proceedings based thereon shall likewise become ineffectual. The resolution of the Annulment of Foreclosure Sale case, therefore, is inevitably dependent on the effectivity of the REM transaction, thus, it can be said that both cases shall be substantially founded on the same transactions, same essential facts and circumstances.

In addition, as correctly pointed out by the private respondent Bank, a careful scrutiny of the Complaint for Annulment of Foreclosure shows petitioners Fortunato and Franklin's repeated reference to the subject property as unlawfully and fraudulently mortgaged. As such, insofar as the determination of the validity of foreclosure proceedings is concerned, same evidence will have to be utilized as the antecedent facts that gave rise to both cases were the same.

x x x x x x x x x

Thirdly, a judgment in the Annulment of Mortgage case will amount to *res judicata* in the Annulment of Foreclosure Sale case. It is a principle in *res judicata* that once a final judgment has been rendered, the prevailing party also has an interest in the stability of that judgment.

To allow relitigation creates the risk of inconsistent results and presents the embarrassing problem of determining which of two conflicting decisions is to be preferred. Here, conflicting decisions may result should the Annulment of Foreclosure case be allowed to proceed.

To stress once again, should RTC Br. 57 rule that the REM contract is null and void, the proceedings based thereon shall likewise become ineffectual. Considering that both RTC Brs. 57 and 133 will be confronted (sic) to discuss or make any pronouncement regarding the validity of the REM, the possibility of conflicting rulings or decisions may be rendered with respect to the said issue. With that, We deem it proper that petitioners Fortunato and Franklin should have just amended their Complaint for Annulment of Mortgage, pleading therein the subsequent extrajudicial foreclosure and include in the prayer the nullification of the said extrajudicial foreclosure.

In view of the foregoing, no grave abuse of discretion can be imputed to public respondent RTC Br. 133 in finding that petitioners Fortunato and Franklin committed forum-shopping. The instant petition, therefore, indubitably warrants denial.

WHEREFORE, the petition is **DENIED.** The assailed Orders dated March 26, 2012 and June 14, 2012 of the x x x Regional Trial Court of Makati City, Branch 133, in Civil Case No. 11-1192, are hereby **AFFIRMED.**

Costs against petitioners.

SO ORDERED.[16] (Emphasis in the original)

A Motion for Reconsideration was filed, but the same was denied in a June 28, 2013 Resolution of the CA. Hence, the present Petition.

In a September 1, 2014 Resolution,[17] the Court resolved to give due course to the instant Petition.

Issues

Petitioners essentially point out that in maintaining Civil Case Nos. 11-116 and 11-1192, they are not guilty of forum shopping, nor did they violate the rule on *litis pendentia.*

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[16] *Rollo,* pp. 32-37.

[17] *Id.* at 434-435.

Petitioners' Arguments

In praying that the assailed CA dispositions be set aside, petitioners in their Petition and Reply[18] reiterate the arguments in their CA Petition that, as between Civil Case No. 11-116 (annulment of mortgage) and Civil Case No. 11-1192 (annulment of foreclosure and sale proceedings), there is no identity of causes of action, subject matter, issues, and reliefs sought; that both cases require different evidence as proof; and that judgments obtained in the two cases will not be inconsistent with each other, and any decision obtained in one will not constitute *res judicata* on the other.

Respondent UBP's Arguments

Respondent UBP, on the other hand, essentially argues in its Comment[19] that the Petition should be denied, for being a mere rehash of the arguments in petitioners' CA Petition which have been thoroughly passed upon by the appellate court; that as correctly held by the CA, Civil Case No. 11-1192 (annulment of foreclosure and sale proceedings) is anchored on a determination of the validity or binding effect of the real estate mortgage in Civil Case No. 11-116 (annulment of mortgage case), and both cases are supported by, and will rise and fall on, the same evidence; that the necessary consequence of Civil Case No. 11-1192 is determined solely by the decision in Civil Case No. 11-116 in that if it is found that the mortgage is null and void, then the foreclosure and sale proceedings based thereon would likewise become ineffectual; that the grounds for annulment of the foreclosure and sale proceedings merely constitute additional reasons for seeking injunctive relief: if any, in the annulment of mortgage case, but cannot form the basis of a separate cause of action; and that a judgment in Civil Case No. 11-116 on the validity of the mortgage should thus amount to *res judicata* in Civil Case No. 11-1192 on the effect of the foreclosure and sale, but with the pendency of both cases,

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[18] *Id.* at 385-391.

[19] *Id.* at 370-381.

a possibility of conflicting rulings by different courts on the validity of the mortgage exists.

Our Ruling

The Court denies the Petition.

This *ponente* has had the occasion to rule on a case[20] where a party instituted two cases against the same set of defendants — one for the annulment of a real estate mortgage, and a second for injunction and nullification of the extrajudicial foreclosure and consolidation of title, rooted in the same real estate mortgage — who moved to dismiss the second case on the ground of forum shopping, claiming that both cases relied on a determination of the same issue: that is, the validity of the real estate mortgage. The trial court dismissed the second case, but the CA ordered its reinstatement. This *ponente* affirmed the trial court, declaring as follows:

> There is forum shopping 'when a party repetitively avails of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in or already resolved adversely by some other court.' The different ways by which forum shopping may be committed were explained in *Chua v. Metropolitan Bank & Trust Company*:
>
> > Forum shopping can be committed in three ways: (1) filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet (where the ground for dismissal is *litis pendentia);* (2) filing multiple cases based on the same cause of action and the same prayer, the previous case having been finally resolved (where the ground for dismissal is *res judicata);* and **(3) filing multiple cases based on the same cause of action but with different prayers (splitting causes of action, where the ground for dismissal is also either *litis pendentia* or *res judicata).***
>
> Common in these types of forum shopping is the identity of the cause of action in the different cases filed. Cause of action is defined as 'the act or omission by which a party violates the right of another.'

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[20] *Asia United Bank v. Goodland Company, Inc.*, 660 Phil. 504 (2011).

The cause of action in the earlier Annulment Case is the alleged nullity of the REM (due to its allegedly falsified or spurious nature) which is allegedly violative of Goodland's right to the mortgaged property. It serves as the basis for the prayer for the nullification of the REM. The Injunction Case involves the same cause of action, inasmuch as it also invokes the nullity of the REM as the basis for the prayer for the nullification of the extrajudicial foreclosure and for injunction against consolidation of title. While the main relief sought in the Annulment Case (nullification of the REM) is ostensibly different from the main relief sought in the Injunction Case (nullification of the extrajudicial foreclosure and injunction against consolidation of title), the cause of action which serves as the basis for the said reliefs remains the same — the alleged nullity of the REM. Thus, what is involved here is the third way of committing forum shopping, i.e., filing multiple cases based on the same cause of action, but with different prayers. As previously held by the Court, there is still forum shopping even if the reliefs prayed for in the two cases are different, so long as both cases raise substantially the same issues.

There can be no determination of the validity of the extrajudicial foreclosure and the propriety of injunction in the Injunction Case without necessarily ruling on the validity of the REM, which is already the subject of the Annulment Case. The identity of the causes of action in the two cases entails that the validity of the mortgage will be ruled upon in both, and **creates a possibility that the two rulings will conflict with each other. This is precisely what is sought to be avoided by the rule against forum shopping.**

The substantial identity of the two cases remains even if the parties should add different grounds or legal theories for the nullity of the REM or should alter the designation or form of the action. **The well-entrenched rule is that 'a party cannot, by varying the form of action, or adopting a different method of presenting his case, escape the operation of the principle that one and the same cause of action shall not be twice litigated.'**[21] (Emphasis supplied)

The foregoing view was reiterated in a subsequent pronouncement,[22] which happens to form the underlying premise of the CA's disposition.

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[21] *Id.* at 514-515.

[22] *Goodland Company Inc. v. Asia United Bank, supra* note 15.

The factual milieu in the present case is the same as in the above-cited cases. The plaintiffs in both cases first filed a case for annulment of the mortgage, followed by the case for annulment of the foreclosure proceedings. For this reason, the underlying principle in these previously decided cases must apply equally to the instant case. Thus, the Court completely agrees with the CA's findings that in the event that the court in Civil Case No. 11-116 (annulment of mortgage case) should nullify the Sunyang mortgage, then subsequent proceedings based thereon, including the foreclosure, shall also be nullified. Notably as well, the CA's observation in Civil Case No. 11-1192 (case for annulment of foreclosure and sale) — that since the complaint therein repeatedly makes reference to an "unlawful" and "fraudulent" Sunyang mortgage, then the same evidence in Civil Case No. 11-116 will have to be utilized — is well-taken.

Petitioners maintain that Civil Case No. 11-1192 (case for annulment of foreclosure and sale) is grounded on specific irregularities committed during the foreclosure proceedings. However, their Complaint in said case reiterates the supposed illegality of the Sunyang mortgage, thus presenting the court in said case with the opportunity and temptation to resolve the issue of validity of the mortgage. There is therefore a danger that a decision might be rendered by the court in Civil Case No. 11-1192 that contradicts the eventual ruling in Civil Case No. 11-116, or the annulment of mortgage case.

The rules of procedure are geared toward securing a just, speedy, and inexpensive disposition of every action and proceeding.[23] "Procedural law has its own rationale in the orderly administration of justice, namely, to ensure the effective enforcement of substantive rights by providing for a system that obviates arbitrariness, caprice, despotism, or whimsicality in the settlement of disputes."[24] With these principles in mind,

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[23] RULES OF COURT, Rule l, Section 6.

[24] *Sebastian v. Morales*, 445 Phil. 595, 605 (2003).

the Court would rather have petitioners try their cause of action in Civil Case No. 11-116, rather than leave the trial court in danger of committing error by issuing a decision or resolving an issue in Civil Case No. 11-1192 that should properly be rendered or resolved by the court trying Civil Case No. 11-116.

WHEREFORE, the Petition is **DENIED**. The February 28, 2013 Decision and June 28, 2013 Resolution of the Court of Appeals in CA-G.R. SP. No. 126075 are **AFFIRMED.**

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 211175. January 18, 2017]

ATTY. REYES G. GEROMO, FLORENCIO BUENTIPO, JR., ERNALDO YAMBOT and LYDIA BUSTAMANTE, *petitioners, vs.* **LA PAZ HOUSING AND DEVELOPMENT CORPORATION and GOVERNMENT SERVICE INSURANCE SYSTEM,** *respondents.*

SYLLABUS

1. CIVIL LAW; SALES; OBLIGATIONS OF THE VENDOR; WARRANTY AGAINST HIDDEN DEFECTS; CONDITIONS THEREOF.— Under the [Article 1561 of the] Civil Code, the vendor shall be answerable for warranty against hidden defects on the thing sold x x x For the implied warranty against hidden defects to be applicable, the following conditions must be met: a. Defect is Important or Serious i. The thing sold is unfit for the use which it is intended ii. Diminishes its fitness for such use or to such an extent that the buyer would not have acquired

it had he been aware thereof b. Defect is Hidden c. Defect Exists at the time of the sale d. Buyer gives Notice of the defect to the seller within reasonable time.

2. ID.; ID.; ID.; ID.; APPLICATION OF THE DOCTRINE OF *RES IPSA LOQUITUR* CONSIDERING THE NATURE OF THE DAMAGE SUSTAINED BY THE STRUCTURES.— One of the purposes of P.D. No. 957, also known as The Subdivision and Condominium Buyers' Protective Decree, is to discourage and prevent unscrupulous owners, developers, agents, and sellers from reneging on their obligations and representations to the detriment of innocent purchasers. Considering the nature of the damage sustained by the structures, even without the findings of the local governmental agency and the MGB-DENR, La Paz is still liable under the doctrine of *res ipsa loquitur*. x x x Under the said doctrine, expert testimony may be dispensed with to sustain an allegation of negligence if the following requisites obtain: a) the event is of a kind which does not ordinarily occur unless someone is negligent; b) the cause of the injury was under the exclusive control of the person in charge; and c) the injury suffered must not have been due to any voluntary action or contribution on the part of the person injured. In this case, the subdivision plan/ layout was prepared and approved by La Paz. The actual excavation, filling and levelling of the subdivision grounds were exclusively done under its supervision and control. There being no contributory fault on the part of the petitioner, there can be no other conclusion except that it was the fault of La Paz for not properly compacting the soil, which used to be an old creek. It should have taken adequate measures to ensure the structural stability of the land before they started building the houses thereon. The uneven street pavements and visible cracks on the houses were readily apparent yet La Paz did not undertake any corrective or rehabilitative work.

3. ID.; DAMAGES; ACTUAL DAMAGES; TEMPERATE AND MODERATE DAMAGES IN LIEU THEREOF MAY BE RECOVERED WHEN SOME PECUNIARY LOSS HAS BEEN SUFFERED BUT ITS AMOUNT CANNOT BE PROVED WITH CERTAINTY.— On actual damages, the standing rule is that to be entitled to them, there must be pleading and proof of actual damages suffered. Actual damages, to be recoverable, must not only be capable of proof, but must actually

be proved with a reasonable degree of certainty. Courts cannot simply rely on speculation, conjecture or guesswork in determining the fact and amount of damages. To justify an award of actual damages, there must be competent proof of the actual amount of loss, credence can be given only to claims which are duly supported by receipts. In this regard, the petitioners failed to prove with concrete evidence the amount of the actual damages they suffered. For this reason, the Court does not have any basis for such an award. Nevertheless, temperate or moderate damages may be recovered when some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty. The amount thereof is usually left to the discretion of the courts but the same should be reasonable, bearing in mind that temperate damages should be more than nominal but less than compensatory. In this case, the petitioners suffered some form of pecuniary loss due to the impairment of the structural integrity of their dwellings.

4. ID.; ID.; ID.; MORAL AND EXEMPLARY DAMAGES; ATTORNEY'S FEES AND COST OF SUIT MAY ALSO BE RECOVERED.— The petitioners are also entitled to moral and exemplary damages. Moral 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. To be entitled to such an award, the claimant must satisfactorily prove that he indeed suffered damages and that the injury causing the same sprung from any of the cases listed in Articles 2219 and 2220 of the Civil Code. Moreover, the damages must be shown to be the proximate result of a wrongful act or omission. Moral damages may be awarded when the breach of contract was attended with bad faith, or is guilty of gross negligence amounting to bad faith. Obviously, the uncaring attitude of La Paz amounted to bad faith. x x x Petitioners are also entitled to exemplary damages which are awarded when a wrongful act is accompanied by bad faith or when the guilty party acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner" under Article 2232 of the Civil Code. The indifference of La Paz in addressing the petitioners' concerns and its subsequent failure to take remedial measures constituted bad faith. Considering that the award of moral and exemplary damages is proper in this case, attorney's

fees and cost of the suit may also be recovered as provided under Article 2208 of the Civil Code.

APPEARANCES OF COUNSEL

Icaonapo Litong Morales and Associates for petitioners.
GSIS Legal Services Group for respondent GSIS.
Smith & Associates for respondent La Paz Housing & Dev't. Corp.

D E C I S I O N

MENDOZA, *J.*:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the September 26, 2013 Decision[1] and the January 29, 2014 Resolution[2] of the Court of Appeals (*CA*), in CA-G.R. SP No. 123139, which affirmed the January 11, 2012 Decision[3] of the Office of the President (*OP*), dismissing the action for damages filed by the petitioners before the Housing and Land Regulatory Board (*HLURB*) against La Paz Housing and Development Corporation (*La Paz*) and the Government Service Insurance System (*GSIS*), on the ground of breach of warranty against hidden defects.

The Antecedents

Petitioners Atty. Reyes G. Geromo (*Geromo*), Florencio Buentipo, Jr. (*Buentipo*), Ernaldo Yambot (*Yambot*), and Lydia Bustamante (*Bustamante*) acquired individual housing units of Adelina 1-A Subdivision (*Adelina*) in San Pedro, Laguna from La Paz, through GSIS financing, as evidenced by their deeds of conditional sale.[4] The properties were all situated along the old Litlit Creek.

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[1] *Rollo*, pp. 54-67.

[2] *Id.* at 68-69.

[3] *Id.* at 185-187.

[4] *Id.* at 108-115.

In 1987, Geromo, Bustamante and Yambot started occupying their respective residential dwellings, which were all located along Block 2 (Pearl Street) of the said subdivision. Buentipo, on the other hand, opted to demolish the turned-over unit and build a new structure thereon. After more than two (2) years of occupation, cracks started to appear on the floor and walls of their houses. The petitioners, through the President of the Adelina 1-A Homeowners Association, requested La Paz, being the owner/developer, to take remedial action. They collectively decided to construct a riprap/retaining wall along the old creek believing that water could be seeping underneath the soil and weakening the foundation of their houses. Although La Paz was of the view that it was not required to build a retaining wall, it decided to give the petitioners ₱3,000.00 each for expenses incurred in the construction of the said riprap/retaining wall. The petitioners claimed that despite the retaining wall, the condition of their housing units worsened as the years passed. When they asked La Paz to shoulder the repairs, it denied their request, explaining that the structural defects could have been caused by the 1990 earthquake and the renovations/improvements introduced to the units that overloaded the foundation of the original structures.

In 1998, the petitioners decided to leave their housing units in Adelina.[5]

In May 2002, upon the request of the petitioners, the Municipal Engineer of San Pedro and the Mines and Geosciences Bureau (*MGB*) of the Department of Environment and Natural Resources (*DENR*) conducted an ocular inspection of the subject properties. They found that there was *"differential settlement of the area where the affected units were constructed."*[6]

On the basis thereof, Geromo filed a complaint for breach of contract with damages against La Paz and GSIS before the HLURB.[7] On May 3, 2003, Buentipo, Yambot and Bustamante

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

[6] *Id.* at 185.

[7] Docketed as HLURB Case No. IV6-11202-1885.

filed a similar complaint against La Paz and GSIS.[8] They all asserted that La Paz was liable for implied warranty against hidden defects and that it was negligent in building their houses on unstable land. Later on, the said complaints were consolidated.

La Paz, in its Answer, averred that it had secured the necessary permits and licenses for the subdivision project; that the houses thereon were built in accordance with the plans and specifications of the National Building Code and were properly delivered to the petitioners; that it did not violate Presidential Decree (*P.D.*) No. 957 as it was issued compliance documents, such as development permits, approved alteration plan, license to sell, and certificate of completion by HLURB; that the Philippine Institute of Volcanology and Seismology (*PHILVOLCS*), based on the serial photo interpretation of its field surveyors in 1996, reported that a portion of the topography of the subdivision developed an active fault line; and lastly, that there were unauthorized, irregular renovation/alteration and additional construction in the said units. Hence, it argued that it should not be held liable for any damage incurred and that the same should be for the sole account of the petitioners.[9]

In its defense, GSIS moved for the dismissal of the complaint for lack of cause of action. It asserted that the deeds of conditional sale were executed between La Paz and the petitioners only and that its only participation in the transactions was to grant loans to the petitioners for the purchase of their respective properties.[10]

The Decision of the HLURB Arbiter

In its August 9, 2004 Decision,[11] the HLURB Arbiter found La Paz liable for the structural damage on the petitioners' housing

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[8] Docketed as HLURB Case No. IV6-051503-1980.

[9] *Rollo*, p. 167.

[10] *Id.* at 164.

[11] *Id.* at 159-170. Penned by Housing and Land Use Board Arbiter Atty. Ma. Perpetua Y. Aquino.

units, explaining that the damage was caused by its failure to properly fill and compact the soil on which the houses were built and to maintain a three (3) meter easement from the edge of the creek as required by law. As to GSIS, the HLURB ruled that there was no cogent reason to find it liable for the structural defects as it merely facilitated the financing of the affected units. The decretal portion of the decision of the HLURB Arbiter reads:

> **WHEREFORE**, premises considered, judgment is hereby rendered as follows:
>
> 1) Ordering respondent La Paz Housing and Dev't. Corp. to immediately undertake and cause the necessary repairs/construction of the subject units to make it suitable for human habitation for which it was originally intended for;
>
> 2) In the alternative, if it is no longer possible for the said units to be repaired to make it suitable for human habitation, respondent LPHDC is hereby ordered to give each complainant a substitute property of the same nature and area, more or less, within the subdivision project or in any project owned and developed by LPHDC within the vicinity of San Pedro, Laguna;
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> 3) Ordering respondent LPHDC to pay complainants:
>
> a. the equivalent sum of what each complainant may prove by documentary evidence such as receipts and the like, as actual damages;
>
> b. the sum of ₱15,000.00 each as moral damages;
>
> c. the sum of ₱10,000.00 each as exemplary damages;
>
> d. the sum of ₱10,000.00 as attorney's fees.;
>
> e. cost of suit.
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> SO ORDERED.[12]

The Decision of the HLURB Board of Commissioners

In its September 12, 2005 Decision,[13] the HLURB Board of Commissioners *set aside* the Arbiter's decision, explaining that

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[12] *Id.* at 169-170.

[13] *Id.* at 171-174.

there was no concrete evidence presented to prove that the houses of the petitioners were indeed damaged by the failure of La Paz to comply with the building standards or easement requirements.

The petitioners moved for reconsideration, but the HLURB Board of Commissioners denied their motion in its Resolution,[14] dated January 31, 2006.

The Decision of the OP

Aggrieved, the petitioners elevated the case to the OP which initially dismissed the appeal on December 18, 2006 for late filing.[15] The petitioners questioned the dismissal before the CA and, in its Decision,[16] dated March 31, 2009, the appellate court reversed the resolution of the OP and ordered the latter to resolve the appeal on the merits.

On January 11, 2012, the OP finally rendered a decision dismissing the appeal for lack of merit. It found that on the culpability of La Paz, the petitioners merely relied on the report submitted by the team that conducted the "ocular inspection" of the subject properties. It wrote that "[w]hat is visual to the eye, though, is not always reflective of the real cause behind. x x x other than the ocular inspection, no investigation was conducted to determine the real cause of damage on the housing units." According to the OP, the petitioners "did not even show that the plans, specifications and designs of their houses were deficient and defective." It concluded that the petitioners failed to show that La Paz was negligent or at fault in the construction of the houses in question or that improper filing and compacting of the soil was the proximate cause of damage.[17]

The CA Decision

Not in conformity, the petitioners appealed the OP decision, dated January 11, 2012, before the CA. On September 26, 2013,

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[14] *Id.* at 178-179.

[15] *Id.* at 183-184.

[16] *Id.* at 87-105.

[17] *Id.* at 186-187.

the CA affirmed the ruling of the OP and found that the petitioners had no cause of action against La Paz for breach of warranty against hidden defects as their contracts were merely contracts to sell, the titles not having been legally passed on to the petitioners. It likewise ruled that La Paz could not be held liable for damages as there was not enough evidence on record to prove that it acted fraudulently and maliciously against the petitioners.[18]

On January 29, 2014, the CA denied the motion for reconsideration[19] filed by the petitioners.

Hence, the present petition raising the following

ISSUES

The CA gravely erred in the issuance of the assailed Decision and challenged Resolution which affirmed in toto the Decision of the O.P. [dismissing the petition for lack of merit] despite the conclusive:

A. Findings of the MGB, DENR, Engineer's Office, San Pedro, Laguna and HLURB Director that petitioners' housing are unfit for human habitation. Hence, they are entitled to the protective mantle of PD 957 which was enacted to protect the subdivision lot buyers against the commission of fraud or negligence by the developer/contractor like La Paz.

B. The contractual relationship between the parties is not governed by Articles 1477 or 1478, the New Civil Code as the correct issue is the liability of La Paz as the contractor/developer to the petitioners' housing units declared by government agencies unfit for human habitation. What governs are Art. 2176 in relation to Art. 1170, 1173 and Art. 19 in relation to Art. 20 and Art. 21, the Civil Code of the Philippines.

C. La Paz is liable for warranty against hidden defects when it sold to the petitioners the housing units

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[18] *Id.* at 54-67.

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

declared unfit for human habitation. La Paz's defense of force majeure will not lie.

D. GSIS' privity to the Contract (Deed of Conditional Sale) executed by and between the petitioners and La Paz for the housing loans which it financed makes it jointly and severally liable for the petitioners' defective housing units.[20]

The central issue in this case is whether La Paz should be held liable for the structural defects on its implied warranty against hidden defects.

The petitioners assert that La Paz was grossly negligent when it constructed houses over a portion of the old Litlit Creek. They claim that La Paz merely covered the old creek with backfilled materials without properly compacting the soil.[21] They argue that they, or any buyer for that matter, could not have known that the soil beneath the cemented flooring of their housing units were not compacted or leveled properly and that the water beneath continuously seeped, causing the soil foundation to soften resulting in the differential settlement of the area.[22]

The Court's Ruling

After a judicious review of the records of this case, the Court finds merit in the petition.

Under the Civil Code, the vendor shall be answerable for warranty against hidden defects on the thing sold under the following circumstances:

Art. 1561. The vendor shall be responsible for warranty against the hidden defects which the thing sold may have, should they render it unfit for the use for which it is intended, or should they diminish its fitness for such use to such an extent that, had the vendee been aware thereof, he would not have acquired it or would have given a lower price for it; but said vendor shall not be answerable for patent

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[20] *Id.* at 27-28.

[21] *Id.* at 32.

[22] *Id.* at 40.

defects or those which may be visible, or for those which are not visible if the vendee is an expert who, by reason of this trade or profession, should have known them. (Emphasis supplied)

Art. 1566. The vendor is responsible to the vendee for any hidden faults or defects in the thing sold, even though he was not aware thereof.

This provision shall not apply if the contrary has been stipulated and the vendor was not aware of the hidden faults or defects in the thing sold.

For the implied warranty against hidden defects to be applicable, the following conditions must be met:

a. Defect is Important or Serious

i. The thing sold is unfit for the use which it is intended

ii. Diminishes its fitness for such use or to such an extent that the buyer would not have acquired it had he been aware thereof

b. Defect is Hidden

c. Defect Exists at the time of the sale

d. Buyer gives Notice of the defect to the seller within reasonable time

Here, the petitioners observed big cracks on the walls and floors of their dwellings within two years from the time they purchased the units. The damage in their respective houses was substantial and serious. They reported the condition of their houses to La Paz, but the latter did not present a concrete plan of action to remedy their predicament. They also brought up the issue of water seeping through their houses during heavy rainfall, but again La Paz failed to properly address their concerns. The structural cracks and water seepage were evident indications that the soil underneath the said structures could be unstable. Verily, the condition of the soil would not be in the checklist that a potential buyer would normally inquire about from the developer considering that it is the latter's prime obligation to ensure suitability and stability of the ground.

Furthermore, on June 11, 2002, HLURB Director Belen G. Ceniza, after confirming the cracks on the walls and floors of their houses, requested MGB-DENR and the Office of the Municipal Mayor to conduct a geological/geohazard assessment and thorough investigation on the entire Adelina subdivision.[23] Thus, in its August 8, 2002 Letter-Report,[24] MGB reported that there was evident ground settlement in the area of the Litlit Creek where the houses of the petitioners were located, probably "caused by hydrocompaction of the backfill and or alluvial deposits x x x." The Engineering Department of San Pedro Municipality, on the other hand, confirmed the settlement affecting at least six (6) houses along Block 2, Pearl St., including that of Geromo, resulting in various structural damage.[25] Records reveal that a portion of Pearl Street itself had sunk, cracking the concrete pavement of the road. For several years, the petitioners had to endure the conditions of their homes while La Paz remained silent on their constant follow-ups. Eventually, they had to leave their own dwellings due to safety concerns.

Based on the said findings, the Court is of the considered view that the petitioners were justified in abandoning their dwellings as they were living therein under unsafe conditions. With the houses uncared for, it was no surprise that, by the time the case was filed in 2004, they were in a worse condition.

La Paz remained unconcerned even after receiving incident reports of structural issues from homeowners and despite constant follow-ups from them for many years. In fact, the petitioners took it upon themselves to build a riprap/retaining wall due to La Paz's indifference.

One of the purposes of P.D. No. 957, also known as The Subdivision and Condominium Buyers' Protective Decree, is to discourage and prevent unscrupulous owners, developers,

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[23] *Id.* at 149-150.

[24] *Id.* at 153-154.

[25] *Id.* at 155.

agents, and sellers from reneging on their obligations and representations to the detriment of innocent purchasers.[26]

Considering the nature of the damage sustained by the structures, even without the findings of the local governmental agency and the MGB-DENR, La Paz is still liable under the doctrine of *res ipsa loquitur*. In the case of *D.M. Consunji, Inc. v. CA*,[27] the Court expounded on this doctrine in this wise:

> The concept of *res ipsa loquitur* has been explained in this wise:
>
> > While negligence is not ordinarily inferred or presumed, and while the mere happening of an accident or injury will not generally give rise to an inference or presumption that it was due to negligence on defendants part, under the doctrine of *res ipsa loquitur*, which means, literally, the thing or transaction speaks for itself, or in one jurisdiction, that the thing or instrumentality speaks for itself, the facts or circumstances accompanying an injury may be such as to raise a presumption, or at least permit an inference of negligence on the part of the defendant, or some other person who is charged with negligence.
> >
> > x x x where it is shown that the thing or instrumentality which caused the injury complained of was under the control or management of the defendant, and that the occurrence resulting in the injury was such as in the ordinary course of things would not happen if those who had its control or management used proper care, there is sufficient evidence, or, as sometimes stated, reasonable evidence, in the absence of explanation by the defendant, that the injury arose from or was caused by the defendant's want of care.
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> One of the theoretical bases for the doctrine is its necessity, i.e., that necessary evidence is absent or not available.
>
> > The *res ipsa loquitur* doctrine is based in part upon the theory that the defendant in charge of the instrumentality which causes the injury either knows the cause of the accident or has the best opportunity of ascertaining it and that the plaintiff has no such knowledge, and therefore is compelled to allege negligence

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[26] *Co Chien v. Sta. Lucia Realty and Development, Inc.*, 542 Phil. 558, 568 (2007).

[27] 409 Phil. 275 (2001).

> in general terms and to rely upon the proof of the happening of the accident in order to establish negligence. The inference which the doctrine permits is grounded upon the fact that the chief evidence of the true cause, whether culpable or innocent, is practically accessible to the defendant but inaccessible to the injured person.
>
> It has been said that the doctrine of *res ipsa loquitur* furnishes a bridge by which a plaintiff, without knowledge of the cause, reaches over to defendant who knows or should know the cause, for any explanation of care exercised by the defendant in respect of the matter of which the plaintiff complains. The *res ipsa loquitur* doctrine, another court has said, is a rule of necessity, in that it proceeds on the theory that under the peculiar circumstances in which the doctrine is applicable, it is within the power of the defendant to show that there was no negligence on his part, and direct proof of defendants negligence is beyond plaintiffs power. Accordingly, some courts add to the three prerequisites for the application of the *res ipsa loquitur* doctrine the further requirement that for the *res ipsa loquitur* doctrine to apply, it must appear that the injured party had no knowledge or means of knowledge as to the cause of the accident, or that the party to be charged with negligence has superior knowledge or opportunity for explanation of the accident.[28]

Under the said doctrine, expert testimony may be dispensed with to sustain an allegation, of negligence if the following requisites obtain: a) the event is of a kind which does not ordinarily occur unless someone is negligent; b) the cause of the injury was under the exclusive control of the person in charge; and c) the injury suffered must not have been due to any voluntary action or contribution on the part of the person injured.[29]

In this case, the subdivision plan/layout was prepared and approved by La Paz. The actual excavation, filling and levelling of the subdivision grounds were exclusively done under its supervision and control. There being no contributory fault on the part of the petitioner, there can be no other conclusion except that it was the fault of La Paz for not properly compacting the soil, which used to be an old creek.

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[28] *Id.* at 289-291.

[29] *DM Consunji v. Court of Appeals, supra* note 27, at 291.

It should have taken adequate measures to ensure the structural stability of the land before they started building the houses thereon. The uneven street pavements and visible cracks on the houses were readily apparent yet La Paz did not undertake any corrective or rehabilitative work.

La Paz's argument that the damage could have been sustained because of the 1990 earthquake or through the various enhancements undertaken by the petitioners on their respective structures was not substantiated. Records undeniably show that the petitioners had raised their concerns as early as 1988 — before the earthquake occurred in 1990.

On Damages

Due to the indifference and negligence of La Paz, it should compensate the petitioners for the damages they sustained. On actual damages, the standing rule is that to be entitled to them, there must be pleading and proof of actual damages suffered.

> Actual damages, to be recoverable, must not only be capable of proof, but must actually be proved with a reasonable degree of certainty. Courts cannot simply rely on speculation, conjecture or guesswork in determining the fact and amount of damages. To justify an award of actual damages, there must be competent proof of the actual amount of loss, credence can be given only to claims which are duly supported by receipts.[30]

In this regard, the petitioners failed to prove with concrete evidence the amount of the actual damages they suffered. For this reason, the Court does not have any basis for such an award.

Nevertheless, temperate or moderate damages may be recovered when some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty.[31] The amount thereof is usually left to the discretion of the courts but the same should be reasonable, bearing in mind that temperate damages should be more than nominal but

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[30] *Viron Transportation Co., Inc. v. Delos Santos*, 399 Phil. 243 (2000).

[31] Art. 2224, Civil Code of the Philippines.

less than compensatory.[32] In this case, the petitioners suffered some form of pecuniary loss due to the impairment of the structural integrity of their dwellings. In view of the circumstances obtaining, an award of temperate damages amounting to ₱200,000.00 is just and reasonable.

The petitioners are also entitled to moral and exemplary damages. Moral 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. To be entitled to such an award, the claimant must satisfactorily prove that he indeed suffered damages and that the injury causing the same sprung from any of the cases listed in Articles 2219[33] and 2220[34] of the Civil Code. Moreover, the damages must be shown to be the proximate result of a wrongful act or omission. Moral damages may be awarded when the breach

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[32] *College Assurance Plan v. Belfranlt Development, Inc.*, 563 Phil. 355, 367 (2007).

[33] Article 2219. Moral damages may be recovered in the following and analogous cases:

(1) A criminal offense resulting in physical injuries;
(2) Quasi-delicts causing physical injuries;
(3) Seduction, abduction, rape or other lascivious acts;
(4) Adultery or concubinage;
(5) Illegal or arbitrary detention or arrest;
(6) Illegal search;
(7) Libel, slander or any other form of defamation;
(8) Malicious prosecution;
(9) Acts mentioned in Article 309;
(10) Acts and actions referred to in Articles 21, 26, 27, 28, 29, 30, 32, 34, and 35.

The parents of the female seduced, abducted, raped, or abused, referred to in No. 3 of this article, may also recover moral damages.

The spouse, descendants, ascendants, and brothers and sisters may bring the action mentioned in No. 9 of this article, in the order named.

[34] Willful injury to property may be a legal ground for awarding moral damages if the court should find that, under the circumstances, such damages are justly due. The same rule applies to breaches of contract where the defendant acted fraudulently and in bad faith.

of contract was attended with bad faith,[35] or is guilty of gross negligence amounting to bad faith.[36] Obviously, the uncaring attitude of La Paz amounted to bad faith. For said reason, the Court finds it proper to award moral damages in the amount of ₱150,000.00.

Petitioners are also entitled to exemplary damages which are awarded when a wrongful act is accompanied by bad faith or when the guilty party acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner"[37] under Article 2232[38] of the Civil Code. The indifference of La Paz in addressing the petitioners' concerns and its subsequent failure to take remedial measures constituted bad faith.

Considering that the award of moral and exemplary damages is proper in this case, attorney's fees and cost of the suit may also be recovered as provided under Article 2208[39] of the Civil Code.[40]

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[35] *Frias v. San Diego-Sison*, 549 Phil. 49, 61 (2007).

[36] *Bankcard, Inc. v. Feliciano*, 529 Phil. 53, 62-63 (2006).

[37] *Amado v. Salvador*, 564 Phil. 728, 745 (2007).

[38] In contracts and quasi-contracts, the court may award exemplary damages if the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner.

[39] Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

(1) **When exemplary damages are awarded;**
(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;
(3) In criminal cases of malicious prosecution against the plaintiff;
(4) In case of a clearly unfounded civil action or proceeding against the plaintiff;
(5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;
(6) In actions for legal support;
(7) In actions for the recovery of wages of household helpers, laborers and skilled workers;
(8) In actions for indemnity under workmen's compensation and employer's liability laws;
(9) In a separate civil action to recover civil liability arising from a crime;
(10) When at least double judicial costs are awarded;
(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable. (Emphasis supplied)

[40] *Unlad Resources Development Corporation v. Dragon*, 582 Phil. 61, 86 (2008).

GSIS not liable

As to the petitioners' prayer to make GSIS jointly and severally liable with La Paz, the Court finds that there is no legal basis to juridically bind GSIS because it was never a party in the contracts between La Paz and the petitioners. The housing loan agreements that the petitioners entered into with GSIS were separate and distinct from the purchase contracts they executed with La Paz. GSIS merely agreed to pay the purchase price of the housing unit that each petitioner purchased from La Paz. It was merely the lender, not the developer.

WHEREFORE, the petition is **GRANTED**. The August 9, 2004 Decision of the HLURB Arbiter is hereby **REINSTATED with MODIFICATIONS** to read as follows:

WHEREFORE, Judgment is hereby rendered

1) Ordering respondent La Paz Housing and Development Corporation to immediately undertake and cause the necessary repairs/construction of the subject units to make it suitable for human habitation for which it was originally intended;

2) In the alternative, if it would no longer possible for the said units to be repaired to make it suitable for human habitation, ordering respondent La Paz to give each petitioner another property of the same nature and size, more or less, within the subdivision project or in any project owned and developed by La Paz in San Pedro, Laguna, or pay the monetary equivalent thereof; and

3) Ordering respondent La Paz to pay each of the petitioners:

a. the sum of ₱200,000.00 as temperate damages;
b. the sum of ₱150,000.00 as moral damages;
c. the sum of ₱150,000.00 as exemplary damages;
d. the sum of ₱100,000.00 as attorney's fees; and
e. cost of suit.

All awards shall earn legal interest at the rate of six percent (6%) per annum from the finality of judgment until full payment, in line with recent jurisprudence.[41]

SO ORDERED.

Carpio (Chairperson), Peralta, Leonen, and *Jardeleza, JJ.*, concur.

FIRST DIVISION

[G.R. No. 213027. January 18, 2017]

ESTATE OF FERDINAND E. MARCOS, *petitioner, vs.* **REPUBLIC OF THE PHILIPPINES,** *respondent.*

[G.R. No. 213253. January 18, 2017]

IMELDA ROMUALDEZ MARCOS and IRENE MARCOS ARANETA, *petitioners, vs.* **REPUBLIC OF THE PHILIPPINES,**[1] *respondent.*

SYLLABUS

1. POLITICAL LAW; SANDIGANBAYAN; JURISDICTION; THE SANDIGANBAYAN CORRECTLY ACQUIRED JURISDICTION OVER THE PIECES OF JEWELRY KNOWN AS MALACAÑANG COLLECTION AS THEY WERE INCLUDED IN THE 1991 PETITION WHICH SOUGHT THE RECOVERY OF ILLEGALLY ACQUIRED

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[41] *Nacar v. Gallery Frames*, 716 Phil. 267, 280-281 (2013).

[1] The Sandiganbayan was initially impleaded as a party, but is being deleted pursuant to Sec. 4, Rule 45 of the 1997 Rules of Civil Procedure, as amended, in the Resolution dated 17 August 2015.

ASSETS AND PROPERTIES OF THE MARCOSES.— Petitioners assailed the Partial Summary Judgment and Resolution rendered by the Sandiganbayan, Special Division in Civil Case No. 0141 (forfeiture case against Marcos) where the pieces of jewelry, known as the Malacañang Collection, were labeled as ill-gotten and were consequently forfeited in favor of the Republic. x x x Whether the Sandiganbayan has jurisdiction over the properties; whether the Malacañang Collection can be the subject of the forfeiture case; And whether the forfeiture is justified under RA 1379, [the Court ruled in the affirmative.] x x x The properties are included in the 1991 Petition which sought the recovery of the assets and properties pertaining to the Marcoses, who acquired them directly and indirectly through, or as a result of, the improper or illegal use of funds or properties owned by the government. x x x The 1991 Petition is compliant with the requirements stated in law and jurisprudence. The sufficiency of its allegations is thus established with respect to the pieces of jewelry. x x x The 1991 Petition is more than enough fulfillment of the requirement provided under Section 3 (d) of RA 1379 (An Act Declaring Forfeiture in Favor of the State of Any Property Found to Have Unlawfully Acquired by Any Public Officer or Employee and Providing for the Proceedings Therefor).

2. ID.; ID.; ID.; ID.; FORFEITURE OF MALACAÑANG COLLECTION JUSTIFIED AS PETITIONERS FAILED TO SATISFACTORILY SHOW THAT THE PROPERTIES WERE LAWFULLY ACQUIRED.— [T]he Sandiganbayan correctly held that the forfeiture was justified and that the Malacañang Collection was subject to forfeiture. x x x We reiterate what we have already stated initially in *Republic v. Sandiganbayan*, and subsequently in *Marcos v. Republic:* that "whenever any public officer or employee has acquired during his incumbency an amount of property which is manifestly out of proportion to his salary as such public officer or employee and to his other lawful income and the income from legitimately acquired property, said property shall be presumed *prima facie* to have been unlawfully acquired." Petitioners failed to satisfactorily show that the properties were lawfully acquired; hence, the *prima facie* presumption that they were unlawfully acquired prevails.

3. REMEDIAL LAW; CIVIL PROCEDURE; MOTION FOR PARTIAL SUMMARY JUDGMENT; NOT INCONSISTENT WITH THE REQUEST FOR ADMISSION AS SAID REQUEST CAN BE THE BASIS FOR THE GRANT OF SUMMARY JUDGMENT WHEN ITS SUBJECT IS DEEMED TO HAVE BEEN ADMITTED BY THE PARTY AND IS REQUESTED AS A RESULT OF THAT PARTY'S FAILURE TO RESPOND TO THE COURT'S DIRECTIVE TO STATE WHAT SPECIFICALLY HAPPENED IN THE CASE.— The Sandiganbayan also properly ruled that there was no inconsistency or incongruity between Republic's Request for Admission and Motion for Partial Summary Judgment. Indeed, we have held that a request for admission can be the basis for the grant of summary judgment. The request can be the basis therefor when its subject is deemed to have been admitted by the party and is requested as a result of that party's failure to respond to the court's directive to state what specifically happened in the case. The resort to such a request as a mode of discovery rendered all the matters contained therein as matters that have been deemed admitted pursuant to Rule 26, Section 2 of the 1997 Rules of Civil Procedure. On the basis of respondent Imelda Marcos's letter dated 25 May 2009; respondents' Answer to the 1991 Petition, which was considered to be a "negative pregnant" in *Republic v. Sandiganbayan;* and respondents' failure to timely respond to petitioner's Request for Admission, the Sandiganbayan thus correctly granted the Motion for Summary Judgment of the Republic.

APPEARANCES OF COUNSEL

Most Law Firm for petitioner Estate of Ferdinand Marcos.

Dizon & Purugganan for petitioners Imelda R. Marcos and Irene M. Araneta.

The Solicitor General for respondent.

R E S O L U T I O N

SERENO, *C.J.*:

Before us are Petitions for Review on *Certiorari*[2] assailing the Partial Summary Judgment[3] dated 13 January 2014 and the Resolution[4] dated 11 June 2014 rendered by the Sandiganbayan, Special Division,[5] in Civil Case No. 0141. In the assailed Judgment and Resolution, the pieces of jewelry, known as the Malacañang Collection, were labeled as ill-gotten and were consequently forfeited in favor of the Republic.

THE ANTECEDENT FACTS

Civil Case No. 0141 is a forfeiture case entitled *Republic of the Philippines v. Ferdinand E. Marcos, (represented by his Estate/Heirs) and Imelda R. Marcos.* It emanated from the Petition[6] dated 17 December 1991 (1991 Petition) filed by the Republic through the Presidential Commission on Good Government (PCGG), represented by the Office of the Solicitor General (OSG), pursuant to Republic Act No. (R.A.) 1379[7] in relation to Executive Order Nos. 1,[8] 2,[9]

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[2] *Rollo* (G.R. No. 213253), pp. 52-77; *rollo* (G.R. No. 213027), pp. 3-12.

[3] *Rollo* (G.R. No. 213253), pp. 11-48; penned by Associate Justice Efren N. de la Cruz and concurred in by Associate Justices Teresita V. Diaz-Baldos and Alex L. Quiroz.

[4] *Id.* at 128-131.

[5] Created by virtue of the Supreme Court *En Banc* Resolution dated 2 December 2008 in A.M. No. 08-10-05-SB, as amended by the SC Resolution dated 15 June 2010.

[6] Sandiganbayan *rollo* (Civil Case No. 0141), Vol. I, pp. 1-78.

[7] An Act Declaring Forfeiture in Favor of the State of Any Property Found to Have Been Unlawfully Acquired by Any Public Officer or Employee and Providing for the Proceedings Therefor, 51 O.G. 4457 (18 June 1955).

[8] Creating the Presidential Commission on Good Government (28 February 1986).

[9] Regarding the Funds, Moneys, Assets, and Properties Illegally Acquired or Misappropriated by Former President Ferdinand Marcos, Mrs. Imelda Romualdez Marcos, Their Close Relatives, Subordinates, Business Associates, Dummies, Agents, or Nominees (12 March 1986).

14[10] and 14-A.[11] The 1991 Petition sought the recovery of the assets and properties pertaining to the Marcoses, who acquired them directly or indirectly through, or as a result of, the improper or illegal use of funds or properties owned by the government.[12] The properties, subject of other pending forfeiture cases before the Sandiganbayan, were excluded; and the properties, subject of the 1991 Petition, were specifically listed and accordingly clustered into 18 categories.[13]

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[10] Defining the Jurisdiction Over Cases Involving the Ill-Gotten Wealth of Former President Ferdinand E. Marcos, Mrs. Imelda R. Marcos, Members of Their Immediate Family, Close Relatives, Subordinates, Close and/or Business Associates, Dummies, Agents and Nominees (7 May 1986).

[11] Amending Executive Order No. 14 (18 August 1986).

[12] Sandiganbayan *rollo* (Civil Case No. 0141). Vol. I, p. 5; Petition dated 17 December 1991 in Civil Case No. 0141, p. 5.

[13] *Id.* at 9-16; Petition dated 17 December 1991 in Civil Case No. 0141, pp. 9-16. Paragraphs 8 and 9 of the 1991 Petition are quoted in full as follows:

8. This petition, therefore, excludes the assets, monies and all the other properties involved in the said civil cases (Nos. 0002-0035, inclusive) now pending before the Sandiganbayan.

9. However, the other properties which had been identified so far by both the PCGG and the Solicitor General (excluding those involved in the aforecited civil cases) are approximated at US$5-B and which include –

(1) Holding companies, agro-industrial ventures and other investments identified by Rolando Gapud in his Affidavit dated August 1, 1987 marked as Annexes "A", "A-1" to "A-6", inclusive, and hereto attached as integral parts hereof;

(2) Landholdings, buildings, condominium units, mansions and other houses which the Marcos spouses built, improved or acquired during their 20-year rule as listed and described in Annex "B" (Bonifacio Gillego's Sworn Statement dated June 30, 1986) and the list of landholdings, buildings and mansions of the arrival of the Marcoses discovered by the PCGG in 1986 hereto attached as Annex "B-1", which are integral parts hereof;

(3) Properties held for the Marcoses and surrendered to the Government (through PCGG) as part of the Marcos ill-gotten wealth by his known crony, Mr. Jose Y. Campos, estimated to be about ₱2.5-B as of April 8, 1986 aside from the ₱250-M cash as stated in his affidavit and other documents marked as Annexes "C", "C-1", to "C-4", inclusive and hereto attached as integral parts hereof;

(4) Properties held for the Marcoses and surrendered to the Government by another Marcos crony, Mr. Antonio Floirendo estimated to be about $30-M, aside from the ₱70-M cash and the $653,856.40

Some of the properties listed in the 1991 Petition were already adjudged as ill-gotten wealth and consequently forfeited in favor

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paid as taxes in the United States as stated in his affidavit, Compromise Agreement and Agreement marked as Annexes "D", "D-1" to "D-2", respectively, and attached hereto as integral parts hereof;

(5) The so-called New York properties valued at $250-M as described in paragraphs 15-21, inclusive, of another Affidavit of Rolando Gapud dated January 14, 1987 marked as Annexes "E", "E-1", "E-2" and "E-2-a" as well as in Annex "A" of Civil Case No. 0001 hereto attached as Annex "E-3" which are integral parts hereof;

(6) Painting and silverwares, already sold at public auction in the United States worth $17-M as shown by Annex "F" hereof, aside from the jewelries, paintings and other valuable decorative arts found in Malacañang and in the United States estimated to be about $23.9-M as listed and described in Annexes "F-1", "F-2", "F-2-a" and "F-3" hereto attached as integral parts hereof;

(7) Philippine peso bills amounting to ₱27,744,535.00, foreign currencies and jewelries amounting to $4-M and Certificates of Time Deposits worth ₱46.4-M seized by the U.S. customs authorities upon arrival of the Marcoses in Honolulu, Hawaii, U.S.A. (now subject of a separate charge before the Ombudsman) when they fled hastily at the height of the February 22-25, 1986 EDSA Revolt, as shown hereto attached documents, marked as Annexes "G", "G-1" and "G-2", which are integral parts hereof;

(8) The US$30-M in the custody of the Central Bank (as part of the dollar denominated treasury bills purchased by the Marcoses from the Central Bank through their dummies using their dollar deposits in Switzerland, the relevant documents of which are hereto attached and marked as Annexes "H", "H-1" up to "H-4", inclusive and which are integral parts hereof;

(9) Shares of stocks in Piedras Petroleum Co. Inc. (PIEDRAS) and in Oriental Petroleum & Minerals Corporation (OCPM) worth ₱500-M as shown by Annexes "I", "I-1" up to "I-3", inclusive hereto attached as integral parts hereof;

(10) Shares of stock in Balabac Oil Company worth about ₱42-M as described in the affidavit of Mr. Raymundo S. Feliciano hereto attached as Annexes "J", "J-1" and "J-2", plus the 60% of the sequestered assets of CDCP in the amount of ₱172,378,030 (Annex "J-3" hereof), and form as integral parts hereof;

(11) The amount of ₱10-M as described by Jesus Tanchangco in his affidavit hereto attached as Annex "K" and the 45% beneficial ownership of FM in Landoil as stated by Jose de Venecia, Jr. in his affidavit dated March 7, 1987, marked as Annex "K-1" and hereto attached as integral part hereof;

(12) The amounts of Philippine peso and US dollars deposited in the Securities Bank & Trust Co. (SBTC) totalling ₱974,885,480.46 and

of the government. In *Republic v. Sandiganbayan*[14] (the Swiss deposits case) the Court *en banc* in 2003 decreed that the deposits

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US$6,522,361.29 as shown in Annexes "L" and "L-1" which are integral parts hereof;

(13) The total amounts of the shareholding of the Marcoses in SBTC which were sold by the PCGG at ₱161,200,000.00 and which has increased to ₱238.7-M including interests, but excluding ₱15-M already received by PCGG as shown by the hereto attached documents marked as Annexes "M", "M-1" to "M-2" which are integral parts hereof;

(14) The other properties already recovered such as the 21 vehicles registered in the names of Fernando and Susan Timbol estimated to be worth about ₱5.1-M as shown by the attached documents marked as Annexes "N" and "N-1" hereof;

(15) Philippine pesos deposits in Traders Royal Bank totalling over ₱1-B which had been invested by Mr. Marcos from 1978 to May 9, 1983 as shown by an analysis of Trust Account No. 76/128 and 76/128A of Mr. Marcos hereto attached as Annexes "O", "O-1", "O-2" and "O-2-a" and which are integral parts hereof;

(16) The other properties in the United States already recovered in the total amount of US$25.7-M as shown by the hereto attached report on recovered and sold assets abroad, 1986-91, marked as Annex "P" and hereto attached as integral part hereof;

(17) The bank deposits in Luxembourg, Hongkong, the Cayman Islands, United States and other countries which have not yet been fully documented and the approximate amounts therein cannot yet be determined and, hence, a reservation is hereby made to file a separate forfeiture petition to cover the said hidden fortunes upon full discovery;

(18) The secret deposits in Swiss banks, which will be fully discussed later and being the primary and principal object of this petition for forfeiture pursuant to judgments of the Swiss Federal Tribunal in "Heirs of Ferdinand Marcos, Imelda Marcos, Avertina Foundation Vaduz, Imelda Marcos, Vibur Foundation, Heirs of Ferdinand Marcos, Palmy Foundation Vaduz versus Attorney General of District of Zurich, Attorney General of Canton of Zurich, and Republic of the Philippines x x x (Zurich Decision), and "Heirs of Ferdinand Marcos, Imelda Marcos, and Aguamina Corporation versus Chambre d' accusation of the Fribourg Cantonal Court and the Republic of the Philippines x x x (Fribourg Decision). The certified true translations of the Zurich and Fribourg Decision are attached hereto as Annexes "Q" and "Q-1", respectively, while the identified accounts and the determined balances amounting to US$350-M, more or less, are shown by the attached Flow Charts of five (5) account groups marked as Annexes "R", "R-1" to "R-5", inclusive. and which are integral parts hereof.

[14] 453 Phil. 1059 (2003).

in various Swiss banks, referred to in the 1991 Petition under paragraph 9 (18),[15] were ill-gotten wealth and forfeited in favor of the State.[16] Likewise, in *Marcos v. Republic*[17] (the Arelma case), the Court's Second Division in 2012 declared that the funds, properties, and interests of Arelma were also ill-gotten wealth and forfeited in favor of the State.[18]

The present consolidated petitions emanated from the same Civil Case No. 0141, when the Republic filed a Motion for Partial Summary Judgment[19] dated 24 June 2009 with respect to another property listed in the 1991 Petition. By way of that motion, the Republic asked the Sandiganbayan to render judgment declaring the pieces of jewelry, known as the Malacañang Collection and specifically mentioned under paragraph 9 (6) of the 1991 Petition, as ill-gotten; and to subsequently cause this collection of jewelry to be declared forfeited in favor of the Republic.[20] The latter categorized the pieces of jewelry recovered from the Marcoses into three

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[15] Sandiganbayan *rollo* (Civil Case No. 0141), Vol. I, p. 11; Petition dated 17 December 1991 in Civil Case No. 0141, p. 11. Paragraph 9, subparagraph 6 of the 1991 petition, reads:

> 9. However, the other properties which had been identified so far by both the PCGG and the Solicitor General (excluding those involved in the aforecited civil cases) are approximated at US$5-B and which include —
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> x x x x x x x x x
>
> (7) Philippine peso bills amounting to ₱27,744,535.00, foreign currencies and jewelries amounting to $4-M and Certificates of Time Deposits worth ₱46.4-M seized by the U.S. customs authorities upon arrival of the Marcoses in Honolulu, Hawaii, U.S.A. (now subject of a separate charge before the Ombudsman) when they fled hastily at the height of the February 22-25, 1986 EDSA Revolt, as shown hereto attached documents, marked as Annexes "G", "G-1" and "G-2", which are integral parts hereof; x x x. (emphasis supplied)

[16] *Id.*

[17] 686 Phil. 980 (2012).

[18] *Id.*

[19] Sandiganbayan *rollo* (Civil Case No. 0141), Vol. XXII, pp. 400-419.

[20] *Id.* at 416.

collections and singled out the Malacañang Collection as the object of the motion.[21] The estimated values thereof were presented also in the motion as follows:

First, the so-called **Hawaii Collection** x x x mentioned in paragraph 9 (7)[22] of the x x x forfeiture petition x x x seized by the United States Customs Service and x x x turned over to the Philippine Government. Significantly, a ruling was made by the United States (U.S.) Hawaii District Court on December 18, 1992 that the Republic of the Philippines is entitled to the possession and control of the said collection. (Annex "A")[23] [The Sandiganbayan] had taken judicial notice of said ruling in its Resolution[24] dated October 25, 1996.

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[21] *Id.* at 409-411.

[22] *Supra* note 15.

[23] Sandiganbayan *rollo* (Civil Case No. 0141), Vol. XXII, pp. 421-453. The annexed document contains the transmittal letter dated 12 April 1999 from Consul General of Honolulu, Hawaii Minerva Jean A. Falcon and the authenticated copy of the Decision dated 18 December 1992 of the US District Court of Hawaii in Consolidated Civil Case Nos. 86-00155 and 86-00213 entitled *United States of America v. The Republic of the Philippines, Roger Roxas and the Golden Buddha Corporation,* including an attached 18-page inventory of the articles accompanying the Marcos party upon arrival in Honolulu on 26 February 1986, which is considered an integral part of the decision.

[24] Sandiganbayan *rollo* (Civil Case No. 0141), Vol. VII, pp. 189-197. It resolved the motion filed by the children of respondent Imelda Marcos and the Estate of Ferdinand Marcos seeking to enjoin the alleged intended sale of jewelry by the Philippine government at an auction in London on an unspecified date. The portion pertaining to the Malacañang jewelry is quoted as follows:

The jewelry allegedly taken from Malacañang at or shortly after the EDSA event on February 25, 1986 (*i.e*. the "Malacañang jewelry"), however, is another matter. This group of jewelry, the Republic informs the Court, also forms part of the jewelry to be sold at auction in London.

These jewelry could be presumed to belong to the "Marcoses" – generically – since common historical fact will tell us that the Marcoses were the principal occupants of Malacañang from 1966 up to February 25, 1986. Unless anyone should make a claim to the contrary, that jewelry must have belonged to the "Marcoses," whether ill-gotten by them or not. Thus these jewelry could be subject of the compromise agreement, if there is indeed one.

While it is true that the "Malacañang jewelry" is not subject of any causes of action in this case, it would appear that it could adversely affect the projected Compromise Agreement, should it actually be affirmed by this Court. (*id.* at 193-194)

Second, the **Roumeliotes Collection** x x x referred to as "MIA Jewelry" x x x seized from Roumeliotes at the Manila International Airport on March 1, 1986. Although not covered by this forfeiture proceeding, respondents earlier sought their inclusion in then pending negotiations for settlement.

Third, the **Malacañang Collection** x x x seized from Malacañang after February 25, 1986 and transferred to the Central Bank on March 1, 1986. As ruled by this Honorable Court in the said resolution (Annex "B"),[25] this collection is the object of this forfeiture proceeding.

This collection is itemized in ANNEX "C"[26] hereof.

The Motion was thereafter granted in favor of the movants as follows:

> WHEREFORE, the plaintiff Republic is temporarily restrained from selling or causing to be sold, disposed of or encumbered, by auction or otherwise, whether in the Philippines or abroad, the "Malacañang jewelry," *i.e.*, the jewelry found in Malacañang on or shortly after February 25, 1986 and deposited with the Central Bank on March 1, 1986, until further orders from this Court.
>
> Likewise, within ten (10) days from receipt hereof the plaintiff shall submit an inventory of all the jewelry seized in Malacañang and delivered to the Central Bank on March 1, 1996 including the price or value thereof.
>
> The instant matter is now set for hearing on November 7, 1996 at 8:00 a.m.
>
> The motion tor the issuance of the temporary restraining order with respect to the sale of the jewelry seized at the Manila International Airport on March 1, 1986 and those ceded by a document signed by Imelda R. Marcos on October 25, 1990 with the assistance of her counsel in Hawaii, is denied.
>
> SO ORDERED. (*id.* at 196-197)

[25] *Supra* note 24.

[26] Sandiganbayan *rollo* (Civil Case No. 0141), Vol. XXII, pp. 468-508. The annexed document pertains to the PCGG Inventory and Valuation of Malacañang Jewelry Collection by Sotheby's (pp. 470-477; the pages contain the specific item numbers and descriptions) and by Christie's (pp. 478-507; the pages contain the specific item numbers, descriptions and estimates) and is tabulated as follows:

Bag No.	Inventory as of March 7, 1988	Item No.	Inventory as of December 1996	Item No.
IV-2	179 (#247 & 329 not seen)	167-345A	83	167,169-172,174,175,196, 183-184,187-188,200,201,

Based on the 1991 valuation of auction house Christie, Manson and Woods International, Inc., the Roumeliotes, Malacañang and Hawaii collections were worth between US$5,313.575 (low estimate) to US$7,112,879 (high estimate), at the time of the filing of the petition. (ANNEX "D")[27] The value of the Malacañang collection

				203-204,206-210,213,223, 237,250-260,262-263,265, 267,269,271,276-280,281-290,292,298,302,309,313, 316,317,319-321,325,327, 330-338,340
IV-4	139	477-615	3	480,491,613
IV-5	60	347-406	20	349,351-356,361,364,370, 373,378-380,384,386,390, 398,405
IV-6	34	43-76	6	43,49,50,57,72,73
IV-11	28	501-528	6	508,511,513,514,516,528
IV-13	30	529-558	13	532-533,538,539,541,547, 548,550,555-558
IV-14	18	25-42	16 (#34 &38 not seen)	25-42
IV-15	38	407-444	3	424,437,440
IV-17	24	1-24		-
IV-18	87	79-165	7	82-83,86-89,95
IV-61	32	445-467	15	445-447,451-452,455,462, 464-465,467-471,474
Total	669*		172**	
Valuation Low Estimates $ 105,055.00 High Estimates $ 144,089.00				

* Appraised by Christie's

** 172 out of the 669 inventoried and appraised by the Sotheby's in 1996.

Pieces of the Malacañang Collection in IV-2, IV-4, IV-5, IV-6, IV-11, IV-13, IV-14, IV-15, IV-17, IV-17, IV-18, and IV-61 are provided descriptions and estimated values. Except for p. 2 of IV-13 and p. 1 of IV-14, Annex "C" of the Motion is the same as Annex "F-2" of the 1991 Petition. *See* notes 47 and 123.

[27] *Id.* at 509-514. The Annex pertains to the Customs Collection of Jewelry examined by Christie's at the Central Bank in Manila, Philippines, during the week of 7 March 1988, the Total Auction Estimates of the three sets of jewelry as of April 1991, and the Summary of the Lower and Higher Figures for all items including "Jewellery." These same documents were also part of the 1991 Petition and were initially labeled as Annexes "F-2", "F-2-A", and "F-3". *Supra* notes 124, 125, and 126.

by itself was US$110,055 (low estimate) to US$153,089 (high estimate).[28] (citations supplied)

In support of the motion, the Republic cited the letter[29] dated 25 May 2009 sent to the PCGG by Imelda Marcos, through

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[28] *Id.* at 510.

[29] Sandiganbayan *rollo*, Vol. XXIII, pp. 16-18; The letter reads:

25 May 2009

Presidential Commission on Good Government
IRC Building, 82 EDSA,
Mandaluyong City

Attention: HON. CAMILO L. SABIO
Chairman

Re: "Demand for the Return of Jewelries: (i) Taken from Malacañang Palace during the 1987 EDSA Incident; and (ii) Turned-Over the U.S. Government"

Sirs/Mesdames:

We write in behalf of our client, FORMER FIRST LADY IMELDA ROMULADEZ-MARCOS (hereinafter "Mrs. Marcos"), in connection with the captioned matter.

In February 1986, at the height of the EDSA incident, the Presidential Commission on Good Government ("PCGG") took possession of, among other things/belongings, the jewelries left by Mrs. Marcos at the Malacañang Palace without her knowledge and consent. In the same month and year, the U.S. Government turned over to PCGG the pieces of jewelry taken from Mrs. Marcos and her family upon their exile in Honolulu, Hawaii.

To date, PCGG has not initiated any civil or criminal proceeding in any court, tribunal or agency for the forfeiture of the subject jewelries. There is no existing court decision which pronounces that these jewelries are ill-gotten and must be forfeited in favor of the government. Mrs. Marcos thus remains to be the legitimate owner of these prized jewelries.

x x x x x x x x x

In view thereof: we demand for the immediate return to Mrs. Marcos of all her pieces of jewelry: (i) taken by PCGG from the Malacañang Palace; and (ii) those turned-over to PCGG by the U.S. Government; within five (5) days from receipt hereof.

Very truly yours,

(Sgd.)
CHARLITO MARTIN R. MENDOZA

counsel, demanding "the immediate return of all her pieces of jewelry (i) taken by PCGG from Malacañang Palace and (ii) those turned over to PCGG by the U.S. Government."[30] The Republic argued that the letter proved the claim of the Marcoses that they owned the Malacañang Collection, including the Hawaii Collection.[31] It further argued that in the 1991 Petition, they were deemed to have admitted the allegations regarding the pieces of jewelry.[32] The Republic said that the words or stock phrases they used in their Answer[33] dated 18 October 1993 had been declared by this Court in the Swiss deposits case as a "negative pregnant" and, as such, amounted to an admission if not squarely denied.[34] Finally, it contended that "the lawful income of the Marcoses during their incumbencies as public officials was grossly disproportionate to the value of the pieces of jewelry."[35] Invoking the declaration of this Court in the Swiss deposits case,[36] the Republic stated that their lawful income

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(Sgd.)
EFREN VINCENT M. DIZON
(Sgd.)
JOANNA V. GERONIMO

Copy furnished:
SECRETARY RAUL M. GONZALES
Department of Justice
DOJ Building. Padre Faura St.,
Ermita, Manila 1004

[30] *Rollo* (G.R. No. 213253). p. 13.

[31] Sandiganbayan *rollo* (Civil Case No. 0141), Vol. XXII, p. 412; Motion for Partial Summary Judgment, p. 13.

[32] *Id.* at 413.

[33] Sandiganbayan *rollo* (Civil Case No. 0141), Vol. IV, pp. 45-63. In particular, the respondents therein stated as follows:

> 9. Respondents specifically DENY paragraph 9 of the Petition for lack of knowledge or information sufficient to form a belief as to the truth of the allegations since Respondents are not privy to the actual data in possession of the PCGG and the Solicitor General. (*id.* at 47)

[34] Sandiganbayan *rollo* (Civil Case No. 0141). Vol. XXII p. 413.

[35] *Id.* at 414.

[36] See *supra* note 14.

amounting to USD 304,372.43 was grossly disproportionate to the value of the pieces of jewelry in 1991.[37]

On 3 July 2009, the Republic also filed a Request for Admission[38] addressed to the Estate of Ferdinand Marcos, Imelda Marcos, Imelda Marcos-Manotoc, and Irene Marcos Araneta. It requested the admission under oath of the truth of the following:

1. That the set of jewelry described as the "Malacañang Collection" subject of this petition and Motion for Partial Summary Judgment dated June 24, 2009 had been acquired during the incumbency of respondents Ferdinand E. Marcos and Imelda R. Marcos as public officials of the Republic of the Philippines, particularly between 1966-1986.

2. That the said "Malacañang Collection" had been acquired from abroad, particularly during respondents' travels to Asia, Europe and the United States.

3. That the acquisition costs of the "Malacañang Collection" more or less corresponds to the values appraised by Christie's in 1998 as summarized in Annex F-2 of the Petition, also Annex D of the Motion for Summary Judgment dated June 24, 2009.

4. That at the time of the recovery of the Collection in Malacañang, the pieces of jewelry were in mint condition, and most of which has never been used by respondents.[39]

The Republic also submitted a Supplement to Motion for Partial Summary Judgment[40] dated 14 July 2009. It restated that the object of the motion covered only the Malacañang Collection, as the ownership of the two other collections had been settled by the Sandiganbayan in a Resolution[41] dated 25 October 1996.[42]

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[37] Sandiganbayan *rollo* (Civil Case No. 0141), Vol. XXII, p. 415.

[38] *Id.* at 389-393.

[39] *Id.* at 390-391.

[40] *Id.* at 519-524.

[41] *Supra* note 24.

[42] Sandiganbayan *rollo* (Civil Case No. 0141), Vol. XXII, p. 520.

It also attached the Affidavit[43] of J. Ermin Ernest Louie R. Miguel, director of the legal department of the PCGG, which was the custodian of the official records pertaining to the cases filed for the recovery of the ill-gotten wealth of the Marcoses.[44] The Affidavit sought to prove the value of the Honolulu/PCGG Collection according to the appraisal[45] by Christie's at US Customs in Honolulu, Hawaii, on 28 and 29 September 1992; of the Roumeliotes Collection according to the appraisal[46] by Christie's at the Central Bank in Manila, Philippines, on 7 March 1988; and of the Malacañang Collection according to the appraisal[47] by Christie's at the Central Bank in Manila, Philippines, on 7 March 1988 and to the much higher acquisition costs indicated in the Invoices[48] transmitted by Gemsland to Imelda Marcos through Mrs. Gliceria Tantoco.[49]

Imelda Marcos and Irene Marcos Araneta filed their Manifestation and Preliminary Comments[50] dated 21 July 2009. They manifested therein that Imelda Marcos had indeed demanded the return of the jewelry to her through a letter[51] dated 25 May 2009 and that the PCGG had been unlawfully possessing the properties in view of its failure to initiate the proper proceeding or to issue a sequestration or freeze

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[43] *Id.* at 525-533.

[44] *Id.* at 525.

[45] *Id.* at 568-627.

[46] *Id.* at 628-639.

[47] *Id.* at 539-567. The appraisal is attached as Annex "B" of the Affidavit. These were also attached to the 1991 Petition as Annex "F-1" (Sandiganbayan *rollo* [Civil Case No. 0141], Vol. I, pp. 275-302). *Supra* notes 26 and 123.

[48] *Id.* at 640-642. The photocopies of the Invoices were attached to the Affidavit as Annexes "E", "E-1", and "E-2", The originals of the Invoices have been submitted as Exhibits "D-1" to "D-3" in Civil Case No. 0008 entitled *Republic v. Tantoco*, which is pending with the Sandiganbayan.

[49] *Id.* at 530.

[50] Sandiganbayan *rollo* (Civil Case No. 0141), Vol. XXIII, pp. 10-15.

[51] *Supra* note 29.

order.[52] It was further manifested that Imelda Marcos also wrote a letter[53] dated 28 May 2009 to the Department of Justice (DOJ), which had administrative supervision and control over the PCGG, through DOJ Secretary Raul M. Gonzalez. In turn, he sent a letter[54] dated 4 June 2009 to the PCGG through Chairperson Camilo M. Sabio ordering the latter to return the jewelry if there was no legal impediment. The PCGG, however, referred the matter to the OSG through Solicitor General Agnes VST Devanadera in a letter[55] dated 9 June 2009. The OSG replied to the Marcoses' letter[56] dated 25 May 2009 by way also of a letter[57] dated 21 July 2009. It said that according to the OSG in its letter[58] to the PCGG dated 19 June 2009, the former pointed out that the fact the jewelry collection was the subject of an action for forfeiture before the Sandiganbayan was a legal impediment to their return.[59]

Imelda Marcos and Irene Marcos Araneta then stated that the Republic's Motion for Partial Summary Judgment was filed to justify the possession by the PCGG of the pieces of jewelry, even if these were not part of the forfeiture case — Civil Case No. 0141.[60] They based their allegations on the pronouncements of the Sandiganbayan in its Resolution[61] dated 25 October 1996

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[52] Sandiganbayan *rollo* (Civil Case No. 0141), Vol. XXIII, p. 10.

[53] *Id.* at 19-20.

[54] *Id.* at 21-22.

[55] *Id.* at 23.

[56] *Supra* note 29.

[57] Sandiganbayan *rollo* (Civil Case No. 0141), Vol. XXIII, p. 24.

[58] *Id.* at 25.

[59] *Id.* at 11.

[60] *Id.* at 12.

[61] *Supra* note 24. The pertinent part of the Resolution quoted by the Marcoses is as follows:

> While it is true that the "Malacañang jewelry" is not subject of any of the causes of action in this case, it would appear that it could adversely affect the projected Compromise Agreement, should it actually be affirmed by this Court.

and Order[62] dated 19 November 2001 and on the Republic's omission of the collection in the prayer[63] of the 1991 Petition.[64]

The Marcoses further stated that the Request for Admission was inconsistent with the Motion for Partial Summary Judgment and the Supplement thereto and further reserved their right to present additional arguments or comments on the Motion and the Supplement.[65]

Imelda Marcos and Irene Marcos Araneta subsequently filed a Manifestation and Motion to Expunge[66] dated 25 July 2009.

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[62] The pertinent part of the Order quoted by the Marcoses is as follows:

> Insofar as the so-called "Malacañang Jewelry" is concerned, the Court is of the view that to this date, the PCGG has not taken any action by which it might formalize a determination of the ownership of the jewelries seized in Malacañang on or about February 25, 1986. Under the circumstances, this Court would appear to have no jurisdiction to make a comment on these so-called "Malacañang Jewelry."

[63] Sandiganbayan *rollo* (Civil Case No. 0141), Vol. I. pp. 76-77. The Prayer reads:

> WHEREFORE, petitioner respectfully prays that:
>
> 1. Before hearing, a writ be issued commanding respondents to show cause why their assets, more particularly the $356-million bank deposits in five (5) account groups already identified in the SKA and SBC as mentioned in the two (2) Swiss Federal Tribunal's decisions (Annexes "Q" and "Q-1" hereof) and the $25-million and $5-million in treasury notes being frozen in the Central Bank per freeze order of the PCGG which are in excess of the Marcos couple's salary and other lawful income and income from legitimately acquired property, should not be forfeited in favor of the State;
>
> 2. After hearing, an order be issued declaring such property or assets in the names of the foundations organized by the dummies and nominees of respondents tor the purpose of concealing those secret deposits in SKA, SBC and Bank Hofman, all in Switzerland, or so much thereof as they may have failed to show to the satisfaction of this Honorable Court as lawfully acquired by them be declared forfeited in favor of the State.
>
> Petitioner further prays for other reliefs and remedies as may be just and equitable under the premises.

[64] Sandiganbayan *rollo* (Civil Case No. 0141), Vol. XXIII, p. 12.

[65] *Id.* at 13.

[66] *Id.* at 26-31.

They specifically stated therein that they were adopting the same arguments raised in their Comment,[67] as well as in their Motion for Reconsideration[68] dated 5 May 2009, which was filed after the Sandiganbayan Decision[69] dated 2 April 2009 granting the Motion for Partial Summary Judgment on the Arelma account.[70]

In their Manifestation and Motion to Expunge, Imelda Marcos and Irene Marcos Araneta claimed that the filing of the Request for Admission was tantamount to an abdication of the earlier position of the Republic that the case was ripe for summary judgment.[71] They argued that the Request for Admission entertained a possibly genuine issue as to a material fact, which was needed for the grant of the motion for summary judgment.[72] They further argued that the filing of the Request for Admission was rather late, considering that it was done after the Republic had filed its Motion for Summary Judgment in 2000 and after the case was concluded in 2004.[73] They then requested that all pleadings, motions and requests filed after the termination of

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[67] On the Motion for Partial Summary Judgment on the Arelma account. A Comment/Opposition (To Motion for Partial Summary Judgment Re: Arelma, Inc.) with Motion to Dismiss (Sandiganbayan *rollo* [Civil Case No. 0141], Vol. XXIII, pp. 553-575) and a Comment/Opposition (Re Supplemental Motion for Summary Judgment) (*Id.* at 628-663) were filed by Ferdinand R. Marcos, Jr.; a Manifestation and Opposition (to Motion for Partial Summary Judgment) with Motion to Cite Petitioner in Direct Contempt of Court was filed by Ma. Imelda 'Imee' Marcos Manotoc (*Id.* at 576-584); a Motion to Expunge (Petitioner's Motion for Partial Summary Judgment dated 12 June 2004) was filed by Irene Marcos Araneta (*Id.* at 607-609).

[68] *Id.* at 664-681.

[69] *Id.* at 111-166; penned by Associate Justice Norberta Y. Geraldez and concurred in by Associate Justices Efren N. de la Cruz and Teresita V. Diaz-Baldos.

[70] *Id.* at 26.

[71] *Id.* at 27.

[72] *Id.*

[73] *Id.* at 29.

the case in 2004 be expunged.[74] Pending a resolution of the motion to expunge, they simultaneously asked for additional time to answer the Request for Admission and for permission to conduct an ocular inspection of the subject jewelry, which had been in the Republic's possession for the past 22 years.[75]

Meanwhile, Ferdinand Marcos Jr. filed a Manifestation[76] that he was adopting the Manifestation and Motion to Expunge filed by Marcos and Irene Marcos Araneta.[77]

The Republic filed its Opposition[78] dated 24 August 2009, in which it said that the Manifestation and Motion to Expunge of Imelda Marcos and Irene Marcos Araneta argued on trivial matters, raised puerile arguments, and failed to refute the contention that the collection was ill-gotten and subject to forfeiture.[79] It further stated that the Request for Admission did not depart from the legal basis of the Motion for Partial Summary Judgment. Instead, the request merely sought to elicit details regarding the acquisition of the jewelry in order to expedite the resolution of the motion.[80] The Republic therefore claimed that by operation of law, the failure of the Marcoses to respond resulted in their admission of the matters contained in the request.[81]

In response to the Marcoses' Manifestation and Preliminary Comments, the Republic likewise filed its Reply[82] dated 24 August 2009. It insisted that while the Decision dated 2 April 2009 focused on the Arelma assets, it had reservations regarding

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[74] *Id.*

[75] *Id.* at 30.

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

[77] *Id.* at 56.

[78] *Id.* at 59-72.

[79] *Id.* at 60.

[80] *Id.* at 61.

[81] *Id.* at 61-62.

[82] *Id.* at 66-71.

"other reliefs and remedies as may be just and equitable under the premises."[83] These reliefs and remedies included the prayer for the forfeiture of the Malacañang Collection as part of the ill-gotten wealth of the Marcoses.[84] Also, the Republic stated that the Request for Admission was not inconsistent with its Motion for Partial Summary Judgment, and that the filing of the request after the motion was not prohibited by the Rules of Court.[85] It stressed that the Request for Admission was filed and served on 3 July 2009.[86] It said that instead of making an admission or a denial as a timely response to the request within 15 days or until 18 July 2009, the Marcoses filed — and belatedly at that — a Manifestation and Motion to Expunge on 25 July 2009.[87] Thus, the Republic insisted that all the matters that were the subject of the request be deemed admitted by the Marcoses.[88]

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[83] Sandiganbayan *rollo* (Civil Case No. 0141), Vol. I, pp. 76-77. The Prayer reads:

> WHEREFORE, petitioner respectfully prays that:
>
> 1. Before hearing, a writ be issued commanding respondents to show cause why their assets, more particularly the $356-million bank deposits in five (5) account groups already identified in the SKA and SBC as mentioned in the two (2) Swiss Federal Tribunal's decisions (Annexes "Q" and "Q-1" hereof) and the $25-million and $5-million in treasury notes being frozen in the Central Bank per freeze order of the PCGG which are in excess of the Marcos couple's salary and other lawful income and income from legitimately acquired property, should not be forfeited in favor of the State;
>
> 2. After hearing, an order be issued declaring such property or assets in the names of the foundations organized by the dummies and nominees of respondents for the purpose of concealing those secret deposits in SKA, SBC and Bank Hofman, all in Switzerland, or so much thereof as they may have failed to show to the satisfaction of this Honorable Court as lawfully acquired by them be declared forfeited in favor of the State.
>
> Petitioner further prays for other reliefs and remedies as may be just and equitable under the premises. (emphasis supplied)

[84] Sandiganbayan *rollo* (Civil Case No. 0141), Vol. XXIII, p. 67.

[85] *Id.* at 68.

[86] *Id.* at 69.

[87] *Id.*

[88] *Id.*

A Rejoinder[89] dated 7 September 2009 was filed by the Marcoses who alleged that the demand could not have meant that the collection was part of the case, because the jewelry collection was "trivially mentioned" in the statement of facts of the 1991 petition;[90] was not specifically prayed for;[91] was not subject of the case, according to the Sandiganbayan in its Resolution[92] dated 25 October 1996 and Order[93] dated 19 November 2001.[94] They also reiterated that the Request for Admission was inconsistent with the Republic's Motion for Partial Summary Judgment.[95]

In a Resolution[96] dated 2 August 2010, the Sandiganbayan denied the Marcoses' Manifestation and Preliminary Comments and Manifestation and Motion to Expunge. It ruled that (1) the proceedings in this case had not been terminated;[97] (2) in filing their objection, respondents were not deemed to have admitted the matters in the Request for Admission;[98] and (3) the Republic's Request for Admission was not inconsistent with the Motion for Summary Judgment.[99] The Sandiganbayan further directed the Marcoses to file and serve within 15 days their sworn answer

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[89] *Id.* at 94-100.

[90] *Id.* at 95.

[91] *Id.*

[92] *Supra* note 61.

[93] *Supra* note 62.

[94] Sandiganbayan *rollo* (Civil Case No. 0141), Vol. XXIII p. 97.

[95] *Id.* at 98.

[96] Sandiganbayan *rollo* (Civil Case No. 0141), Vol. XXIV, pp. 385-394. An Omnibus Motion for Reconsideration dated 27 August 2010 was filed by Imelda Marcos and Irene Marcos Araneta (*id.* at 396-412) but this was denied by the Sandiganbayan in its Resolution dated 29 December 2010 (*id.* at 456-460).

[97] *Id.* at 388.

[98] *Id.* at 390.

[99] *Id.* at 392.

to the Request for Admission,[100] but they failed to comply with the directive.[101]

After the submission of the parties of their respective memoranda,[102] the Sandiganbayan issued a Partial Summary Judgment[103] dated 13 January 2014 ruling that (1) the Malacañang Collection was part and subject of the forfeiture petition;[104] (2) the Motion for Summary Judgment was proper;[105] and (3) the forfeiture of the Malacañang Collection was justified pursuant to R.A. 1379.[106]

Motions for Reconsideration were filed by the Estate of Marcos on 29 January 2014[107] and by Imelda Marcos and Irene Marcos Araneta on 30 January 2014.[108] The Republic submitted its Consolidated Opposition[109] dated 25 February 2014, while Replies were submitted by the Estate of Marcos on 12 March 2014[110] and by Imelda Marcos and Irene Marcos Araneta on 31 March 2014.[111] The Republic filed its Consolidated Rejoinder[112] on 23 April 2014.

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[100] *Id.* at 394.

[101] The Marcoses' failure to file an answer to the request for admission within the period stated was specifically pointed out by the Republic when it filed its Motion to Resolve dated 22 October 2012 (Sandiganbayan *rollo* [Civil Case No. 0141], Vol. XXVI, pp. 126-146).

[102] The Republic filed its Memorandum dated 23 October 2009 (Sandiganbayan *rollo* [Civil Case No. 0141], Vol. XXIII, pp. 168-202) while the Marcoses filed their Memoranda dated 26 October 2009 (*Id.* at 288-306).

[103] Sandiganbayan *rollo* (Civil Case No. 0141), Vol. XXVI, pp. 329-361.

[104] *Id.* at 340.

[105] *Id.* at 349.

[106] *Id.* at 358.

[107] *Id.* at 364-371.

[108] *Id.* at 397-411.

[109] *Id.* at 416-439.

[110] *Id.* at 442-445.

[111] *Id.* at 455-473.

[112] *Id.* at 497-505.

In a Resolution[113] dated 11 June 2014, the Sandiganbayan denied the Motions for Reconsideration for being mere rehashes of the arguments of the Marcoses in their Comments and Opposition to the Republic's Motion for Summary Judgment.[114]

Imelda Marcos and Irene Marcos Araneta received the Resolution denying their Motion for Reconsideration on 24 June 2014.[115] Within the 15-day period to file a petition, they submitted to this Court a Manifestation with Entry of Appearance and Motion for Extension of Time, asking that they be given until 09 August 2014 to file their petition.[116] Meanwhile, the Estate of Marcos filed a Motion for Extension of Time on 09 July 2014 and a Manifestation on 8 August 2014, saying that its other executor *in solidum* was no longer filing a separate petition for review, but was adopting that which was filed by Imelda Marcos.[117]

This Court issued a Resolution[118] on 17 November 2014 in G.R. No. 213027 granting the Motion for Extension and noting the Manifestation of the Estate of Marcos that the latter was adopting the petition for review filed by Imelda Marcos and Irene Marcos Araneta in G.R. No. 213253. This Court also issued a Resolution[119] on 17 November 2014 in G.R. No. 213253 noting the Manifestation of Imelda Marcos and Irene Marcos Araneta's counsels, who were seeking the grant of their Motion for an Extension.[120] This Court thereafter consolidated the petitions.[121]

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[113] *Id.* at 522-525.

[114] *Id.* at 523.

[115] *Rollo* (G.R. No. 213027), p. 3.

[116] *Rollo* (G.R. No. 213253), p. 5.

[117] *Rollo* (G.R. No. 213027), pp. 8-12.

[118] *Id.* at 13.

[119] *Rollo* (G.R. No. 213253), p. 215.

[120] *Id.*

[121] *Supra* notes 118 and 119.

THE ISSUES

The issues for this Court's resolution are as follows: (1) whether the Sandiganbayan has jurisdiction over the properties; (2) whether the Malacañang Collection can be the subject of the forfeiture case; (3) whether forfeiture is justified under R.A. 1379; (4) whether the Sandiganbayan correctly ruled that the Motion for Partial Summary Judgment was not inconsistent with the Request for Admission; and (5) whether the Sandiganbayan conectly declared that the forfeiture was not a deprivation of petitioners' right to due process of law.[122]

OUR RULING

We find no reversible error in the ruling of the Sandiganbayan.

The Sandiganbayan correctly acquired jurisdiction over the case. The properties are included in the 1991 Petition as found in subparagraph (6) of paragraph (9), which reads:

9. However, the other properties which had been identified so far by both the PCGG and the Solicitor General (excluding those involved in the aforesaid civil cases) are approximated at US$5-B and which include —

x x x x x x x x x

(6) Paintings and silverware sold at public auction in the United States worth $17-M as shown by Annex "F" hereof, aside from the **jewelries**, paintings and other valuable decorative arts **found in Malacañang and in the United States estimated to be about $23.9-M as listed and described in Annexes "F-1",**[123]

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[122] *Rollo* (G.R. No. 213253), pp. 59-60.

[123] The annexed documents consist of a listing of racks, boxes and bags of items as follows:

Rack 1:
Boxes 1, 2, 3, 4, 5, 6, 7, 8, 9, 10
Rack 2:
Boxes 11, 12, 13, 14, 15, 16, 17, 18, 19
Rack 3:
Boxes 20, 21, 22, 23, 24, 25, 26, 27, 28
Rack 4:
Boxes 29, 30, 31, 32, 33, 34, 35, 36, 37, 38

"F-2",[124] **"F-2-a"**[125] **and "F-3"**[126] **hereto attached as integral parts hereof**;[127] (Emphasis supplied)

Rack 5:
Boxes 39, 40, 41, 42, 43, 44, 45, 46, E-3 (three brown envelopes)
(Note: Bxs. 45 & 46 are placed in front of Rack 5)
Rack 6:
Boxes, 49, 50, 51, 52, 53, 54, 55, 56, 57, 59, 47
SGV IV-2 on top of Rack 6 (Maroon leather luggage)
Rack 7:
Boxes 48, 58, 60, 61, 62, 63
SGV IV-3 - on top of Rack 7
SGV IV-5 - on top of Rack 7
SGV IV-6 & SGV IV-17 - 5th layer of Rack 7
SGV IV-15 in front of Rack 7
SGV IV-18 - 1st layer of Rack 7
Coconut Palace - (3 boxes)
C-1 (Biggest box) Front of Stand 1
C-2 - on top of stand 2
C-3 - on top of stand 2
BAGS:
#'s: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16,
17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30,
31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 53

These annexed documents in the 1991 Petition (Sandiganbayan *rollo* [Civil Case No. 0141], Vol. I, pp. 275-302) also form part of Annex "C" (*supra* note 26) of the Republic's Motion for Partial Summary Judgment dated 24 June 2009 (Sandiganbayan *rollo* [Civil Case No. 0141], Vol. XXII, pp. 468-508) and Annex "B" (*supra* note 47) of the Affidavit of J. Ermin Ernest Louie R. Miguel in the Supplement to the Motion for Partial Summary Judgment (*id.* at 539-567).

[124] The annexed document is the cover page of the subsequent documents, Annexes "F-2", "F-2-A", and "F-3" of the 1991 Petition. It is entitled "Appraisal of Customs Collection of Jewelry Examined by Christie's at the Central Bank in Manila, Philippines during the week of March 7, 1988." (Sandiganbayan *rollo* [Civil Case No. 0141], Vol. I, p. 303) This same document is also Annex "D" (*supra* note 27) of the Republic's Motion dated 24 June 2009 (Sandiganbayan *rollo* [Civil Case No. 0141], Vol. XXII, p. 509).

[125] The annexed document in the 1991 Petition (Sandiganbayan *rollo* [Civil Case No. 0141], Vol. I, p. 304) is also part of Annex "D" (*supra* note 27) of the Republic's motion dated 24 June 2009 (Sandiganbayan *rollo* [Civil Case No. 0141], Vol. XXII, p. 510). It contains the Jewelry Appraisal of Christie Manson and Woods International Inc. as of April 1991 as follows:

The Sandiganbayan correctly noted the Annexes, which were mentioned in subparagraph 6 and made an integral part of the 1991 Petition, itemizing and enumerating the pieces of jewelry with their estimated values. It ultimately found that the 1991 Petition had categorically alleged that the Malacañang Collection was included in the assets, monies and properties sought to be recovered.

With respect to the manner of making allegations in pleadings, the Rules of Court simply provides as follows:

Section 1. In general. – Every pleading shall contain in a methodical and logical form, a plain, concise and direct statement of the ultimate facts on which the party pleading relies for his claim or defense, as the case may be, omitting the statement of mere evidentiary facts.

Collection	Low Estimate	High Estimate
Roumeliotes/Customs Collection	$4,767,100	$6,400,160
Malacañang Collection	110,055	153,089
PCGG Collection	436,420	559,630
Total	$5,313,575	$7,112,879

[126] The annexed document in the 1991 Petition (Sandiganbayan *rollo* [Civil Case No. 0141], Vol. I, p. 305) is also part of Annex "D" (*supra* note 27) of the Republic's Motion dated 24 June 2009 (Sandiganbayan *rollo* [Civil Case No. 0141], Vol. XXII, p. 511). It contains the Sotheby's Summary as follows:

LOWER FIGURES

Silver	3,837,730.00
Jewellery	4,194,920.00
European Ceramics	194,000.00
Chinese Ceramics	291,103.00
Icons	58,390.00
Pictures	8,377,650.00
GRAND TOTAL US $	16,952,793.00

HIGHER FIGURES

Silver	5,085,970.00
Jewellery	5,736,600.00
European Ceramics	280,700.00
Chinese Ceramics	423,136.00
Icons	85,520.00
Pictures	12,297,600.00
GRAND TOTAL US $	23,909,526.00

[127] Sandiganbayan *rollo* (Civil Case No. 0141), Vol. I, pp. 9 and 11.

If a defense relied on is based on law, the pertinent provisions thereof and their applicability to him shall be clearly and concisely stated.[128]

With respect to the determination of whether an initiatory pleading sufficiently states a cause of action, this Court has ruled in this wise:

> In determining whether an initiatory pleading states a cause of action, the test is as follows: admitting the truth of the facts alleged, can the court render a valid judgment in accordance with the prayer? To be taken into account are only the material allegations in the complaint; extraneous facts and circumstances or other matters *aliunde* are not considered. The court may consider — in addition to the complaint — the appended annexes or documents, other pleadings of the plaintiff, or admissions in the records.[129]

The 1991 Petition is compliant with the requirements stated in law and jurisprudence. The sufficiency of its allegations is thus established with respect to the pieces of jewelry. Not only were these listed in paragraph 9 (6)[130] of that petition as part of the properties subject to forfeiture but these were also itemized in the documents annexed thereto: Annexes "F-1,"[131] "F- 2,"[132] "F-2-a,"[133] and "F-3."[134] The 1991 Petition is more than enough fulfillment of the requirement provided under Section 3[135](d) of R.A. 1379.

Meanwhile, the Sandiganbayan correctly held that the forfeiture was justified and that the Malacañang Collection was subject to forfeiture. The legitimate income of the Marcoses

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[128] Rules of Court. Section 1, Rule 8.

[129] *Goodyear v. Sy*, 511 Phil. 41 (2005).

[130] *Supra* note 13.

[131] *Supra* note 123.

[132] *Supra* note 124.

[133] *Supra* note 125.

[134] *Supra* note 126.

[135] *Supra* note 128.

had been pegged at USD 304,372.43.[136] We reiterate what we have already stated initially in *Republic v. Sandiganbayan*,[137] and subsequently in *Marcos v. Republic*:[138] that "whenever any public officer or employee has acquired during his incumbency an amount of property which is manifestly out of proportion to his salary as such public officer or employee and to his other lawful income and the income from legitimately acquired property, said property shall be presumed *prima facie* to have been unlawfully acquired."[139] Petitioners failed to satisfactorily show that the properties were lawfully acquired; hence, the *prima facie* presumption that they were unlawfully acquired prevails.

The Sandiganbayan also properly ruled that there was no inconsistency or incongruity between Republic's Request for Admission and Motion for Partial Summary Judgment. Indeed, we have held that a request for admission can be the basis for the grant of summary judgment. The request can be the basis therefor when its subject is deemed to have been admitted by the party and is requested as a result of that party's failure to respond to the court's directive to state what specifically happened in the case.[140] The resort to such a request as a mode of discovery rendered all the matters contained therein as matters that have been deemed admitted pursuant to Rule 26, Section 2 of the 1997 Rules of Civil Procedure.[141]

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[136] *Supra* note 14.

[137] *Id.*

[138] *Supra* note 17.

[139] Section 2. *Filing of petition.* – Whenever any public officer or employee has acquired during his incumbency an amount of property which is manifestly out of proportion to his salary as such public officer or employee and to his other lawful income and the income from legitimately acquired property, said property shall be presumed *prima facie* to have been unlawfully acquired. x x x

[140] *Concrete Aggregates Corp. v. CA*, 334 Phil. 77 (1997), *Diman v. Alumbres*, 359 Phil. 796 (1998), and *Allied Agri-Business v. CA*, 360 Phil. 64 (1998).

[141] Section 2. *Implied admission.* – Each of the matters of which an admission is requested shall be deemed admitted unless, within a period designated in

On the basis of respondent Imelda Marcos's letter dated 25 May 2009; respondents' Answer to the 1991 Petition, which was considered to be a "negative pregnant" in *Republic v. Sandiganbayan*; and respondents' failure to timely respond to petitioner's Request for Admission, the Sandiganbayan thus correctly granted the Motion for Summary Judgment of the Republic.

A careful scrutiny of the three bases used by the Sandiganbayan in justifying the absence of a genuine issue and eventually granting the Motion for Partial Summary Judgment leads us to no other course of action but to affirm the ruling of the Sandiganbayan. The *prima facie* presumption on unlawfully acquired property indeed finds application on the first basis. Section 2 of R.A. 1379 provides that "[w]henever any public officer or employee has acquired during his incumbency an amount of property which is manifestly out of proportion to his salary as such public officer or employee and to his other lawful income and the income from legitimately acquired property, said property shall be presumed *prima facie* to have been unlawfully acquired." And in this regard, the Sandiganbayan had taken judicial notice of the legitimate income of the Marcoses during their incumbency as public officers for the period 1966-1986 which was pegged at USD 304,372.43.[142]

With respect to the second basis—the Answer to the 1991 Petition—the denial of the Marcoses cannot be considered a

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the request, which shall not be less than fifteen (15) days after service thereof, or within such further time as the court may allow on motion, the party to whom the request is directed files and serves upon the party requesting the admission of a sworn statement either denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he cannot truthfully either admit or deny those matters.

Objections to any request for admission shall be submitted to the court by the party requested within the period for and prior to the filing of his sworn statement as contemplated in the preceding paragraph and his compliance therewith shall be deferred until such objections are resolved, which resolution shall be made as early as practicable.

[142] Sandiganbayan *rollo* (Civil Case No. 0141), Vol. XXVI, p. 359.

specific denial because similar to their denial in the Arelma case, in which insisted that they were not privy to the transactions, the Marcoses gave "the same stock answer to the effect that [they] did not engage in any illegal activities, and that all their properties were lawfully acquired."[143] That they were not privy to the actual data in the possession of the PCGG and the Solicitor General is simply a line of defense which necessarily results in their failure to allege the lawfulness of the mode of acquiring the property, subject of forfeiture, considering the amount of their lawful income.[144] As in the Arelma case, the Marcoses are deemed to have admitted that the Malacañang Collection itemized in the annexes were found in the palace and subsequently proven to have been owned by Mrs. Marcos as she admitted in her letter dated 25 May 2009.

In light of the third basis, the factual antecedents of the case bear restating. The Republic filed a Motion for Partial Summary Judgment dated 24 June 2009, after which it filed and served a Request for Admission on 3 July 2009. Afterwards, it submitted a Supplement to Motion for Partial Summary Judgment dated 14 July 2009. On 28 July 2009, the Marcoses filed their Manifestation and Preliminary Comments. The Sandiganbayan noted the objection they had raised in their Manifestation and Preliminary Comments.[145] In that manner, rather than declaring that the matters raised in the Request for Admission were deemed admitted, the Sandiganbayan instead ruled on the objection raised by the Marcoses. In short, it ruled that the Request for Admission was not inconsistent with the motion for summary judgment.[146] The Sandiganbayan reasoned that there was no inconsistency between the two. It said that a request for admission may even complement a summary judgment in that the request for admission may be used as basis for filing a motion for summary judgment.[147] It

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[143] *Id.* at 356.

[144] *Id.*

[145] Sandiganbayan *rollo* (Civil Case No. 0141), Vol. XXIV, p. 392.

[146] *Id.* at 393.

[147] *Id.* at 394.

then denied the Manifestation and Preliminary Comments and Manifestation and Motion to Expunge filed by the Marcoses relative to the Republic's Request for Admission. Thereafter, it required the Marcoses to file and serve their sworn answer to the Request for Admission.[148] The Marcoses filed numerous pleadings, but none of these was made in response to the Request for Admission as required by Rule 26, Section 2[149] of the Rules of Court until the Sandiganbayan eventually issued the Partial Summary Judgment dated 13 January 2014 and the Resolution dated 11 June 2014.

The Sandiganbayan ruled that "a request for admission may even complement a summary judgment in that the request for admission may be used as basis for filing a summary judgment"[150] citing three cases as follows: *Concrete Aggregates Corp. v. CA*,[151] *Diman v. Alumbres*,[152] and *Allied Agri-Business v. CA*.[153] The first case instructs that a request for admission "should set forth relevant evidentiary matters of fact, or documents described in and exhibited with the request, whose purpose is to establish said party's cause of action or defense."[154]

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[148] *Id.*

[149] Section 2. *Implied admission*. – Each of the matters of which an admission is requested shall be deemed admitted unless, within a period designated in the request, which shall not be less than fifteen (15) days after service thereof, or within such further time as the court may allow on motion, the party to whom the request is directed files and serves upon the party requesting the admission a sworn statement either denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he cannot truthfully either admit or deny those matters.

Objections to any request for admission shall be submitted to the court by the party requested within the period for and prior to the filing of his sworn statement as contemplated in the preceding paragraph and his compliance therewith shall be deferred until such objections are resolved, which resolution shall be made as early as practicable.

[150] Sandiganbayan *rollo* (Civil Case No. 0141), Vol. XXIV, p. 394.

[151] 334 Phil. 77 (1997).

[152] 359 Phil. 796 (1998).

[153] 360 Phil. 64 (1998).

[154] *Supra* note 151, at 82.

The second case, on the other hand, teaches the nature of modes of discovery in this wise:

> Particularly as regards request for admission under Rule 26 of the Rules of Court, the law ordains that when a party is served with a written request that he admit: (1) the genuineness of any material and relevant document described in and exhibited with the request, or (2) the truth of any material and relevant matter of fact set forth in the request, said party is bound within the period designated in the request, to file and serve on the party requesting the admission a *sworn statement* either (10) denying specifically the matters of which an admission is requested or (2) setting forth in details the reasons why he cannot truthfully either admit or deny those matters. If the party served does not respond with such sworn statement, *each of the matters of which an admission is requested shall be deemed admitted*.
>
> In this case, the Dimans' request for admission was duly served by registered mail on Jose Lacalle on February 6, 1995, and a copy thereof on his lawyers on February 4, 1995. Neither made any response whatever within the reglementary period. Nor did either of them do so even after receiving copy of the Dimans' "MANIFESTATION WITH MOTION TO REQUIRE PLAINTIFFS TO ANSWER REQUEST FOR ADMISSION." dated March 28, 1995. On account thereof, in legal contemplation, the Heirs impliedly admitted all the facts listed in the request for admission.
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> x x x x x x x x x
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> On the other hand, in the case of a summary judgment, issues apparently exist - i.e., facts are asserted in the complaint regarding which there is as yet no admission, disavowal or qualification; or specific denials or affirmative defenses are in truth set out in the answer - but *the issues thus arising from the pleadings are sham, fictitious, not genuine, as shown by admissions, depositions or admissions*.[155] (Italics supplied)

The third case demonstrates how failure to answer the request for admission within the period resulted in the admission of the matters stated therein. The Court, in that case, specifically ruled:

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[155] *Supra* note 152, at 813-815.

The burden of affirmative action is on the party upon whom notice is served to avoid the admission rather than upon the party seeking the admission. Hence, when petitioner failed to reply to a request to admit, it may not argue that the adverse party has the burden of proving the facts sought to be admitted. Petitioners silence is an admission of the facts stated in the request.

This Court finds that the motion for summary judgment filed by respondent CHERRY VALLEY on the ground that there were no questions of fact in issue since the material allegations of the complaint were not disputed was correctly granted by the trial court. It is a settled rule that summary judgment may be granted if the facts which stand admitted by reason of a partys failure to deny statements contained in a request for admission show that no material issue of fact exists. By its failure to answer the other partys request for admission, petitioner has admitted all the material facts necessary for judgment against itself.[156]

Petitioners claim that there has been a lack of observance of due process;[157] that "there has been no trial or hearing";[158] and that "petitioners were shamefully never given an opportunity to show that the questioned properties may have been lawfully acquired through other means."[159] We find the invocation of lack of observance of due process at this stage of the proceedings rather belated, especially when it was never invoked before the Sandiganbayan. Needless to say, the various pleadings petitioners have filed in this case and in other cases involving the Marcos properties were countless occasions when they could have proven that the Malacañang Collection had indeed been lawfully acquired as claimed. They allege that they were denied due process by not being given any opportunity to prove their lawful acquisition of the Malacañang Collection. This allegation cannot be given credence for being utterly baseless.

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[156] *Supra* note 153, at 73.

[157] *Rollo* (G.R. No. 213253), p. 70.

[158] *Id.* at 70.

[159] *Id.* at 70-71.

The complete records of Civil Case No. 0141 — a total of 35 volumes along with 2 envelopes containing exhibits and 1 envelope containing the transcripts of stenographic notes — have been forwarded to this Court by the Sandiganbayan. Pertinent parts of these documents annexed to the 1991 Petition, along with the other pleadings filed before the Sandiganbayan relative to the present petitions, have also been extensively quoted and reproduced verbatim in this resolution. The purpose is not only to provide a clearer statement of the factual antecedents, but also to confirm the veracity of the reference to these documents and to equally dispel any doubt regarding them.

All in all, in the absence of any compelling legal reason, there is no basis to overturn, or carve an exception to, existing jurisprudence on the matters raised in the present case.

WHEREFORE, premises considered, the assailed Partial Summary Judgment dated 13 January 2014 and Resolution dated 11 June 2014 rendered by the Sandiganbayan in Civil Case No. 0141 are **AFFIRMED**.

SO ORDERED.

Del Castillo, Reyes,[*] *Perlas-Bernabe,* and *Caguioa, JJ.*, concur.

FIRST DIVISION

[G.R. No. 215942. January 18, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee vs.* **KUSAIN AMIN *y* AMPUAN, *a.k.a.* "Cocoy,"** *accused-appellant.*

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[*] In lieu of Associate Justice Teresita J. Leonardo-De Castro per Raffle dated 16 January 2017.

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT NO. 9165); ILLEGAL SALE OF PROHIBITED DRUGS; THE NON-PRESENTATION OF THE POSEUR-BUYER IS FATAL TO THE CAUSE OF THE PROSECUTION; WHILE THERE IS A NEED TO HIDE THE IDENTITY OF THE POSEUR-BUYER AND PRESERVE HIS INVALUABLE SERVICE TO THE POLICE, THIS CONSIDERATION CANNOT BE APPLIED WHERE THE POSEUR-BUYER AND THE CONFIDENTIAL INFORMANT WERE ONE AND THE SAME.— While prior coordination with the PDEA is not necessary to make a buy-bust operation valid, we are constrained to reverse the findings of the CA because the non-presentation of the poseur-buyer is fatal to the cause of the prosecution. In *People v. Andaya*, the importance of presenting the poseur-buyer's testimony before the trial court was underscored by the Court in this wise: The justification that underlies the legitimacy of the buy-bust operation is that the suspect is arrested in *flagranti delicto*, that is, the suspect has just committed, or is in the act of committing, or is attempting to commit the offense in the presence of the arresting police officer or private person. The arresting police officer or private person is favored in such instance with the presumption of regularity in the performance of official duty. Proof of the transaction must be credible and complete. In every criminal prosecution, it is the State, and no other, that bears the burden of proving the illegal sale of the dangerous drug beyond reasonable doubt. This responsibility imposed on the State accords with the presumption of innocence in favor of the accused, who has no duty to prove his innocence until and unless the presumption of innocence in his favor has been overcome by sufficient and competent evidence. x x x. While there is a "need to hide [the poseur-buyers] identit[ies] and preserve their invaluable service to the police," this consideration cannot be applied to this case, because, as in *Andaya*, the "poseur-buyer and the confidential informant were one and the same. Without the poseur buyer's testimony, the State did not credibly incriminate [the accused]."

2. ID.; ID.; ID.; THE TESTIMONIES OF THE POLICE OFFICERS CANNOT BE CONSIDERED AS EYEWITNESS

ACCOUNTS OF THE ILLEGAL SALE WHERE THERE WAS NO INDICATION THAT THEY DIRECTLY SAW AN ILLEGAL DRUG BEING SOLD TO THE POSEUR-BUYER.— The testimonies of prosecution witnesses SPO2 Bagas, SPO2 Alvior, Jr., SPO2 Dacara, and P/Insp. Ramas (who was 10 meters away) cannot be considered as eyewitness accounts of the illegal sale. There was no indication that they directly saw an illegal drug being sold to the poseur-buyer. In *People v. Guzon,* we held that "the police officer, who admitted that he was seven (7) to eight (8) meters away from where the actual transaction took place, could not be deemed an eyewitness to the crime."

3. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; WHEN THE INCULPATORY FACTS AND CIRCUMSTANCES ARE CAPABLE OF TWO (2) OR MORE EXPLANATIONS, ONE OF WHICH IS CONSISTENT WITH THE INNOCENCE OF THE ACCUSED AND THE OTHER CONSISTENT WITH HIS GUILT, THEN THE EVIDENCE DOES NOT FULFILL THE TEST OF MORAL CERTAINTY AND IS NOT SUFFICIENT TO SUPPORT A CONVICTION.— At this juncture, We reiterate our point in *Andaya:* Secondly, the reliance on the supposed signal to establish the consummation of the transaction between the poseur buyer and Andaya was unwarranted because the unmitigatedly hearsay character of the signal rendered it entirely bereft of trustworthiness. The arresting members of the buy-bust team interpreted the signal from the anonymous poseur buyer as the sign of the consummation of the transaction. Their interpretation, being necessarily subjective without the testimony of the poseur buyer, unfairly threatened the liberty of Andaya. We should not allow that threat to perpetuate itself. And, lastly, the reliance on the signal would deprive Andaya the right to confront and test the credibility of the poseur buyer who supposedly gave it. This interpretation is premised on the legal reasoning that "when the inculpatory facts and circumstances are capable of two (2) or more explanations, one of which is consistent with the innocence of the accused and the other consistent with his guilt, then the evidence does not fulfill the test of moral certainty and is not sufficient to support a conviction."

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 assailing the Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01179, which affirmed the Decision[2] of the Regional Trial Court (RTC), Branch 40, Cagayan de Oro City, in Criminal Case No. 2004-010. The RTC found accused-appellant guilty beyond reasonable doubt of the crime of illegal sale of prohibited drugs under Section 5, paragraph 1, Article II of Republic Act (R.A.) No. 9165.

Accused-appellant was charged under the following Information:

That on January 2, 2004, at 5:40 p.m. more or less, at Landless, Colrai, Macabalan, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused without authority of law, did then and there wilfully and feloniously have in his possession custody and control one (1) small heated-sealed transparent plastic sachet of white crystalline substance locally known as shabu with approx. weight of 0.09 gram valued to more or less ₱100 and sold it to a poseur-buyer of PNP-CDO for a consideration of ₱100.00 marked money one (1) pc one hundred pesos bill with serial number FA246643, well knowing it to be a dangerous drug.

Contrary to law.[3]

Upon arraignment, accused-appellant, assisted by counsel, pleaded not guilty to the charge.[4] Hence, trial ensued.

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[1] *Rollo*, pp. 3-15; Decision dated 16 October 2014 and penned by Associate Justice Edgardo T. Lloren and concurred in by Associate Justices Edward B. Contreras and Rafael Antonio M. Santos.

[2] CA *Rollo*, pp. 29-37; Decision dated 14 June 2013.

[3] *Id.* at 29.

[4] *Id.*

On 14 June 2013, the RTC rendered a Decision,[5] the dispositive portion of which is herein quoted:

> WHEREFORE, the foregoing considered, the prosecution having established all the elements of the crime of illegal sale of a dangerous drug, the Court hereby finds the accused, **Kusain Amin y Ampuan GUILTY** beyond reasonable doubt of the crime of Violation of Sec. 5, par. 1, Article II of R.A. 9165, and hereby sentences him to suffer the penalty of LIFE IMPRISONMENT and to pay a fine of ₱500,000.00. The sachet of shabu described in the Information is ordered confiscated in favor of the Government to be disposed of in accordance with law and regulations. No pronouncement as to costs.
>
> SO ORDERED.[6]

In so ruling, the RTC gave credence to the testimonies of the prosecution witnesses: Police Inspector (P/Insp.) Penel Ramas; and Senior Police Officers (SPOs)2 Ricky Bagas, Jameson Alvior, Jr., and Benjamin Dacara (Ret.).[7] The trial court held that the prosecution had successfully proved the existence of all the essential elements of the crime, accused-appellant having been "positively identified by the police officers who conducted the buy-bust operation as the seller of the *shabu* presented in the case."[8] Likewise, the prosecution established that the "sale actually occurred and that one sachet of *shabu* was sold for the price of ₱100.00."[9] P/Insp. Ramas testified that he was about 10 to 15 meters away when the confidential informant/poseur-buyer handed the marked money to accused-appellant in exchange for *shabu*.[10] After relying on the signal given by the poseur-buyer (i.e. removing his eyeglasses), they proceeded to frisk accused-appellant and arrest him immediately. They were able to recover the marked money in the latter's possession.[11]

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[5] *Id*.

[6] *Id.* at 36.

[7] *Id.* at 30-33.

[8] *Id.* at 35.

[9] *Id*.

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

[11] *Id.* at 32.

Moreover, the RTC found that the identity of the dangerous drug was sufficiently proven because the prosecution was able to establish the chain of custody, from the time it was sold by accused-appellant to when it was presented in court.[12] SPO2 Dacara testified that he had personally received the sachet of *shabu* from their poseur-buyer at the place of arrest and brought it to their office later. After making the appropriate markings (the letter "A" and his initials) on the sachet, he turned it over to SPO2 Bagas for delivery to the Philippine National Police (PNP) Crime Laboratory.[13] SPO2 Alvior then identified the sachet as the same item that he had received on 3 January 2004 from SPO3 Pagas at the PNP Crime Laboratory Office, and that he later turned over to the examining forensic chemist, Police Senior Inspector (P/SI) April Garcia Carbajal.[14]

In light of the positive testimonies of the prosecution witnesses, the trial court gave scant consideration to the uncorroborated self-serving allegations of accused-appellant that he had been framed. He was sentenced to suffer the penalty of life imprisonment and to pay a fine of five hundred thousand pesos (₱500,000) for the crime of illegal sale of prohibited drugs.[15]

Upon intermediate appellate review, the CA rendered a Decision on 16 October 2014, the dispositive portion of which reads:

> WHEREFORE, the appeal is DENIED. The Judgment dated June 14, 2013 of the Regional Trial Court of Misamis Oriental, 10th Judicial Region, Branch 40 in Criminal Case No. 2004-010 is hereby AFFIRMED *in toto*.
>
> **SO ORDERED.**[16]

In convicting appellant of the crimes charged, the CA disregarded his position that there was no valid buy-bust

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[12] *Id.* at 35.

[13] *Id*.

[14] *Id*.

[15] *Id*.

[16] *Rollo,* p. 14.

operation, because the arresting team had not coordinated the matter with the Philippine Drug Enforcement Agency (PDEA).[17] The appellate court maintained that neither R.A. 9165 nor its Implementing Rules and Regulations (IRR) required PDEA's participation in any buy-bust operation. After all, a buy-bust is "just a form of an *in flagrante* arrest sanctioned by Section 5, Rule 113 of the Rules of Court [sic], which police authorities may rightfully resort to in apprehending violators x x x. A buy-bust operation is not invalidated by mere non-coordination with the PDEA."[18]

On accused-appellant's contention that the prosecution's failure to present the poseur-buyer weakened the arresting team's testimonies, the CA held that the non-presentation of the poseur-buyer is fatal only if there is no other eyewitness to the illicit transaction, as held in *People v. Berdadero*.[19] In any case, the testimonies of SPO2 Dacara and P/Insp. Ramas, who were both within clear seeing distance, "presented a complete picture, providing every detail of the buy-bust operation."[20]

Finally, as regards the failure of the police officers to immediately mark the alleged *shabu* at the crime scene (but only at the police station), the CA ruled that "failure to strictly comply with Section 21 (1), Article II of RA No. 9165 does not necessarily render an accused's arrest illegal or the items seized or confiscated from him inadmissible."[21] It further emphasized that "[w]hat is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as these would be utilized in the determination of the guilt or innocence of the accused."[22]

We now resolve the appeal.

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[17] *Id.* at 7.

[18] *Id.* at 10.

[19] *Id.* at 11.

[20] *Id*.

[21] *Id.* at 13.

[22] *Id*.

ISSUE

From the foregoing, the sole issue before us is whether or not the RTC and the CA erred in finding the testimonial evidence of the prosecution witnesses sufficient to warrant appellant's conviction for the crimes charged.

THE COURT'S RULING

We reverse the appellate court.

While prior coordination with the PDEA is not necessary to make a buy-bust operation valid,[23] we are constrained to reverse the findings of the CA because the non-presentation of the poseur-buyer is fatal to the cause of the prosecution. In *People v. Andaya*,[24] the importance of presenting the poseur-buyer's testimony before the trial court was underscored by the Court in this wise:

> The justification that underlies the legitimacy of the buy-bust operation is that the suspect is arrested *in flagranti delicto*, that is, the suspect has just committed, or is in the act of committing, or is attempting to commit the offense in the presence of the arresting police officer or private person. The arresting police officer or private person is favored in such instance with the presumption of regularity in the performance of official duty.
>
> Proof of the transaction must be credible and complete. In every criminal prosecution, it is the State, and no other, that bears the burden of proving the illegal sale of the dangerous drug beyond reasonable doubt. This responsibility imposed on the State accords with the

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[23] *People v. Balaquit*, G.R. No. 206366, 13 August 2014, 733 SCRA 144, 152-153, citing *People v. Roa*, G.R. No. 186134, 6 May 2010, 620 SCRA 359, 368-369. In *People v. Balaquit*, we said that "[w]hile it is true that Section 8615 of R.A. No. 9165 requires the National Bureau of Investigation, PNP and the Bureau of Customs to maintain 'close coordination with the PDEA on all drug related matters, the provision does not, by so saying, make PDEA's participation a condition *sine qua non* for every buy-bust operation. After all, a buy-bust is just a form of an *in flagrante* arrest sanctioned by Section 5, Rule 113 of the Rules of the Court, which police authorities may rightfully resort to in apprehending violators of R.A. No. 9165 in support of the PDEA x x x.''

[24] G.R. No. 183700, 13 October 2014.

presumption of innocence in favor of the accused, who has no duty to prove his innocence until and unless the presumption of innocence in his favor has been overcome by sufficient and competent evidence.[25]

In the same case, we emphasized that "[t]here would have been no issue against [the buy-bust operation], except that none of the members of the buy-bust team had directly witnessed the transaction, if any, between Andaya and the poseur buyer due to their being positioned at a distance from the poseur buyer and Andaya at the moment of the supposed transaction."[26] It was even noted in that case that the "members of the buy-bust team arrested Andaya on the basis of the pre-arranged signal from the poseur-buyer."[27]

While there is a "need to hide [the poseur-buyers] identit[ies] and preserve their invaluable service to the police,"[28] this consideration cannot be applied to this case, because, as in *Andaya,* the "poseur-buyer and the confidential informant were one and the same. Without the poseur buyer's testimony, the State did not credibly incriminate [the accused]."[29]

The testimonies of prosecution witnesses SPO2 Bagas, SPO2 Alvior, Jr., SPO2 Dacara, and P/Insp. Ramas (who was 10 meters away) cannot be considered as eyewitness accounts of the illegal sale. There was no indication that they directly saw an illegal drug being sold to the poseur-buyer. In *People v. Guzon,*[30] we held that "the police officer, who admitted that he was seven (7) to eight (8) meters away from where the actual transaction took place, could not be deemed an eyewitness to the crime."[31]

At this juncture, We reiterate our point in *Andaya*:

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[25] *Id*.

[26] *Id*.

[27] *Id*.

[28] *Id*.

[29] *Id*.

[30] G.R. No. 199901, 9 October 2013, 751 SCRA 384.

[31] *Id.* at 408.

Secondly, the reliance on the supposed signal to establish the consummation of the transaction between the poseur buyer and Andaya was unwarranted because the unmitigatedly hearsay character of the signal rendered it entirely bereft of trustworthiness. The arresting members of the buy-bust team interpreted the signal from the anonymous poseur buyer as the sign of the consummation of the transaction. Their interpretation, being necessarily subjective without the testimony of the poseur buyer, unfairly threatened the liberty of Andaya. We should not allow that threat to perpetuate itself. And, lastly, the reliance on the signal would deprive Andaya the right to confront and test the credibility of the poseur buyer who supposedly gave it.[32]

This interpretation is premised on the legal reasoning that "when the inculpatory facts and circumstances are capable of two (2) or more explanations, one of which is consistent with the innocence of the accused and the other consistent with his guilt, then the evidence does not fulfill the test of moral certainty and is not sufficient to support a conviction."[33] In light of the pronouncements above, We deem it unnecessary to discuss other issues raised by both parties.

WHEREFORE, the Court **REVERSES** and **SETS ASIDE** the Court of Appeals Decision dated 16 October 2014 in CA-G.R. CR-H.C. No. 01179 affirming the Decision dated 14 June 2013 issued by the Regional Trial Court, Branch 40, Cagayan de Oro City, in Criminal Case No. 2004-010; and **ACQUITS** accused-appellant **KUSAIN AMIN *y* AMPUAN** of the crime charged in Criminal Case No. 2004-010 on the ground of reasonable doubt. The Director of the Bureau of Corrections is hereby **ORDERED** to immediately release accused-appellant **KUSAIN AMIN *y* AMPUAN** from custody, unless he is being detained for some other lawful cause.

SO ORDERED.

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

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[32] *Supra* note 23.

[33] *People v. Tadepa,* 314 Phil. 231-241 (1995), citing *People v. Yabut,* G.R. No. 82263, 26 June 1992, 210 SCRA 394.

SECOND DIVISION

[G.R. No. 219509. January 18, 2017]

ILOILO JAR CORPORATION, *petitioner, vs.* **COMGLASCO CORPORATION/AGUILA GLASS,** *respondent*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW FILED ONE DAY PAST THE TWICE EXTENDED FILING PERIOD IS A VIOLATION OF THE RULES ON APPEAL; LIBERAL APPLICATION IN THE INTEREST OF SUBSTANTIAL JUSTICE.— Iloilo Jar, unfortunately, filed its petition for review only on September 24, 2015, one day past the twice extended filing period. [P]rocedural rules are not lightly brushed aside as its strict compliance is necessary for the orderly administration of justice. Thus, even if the filing of the petition was merely late for a day, it is still a violation of the rules on appeal, which generally leads to its outright denial. The tardy filing, notwithstanding, the Court may still entertain the present appeal. Procedural rules may be disregarded by the Court to serve the ends of substantial justice. When a petition for review is filed a few days late, application of procedural rules may be relaxed, where strong considerations of substantial justice are manifest in the petition, in the exercise of the Court's equity jurisdiction. x x x The merits of Iloilo Jar's petition for review warrant a relaxation of the strict rules of procedure if only to attain justice swiftly. A denial of its petition will cause the remand of the case, which based on the circumstances, will unnecessarily delay the proceedings. Thus, the Court deems it wise to let Iloilo Jar's procedural lapse pass.

2. ID.; ID.; JUDGMENT ON THE PLEADINGS; DISTINGUISHED FROM SUMMARY JUDGMENT; THE FORMER IS APPROPRIATE IF THE ANSWER FAILED TO TENDER AN ISSUE AND THE LATTER MAY BE RESORTED TO IF THERE ARE NO GENUINE ISSUES RAISED.— Section 1, Rule 34 of the Revised Rules of Court governs motions for judgment on the pleadings. It reads: **SECTION 1.** *Judgment on the pleadings.* – **Where an answers fails to tender an issue,**

or otherwise admits the material allegations of the adverse party's pleading, the court may, on motion of that party, direct judgment on such pleading. However, in actions for declaration of nullity or annulment of marriage or for legal separation, the material facts alleged in the complaint shall always be proved. On the other hand, under Rule 35 of the Rules of Court, a party may move for summary judgment if there are no genuine issues raised. In *Basbas v. Sayson*, the Court differentiated judgment on the pleadings from summary judgment in that the former is appropriate if the answer failed to tender an issue and the latter may be resorted to if there are no genuine issues raised.

3. CIVIL LAW; OBLIGATIONS AND CONTRACTS; EXTINGUISHMENT OF OBLIGATIONS; INABILITY TO COMPLY BECAUSE OF DIFFICULTY BEYOND CONTEMPLATION; APPLIES ONLY TO OBLIGATIONS TO DO AND NOT TO OBLIGATIONS TO GIVE; OBLIGATION TO PAY RENTAL IS OBLIGATION TO GIVE.— What is to be resolved is whether Comglasco was justified in treating the lease contract terminated due to the economic circumstances then prevalent. To evade responsibility, Comglasco explained that by virtue of Article 1267, it was released from the lease contract. It cited the existing global and regional economic crisis for its inability to comply with its obligation. Comglasco's position fails to impress because Article 1267 applies only to obligations to do and not to obligations to give. x x x Considering that Comglasco's obligation of paying rent is not an obligation to do, it could not rightfully invoke Article 1267 of the Civil Code. Even so, its position is still without merit as financial struggles due to an economic crisis is not enough reason for the courts to grant reprieve from contractual obligations.

4. ID.; DAMAGES; ATTORNEY'S FEES PROPER FOR EXPENSES INCURRED TO PROTECT INTEREST; EXEMPLARY DAMAGES NOT PROPER IN THE ABSENCE OF PROOF OF ACTION IN WANTON, RECKLESS OR MALEVOLENT MANNER.— Iloilo Jar is entitled to attorney's fees because it incurred expenses to protect its interest. The trial court, however, erred in awarding exemplary damages and litigation expenses. Exemplary damages may be recovered in contractual obligations recovered if the

> defendant acted in wanton or fraudulent, reckless, oppressive or malevolent manner. As discussed, Comglasco defaulted in its obligation to pay the rentals by reason of its erroneous belief that the lease contract was pre-terminated because of the economic crisis. The same, however, does not prove that Comglasco acted in wanton or fraudulent, reckless, oppressive or malevolent manner. On the other hand, attorney's fees may be recovered in case the plaintiff was compelled to incur expenses to protect his interest because of the defendant's acts or omissions. Further, the interest rate should be modified pursuant to recent jurisprudence. The monetary awards shall be subject to 12% interest *per annum* until June 30, 2013 and 6% *per annum* from July 1, 2003 until fully satisfied.

APPEARANCES OF COUNSEL

The Law Offices of Santos-Gatmaytan Gatmaytan Acanto & Manikan for petitioner.
Paner Hosaka & Ypil for respondent.

D E C I S I O N

MENDOZA, *J.*:

This petition for review on *certiorari* seeks to reverse and set aside the January 30, 2015 Decision[1] and June 17, 2015 Resolution[2] of the Court of Appeals (*CA*) in CA-G.R. CV No. 01475, which overturned the February 17, 2005 Amended Order[3] of the Regional Trial Court, Branch 37, Iloilo City (*RTC*).

The Antecedents:

On August 16, 2000, petitioner Iloilo Jar Corporation (*Iloilo Jar*), as lessor, and respondent Comglasco Corporation/Aguila

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[1] Penned by Associate Justice Pamela Ann Abella Maxino with Associate Justice Gabriel T. Ingles and Associate Justice Renato C. Francisco, concurring; *rollo*, pp. 47-57.

[2] *Id.* at 41-44.

[3] Penned by Judge Jose D. Azarraga, *id.* at 104-107.

Glass (*Comglasco*), as lessee, entered into a lease contract over a portion of a warehouse building, with an estimated floor area of 450 square meters, located on a parcel of land identified as Lot 2-G-1-E-2 in Barangay Lapuz, La Paz District, Iloilo City. The term of the lease was for a period of three (3) years or until August 15, 2003.[4]

On December 1, 2001, Comglasco requested for the pre-termination of the lease effective on the same date. Iloilo Jar, however, rejected the request on the ground that the pre-termination of the lease contract was not stipulated therein. Despite the denial of the request for pre-termination, Comglasco still removed all its stock, merchandise and equipment from the leased premises on January 15, 2002. From the time of the withdrawal of the equipment, and notwithstanding several demand letters, Comglasco no longer paid all rentals accruing from the said date.[5]

On September 14, 2003, Iloilo Jar sent a final demand letter to Comglasco, but it was again ignored. Consequently, Iloilo Jar filed a civil action for breach of contract and damages before the RTC on October 10, 2003.[6]

On June 28, 2004, Comglasco filed its Answer[7] and raised an affirmative defense, arguing that by virtue of Article 1267 of the Civil Code (*Article 1267*),[8] it was released from its obligation from the lease contract. It explained that the consideration thereof had become so difficult due to the global and regional economic crisis that had plagued the economy. Likewise, Comglasco admitted that it had removed its stocks and merchandise but it did not refuse to pay the rentals because

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[4] *Id.* at 22.

[5] *Id.* at 23.

[6] *Id.*

[7] *Id.* at 87-90.

[8] Article 1267. When the service has become so difficult as to be manifestly beyond the contemplation of the parties, the obligor may also be released therefrom, in whole or in part.

the lease contract was already deemed terminated. Further, it averred that though it received the demand letters, it did not amount to a refusal to pay the rent because the lease contract had been pre-terminated in the first place.

On July 15, 2004, Iloilo Jar filed its Motion for Judgment on the Pleadings[9] arguing that Comglasco admitted all the material allegations in the complaint. It insisted that Comglasco's answer failed to tender an issue because its affirmative defense was unavailing.

The RTC Order

In its August 18, 2004 Order,[10] the RTC granted the motion for judgment on the pleadings. It opined that Comglasco's answer admitted the material allegations of the complaint and that its affirmative defense was unavailing because Article 1267 was inapplicable to lease contracts.

Comglasco moved for reconsideration but its motion was denied by the RTC in its January 24, 2005 Order.[11] After formal defects in the original order were raised, the RTC issued the assailed February 17, 2005 Amended Order wherein the total amount of unpaid rentals to be paid was modified from ₱1,333,200.00 to ₱333,300.00. Further, it changed the following: (a) award of attorney's fees from ₱200,000.00 to ₱75,000.00; (b) litigation expenses from ₱50,000.00 to ₱30,000.00; and (c) exemplary damages from ₱400,000.00 to ₱200,000.00.

Aggrieved, Comglasco appealed before the CA.

The CA Ruling

In its January 30, 2015 decision, the CA *reversed* the amended order of the RTC. The appellate court was of the view that judgment on the pleadings was improper as Comglasco's answer tendered an issue considering that Iloilo Jar's material allegations

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[9] *Id.* at 91-96.

[10] *Id.* at 97-100.

[11] *Id.* at 101-103.

were specifically denied therein. Further, the CA opined that even if the same were not specifically denied, the answer raised an affirmative issue which was factual in nature. It disposed:

> IN LIGHT OF ALL THE FOREGOING, the instant appeal is GRANTED. The Order dated August 18, 2004; the Order dated January 24, 2005; and the Order dated February 17, 2005 of the Regional Trial Court, Branch 37, Iloilo City, in Civil Case No. 03-27960, are REVERSED.
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> Let the records be REMANDED to the RTC for the conduct of further proceedings.
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> SO ORDERED.[12]

Iloilo Jar moved for reconsideration, but its motion was denied by the CA in its assailed June 17, 2015 resolution.

Hence, this petition.

ISSUES

I

WHETHER OR NOT A DEFENSE RAISED IN THE ANSWER THAT IS NOT APPLICABLE TO THE CASE AT BAR CAN BE CONSIDERED AS APPROPRIATELY TENDERING AN ISSUE THAT NEED TO BE TRIED BY THE TRIAL COURT; AND

II

WHETHER OR NOT A JUDGMENT ON THE PLEADINGS IS APPROPRIATE AND VALID WHEN THE DEFENSE INTERPOSED BY THE DEFENDANT IN THE ANSWER IS NOT APPLICABLE AS A DEFENSE TO THE CAUSE OF ACTION AS STATED IN THE COMPLAINT.[13]

Iloilo Jar argues that Comglasco's answer materially admitted the allegations of the former's complaint, particularly, that the latter had removed its merchandise from the lease premises and failed to pay subsequent rentals, after it had received the

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

[13] *Id.* at 26.

demand letters sent. It points out that Comglasco brushed aside its obligation by merely claiming that it was no longer bound by the lease contract because it was terminated due to the financial difficulties it was experiencing in light of the economic crisis. Iloilo Jar insisted that Comglasco cannot rely on Article 1267 because it does not apply to lease contracts, which involves an obligation to give, and not an obligation to do.

In its Comment,[14] dated February 11, 2016, Comglasco countered that its answer raised material defenses which rendered judgment on the pleadings improper. It asserted that judgment on the pleadings may be had only when the answer fails to tender an issue or otherwise admits the material allegations of the adverse party's pleading. Comglasco argued that even if the allegations in the complaint were deemed admitted, the affirmative defenses it raised may give rise to factual controversies or issues which should be subject to a trial.

In its Reply,[15] dated September 28, 2016, Iloilo Jar reiterated that judgment on the pleadings was warranted because Comglasco's answer failed to specifically deny the allegation in the complaint, and that the affirmative defense alleged therein was improper because Article 1267 is inapplicable to a lease contract. As such, it stressed that Comglasco's answer failed to tender an issue.

The Court's Ruling

The Court finds merit in the petition.

Rules of Procedure strictly complied with; Exceptions

It must be remembered that the right to appeal is not a natural right but merely a statutory privilege; a party appealing is, thus, expected to comply with the requirements of relevant rules otherwise he would lose the statutory right to appeal.[16]

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[14] *Id.* at 199-205.

[15] *Id.* at 212-229.

[16] *Magsino v. de Ocampo*, G.R. No. 166944, August 18, 2014, 733 SCRA 202, 210.

A review of the records reveals that Iloilo Jar received the Notice of Resolution of the assailed CA resolution on July 9, 2015. Pursuant to Section 2 Rule 45 of the Rules of Court,[17] it had fifteen (15) days from receipt of the resolution or until July 24, 2015 to file its petition for review on *certiorari* before the Court.

On the said date, however, Iloilo Jar filed a motion for extension to file the said petition. In its September 2, 2015 Resolution,[18] the Court granted that same and extended for thirty (30) days reckoned from the expiration of the reglementary period within which to file the petition, with a warning that it would be the last extension to be given. In other words, Iloilo Jar had until August 23, 2015 to file its petition for review on *certiorari*.

On August 24, 2015, Iloilo Jar again filed another motion for extension[19] requesting an additional thirty (30) days. In its November 25, 2015 Resolution,[20] the Court again granted the same and gave another 30- day extension reckoned from August 24, 2015. Thus, it had until September 23, 2015 to file its petition.

Iloilo Jar, unfortunately, filed its petition for review only on September 24, 2015,[21] one day past the twice extended filing period. Again, procedural rules are not lightly brushed aside

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[17] The petition shall be filed within fifteen (15) days from notice of the judgment or final order or resolution appealed from, or of the denial of the petitioner's motion for new trial or reconsideration filed in due time after notice of the judgment. On motion duly filed and served, with full payment of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the Supreme Court may for justifiable reasons grant an extension of thirty (30) days only within which to file the petition.

[18] *Rollo*, p. 17.

[19] *Id.* at 176-181.

[20] *Id.* at 190.

[21] *Id.* at 33.

as its strict compliance is necessary for the orderly administration of justice. Thus, even if the filing of the petition was merely late for a day, it is still a violation of the rules on appeal, which generally leads to its outright denial.

The tardy filing, notwithstanding, the Court may still entertain the present appeal. Procedural rules may be disregarded by the Court to serve the ends of substantial justice. When a petition for review is filed a few days late, application of procedural rules may be relaxed, where strong considerations of substantial justice are manifest in the petition, in the exercise of the Court's equity jurisdiction.[22] In *CMTC International Marketing Corporation v. Bhagis International Trading Corporation*,[23] the Court did not strictly apply procedural rules as it would serve the interest of justice, elucidating:

> Time and again, this Court has emphasized that procedural rules should be treated with utmost respect and due regard, since they are designed to facilitate the adjudication of cases to remedy the worsening problem of delay in the resolution of rival claims and in the administration of justice. **From time to time, however, we have recognized exceptions to the Rules, but only for the most compelling reasons where stubborn obedience to the Rules would defeat rather than serve the ends of justice.**
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> x x x x x x x x x
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> **Ergo, where strong considerations of substantive justice are manifest in the petition, the strict application of the rules of procedure may be relaxed, in the exercise of its equity jurisdiction.** Thus, a rigid application of the rules of procedure will not be entertained if it will obstruct rather than serve the broader interests of justice in the light of the prevailing circumstances in the case under consideration.[24] [Emphases supplied]

The merits of Iloilo Jar's petition for review warrant a relaxation of the strict rules of procedure if only to attain justice

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[22] *Montajes v. People*, 684 Phil. 1, 10-11 (2012).

[23] 700 Phil. 575 (2012).

[24] *Id.* at 581-582.

swiftly. A denial of its petition will cause the remand of the case, which based on the circumstances, will unnecessarily delay the proceedings. Thus, the Court deems it wise to let Iloilo Jar's procedural lapse pass.

Judgment on the pleadings vis-a-vis Summary Judgment

Section 1, Rule 34 of the Revised Rules of Court governs motions for judgment on the pleadings. It reads:

> **SECTION 1.** *Judgment on the pleadings*. – **Where an answers fails to tender an issue, or otherwise admits the material allegations of the adverse party's pleading, the court may, on motion of that party, direct judgment on such pleading.** However, in actions for declaration of nullity or annulment of marriage or for legal separation, the material facts alleged in the complaint shall always be proved. [Emphasis supplied]

On the other hand, under Rule 35 of the Rules of Court, a party may move for summary judgment if there are no genuine issues raised.

In *Basbas v. Sayson*,[25] the Court differentiated judgment on the pleadings from summary judgment in that the former is appropriate if the answer failed to tender an issue and the latter may be resorted to if there are no genuine issues raised, to wit:

> **Simply stated, what distinguishes a judgment on the pleadings from a summary judgment is the presence of issues in the Answer to the Complaint.** When the Answer fails to tender any issue, that is, if it does not deny the material allegations in the complaint or admits said material allegations of the adverse party's pleadings by admitting the truthfulness thereof and/or omitting to deal with them at all, a judgment on the pleadings is appropriate. **On the other hand, when the Answer specifically denies the material averments of the complaint or asserts affirmative defenses, or in other words raises an issue, a summary judgment is proper provided that the issue raised is not genuine.** "A 'genuine issue' means an issue of fact which calls for the presentation of evidence, as distinguished

[25] 671 Phil. 662 (2011).

from an issue which is fictitious or contrived or which does not constitute a genuine issue for trial."

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In this case, we note that while petitioners' Answer to respondents' Complaint practically admitted all the material allegations therein, it nevertheless asserts the affirmative defences that the action for revival of judgment is not the proper action and that petitioners are not the proper parties. **As issues obviously arise from these affirmative defenses, a judgment on the pleadings is clearly improper in this case.**[26] [Emphases supplied]

In the case at bench, Comglasco interposed an affirmative defense in its answer. While it admitted that it had removed its stocks from the leased premises and had received the demand letter for rental payments, it argued that the lease contract had been pre-terminated because the consideration thereof had become so difficult to comply in light of the economic crisis then existing. Thus, judgment on the pleadings was improper considering that Comglasco's Answer raised an affirmative defense.

Although resort to judgment on the pleadings might have been improper, there was still no need to remand the case to the RTC for further proceedings. In *Wood Technology Corporation v. Equitable Banking Corporation (Wood Technology)*,[27] the Court ruled that summary judgment may be availed if no genuine issue for trial is raised, *viz*:

Summary judgment is a procedure aimed at weeding out sham claims or defenses at an early stage of the litigation. The proper inquiry in this regard would be whether the affirmative defenses offered by petitioners constitute genuine issues of fact requiring a full-blown trial. In a summary judgment, the crucial question is: are the issues raised by petitioners not genuine so as to justify a summary judgment? **A "genuine issue" means an issue of fact which calls for the presentation of evidence, as distinguished from an issue which is**

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[26] *Id.* at 682-683.

[27] 492 Phil. 106 (2005).

fictitious or contrived, an issue that does not constitute a genuine issue for trial.[28] [Emphasis supplied]

It bears noting that in *Wood Technology*, the RTC originally rendered a judgment on the pleadings but was corrected by the Court to be a summary judgment because of the issue presented by the affirmative defense raised therein. In the said case, the Court, nonetheless, ruled in favor of the complainant therein because there was no genuine issue raised.

Similar to *Wood Technology*, the judgment rendered by the RTC in this case was a summary judgment, not a judgment on the pleadings, because Comglasco's answer raised an affirmative defense. Nevertheless, no genuine issue was raised because there is no issue of fact which needs presentation of evidence, and the affirmative defense Comglasco invoked is inapplicable in the case at bench.

A full blown trial would needlessly prolong the proceedings where a summary judgment would suffice. It is undisputed that Comglasco removed its merchandise from the leased premises and stopped paying rentals thereafter. Thus, there remains no question of fact which must be resolved in trial. What is to be resolved is whether Comglasco was justified in treating the lease contract terminated due to the economic circumstances then prevalent.

To evade responsibility, Comglasco explained that by virtue of Article 1267, it was released from the lease contract. It cited the existing global and regional economic crisis for its inability to comply with its obligation.

Comglasco's position fails to impress because Article 1267 applies only to obligations to do and not to obligations to give. Thus, in *Philippine National Construction Corporation v. Court of Appeals*,[29] the Court expounded:

Petitioner cannot, however, successfully take refuge in the said article, since it is applicable only to obligations "to do," and not

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

[29] 338 Phil. 691 (1997).

to obligations "to give." An obligation "to do" includes all kinds of work or service; while an obligation "to give" is a prestation which consists in the delivery of a movable or an immovable thing in order to create a real right, or for the use of the recipient, or for its simple possession, or in order to return it to its owner.

The obligation to pay rentals or deliver the thing in a contract of lease falls within the prestation "to give"; x x x

The principle of *rebus sic stantibus* neither fits in with the facts of the case. Under this theory, the parties stipulate in the light of certain prevailing conditions, and once these conditions cease to exist, the contract also ceases to exist. x x x

This article, which enunciates the doctrine of unforeseen events, is not, however, an absolute application of the principle of *rebus sic stantibus*, which would endanger the security of contractual relations. The parties to the contract must be presumed to have assumed the risks of unfavorable developments. **It is therefore only in absolutely exceptional changes of circumstances that equity demands assistance for the debtor.**[30] [Emphases and Underscoring supplied]

Considering that Comglasco's obligation of paying rent is not an obligation to do, it could not rightfully invoke Article 1267 of the Civil Code. Even so, its position is still without merit as financial struggles due to an economic crisis is not enough reason for the courts to grant reprieve from contractual obligations.

In *COMGLASCO Corporation/Aguila Glass v. Santos Car Check Center Corporation*,[31] the Court ruled that the economic crisis which may have caused therein petitioner's financial problems is not an absolute exceptional change of circumstances that equity demands assistance for the debtor. It is noteworthy that Comglasco was also the petitioner in the above-mentioned case, where it also involved Article 1267 to pre-terminate the lease contract.

Thus, the RTC was correct in ordering Comglasco to pay the unpaid rentals because the affirmative defense raised by it

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[30] *Id.* at 700-701.

[31] G.R. No. 202989, March 25, 2015, 754 SCRA 481.

was insufficient to free it from its obligations under the lease contract. In addition, Iloilo Jar is entitled to attorney's fees because it incurred expenses to protect its interest. The trial court, however, erred in awarding exemplary damages and litigation expenses.

Exemplary damages may be recovered in contractual obligations if the defendant acted in wanton or fraudulent, reckless, oppressive or malevolent manner.[32] As discussed, Comglasco defaulted in its obligation to pay the rentals by reason of its erroneous belief that the lease contract was pre-terminated because of the economic crisis. The same, however, does not prove that Comglasco acted in wanton or fraudulent, reckless, oppressive or malevolent manner.[33] On the other hand, attorney's fees may be recovered in case the plaintiff was compelled to incur expenses to protect his interest because of the defendant's acts or omissions.

Further, the interest rate should be modified pursuant to recent jurisprudence.[34] The monetary awards shall be subject to 12% interest *per annum* until June 30, 2013 and 6% *per annum* from July 1, 2013 until fully satisfied.

A Final Note

A lawyer, as an officer of the court, is expected to observe utmost respect and deference to the Court. As such, he must ensure that he faithfully complies with rules of procedure especially since they are in place to aid in the administration of justice. This duty to be subservient to the rules of procedure is manifested in numerous provisions[35] of the Code of Professional Responsibility.

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[32] Article 2208(2) of the Civil Code.

[33] *Ramos v. China Southern Airlines Co. Ltd.*, G.R. No. 213418, September 21, 2016.

[34] *Oyster Plaza Hotel v. Melivo*, G.R. No. 217455, October 5, 2016, citing *Nacar v. Gallery Frames*, 716 Phil. 267 (2013).

[35] Canon 1, Rule 10.03, Canon 12, Rule 12.03, Rule 18.02 and Rule 18.03.

The Court admonishes Iloilo Jar' counsel for repeatedly failing to comply with the rules of procedure and court processes. *First*, he belatedly filed the petition for review. *Second*, Iloilo Jar's counsel failed to file its Reply within the time originally allotted prompting the Court to require him to show cause why he should not be held in contempt.[36] Personal obligations, heavy workload does not excuse a lawyer from complying with his obligations particularly in timely filing the pleadings required by the Court.

WHEREFORE, the January 30, 2015 Decision and June 17, 2015 Resolution of the Court of Appeals are **REVERSED** and **SET ASIDE**. The February 17, 2005 Amended Order of the Regional Trial Court, Branch 37, Iloilo City, is **AFFIRMED WITH MODIFICATION** in that the award of exemplary damages and litigation expenses is **DELETED**. The monetary award shall be subject to 12% *per annum* until June 30, 2013 and 6% *per annum* from July 1, 2013 until fully satisfied.

Atty. Raleigh Silvino L. Manikan is **ADMONISHED** for his repeated failure to observe the rules of procedure, with a WARNING that a repetition to strictly comply with procedural rules shall be dealt with more severely.

SO ORDERED.

Carpio (Chairperson), Peralta, Leonen, and *Jardeleza*,* *JJ.*, concur.

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[36] *Rollo*, p. 211.

* Per Special Order No. 2416 dated January 4, 2017.

SECOND DIVISION

[G.R. No. 219829. January 18, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MONIR JAAFAR *y* TAMBUYONG,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165); ILLEGAL SALE OF DRUGS; THE EXISTENCE OF THE DANGEROUS DRUG IS ESSENTIAL TO A JUDGMENT OF CONVICTION; HENCE, THE IDENTITY OF THE DANGEROUS DRUG MUST BE CLEARLY ESTABLISHED.— In all prosecutions for violations of Republic Act No. 9165, the *corpus delicti* is the dangerous drug itself. Its existence is essential to a judgment of conviction. Hence, the identity of the dangerous drug must be clearly established. Narcotic substances are not readily identifiable. To determine their composition and nature, they must undergo scientific testing and analysis. Narcotic substances are also highly susceptible to alteration, tampering, or contamination. It is imperative, therefore, that the drugs allegedly seized from the accused are the very same objects tested in the laboratory and offered in court as evidence. The chain of custody, as a method of authentication, ensures that unnecessary doubts involving the identity of seized drugs are removed.

2. ID.; ID.; ID.; CHAIN OF CUSTODY RULE; WHILE IT MAY BE TRUE THAT NON-COMPLIANCE WITH SECTION 21 OF REPUBLIC ACT NO. 9165 IS NOT FATAL TO THE PROSECUTION'S CASE PROVIDED THAT THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED BY THE APPREHENDING OFFICERS, THIS EXCEPTION WILL ONLY BE TRIGGERED BY THE EXISTENCE OF A GROUND THAT JUSTIFIES DEPARTURE FROM THE GENERAL RULE.— Section 21 of Republic Act No. 9165 provides the manner by which law enforcement officers should handle seized dangerous drugs. x x x. While it may be true that non-compliance with Section 21 of Republic Act No. 9165 is not fatal to the prosecution's case provided that the integrity

and evidentiary value of the seized items are properly preserved by the apprehending officers, this exception will only be triggered by the existence of a ground that justifies departure from the general rule. This Court finds that the prosecution failed to show any justifiable reason that would warrant non-compliance with the mandatory requirements in Section 21 of Republic Act No. 9165. Although the buy-bust team marked and conducted a physical inventory of the seized sachet of shabu, the records do not show that the seized sachet had been photographed. Furthermore, there is absolutely no evidence to show that the physical inventory was done in the presence of accused-appellant or his representative, representatives from the media and the Department of Justice, and an elected public official.

3. ID.; ID.; ID.; NON-OBSERVANCE OF THE MANDATORY REQUIREMENTS UNDER SECTION 21 OF REPUBLIC ACT NO. 9165 CASTS DOUBT ON THE INTEGRITY OF THE *SHABU* SUPPOSEDLY SEIZED FROM ACCUSED-APPELLANT, AND THUS CREATES REASONABLE DOUBT IN THE CONVICTION OF ACCUSED-APPELLANT; RECENT CASES HAVE HIGHLIGHTED THE NEED TO ENSURE THE INTEGRITY OF SEIZED DRUGS IN THE CHAIN OF CUSTODY WHEN ONLY A MINISCULE AMOUNT OF DRUG HAD BEEN ALLEGEDLY SEIZED FROM THE ACCUSED.— The prosecution established during trial and on appeal that the buy-bust operation had been carefully planned by narrating the events with intricate detail. However, at the same time, the prosecution relied heavily on the exception to the chain of custody rule. Worse, the prosecution did not even offer any explanation on why they failed to comply with what was mandated under the law. Indeed, if the police authorities had carefully planned the buy-bust operation, then there was no reason for them to neglect such important requirements. They cannot feign ignorance of the exacting standards under Section 21 of Republic Act No. 9165. Police officers are presumed and are required to know the laws they are charged with executing. This Court cannot merely gloss over the glaring procedural lapses committed by the police officers, especially when what had been allegedly seized from accused-appellant was only 0.0604 grams of shabu. Recent cases have highlighted the need to ensure the integrity of seized drugs in the chain of custody when only a miniscule amount of drugs had been allegedly seized from the accused. x x x. Non-observance of the mandatory requirements under Section 21

of Republic Act No. 9165 casts doubt on the integrity of the shabu supposedly seized from accused-appellant. This creates reasonable doubt in the conviction of accused-appellant for violation of Article II, Section 5 of Republic Act No. 9165.

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

LEONEN, *J.*:

This reviews the Decision[1] dated February 24, 2015 of the Court of Appeals in CA-G.R. CR HC No. 01053-MIN affirming the conviction of accused-appellant Monir Jaafar y Tambuyong for violation of Article II, Section 5 of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

In an Information, accused-appellant Monir Jaafar *y* Tambuyong (Jaafar) and Ahmad Gani *y* Idjirani (Gani) were charged with violation of Republic Act No. 9165:

That on the 11th day of September 2009 at Barangay Port Area, Isabela City, Zamboanga Peninsula, Philippines and within the jurisdiction of this Honorable Court, the above named accused, not being authorized by law to sell, deliver, give away to another, transport or distribute any dangerous drug, conspiring and confederating together, mutually aiding and assisting one another, did then and there willfully, unlawfully and feloniously sell and deliver to PO1 Marlon Takazi M. Look, who acted as poseur-buyer, one (1) [heat-sealed] transparent plastic sachet containing white crystalline substance weighing 0.0604 grams which when subjected to qualitative examination gave positive result to the tests for the presence of METHAMPHETAMINE HYDROCHLORIDE (SHABU), knowing [the] same to be a dangerous drug.

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[1] *Rollo*, pp. 3-11. The Decision was penned by Associate Justice Henri Jean Paul B. Inting and concurred in by Associate Justices Edgardo A. Camello and Pablito A. Perez of the Twenty-Second Division, Court of Appeals, Cagayan de Oro City.

CONTRARY TO LAW.[2]

Upon arraignment, both accused pleaded not guilty.[3] Trial on the merits ensued.[4]

According to the prosecution, at 8:00 a.m. on September 10, 2009, a male civilian informant reported to Chief of Police, Police Superintendent Alberto Capacio Larubis (Chief Larubis) that a certain "Mana" was selling methamphetamine hydrochloride (shabu) at the port area barangay located just beside the police station.[5] Mana was later identified as Jaafar, who sold shabu between 12:00 m.n. and 4:00a.m. to facilitate the sale of the drug and evade arrest.[6] Jaafar allegedly peddled shabu in his house.[7]

Chief Larubis instructed SPO4 Enrico Morales (SPO4 Morales) to form a team composed of SPO3 Tabunyag, PO3 Perez, PO3 Hasim, PO2 Canete, PO2 Bobby Rey Bucoy (PO2 Bucoy), PO1 Insang, and PO1 Marlon Takazi M. Look (PO1 Look) and to schedule a buy-bust operation the next day. He also instructed the team to coordinate with agents from the Philippine Drug Enforcement Agency (PDEA).[8] PO1 Look was designated as the poseur-buyer while PO2 Bucoy and PDEA Agent Mark Dela Cruz were designated as the arresting officers.[9]

On September 11, 2009, the buy-bust team left the police station at 1:45 a.m. and went to Jaafar's house.[10]

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[2] *Id.* at 5.

[3] CA *rollo*, p. 66.

[4] *Id.*

[5] *Id.*

[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] *Id.*

[10] *Id.*

Jaafar met PO1 Look and the informant at the door of his house and asked them if they were buying shabu.[11] PO1 Look answered in the affirmative and gave Jaafar a marked ₱500.00 bill.[12] Jaafar called for Gani inside the house.[13] Gani came out and handed Jaafar a sachet containing shabu.[14] Jaafar gave the sachet to PO1 Look, who immediately lit a cigarette—the pre-arranged signal agreed upon by the buy-bust team.[15]

The police officers rushed to arrest Jaafar, but he managed to escape.[16] Jaafar threw away the marked ₱500.00 bill as he ran.[17] Eventually, the arresting officers caught up with him 30 meters away from his house.[18]

Immediately after the arrest, PO1 Look marked the confiscated sachet of shabu with his initials.[19] He then turned over the sachet and the marked ₱500.00 bill to their team leader, SPO4 Morales.[20] The buy-bust team brought Jaafar and Gani to the police station for investigation.[21]

Chief Larubis prepared a letter-request addressed to forensic chemist Melvin Manuel for the examination of the contents of the sachet.[22] Upon examination, the contents tested positive for methamphetamine hydrochloride.[23]

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[11] *Id.* at 67.

[12] *Id.*

[13] *Rollo*, p. 5.

[14] CA *rollo*, p. 67.

[15] *Id.*

[16] *Id.*

[17] *Rollo*, p. 5.

[18] CA *rollo*, p. 67.

[19] *Id.*

[20] *Id.*

[21] *Id.*

[22] *Id.*

[23] *Id.*

In his defense, Gani testified that he was at an internet cafe located near the police station at 2:00 a.m. on September 11, 2009.[24] After stepping out of the establishment, Gani was suddenly apprehended by unknown persons, who later identified themselves as PO1 Look and PO2 Bucoy.[25] He was detained at the police station for two (2) days and was subsequently transferred to the Bureau of Jail Management and Penology.[26] Gani claimed that he did not know the reason for his arrest.[27]

Meanwhile, Jaafar testified that he was at the internet cafe at 12:00 m.n. on September 11, 2009, watching people play video games.[28] He left after two (2) hours and made his way home.[29] Upon entering an alley, Jaafar saw six (6) persons headed towards him.[30] One of them pointed a gun at him and told him not to run. Out of fear, he ran towards the main road.[31] However, the six (6) persons, who turned out to be police officers, caught up with him.[32] They conducted a body search but found nothing since Jaafar was only wearing boxer shorts and a t-shirt. Jaafar was detained after his arrest and brought to the Office of the City Prosecutor at the City Hall of Isabela the next day.[33]

The Regional Trial Court found that the prosecution clearly established all the elements of the crime of illegal sale of drugs.[34] Although the chain of custody rule was not strictly complied with, the trial court ruled that the integrity and evidentiary value of the confiscated shabu sachet had been duly

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[24] *Id.* at 68. In the Regional Trial Court Decision, it was indicated that Gani was at the internet cafe on September 11, 2012.

[25] *Id.*

[26] *Id.*

[27] *Id.*

[28] *Rollo*, p. 6.

[29] CA *rollo*, p. 68.

[30] *Id.* at 69.

[31] *Id.*

[32] *Id.*

[33] *Id.*

[34] *Id.* at 70.

preserved.[35] It applied the legal presumption of regularity in the performance of duties by the police officers.[36]

Jaafar primarily relied on denial for his defense and presented a different story of what had transpired. The Regional Trial Court considered the version of the defense weak.[37] It could not have foreclosed the possibility that Jaafar committed the crime.[38] The Regional Trial Court also found it unusual that Jaafar never exhibited any form of resistance.[39] Instead, he remained cool and calm.[40] This, according to the Regional Trial Court, was an unusual reaction since a person whose rights were allegedly transgressed would offer some form of resistance.[41]

In its Decision[42] dated May 15, 2012, the Regional Trial Court convicted Jaafar for violation of Article II, Section 5 of Republic Act No. 9165. However, it acquitted Gani for insufficiency of evidence. The dispositive portion of the Decision reads:

> WHEREFORE, premises considered, accused Ahmad Gani Y Idjirani a.k.a. "Botchoy" is hereby ACQUITTED of the above charge for want of sufficient evidence. The property bond posted for his provisional liberty is ordered cancelled and returned to its lawful owner.
>
> WHEREAS, accused Monir Jaafar y Tambuyong a.k.a. "Mana" is found GUILTY beyond reasonable doubt of the offense of illegal sale of 0.0604 gram of shabu, a dangerous drug, in violation of Section 5, Article II of Republic Act No. 9165, and is hereby sentenced to suffer the penalty of LIFE IMPRISONMENT and to pay a fine of ₱500,000.00.
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> SO ORDERED.[43]

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[35] *Id.* at 71.

[36] *Id.* at 72.

[37] *Id.*

[38] *Id.* at 72.

[39] *Id.* at 73.

[40] *Id.*

[41] *Id.*

[42] *Id.* at 65-75. The Decision was penned by Presiding Judge Danilo M. Bucoy of Branch 2, Regional Trial Court, Isabela City, Basilan.

[43] *Id.* at 75.

Jaafar filed an appeal before the Court of Appeals and raised the following errors: (1) the prosecution failed to prove his guilt beyond reasonable doubt; and (2) the arresting team violated the chain of custody rule under Section 21 of Republic Act No. 9165.[44]

Jaafar argued that the shabu was not formally offered as evidence during trial; rather, it was only presented during the hearing for the application for bail. Hence, the Regional Trial Court should not have considered the shabu as evidence. Jaafar further argued that the prosecution failed to show an unbroken chain of custody of the shabu allegedly obtained from him. He pointed out that the police officers neither photographed nor inventoried the seized shabu sachet and emphasized that there were no representatives from the media and the Department of Justice as well as an elected public official to witness the proceedings.[45]

On the other hand, the People of the Philippines argued that the alleged non-compliance with the chain of custody rule was not fatal to the prosecution's case considering that the integrity and evidentiary value of the seized items were properly preserved.[46]

The Court of Appeals ruled that although the sachet of shabu was not formally offered in evidence during trial, it was nevertheless identified by PO1 Look and the forensic chemist. Being part of their direct testimonies, the shabu formed part of the records of the case. Hence, the Court of Appeals ruled that the Regional Trial Court did not err in considering the shabu as evidence.[47]

The Court of Appeals also agreed with the Regional Trial Court with regard to the alleged violation of the chain of custody

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[44] *Rollo*, p. 6.

[45] CA *rollo*, pp. 57-63.

[46] *Id.* at 88-91.

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

rule. Although there was a departure in the procedure mandated under Section 21 of Republic Act No. 9165, the Court of Appeals ruled that it did not automatically render the confiscated drugs inadmissible since the integrity of the seized shabu had been kept intact.[48]

In its Decision[49] dated February 24, 2015, the Court of Appeals affirmed the Regional Trial Court Decision in toto.

Aggrieved, Jaafar filed a Notice of Appeal on March 20, 2015, which was noted and given due course in the Court of Appeals Resolution dated May 11, 2015.[50]

In the Resolution dated October 7, 2015, this Court noted the records forwarded by the Court of Appeals and informed the parties that they could submit their supplemental briefs.[51]

On November 25, 2015, the People of the Philippines, through the Office of the Solicitor General, filed a Manifestation stating that it would dispense with the filing of a supplemental brief since all its arguments had been sufficiently raised in its Appellee's Brief dated August 22, 2013.[52]

On January 26, 2016, accused-appellant filed a similar Manifestation stating that he would no longer file a supplemental brief and instead would adopt his appellant's brief.[53]

The issue for this Court's resolution is whether the guilt of accused-appellant was proven beyond reasonable doubt despite the non-observance of the required procedure under Section 21 of Republic Act No. 9165.

This Court grants the appeal and acquits accused-appellant Monir Jaafar *y* Tambuyong.

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[48] *Id.* at 8-10.

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

[50] *Id.* at 1.

[51] *Id.* at 17.

[52] *Id.* at 19.

[53] *Id.* at 25.

In all prosecutions for violations of Republic Act No. 9165, the *corpus delicti* is the dangerous drug itself.[54] Its existence is essential to a judgment of conviction.[55] Hence, the identity of the dangerous drug must be clearly established.[56]

Narcotic substances are not readily identifiable.[57] To determine their composition and nature, they must undergo scientific testing and analysis. Narcotic substances are also highly susceptible to alteration, tampering, or contamination.[58] It is imperative, therefore, that the drugs allegedly seized from the accused are the very same objects tested in the laboratory and offered in court as evidence.[59] The chain of custody, as a method of authentication, ensures that unnecessary doubts involving the identity of seized drugs are removed.[60]

Section 21 of Republic Act No. 9165 provides the manner by which law enforcement officers should handle seized dangerous drugs:

SECTION 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment*. — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

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[54] *People v. Simbahon*, 449 Phil. 74, 81 (2003) [Per *J.* Ynares-Santiago, First Division].

[55] *Id.*

[56] *Id.* See also *People v. Laxa*, 414 Phil. 156, 170 (2001) [Per *J.* Mendoza, Second Division]; *Mallillin v. People*, 516 Phil. 576, 586 (2008) [Per *J.* Tinga, Second Division].

[57] *Mallillin v. People*, 516 Phil. 576, 588 (2008) [Per *J.* Tinga, Second Division].

[58] *Id.*

[59] *Id.*

[60] *Id.* at 586.

(1) The apprehending team having initial custody and control of the drugs ***shall***, immediately after seizure and confiscation, ***physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official*** who shall be required to sign the copies of the inventory and be given a copy thereof[.] (Emphasis supplied)

The Implementing Rules and Regulations of Republic Act No. 9165 further provide:

Section 21. Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: *Provided*, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; ***Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items***[.] (Emphasis supplied)

While it may be true that non-compliance with Section 21 of Republic Act No. 9165 is not fatal to the prosecution's case provided that the integrity and evidentiary value of the seized items are properly preserved by the apprehending officers,[61] this exception will only be triggered by the existence of a ground that justifies departure from the general rule.[62]

This Court finds that the prosecution failed to show any justifiable reason that would warrant non-compliance with the mandatory requirements in Section 21 of Republic Act No. 9165.

Although the buy-bust team market[63] and conducted a physical inventory[64] of the seized sachet of shabu, the records do not show that the seized sachet had been photographed.

Furthermore, there is absolutely no evidence to show that the physical inventory was done in the presence of accused-appellant or his representative, representatives from the media and the Department of Justice, and an elected public official.[65] The poseur-buyer, PO1 Look, testified as follows:

Q. Can you go over this Certificate of [Inventory], is there an entry under the witnesses Media, do you see any name there and signature?

A. No, sir[.]

Q. How about representative from Department of Justice, can you see any name there and their corresponding signature?

A. None, sir[.]

Q. In the entry Elected Official, do you see any name there and their signature?

A. None, sir.

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[61] *People v. Pringas*, 558 Phil. 579, 593 (2007) [Per J. Chico-Nazario, Third Division].

[62] *Id.* at 594.

[63] *Rollo*, p. 9.

[64] *Id.*

[65] Rep. Act No. 9165, Sec. 21(a).

Q. And lastly[,] the representative of the accused, can you see any printed name there and signature?

A. None, sir.[66]

The buy-bust team had an entire day within which to coordinate with the persons required by law to be present during the physical inventory of the seized drugs. The Chief of Police received the confidential tip early in the morning.[67] He immediately instructed SPO4 Morales to form a buy-bust team and coordinate with agents from the Philippine Drug Enforcement Agency.[68] The buy-bust team had ample time to contact an elected public official and representatives from the media and the Department of Justice.

The prosecution established during trial[69] and on appeal[70] that the buy-bust operation had been carefully planned by narrating the events with intricate detail. However, at the same time, the prosecution relied heavily on the exception to the chain of custody rule.[71] Worse, the prosecution did not even offer any explanation on why they failed to comply with what was mandated under the law. Indeed, if the police authorities had carefully planned the buy-bust operation, then there was no reason for them to neglect such important requirements. They cannot feign ignorance of the exacting standards under Section 21 of Republic Act No. 9165. Police officers are presumed and are required to know the laws they are charged with executing.

This Court cannot merely gloss over the glaring procedural lapses committed by the police officers, especially when what had been allegedly seized from accused-appellant was only

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[66] CA *rollo*, p. 59.

[67] *Rollo*, p. 4.

[68] *Id.*

[69] CA *rollo*, pp. 15-16.

[70] *Id.* at 84-86.

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

0.0604 grams of shabu.[72] Recent cases[73] have highlighted the need to ensure the integrity of seized drugs in the chain of custody when only a miniscule amount of drugs had been allegedly seized from the accused.

In *People v. Holgado*,[74] this Court held that "[c]ourts must employ heightened scrutiny, consistent with the requirement of proof beyond reasonable doubt, in evaluating cases involving miniscule amounts of drugs . . . [as] they can be readily planted and tampered."[75]

Non-observance of the mandatory requirements under Section 21 of Republic Act No. 9165 casts doubt on the integrity of the shabu supposedly seized from accused-appellant. This creates reasonable doubt in the conviction of accused-appellant for violation of Article II, Section 5 of Republic Act No. 9165.

WHEREFORE, the Decision dated February 24, 2015 of the Court of Appeals in CA-G.R. CR HC No. 01053-MIN is **REVERSED** and **SET ASIDE**. Accused-appellant Monir Jaafar *y* Tambuyong is **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered immediately **RELEASED** from detention, unless he is confined for any other lawful cause.

Let a copy of this Decision be furnished to the Director of the Bureau of Corrections, Muntinlupa City, for immediate implementation. The Director of the Bureau of Corrections is

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[72] CA *rollo*, p. 14.

[73] *People v. Holgado*, G.R. No. 207992, August 11, 2014, 732 SCRA 554, 569 (2014) [Per *J.* Leonen, Third Division]; *Tuano v. People*, G.R. No. 205871, September 28, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/september2016/205871.pdf > [Per *J.* Leonen, Second Division]; *People v. Talvo*, G.R. No. 215340, July 13, 2016 <sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/july2016/215340.pdf> [Per *J.* Leonen, Second Division].

[74] G.R. No. 207992, August 11, 2014, 732 SCRA 554 [Per *J.* Leonen, Third Division].

[75] *Id.* at 576-577.

directed to report to this Court, within five (5) days from receipt of this Decision, the action he has taken. Copies shall also be furnished to the Director General of the Philippine National Police and the Director General of the Philippine Drug Enforcement Agency for their information.

SO ORDERED.

Carpio (Chairperson), Velasco, Jr.,[*] *Peralta,* and *Mendoza, JJ.,* concur.

SECOND DIVISION

[G.R. No. 220506. January 18, 2017]

C.I.C.M. MISSION SEMINARIES (MARYHURST, MARYHEIGHTS, MARYSHORE AND MARYHILL) SCHOOL OF THEOLOGY, INC., FR. ROMEO NIMEZ, CICM, *petitioners, vs.* **MARIA VERONICA C. PEREZ,** *respondent*.

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PETITION FOR *CERTIORARI*; FAILURE TO APPEND THE REQUIRED AFFIDAVIT OF SERVICE TO THE PETITION FOR *CERTIORARI* IS A FATAL DEFECT.— [T]he petitioners failed to append the required affidavit of service. The rule is, such affidavit is essential to due process and the orderly administration of justice even if it is used merely as proof that service has been made on the other party. The utter disregard of this requirement as held in a catena of cases cannot

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[*] Designated additional member per Special Order No. 2416-A dated January 4, 2017.

be justified by harking to substantial justice and the policy of liberal construction of the Rules. Indeed, technical rules of procedure are not meant to frustrate the ends of justice. Rather, they serve to effect the proper and orderly disposition of cases and, thus, effectively prevent the clogging of court dockets. Thus, in *Ferrer v. Villanueva,* the Court held that petitioner's failure to append the proof of service to his petition for *certiorari* was a fatal defect. Hence, the denial of this case is in order.

2. **ID.; CIVIL PROCEDURE; APPEALS; THE COURT'S DUTY IN A RULE 45 PETITION, ASSAILING THE DECISION OF THE COURT OF APPEALS (CA) IN A LABOR CASE ELEVATED TO IT THROUGH A RULE 65 PETITION, IS LIMITED ONLY TO THE DETERMINATION OF WHETHER THE CA COMMITTED AN ERROR IN JUDGMENT IN DECLARING THE ABSENCE OR EXISTENCE OF GRAVE ABUSE OF DISCRETION ON THE PART OF THE NATIONAL LABOR RELATIONS COMMISSION (NLRC).—** [T]he Court's duty in a Rule 45 petition, assailing the decision of the CA in a labor case elevated to it through a Rule 65 petition, is limited only to the determination of whether the CA committed an error in judgment in declaring the absence or existence, as the case may be, of grave abuse of discretion on the part of the NLRC. x x x. Grave abuse of discretion, which has been defined as a capricious and whimsical exercise of judgment so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, requires proof that the CA committed errors such that its decision was not made in contemplation of law. The burden of proof rests upon the party who asserts. The petitioners, however, failed to carry out such burden.

3. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; BACKWAGES AND SEPARATION PAY; THE PAYMENT OF BACKWAGES AND SEPARATION PAY IN LIEU OF REINSTATEMENT OF AN ILLEGALLY DISMISSED EMPLOYEE SHALL BE COMPUTED FROM THE TIME OF DISMISSAL UNTIL THE FINALITY OF THE DECISION ORDERING THE SEPARATION PAY; RATIONALE.—** The decision of the CA is based on long standing jurisprudence that in the event the aspect of reinstatement is disputed, backwages,

including separation pay, shall be computed from the time of dismissal until the finality of the decision ordering the separation pay. In *Gaco v. NLRC,* it was ruled that with respect to the payment of backwages and separation pay in lieu of reinstatement of an illegally dismissed employee, the period shall be reckoned from the time compensation was withheld up to the finality of this Court's decision. This was reiterated in *Surima v. NLRC* and *Session Delights Ice Cream and Fast Foods v. CA.* The reason for this was explained in *Bani Rural Bank, Inc. v. De Guzman.* When there is an order of separation pay (in lieu of reinstatement or when the reinstatement aspect is waived or subsequently ordered in light of a supervening event making the award of reinstatement no longer possible), the employment relationship is terminated only upon the finality of the decision ordering the separation pay. The finality of the decision cuts-off the employment relationship and represents the final settlement of the rights and obligations of the parties against each other. Hence, backwages no longer accumulate upon the finality of the decision ordering the payment of separation pay because the employee is no longer entitled to any compensation from the employer by reason of the severance of his employment.

4. ID.; ID.; ID.;ID.; IF THE DECISION OF THE LABOR ARBITER, WHICH GRANTED SEPARATION PAY IN LIEU OF REINSTATEMENT, IS APPEALED BY ANY PARTY, THE EMPLOYER-EMPLOYEE RELATIONSHIP SUBSISTS AND UNTIL SUCH TIME WHEN DECISION BECOMES FINAL AND EXECUTORY, THE EMPLOYEE IS ENTITLED TO ALL THE MONETARY AWARDS AWARDED BY THE LABOR ARBITER.— [I]t does not matter if the delay caused by an appeal was brought about by the employer or by the employee. The rule is, if the LA's decision, which granted separation pay in lieu of reinstatement, is appealed by any party, the employer-employee relationship subsists and until such time when decision becomes final and executory, the employee is entitled to all the monetary awards awarded by the LA. In this case, respondent remained an employee of the petitioners pending her partial appeal. Her employment was only severed when this Court, in G.R. No. 200490, affirmed with finality the rulings of the CA and the labor tribunals declaring her right to separation pay instead of actual reinstatement. Accordingly, she is entitled to have her backwages and separation pay computed until October 4, 2012, the date

when the judgment of this Court became final and executory, as certified by the Clerk of Court, per the Entry of Judgment in G.R. No. 200490. The Court would not have expected the CA and the NLRC to rule contrary to the above pronouncements. If it were otherwise, all employees who are similarly situated will be forced to relinquish early on their fight for reinstatement, a remedy, which the law prefers over severance of employment relation. Furthermore, to favor the petitioners' position is nothing short of a derogation of the State's policy to protect the rights of workers and their welfare under Article II, Section 8 of the 1987 Constitution.

5. ID.; ID.; ID.; ID.; THE RECOMPUTATION OF THE AWARDS STEMMING FROM AN ILLEGAL DISMISSAL CASE DOES NOT CONSTITUTE AN ALTERATION OR AMENDMENT OF THE FINAL DECISION BEING IMPLEMENTED; HENCE, NOT VIOLATIVE OF THE PRINCIPLE OF IMMUTABILITY OF FINAL JUDGMENTS, AS THE ILLEGAL DISMISSAL RULING STANDS AND ONLY THE COMPUTATION OF THE MONETARY CONSEQUENCES OF THE DISMISSAL IS AFFECTED.— [T]he Court disagrees with the petitioners' assertion that a recomputation would violate the doctrine of immutability of judgment. It has been settled that no essential change is made by a recomputation as this step is a necessary consequence that flows from the nature of the illegality of dismissal declared in that decision. By the nature of an illegal dismissal case, the reliefs continue to add on until full satisfaction thereof. The recomputation of the awards stemming from an illegal dismissal case does not constitute an alteration or amendment of the final decision being implemented. The illegal dismissal ruling stands; only the computation of the monetary consequences of the dismissal is affected and this is not a violation of the principle of immutability of final judgments.

APPEARANCES OF COUNSEL

Abelardo T. Domondon for petitioners.
Placido & Chan Law Offices for respondent.

D E C I S I O N

MENDOZA, *J.*:

In this petition for review on *certiorari*[1] under Rule 45 of the Rules of Court, petitioner C.I.C.M. Mission Seminaries (Maryhurst, Maryheights, Maryshore and Maryhill) School of Theology, Inc., and Fr. Romeo Nimez, CICM *(petitioners)*, seek the review of the May 27, 2015 Decision[2] and September 7, 2015 Resolution[3] of the Court of Appeals *(CA)* in CA-G.R. SP. No. 137132.

In the assailed rulings, the CA dismissed the petitioners' petition for *certiorari* filed under Rule 65 of the Rules of Court questioning the September 8, 2014 Resolution of the National Labor Relations Commission *(NLRC)* in LER Case No. 07-205-14, which affirmed the July 10, 2014 Order of the Labor Arbiter *(LA)* in NLRC Case No. NCR-12-14242-07, issued in favor of Maria Veronica C. Perez *(respondent)*.

The Antecedents

This controversy is an offshoot of an illegal dismissal case filed by the respondent against the petitioners. In its June 16, 2008 Decision, the LA recognized respondent's right to receive from the petitioners backwages and separation pay in lieu of reinstatement. Thus, it ordered the petitioners to pay respondent the aggregate amount of ₱286,670.58. The LA decision was affirmed by the NLRC, by the CA and by this Court in G.R. No. 200490.

The decision became final and executory on October 4, 2012, as evidenced by the Entry of Judgment. Consequently, respondent moved for the issuance of a writ of execution. The petitioners

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[1] *Rollo,* pp. 8-25.

[2] *Id.* at 26-39. Penned by Associate Justice Marlene Gonzales-Sison, with Associate Justices Remedios A. Salazar-Fernando and Ramon A. Cruz, concurring.

[3] *Id.* at 40-41. Penned by Associate Justice Marlene Gonzales-Sison, with Associate Justices Remedios A. Salazar-Fernando and Ramon A. Cruz, concurring.

opposed and moved for the issuance of a certificate of satisfaction of judgment, alleging that their obligation had been satisfied by the release of the cash bond in the amount of ₱272,337.05 to respondent.

In its July 10, 2014 Order, the LA ruled that the cash bond posted by the petitioners was insufficient to satisfy their obligation. Thus, it ordered the issuance of a writ of execution, to wit:

> After evaluation, this Office deems it proper to grant [respondent's] Motion for Issuance of Writ of Execution. The fact that [petitioner CICM's] cash bond has been released to respondent in the amount of ₱272,337.05 does not mean full satisfaction of the award as petitioner CICM insists.
>
> The Decision dated 16 June 200[8] which was affirmed by the Commission, the Court of Appeals and the Supreme Court specifically states that [respondent] is entitled to backwages and separation pay until the finality of the Decision. Further, the Resolution of the Court of Appeals dated February 2, 2012 stressed the need to recompute the monetary award specifically with regard to the payment of backwages, separation pay and attorney's fees, so as to update the total monetary award to which respondent is entitled in accordance with prevailing laws and jurisprudence.
>
> This Office therefore ordered the recomputation of complainant's award of additional backwages from 07 June 2008 until 04 October 2012, the finality of the Supreme Court decision, and additional separation pay also until 04 October 2012. The total award therefore is ₱1,847,088.89. From this amount should be deducted the amount respondent received at ₱272,337.05. Thus, the additional backwages and separation pay due is ₱1,575,751.84. Since there is no more legal hindrance in the enforcement of the judgment; this Office orders the issuance of the writ of execution.[4]

Undaunted, the petitioners elevated an appeal before the NLRC. Nevertheless, in its September 8, 2014 Decision, the NLRC affirmed the ruling of the LA.

Aggrieved, the petitioners filed a petition for *certiorari* with the CA.

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[4] The date of the LA's Decision should be 2008 not 2003.

Meanwhile, the LA issued an undated writ of execution addressed to the Sheriff, who, in turn, implemented it by garnishing upon CICM's bank deposit with BPI Family Savings Bank. CICM moved for the urgent quashal of the said writ and for the garnishment to be lifted.

On January 14, 2015, the LA issued an order lifting the notice of garnishment made on CICM's bank accounts. Nonetheless, on April 13, 2015, the LA still ordered the issuance of a writ of execution to enforce the balance of the judgment award. The dispositive portion reads:

> WHEREFORE, premises considered, the Urgent Motion to Quash Writ of Execution is granted. The Writ of Execution dated 3 October 2014 is hereby ordered quashed effective immediately. The Motion to Lift Garnishment of CICM Missionaries, Inc.'s account with BPI Family Savings Bank will be lifted upon release of its bond covered by BPI Check No. 0000704053 in the amount of ₱266,670.58 (O.R. No. 6742637) to [respondent].
>
> Let a Writ of Execution be issued against [petitioners] to enforce the balance of the judgment award.[5]

On May 27, 2015, the CA dismissed the petition filed by the petitioners. The petitioners moved for reconsideration. In its September 7, 2015 Resolution, the CA denied their motion.

Hence, this petition.

The petitioners, therefore, ask this Court to determine "what should be the legal basis for the computation of the backwages and separation pay of an illegally dismissed employee in a case where reinstatement was not ordered despite appeals made by said employee which [delayed] the final resolution of the issue on reinstatement."[6]

The petitioners challenge the affirmation by the CA and NLRC of the July 10, 2014 Order of the LA, which recomputed respondent's award of additional backwages and separation pay

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[5] See Petition, *Rollo*, p. 13.

[6] *Id.* at 14.

until October 4, 2012, the finality of this Court's decision in G.R. No. 200490. They argue that the computation of backwages and separation pay of respondent should be only up to June 16, 2008, the date when the LA rendered her decision in the main case and which was also the date when reinstatement was refused. They contend that although the cases cited by the CA - *Surima v. NLRC,*[7] *Gaco v. NLRC,*[8] *Oscar Ledesma and Company v. NLRC,*[9] *Labor v. NLRC,*[10] *Rasonable v. NLRC*[11] and *Bustamante v. NLRC,*[12] commonly held that the computation of the separation pay and backwages shall be up to the time of finality of this Court's decision, the same were not applicable to their case. They point varying factual antecedents and claim that in the cases mentioned, the employers were the ones who appealed, thereby delaying the resolution of the illegal dismissal cases before the LA. Thus, the increase in the awards should necessarily be shouldered by the employer. This circumstance, however, is not present in this case. In other words, they posit that if the employer caused the delay in satisfying the judgment award, the computation should be up to the finality of the case. If it were the employee's fault, as in this case, the computation should only run until the time actual reinstatement is no longer possible nor practicable.[13]

In her *Comment,*[14] respondent argued that the recomputation of the total monetary award should be until October 4, 2012 (the date when the main case became final); and that her appeal of the main case should not prejudice her as she had the right to file the same.

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[7] 353 Phil. 461 (1998).

[8] 300 Phil. 261(1994).

[9] 316 Phil. 80 (1995).

[10] 318 Phil. 219 (1995).

[11] 324 Phil. 191 (1996).

[12] 325 Phil. 415 (1996).

[13] *Rollo,* p. 21.

[14] *Id.* at 60-74.

In their *Reply*,[15] the petitioners contended that the computation made by the LA in the main case, which has become final and executory, could no longer be disturbed following the doctrine of immutability of judgment.

The Court's Ruling

The Court finds no merit in the petition.

To begin with, the petitioners failed to append the required affidavit of service. The rule is, such affidavit is essential to due process and the orderly administration of justice even if it is used merely as proof that service has been made on the other party.[16] The utter disregard of this requirement as held in a catena of cases cannot be justified by harking to substantial justice and the policy of liberal construction of the Rules. Indeed, technical rules of procedure are not meant to frustrate the ends of justice. Rather, they serve to effect the proper and orderly disposition of cases and, thus, effectively prevent the clogging of court dockets.[17] Thus, in *Ferrer v. Villanueva*,[18] the Court held that petitioner's failure to append the proof of service to his petition for *certiorari* was a fatal defect.

Hence, the denial of this case is in order.

For the guidance of the bench and the bar, however, the Court opts to also delve into the merits of the case.

As a precept, the Court's duty in a Rule 45 petition, assailing the decision of the CA in a labor case elevated to it through a Rule 65 petition, is limited only to the determination of whether the CA committed an error in judgment in declaring the absence or existence, as the case may be, of grave abuse of discretion on the part of the NLRC.[19]

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[15] *Id.* at 106-109.

[16] *Ang Biat Huan Sons Industries, Inc. v. Court of Appeals*, 547 Phil. 588, 569 (2007).

[17] *Ferrer v. Villanueva*, 557 Phil. 643, 648 (2007).

[18] *Id.*

[19] *Brown Madonna Press, Inc. v. Casas*, G.R. No. 200898, June 15, 2015, 757 SCRA 525, 536.

As a consequence, the Court shall examine only whether the CA erred in not finding grave abuse of discretion when the NLRC affirmed the LA's findings that the separation pay in lieu of reinstatement as well as backwages due to respondent should be recomputed until the finality of the Court's decision in G.R. No. 200490, despite the fact that the delay in the resolution of the said case was brought about by respondent herself.

On this point, the Court rules in the negative.

Grave abuse of discretion, which has been defined as a capricious and whimsical exercise of judgment so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law,[20] requires proof that the CA committed errors such that its decision was not made in contemplation of law. The burden of proof rests upon the party who asserts.[21]

The petitioners, however, failed to carry out such burden.

The decision of the CA is based on long standing jurisprudence that in the event the aspect of reinstatement is disputed, backwages, including separation pay, shall be computed from the time of dismissal until the finality of the decision ordering the separation pay. In *Gaco v. NLRC*,[22] it was ruled that with respect to the payment of backwages and separation pay in lieu of reinstatement of an illegally dismissed employee, the period shall be reckoned from the time compensation was withheld up to the finality of this Court's decision. This was reiterated in *Surima v. NLRC*[23] and *Session Delights Ice Cream and Fast Foods v. CA.*[24]

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[20] *United Coconut Planters Bank v. Looyuko*, 560 Phil. 581, 591-592 (2007).

[21] In *Acabal v. Acabal*, 494 Phil. 528, 541 (2005), this Court has reiterated that [b]asic is the rule in evidence that the burden of proof lies upon him who asserts it, not upon him who denies, since, by the nature of things, he who denies a fact cannot produce any proof of it.

[22] *Supra* note 8.

[23] 353 Phil. 461 (1998).

[24] 625 Phil. 612 (2010).

The reason for this was explained in *Bani Rural Bank, Inc. v. De Guzman*.[25] When there is an order of separation pay (in lieu of reinstatement or when the reinstatement aspect is waived or subsequently ordered in light of a supervening event making the award of reinstatement no longer possible), the employment relationship is terminated only upon the finality of the decision ordering the separation pay. The finality of the decision cuts-off the employment relationship and represents the final settlement of the rights and obligations of the parties against each other. Hence, backwages no longer accumulate upon the finality of the decision ordering the payment of separation pay because the employee is no longer entitled to any compensation from the employer by reason of the severance of his employment. One cannot, therefore, attribute patent error on the part of the CA when it merely affirmed the NLRC's conclusion, which was clearly based on jurisprudence.

Plainly, it does not matter if the delay caused by an appeal was brought about by the employer or by the employee. The rule is, if the LA's decision, which granted separation pay in lieu of reinstatement, is appealed by any party, the employer-employee relationship subsists and until such time when decision becomes final and executory, the employee is entitled to all the monetary awards awarded by the LA.

In this case, respondent remained an employee of the petitioners pending her partial appeal. Her employment was only severed when this Court, in G.R. No. 200490, affirmed with finality the rulings of the CA and the labor tribunals declaring her right to separation pay instead of actual reinstatement. Accordingly, she is entitled to have her backwages and separation pay computed until October 4, 2012, the date when the judgment of this Court became final and executory, as certified by the Clerk of Court, per the Entry of Judgment in G.R. No. 200490.

The Court would not have expected the CA and the NLRC to rule contrary to the above pronouncements. If it were otherwise,

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[25] 721 Phil. 84 (2013).

all employees who are similarly situated will be forced to relinquish early on their fight for reinstatement, a remedy, which the law prefers over severance of employment relation. Furthermore, to favor the petitioners' position is nothing short of a derogation of the State's policy to protect the rights of workers and their welfare under Article II, Section 8 of the 1987 Constitution.[26]

The petitioners, nonetheless, claim that it was not their fault why the amounts due ballooned to the present level. They are mistaken. Suffice it to state that had they not illegally dismissed respondent, they will not be where they are today. They took the risk and must suffer the consequences.

Finally, the Court disagrees with the petitioners' assertion that a recomputation would violate the doctrine of immutability of judgment. It has been settled that no essential change is made by a recomputation as this step is a necessary consequence that flows from the nature of the illegality of dismissal declared in that decision. By the nature of an illegal dismissal case, the reliefs continue to add on until full satisfaction thereof. The recomputation of the awards stemming from an illegal dismissal case does not constitute an alteration or amendment of the final decision being implemented. The illegal dismissal ruling stands; only the computation of the monetary consequences of the dismissal is affected and this is not a violation of the principle of immutability of final judgments.[27]

WHEREFORE, the petition is **DENIED.** The Temporary Restraining Order issued by this Court on February 3, 2016 is hereby **LIFTED.**

SO ORDERED.

Carpio (Chairperson), Peralta, Leonen, and *Jardeleza,*[*] *JJ.,* concur.

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[26] The Constitution, Section 18. The State affirms labor as a primary social economic force. It shall protect the rights of workers and promote their welfare.

[27] *Session Delights Ice Cream and Fast Foods v. CA,* 625 Phil. 612, 629 (2010).

[*] Per Special Order No. 2416 dated January 4, 2017.

THIRD DIVISION

[G.R. No. 221071. January 18, 2017]

EDDIE E. DIZON and BRYAN R. DIZON, *petitioners, vs.* **YOLANDA VIDA P. BELTRAN,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; FORCIBLE ENTRY AND UNLAWFUL DETAINER; EXCEPTIONS TO IMMEDIATE EXECUTION OF JUDGMENT IN EJECTMENT CASES; EVEN IF THE APPEALING DEFENDANT WAS NOT ABLE TO FILE A SUPERSEDEAS BOND, AND MAKE PERIODIC DEPOSITS TO THE APPELLATE COURT, IMMEDIATE EXECUTION OF THE DECISION OF THE METROPOLITAN TRIAL COURT IS NOT PROPER WHERE SUPERVENING EVENTS OCCURRING SUBSEQUENT TO THE JUDGMENT BRING ABOUT A MATERIAL CHANGE IN THE SITUATION OF THE PARTIES WHICH MAKES THE EXECUTION INEQUITABLE, OR WHERE THERE IS NO COMPELLING URGENCY FOR THE EXECUTION BECAUSE IT IS NOT JUSTIFIED BY THE PREVAILING CIRCUMSTANCES.— [I]n *City of Naga v. Hon. Asuncion, et al.*, the Court has carved exceptions to immediate execution of judgment in ejectment cases, *viz*.: Petitioner herein invokes seasonably the exceptions to immediate execution of judgments in ejectment cases cited in *Hualam Construction and Dev't. Corp. v. Court of Appeals* and *Laurel v. Abalos*, thus: Where supervening events (occurring subsequent to the judgment) bring about a material change in the situation of the parties which makes the execution inequitable, or where there is no compelling urgency for the execution because it is not justified by the prevailing circumstances, the court may stay immediate execution of the judgment. Noteworthy, the foregoing exceptions were made in reference to Section 8, Rule 70 of the old Rules of Court which has been substantially reproduced as Section 19, Rule 70 of the 1997 Rules of Civil Procedure. Therefore, even if the appealing defendant was not able to file a supersedeas bond, and make periodic deposits to the appellate court,

immediate execution of the MTC decision is not proper where the circumstances of the case fall under any of the above-mentioned exceptions. x x x. By analogy, in the unlawful detainer case from which the instant petition arose, Eddie was originally a co-owner of the disputed property, and he remains in possession thereof. Vida, on the other, is not even a resident of Davao City. Moreover, prior to Vida's filing of the unlawful detainer case, Eddie had already instituted actions for nullification of the Deed and falsification of public documents. The Office of the Davao City Prosecutor had likewise made a preliminary determination of probable cause that forgery was committed. Eddie, thus, insists that no valid conveyance was made by Verona to Vida. In the mind of the Court, the foregoing are persuasive reasons justifying the non-immediate execution of the MTCC judgment despite the petitioners' belated posting of the supersedeas bond. Hence, the CA erred in declaring that the RTC improperly denied Vida's motion for the issuance of a writ of execution pending appeal.

2. ID.; EVIDENCE; DOCUMENTARY EVIDENCE; A DEFECTIVE NOTARIZATION WILL STRIP THE DOCUMENT OF ITS PUBLIC CHARACTER AND REDUCE IT TO A PRIVATE INSTRUMENT, CONSEQUENTLY, WHEN THERE IS A DEFECT IN THE NOTARIZATION OF A DOCUMENT, THE CLEAR AND CONVINCING EVIDENTIARY STANDARD NORMALLY ATTACHED TO A DULY-NOTARIZED DOCUMENT IS DISPENSED WITH, AND THE MEASURE TO TEST THE VALIDITY OF SUCH DOCUMENT IS PREPONDERANCE OF EVIDENCE.— In the case at bar, when the Deed was executed on December 1, 2009, Eddie claimed that he was abroad while Verona was already unconscious. Vida did not directly refute these allegations and instead pointed out that the Deed was pre-signed in April of 2008. The foregoing circumstances reduced the Deed into the category of a private instrument as can be drawn from the Court's discussion in *Adelaida Meneses (deceased) v. Venturozo, viz.*: As notarized documents, [Deeds] carry evidentiary weight conferred upon them with respect to their due execution and enjoy the presumption of regularity which may only be rebutted by evidence so clear, strong and convincing as to exclude all controversy as to falsity. The presumptions that attach to notarized documents can be affirmed only so long as it is beyond dispute that the notarization was regular. A defective notarization

will strip the document of its public character and reduce it to a private instrument. Consequently, when there is a defect in the notarization of a document, the clear and convincing evidentiary standard normally attached to a duly-notarized document is dispensed with, and the measure to test the validity of such document is preponderance of evidence.

3. ID.; SPECIAL CIVIL ACTIONS; FORCIBLE ENTRY AND UNLAWFUL DETAINER; THE ISSUE OF OWNERSHIP CANNOT BE DISREGARDED IN THE UNLAWFUL DETAINER CASE, BUT THE RESOLUTION OF THE ISSUE OF OWNERSHIP IS AT BEST PRELIMINARY.— In the instant petition, Vida impliedly admits the irregularity of the Deed's notarization as both of the vendors were not personally present. Consequently, due execution can no longer be presumed. Besides, the extant circumstances surrounding the controversy constitute preponderant evidence suggesting that forgery was committed. Eddie promptly filed a criminal case for falsification of documents and a civil case to nullify the Deed. Later, the Office of the Davao City Prosecutor found probable cause to indict Vida for falsification. Consequently, the issue of ownership cannot be disregarded in the unlawful detainer case. It bears stressing though that while the RTC aptly resolved the issue of ownership, it is at best preliminary and shall not be determinative of the outcome of the two other cases filed by Eddie against Vida.

APPEARANCES OF COUNSEL

Into Pantojan Feliciano-Braceros & Lumbatan Law Offices for petitioners.

Galgo Racho Wakan Law Firm for respondent.

D E C I S I O N

REYES, *J.*:

Before the Court is the petition for review on *certiorari*,[1] under Rule 45 of the Rules of Court, with prayer for the issuance

[1] *Rollo*, pp. 9-47.

of a temporary restraining order and/or writ of preliminary injunction, filed by Eddie E. Dizon (Eddie) and Bryan James R. Dizon (Bryan) (collectively, the petitioners) to challenge the Decision[2] rendered on January 23, 2015 and Resolution[3] issued on September 7, 2015 by the Court of Appeals (CA) in CA-G.R. SP No. 05256-MIN. The dispositive portion of the assailed decision reads:

> WHEREFORE, the instant petition is hereby GRANTED. The Decision dated 13 June 2012 of the Regional Trial Court of Davao City, Branch 14, is REVERSED and SET ASIDE. The Decision dated 11 November 2011 of the Municipal Trial Court in Cities of Davao City, Branch 1, in Civil Case No. 21[,]755-A-10, is REINSTATED. The Regional Trial Court of Davao City, Branch 14, is hereby ORDERED to issue a writ of execution for the enforcement of the MTCC Decision dated 11 November 2011.
>
> SO ORDERED.[4]

The assailed resolution denied the petitioners' motion for reconsideration.

Antecedents

Eddie started working as a seafarer in the 1980s.[5] He has two children, namely, Bryan and James Christopher R. Dizon (James).[6]

Eddie and Verona Juana Pascua-Dizon (Verona) (collectively, the Spouses Dizon) got married on March 8, 1995.[7] Verona was a housewife.[8] She and her mother, together with Bryan

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[2] Penned by Associate Justice Rafael Antonio M. Santos, with Associate Justices Edgardo T. Lloren and Edward B. Contreras, concurring; *id.* at 52-76.

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

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

[5] *Id.* at 125.

[6] *Id.* at 53.

[7] *See* Certificate of Marriage, *id.* at 136.

[8] *Id.* at 125.

and James, resided in the house erected on a 240-square-meter lot (disputed property) at No. 42 Mahogany Street, Nova Tierra Subdivision, Lanang, Davao City.[9] The disputed property was covered by Transfer Certificate of Title (TCT) No. T-351707[10] issued in 2002. The registered owners were "[Verona], married to [Eddie]."

In 2008, Verona filed before the Regional Trial Court (RTC) of Davao City a petition for the issuance of Temporary and Permanent Protection Orders against Eddie and James.[11]

On April 9, 2008, the Spouses Dizon entered into a Compromise Agreement,[12] whereby they contemplated selling the disputed property in the amount of not less than ₱4,000,000.00, which price shall be increased by ₱100,000.00 for every succeeding year until the same is finally sold. They would thereafter equally divide the proceeds from the sale.

On September 27, 2009, Eddie left the Philippines to work on board a ship.[13]

Sometime in October of 2009, Verona was confined at the Adventist Hospital in Bangkal, Davao City. She was transferred to Ricardo Limso Medical Center on November 30, 2009.[14] She died on December 8, 2009 due to cardio-respiratory arrest, with "*leukonoid reaction secondary to sepsis or malignancy (occult)*" as antecedent cause.[15]

Eddie claimed that he was unaware of Verona's hospital confinement. On December 9, 2009, his brother Jun Dizon (Jun), called him through the telephone and informed him about

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[9] *Id.* at 145.

[10] *Id.* at 137.

[11] Docketed as Case No. 055-08 and raffled to Branch 12, *id.* at 144-152.

[12] *Id.* at 138-139.

[13] *Id.* at 192.

[14] *Id.* at 193.

[15] *See* Certificate of Death, *id.* at 140.

Verona's death. Eddie intended to promptly return to the Philippines before Verona's burial. Hence, he advised Jun to ask Verona's relatives to wait for his arrival.[16]

It took a while before Eddie's employer finally permitted him to go home. Verona was already buried before Eddie's arrival on December 21, 2009.[17]

Thereafter, a copy of a Deed of Absolute Sale (Deed),[18] dated December 1, 2009, was shown to Eddie. Its subject was the disputed property conveyed to herein respondent, Yolanda Vida P. Beltran (Vida), for ₱1,500,000.00.[19]

Eddie alleged that the Deed was falsified, and his and Verona's signatures thereat were forgeries.[20]

In January of 2010, Eddie filed two complaints against Vida. One was a civil case for nullification of the Deed, and for payment of damages and attorney's fees.[21] The other was a criminal complaint for falsification of public document.[22] He also caused the annotation of a notice of *lis pendens* upon TCT No. T-351707.[23]

On April 6, 2010, TCT No. T-351707 was cancelled, and in its place, TCT No. T-146-2010002236 was issued in Vida's name.[24] Eddie belatedly discovered about the foregoing fact sometime in May 2010 after Davao Light and Power Company cut off the electrical connection purportedly upon the advice of the new owner of the disputed property.[25]

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[16] *Id.* at 192.

[17] *Id.* at 192-193.

[18] *Id.* at 141-142.

[19] *Id.* at 192.

[20] *Id.*

[21] *Id.* at 124-135.

[22] *Id.* at 156-162.

[23] *Id.* at 29.

[24] *Id.* at 194.

[25] *Id.* at 193.

Ruling of the Municipal Trial Court in Cities

In June of 2010, Vida filed before the Municipal Trial Court in Cities (MTCC) of Davao City an action for unlawful detainer[26] against the petitioners, James and their unnamed relatives, house helpers and acquaintances residing in the disputed property.[27]

Vida alleged that she is the registered owner of the disputed property. While the Deed evidencing the conveyance in her favor was executed on December 1, 2009, Eddie pre-signed the same on April 9, 2008 before he left to work abroad. The Spouses Dizon's respective lawyers witnessed the signing. After Verona's death, Vida tolerated the petitioners' stay in the disputed property. On May 18, 2010, Vida sent a formal letter requiring the petitioners to vacate the disputed property, but to no avail.[28]

The petitioners sought the dismissal of Vida's complaint arguing that at the time the Deed was executed, Verona was already unconscious. Eddie, on the other hand, could not have signed the Deed as well since he left the Philippines on September 27, 2009 and returned only on December 21, 2009. Further, Verona's signature appearing on the Deed was distinctly different from those she had affixed in her petition for the issuance of a temporary protection order and Compromise Agreement, dated March 26, 2008 and April 9, 2008, respectively. Besides, the purchase price of ₱1,500,000.00 was not in accord with the Spouses Dizon's agreement to sell the disputed property for not less than ₱4,000,000.00.[29]

On November 11, 2011, the MTCC rendered a Decision[30] directing the petitioners and their co-defendants to turn over to Vida the possession of the disputed property, and pay ₱1,000.00 monthly rent from July 12, 2010 until the said property

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[26] Docketed as Civil Case No. 21,755-A-10.

[27] *Rollo*, p. 187.

[28] *Id.* at 190.

[29] *Id.* at 192-193.

[30] Rendered by Presiding Judge Leo Tolentino Madrazo; *id.* at 187-200.

is vacated, ₱20,000.00 as attorney's fees and cost of suit. Vida was, however, ordered to pay therein defendants ₱414,459.78 as remaining balance relative to the sale.[31]

The MTCC rationalized as follows:

> The claim of [the petitioners] as to the falsity of the sale is a collateral attack on the generated title itself, which can only be impugned in a direct proceeding litigated for that matter. The fact that [Eddie] presigned the [Deed] prior to the death of [Verona], in the presence of counsels[,] which remained unrebutted[,] was in fact giving consent to the act of disposing the property to answer for any exigency or impending situation that will arise later[,] which may or may not be entirely connected with the medical requirements of his ailing spouse[,] whose health condition at that time of the execution [of the Deed] ha[d] apparently started to deteriorate. Records show [that] [Vida] incurred a hefty sum of One Million Eighty-Five Thousand Five Hundred and Forty pesos and twenty-one centavos **(₱1,085,540.21)** for both medical and burial expenses of the deceased of which [Eddie] failed to support in violation of the Civil Code on the rights and, [sic] obligation of the husband and wife to render mutual support.
>
> x x x x x x x x x
>
> While evidences were presented to prove the existence of fraud in the execution of the instrument[,] the same cannot be appreciated in this summary action for want of jurisdiction.
>
> x x x [A] notarized document carries the evidentiary weight conferred upon it with respect to its due execution, and documents acknowledged before a notary public have in their favor the presumption of regularity. x x x.
>
> x x x x x x x x x
>
> x x x The sole issue to be resolved is whether or not defendants unlawfully withheld the property sold to [Vida.]
>
> x x x x x x x x x
>
> While it is true that defendants herein filed both civil and criminal cases for the Nullification of the [Deed] and Falsification alleging forgeries, the issues therein are entirely different from this ejectment

[31] *Id.* at 200.

case. The criminal case, [sic] only proves the existence of probable cause to determine criminal culpability. The nullification tackles the validity or invalidity of the sale on grounds of falsity.

The prevailing doctrine is that suits or actions for the annulment of sale title or document do not abate any ejectment action respecting the same property x x x.

x x x x x x x x x

x x x [C]onsidering the conjugal nature of the property and the subsequent dissolution of the conjugal partnership upon the death of [Verona] on December 08, 2009, with the execution of conveyance in favor of [Vida], this Court deemed it equitable and just for [Vida], to return to [Eddie], [sic] the remaining balance of the sale representing the net amount less the total actual medical and burial expenses of [Verona] from the proceeds of the sale, in the amount of **FOUR HUNDRED, FOURTEEN THOUSAND FOUR HUNDRED, FIFTY-NINE PESOS AND SEVENTY-NINE centavos (₱414,459.79)** in the absence of evidence to that effect and for reasons of equity.[32]

Ruling of the RTC

The petitioners filed an appeal[33] before the RTC. During its pendency, Vida filed a motion for the issuance of a writ of execution. On June 13, 2012, the RTC reversed the MTCC ruling, dismissed the complaint for unlawful detainer and denied Vida's motion for the issuance of a writ of execution.[34] The RTC explained that:

Under Republic Act No. 7691 expanding the jurisdiction of the Metropolitan Trial Courts, [MTCCs], Municipal Trial Courts, and Municipal Circuit Trial Courts, amending Batas Pambansa [Blg.] 129, otherwise known as the "Judiciary Reorganization Act of 1980,["] paragraph 2, of Section 33 therein provides that the court of first level has "x-x- Exclusive Original jurisdiction over cases of forcible entry and unlawful detainer: Provided, **that when, in such cases,**

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[32] *Id.* at 196-199.

[33] Docketed as Civil Case No. 34,450-2012.

[34] Rendered by Presiding Judge George E. Omelio; *rollo*, pp. 201-207.

the defendant raises the question of ownership in his pleadings and the question of possession cannot he resolved without deciding the issue of ownership[, the latter] shall be resolved only to determine the issue of possession[.][”] x x x

In the pleadings of the [petitioners] filed before the court a quo, and even in their memorandum on appeal, they vigorously raise[d] the question of ownership of [Vida] based on the alleged notarized [Deed] signed by [Eddie] in favor of [Vida] where the latter derived her so-called ownership over the subject premises[.] Truly indeed upon examination by any sensible man[,] it would reveal that the signature[s] of [the Spouses Dizon] appearing at the bottom of the alleged Deed [were] falsified x x x. Thus, a document challenged by a party in litigation as falsified may be proved without resorting to an opinion of handwriting experts. x x x.

In another case[,] the Supreme Court held that: “x-x- A finding of forgery does not entirely depend on the testimony of handwriting experts. Although it is useful[,] the judge still exercises independent judgment on the issue of **authenticity of the signatures under scrutiny by comparing the alleged forged signature and the authentic and genuine signatures of the person whose signature is theorized upon to have been forged**. x x x

This court x x x took occasion in comparing and examining the signature of [Verona] in the [Deed] x x x vis-a-vis her signature appearing in the compromise agreement executed [with Eddie] x x x[.] [The comparison] lucidly showed that the signatures of [Verona] [were] x x x very different from each other and [the differences are] detectable by a human eye. x x x.

x x x x x x x x x

Another thing that caught the curiosity of this court is the stipulation contained in the compromise agreement x x x wherein [the Spouses Dizon] agreed x x x that the “x-x- net selling price of the said conjugal property should be sold not lower than FOUR MILLION (₱4,000,000.00) PESOS for the year 2008 x x x.”

x x x x x x x x x

x x x [T]here was never proof adduced that the compromise agreement adverted to was rescinded or modified by the [Spouses Dizon]. To the view of this Court[,] the consideration of the said [Deed] x x x has an indicia of fraud x x x [and] the signature[s] of

the [Spouses Dizon] as falsified. [A] [f]alsified document cannot give right or ownership to a party who uses it.

x x x x x x x x x

x x x To justify an action for unlawful detainer[,] **the permission or tolerance must have been present at the beginning of the possession**[.]-x-x-x- Since the complaint did not satisfy the jurisdictional requirement of a valid cause for unlawful detainer, the [MTCC] had no jurisdiction over the case. x x x.[35] (Emphasis and underlining in the original)

Ruling of the CA

Vida assailed the foregoing *via* a petition for review, which the CA granted in the herein assailed decision and resolution. The CA's reasons are cited below:

[Vida] was able to sufficiently allege and consequently established the requisites of unlawful detainer.

First, [Vida] alleged that she is the registered owner of the [disputed] property and she merely tolerated the continuous possession of the [petitioners] [of] the [disputed] property after she purchased it and had it titled in her name. *Second*, [the petitioners'] possession became illegal upon notice by [Vida] to [the petitioners] of the termination of the [petitioners'] right of possession as shown by the Notice to Vacate dated 18 May 2010 sent by [Vida's] counsel to [the petitioners]. *Third*, [the petitioners] refused to vacate the [disputed] property x x x thereby depriving [Vida] of the enjoyment thereof. And *fourth*, [Vida] instituted the complaint dated 03 June 2010 for unlawful detainer within one (1) year from demand to vacate the premises. x x x

x x x x x x x x x

x x x While the said [Deed] was questioned by [the petitioners] for being a nullity in a separate case, yet, it should be emphasized that the determination of the validity or the nullity of the [Deed] should be properly threshed out in that separate proceeding and not in the summary action for unlawful detainer. x x x.

x x x x x x x x x

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[35] *Id.* at 203-206.

x x x Nothing is more settled than the rule that "[i]n an unlawful detainer case, the sole issue for resolution is the physical or material possession of the property involved, independent of any claim of ownership by any of the parties. However, where the issue of ownership is raised, the courts may pass upon the issue of ownership in order to determine who has the right to possess the property. The Court stresses, however, that this adjudication is only an initial determination of ownership for the purpose of settling the issue of possession, the issue of ownership being inseparably linked thereto. The lower court's adjudication of ownership in the ejectment case is merely provisional and would not bar or prejudice an action between the same parties involving title to the property. It is, therefore, not conclusive as to the issue of ownership, which is the subject matter of a separate case for annulment of [the Deed] filed by [the petitioners].

x x x [T]he RTC[,] in resolving the issue of possession in the unlawful detainer case[,] has not only provisionally passed upon the issue of ownership of the [disputed] property but it in fact made a determinative and conclusive finding on the ownership thereof, contrary to the settled rule that in [an] unlawful detainer case, the only issue to be resolve[d] by the court is the physical or material possession of the property involved x x x.

x x x [W]hile the Court may make provisional determination of ownership in order to determine who between [Vida] and [the petitioners] had the better right to possess the property, yet, the court is proscribed from making a conclusive finding on this issue. x x x [T]hc RTC has already made a preemptive finding on the validity or invalidity of the document, [but] the resolution thereof properly pertains to a separate proceeding pending before it in a separate case. x x x.

x x x x x x x x x

x x x [T]his Court agrees with the contention of [Vida] that the RTC's pronouncement that the signatures in the [Deed] were forged and [Vida's] title issued pursuant thereto is void is a collateral attack on [Vida's] title which violates the [principle of] indefeasibility of the Torrens title. x x x

x x x x x x x x x

Verily, unless and until [Vida's] title over the [disputed] property is annulled in a separate proceeding instituted by [the petitioners], the same is valid and [Vida] has the right to possess the subject property, being an attribute of her ownership over it. x x x.

x x x x x x x x x

x x x [T]o stay the immediate execution of judgment in ejectment proceedings, the defendant-appellant must: (a) perfect his appeal, (b) file a supersedeas bond, and (c) periodically deposit the rentals falling due during the pendency of the appeal.

x x x [T]he supersedeas bond was paid by [the petitioners] only on 02 May 2012. x x x [T]he bond filed by [the petitioners] in order to stay the immediate execution of the MTCC Decision was filed out of time as it was not filed within the period to appeal.

x x x [T]he failure of the [petitioners] in this case to comply with *any* of the conditions provided under Section 19, Rule 70 of the Rules of Court is a ground for the *outright execution* of the judgment, the duty of the court in this respect being "ministerial and imperative." x x x.

Thus, as the supersedeas bond was filed out of time or beyond the period to appeal, [Vida's] motion for immediate execution should have been acted upon by the RTC and the writ of execution should have been issued as a matter of right.[36] (Citations omitted and italics in the original)

The CA, through the herein assailed resolution,[37] denied the petitioners' motion for reconsideration.[38]

Issues

The instant petition is anchored on the issues of whether or not:

(1) Vida has a cause of action for unlawful detainer against the petitioners considering that the Deed she relied upon in filing her complaint was falsified, hence, null; and

(2) the RTC correctly ruled that in an unlawful detainer case, the MTCC can resolve the issue of ownership.[39]

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[36] *Id.* at 61-71.

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

[38] *Id.* at 87-101.

[39] *Id.* at 30.

In support thereof, the petitioners point out that relative to the falsification case filed by Eddie against Vida, the Office of the Davao City Prosecutor issued a Resolution,[40] dated June 11, 2010, stating that no expert eye is needed to ascertain that the signatures appearing in the Deed were different from the standard signatures of the Spouses Dizon. Further, on September 20, 2010, another resolution[41] was issued finding probable cause to indict Vida for the crime of falsification of public documents. Thereafter, the MTCC issued a Warrant of Arrest[42] against Vida.

The petitioners also insist that no Deed was executed conveying the disputed property in Vida's favor. When the Deed was purportedly executed on December 1, 2009, Verona was already unconscious, while Eddie was abroad. Having been simulated, the Deed was void and inexistent. It produced no effect and cannot create, modify or extinguish a juridical relation. Hence, Vida had no right to transfer the title in her name using the falsified Deed. Perforce, her complaint for unlawful detainer against the petitioners had no leg to stand on and should be dismissed.

Citing *Spouses De Guzman v. Agbagala*,[43] the petitioners c1aim that the rule on non-collateral attack of a Torrens title does not apply in a case where the title is void from the start. An action to declare the nullity of a void title does not prescribe and is susceptible to direct, as well as to collateral attack.[44]

Anent the belated posting of the supersedeas bond, the petitioners stress that fault cannot be ascribed to them. They waited for the MTCC's order approving and fixing the amount. When the order was finally issued, the petitioners were required to post the bond before the RTC and deposit the monthly rental

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[40] Issued by Prosecutor II Victor C. Sepulveda; *id.* at 163-164.

[41] *Id.* at 172.

[42] *Id.* at 173.

[43] 569 Phil. 607 (2008).

[44] *Rollo*, p. 40.

as well. The petitioners complied before the RTC rendered its Decision dated June 13, 2012.[45]

As counterclaims, the petitioners impute malice and bad faith against Vida in filing the complaint for unlawful detainer. The petitioners, thus, pray for the award of ₱1,000,000.00 as moral damages, ₱500,000.00 as exemplary damages, ₱50,000.00 as attorney's fees, and ₱2,000.00 for each appearance of their counsel.[46]

In Vida's Comment,[47] she argues that the petitioners' claim of forgery is yet to be proven in court by clear, positive and convincing evidence. Having been notarized, the Deed enjoys the presumption of due execution, and shall remain valid unless annulled in a proper proceeding. Besides, the allegations of forgery and nullity of the Deed are immaterial in a summary action for unlawful detainer. Allowing the foregoing claims to be litigated amounts to a collateral attack on Vida's title.

Vidal also points out that the petitioners paid the supersedeas bond only on May 2, 2012, beyond the period to perfect an appeal.[48]

Ruling of the Court

On matters of procedure

While the petitioners explicitly raise only two substantive issues, in the body of the petition, they discuss procedural matters anent their payment of the supersedeas bond and an alleged error on the part of the CA in concluding that the RTC should have issued a writ of execution relative to the MTCC's decision in Vida's favor.[49]

The petitioners admit that they posted the supersedeas bond beyond the period to perfect an appeal, but claim that it was

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

[46] *Id.* at 42-43.

[47] *Id.* at 220-228.

[48] *Id.* at 226.

[49] *Id.* at 40-42.

the MTCC, which belatedly fixed the amount. Pending the appeal they had filed before the RTC, they promptly posted the bond after the amount was determined by the MTCC.[50]

In *Spouses Chua v. CA*,[51] the Court ruled that:

> Petitioners need not require the MTC to fix the amount of the supersedeas bond. They could have computed this themselves. As early as 1947, we have held in *Aylon vs. Jugo and De Pablo* that the supersedeas bond is equivalent to the amount of rentals, damages and costs stated in the judgment.[52]

If the cited case were to be applied, the petitioners' failure to post the supersedeas bond within the allowable period shall result in the immediate execution of the MTCC judgment. Nonetheless, in *City of Naga v. Hon. Asuncion, et al.*,[53] the Court has carved exceptions to immediate execution of judgments in ejectment cases, *viz.*:

> Petitioner herein invokes seasonably the exceptions to immediate execution of judgments in ejectment cases cited in *Hualam Construction and Dev't. Corp. v. Court of Appeals* and *Laurel v. Abalos*, thus:
>
> > Where supervening events (occurring subsequent to the judgment) bring about a material change in the situation of the parties which makes the execution inequitable, or where there is no compelling urgency for the execution because it is not justified by the prevailing circumstances, the court may stay immediate execution of the judgment.

Noteworthy, the foregoing exceptions were made in reference to Section 8, Rule 70 of the old Rules of Court which has been substantially reproduced as Section 19, Rule 70[54] of the 1997 Rules

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

[51] 350 Phil. 74 (1998).

[52] *Id.* at 84.

[53] 579 Phil. 781 (2008).

[54] **Section 19.** *Immediate execution of judgment; how to stay same.* – If judgment is rendered against the defendant, execution shall issue immediately

of Civil Procedure. Therefore, even if the appealing defendant was not able to file a supersedeas bond, and make periodic deposits to the appellate court, immediate execution of the MTC decision is not proper where the circumstances of the case fall under any of the above-mentioned exceptions. x x x.[55] (Citations omitted and underlining ours)

In *Laurel, et al. v. Hon. Abalos, etc., et al.*,[56] therein respondent filed an action for reformation of the deed of sale against therein petitioners pending the appeal of the unlawful detainer case before the RTC. The RTC thereafter denied therein petitioners' motion for the issuance of a writ of execution relative to the MTCC judgment, and required therein respondent to post a supersedeas bond. According to the Court, the peculiar environmental circumstances obtaining in the case justify the non-immediate execution of the MTCC's judgment pending appeal. The Court further expounded as follows:

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upon motion unless an appeal has been perfected and the defendant to stay execution files a sufficient supersedeas bond, approved by the Municipal Trial Court and executed in favor of the plaintiff to pay the rents, damages, and costs accruing down to the time of the judgment appealed from, and unless, during the pendency of the appeal, he deposits with the appellate court the amount of rent due from time to time under the contract, if any, as determined by the judgment of the Municipal Trial Court. In the absence of a contract, he shall deposit with the Regional Trial Court the reasonable value of the use and occupation of the premises for the preceding month or period at the rate determined by the judgment of the lower court on or before the tenth day of each succeeding month or period. The supersedeas bond shall be transmitted by the Municipal Trial Court, with the papers, to the clerk of the Regional Trial Court to which the action is appealed.

x x x Should the defendant fail to make the payments above prescribed from time to time during the pendency of the appeal, the appellate court, upon motion of the plaintiff, and upon proof of such failure, shall order the execution of the judgment appealed from with respect to the restoration of possession, but such execution shall not be a bar to the appeal taking its course until the final disposition thereof on the merits.

x x x x x x x x x

(Underlining ours)

[55] *City of Naga v. Hon. Asuncion, et al., supra* note 53, at 797.

[56] 140 Phil. 532 (1969).

[T]his Court took pains at length to explain that this provision (regarding immediate execution of the judgment of inferior courts in cases of unlawful detainer) can be availed of only if no question of title is involved and the ownership or the right to the possession of the property is an admitted fact. Through Mr. Justice Labrador, this Court said in *De los Reyes vs. Castro, et al.*:

> . . . The provision for the immediate execution of a judgment of the justice of the peace court in actions of unlawful detainer under Section 8 of Rule 72 of the [old] Rules of Court, is not applicable to an action of detainer like the present, where there is no immediate urgency for the execution because it is not justified by the circumstances. This view is based on the history of the action of forcible entry. This action originated in the English common law where it was originally in the form of a criminal proceeding whereby lands or properties seized through the use of force could immediately be returned. x x x.
>
> It is the opinion of the writer that inasmuch as the property now subject of litigation was originally sold only with right to repurchase to the plaintiff, so that the plaintiff was not really and originally the owner and possessor of the property, and since there are reasonable grounds to believe that the contract entered into between them was not one of lease but one of loan with mortgage of the property, the right of the plaintiff to the immediate possession of the property is not apparent, clear or conclusive, and neither should his right to the immediate execution of the property [be] allowed until opportunity to settle the question of ownership is had. In other words, the writer of the opinion holds that while Section 8 of Rule 72 is applicable also in cases of unlawful detainer, the immediate execution it provides for may be availed of only if no question of title is involved and the ownership and the right to the possession of the property is an admitted fact.
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> x x x x x x x x x

Where supervening events (occurring subsequent to the judgment) bring about a material change in the situation of the parties which makes the execution inequitable, or where there is no compelling urgency for the execution because it is not justified by the prevailing circumstances, the court may stay immediate execution of the judgment.

> The assertion by Laput of "ownership" of the house she is occupying, the appeal pending in the [CA] from the decision in Civil Case 1517 which declared null and void from the beginning the deed of sale in favor of the petitioners, the latter's unexplained silence in the face of the manifestation filed by Laput informing this Court of the supervening occurrences, and their failure to submit their comment as required by this Court, are strong and sufficient additional reasons, cumulatively, to justify the dismissal of the present petition.[57] (Citations, emphasis and italics omitted, and underlining ours)

By analogy, in the unlawful detainer case from which the instant petition arose, Eddie was originally a co-owner of the disputed property, and he remains in possession thereof. Vida, on the other, is not even a resident of Davao City.[58] Moreover, prior to Vida's filing of the unlawful detainer case, Eddie had already instituted actions for nullification of the Deed and falsification of public documents. The Office of the Davao City Prosecutor had likewise made a preliminary determination of probable cause that forgery was committed. Eddie, thus, insists that no valid conveyance was made by Verona to Vida. In the mind of the Court, the foregoing are persuasive reasons justifying the non-immediate execution of the MTCC judgment despite the petitioners' belated posting of the supersedeas bond. Hence, the CA erred in declaring that the RTC improperly denied Vida's motion for the issuance of a writ of execution pending appeal.

On substantive issues

Being interrelated, the two substantive issues raised shall be discussed jointly. Essentially, the petitioners allege that the MTCC should have dismissed Vida's complaint for unlawful detainer for lack of basis as the Deed she relied upon is falsified and void. It is also claimed that the CA erred in not upholding the RTC's ruling that the latter can take cognizance of the issue of ownership in an unlawful detainer case.

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[57] *Id.* at 541-544.

[58] *Rollo*, pp. 164, 172.

The Court finds merit in the petitioners' arguments.

In *Consolacion D. Romero and Rosario S.D. Domingo v. Engracia D. Singson*,[59] where there were similar allegations of forgery and the issue of ownership was raised in the ejectment case, the Court pronounced:

> In arriving at its pronouncement, the CA passed upon the issue or claim of ownership, which both parties raised. While the procedure taken is allowed - under Section 16, Rule 70[60] of the 1997 Rules of Civil Procedure, the issue of ownership may be resolved only to determine the issue of possession - the CA nonetheless committed serious and patent error in concluding that based solely on respondent's TCT 12575 issued in her name, she must be considered the singular owner of the subject property and thus entitled to possession thereof - pursuant to the principle that "the person who has Torrens Title over a land is entitled to possession thereof." Such provisional determination of ownership should have been resolved in petitioners' favor.
>
> When the deed of sale in favor of respondent was purportedly executed by the parties thereto and notarized on June 6, 2006, it is perfectly obvious that the signatures of the vendors therein, Macario and Felicidad, were forged. They could not have signed the same, because both were by then, long deceased: Macario died on Febmary 22, 1981, while Felicidad passed away on September 14, 1997. This makes the June 6, 2006 deed of sale null and void; being so, it is "equivalent to nothing; it produces no civil effect; and it does not create, modify or extinguish a juridical relation."
>
> And while it is true that respondent has in her favor a Torrens title over the subject property, she nonetheless acquired no right or title in her favor by virtue of the null and void June 6, 2006 deed. "Verily, when the instrument presented is forged, even if accompanied by the owner's duplicate certificate of title, the registered owner does not thereby lose his title, and neither does the assignee in the forged deed acquire any right or title to the property."

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[59] G.R. No. 200969, August 3, 2015.

[60] **Section 16.** *Resolving defense of ownership*. — When the defendant raises the defense of ownership in his pleadings and the question of possession cannot be resolved without deciding the issue of ownership, the issue of ownership shall be resolved only to determine the issue of possession.

x x x x x x x x x

> Insofar as a person who fraudulently obtained a property is concerned, the registration of the property in said person's name would not be sufficient to vest in him or her the title to the property. A certificate of title merely confirms or records title already existing and vested. The indefeasibility of the Torrens title should not be used as a means to perpetrate fraud against the rightful owner of real property. Good faith must concur with registration because, otherwise, registration would be an exercise in futility. A Torrens title does not furnish a shield for fraud, notwithstanding the long-standing rule that registration is a constructive notice of title binding upon the whole world. The legal principle is that if the registration of the land is fraudulent, the person in whose name the land is registered holds it as a mere trustee.

Since respondent acquired no right over the subject property, the same remained in the name of the original registered owners, Macario and Felicidad. Being heirs of the owners, petitioners and respondent thus became, and remain co-owners – by succession – of the subject property. As such, petitioners may exercise all attributes of ownership over the same, including possession – whether *de facto* or *dejure*; respondent thus has no right to exclude them from this right through an action for ejectment.

With the Court's determination that respondent's title is null and void, the matter of direct or collateral attack is a foregone conclusion as well. "An action to declare the nullity of a void title does not prescribe and is susceptible to direct, as well as to collateral, attack;" petitioners were not precluded from questioning the validity of respondent's title in the ejectment case.[61] (Citations and emphasis omitted and underlining ours)

In the case at bar, when the Deed was executed on December 1, 2009, Eddie claimed that he was abroad while Verona was already unconscious. Vida did not directly refute these allegations and instead pointed out that the Deed was pre-signed in April of 2008. The foregoing circumstances reduced the Deed into

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[61] *Consolacion D. Romero and Rosario S.D. Domingo v. Engracia D. Singson, supra* note 59.

the category of a private instrument as can be drawn from the Court's discussion in *Adelaida Meneses (deceased) v. Venturozo*,[62] *viz.*:

> As notarized documents, [Deeds] carry evidentiary weight conferred upon them with respect to their due execution and enjoy the presumption of regularity which may only be rebutted by evidence so clear, strong and convincing as to exclude all controversy as to falsity. The presumptions that attach to notarized documents can be affirmed only so long as it is beyond dispute that the notarization was regular. A defective notarization will strip the document of its public character and reduce it to a private instrument. Consequently, when there is a defect in the notarization of a document, the clear and convincing evidentiary standard normally attached to a duly-notarized document is dispensed with, and the measure to test the validity of such document is preponderance of evidence.[63] (Citations omitted and underlining ours)

Further, in *Dela Rama, et al. v. Papa, et al.*,[64] the Court elucidated that:

> Papas['] admissions, refreshing in their self-incriminatory candor, bear legal significance. With respect to deeds of sale or conveyance, what spells the difference between a public document and a private document is the acknowledgment in the former that the parties acknowledging the document appear before the notary public and specifically manifest under oath that they are the persons who executed it, and acknowledge that the same are their free act and deed. x x x
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> x x x x x x x x x
>
> The presumptions that attach to notarized documents can be affirmed only so long as it is beyond dispute that the notarization was regular. We cannot ascribe that conclusion at bar to the deed of sale. Respondent failed to confirm before the RTC that he had actually appeared before the notary public, a bare minimum requirement under Public Act No. 2103. Such defect will not *ipso facto* void the deed of sale. However, it eliminates the presumptions that are carried by

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[62] 675 Phil. 641 (2011).

[63] *Id.* at 651-652.

[64] 597 Phil. 227 (2009).

notarized public documents and subject the deed of sale to a different level of scrutiny than that relied on by the [CA]. This consequence is with precedent. In *Tigno v. Sps. Aquino*, where the public document in question had been notarized by a judge who had no authority to do so, the Court dispensed with the clear and convincing evidentiary standard normally attached to duly notarized documents, and instead applied preponderance of evidence as the measure to test the validity of that document.[65] (Citations omitted and underlining ours)

In the instant petition, Vida impliedly admits the irregularity of the Deed's notarization as both of the vendors were not personally present. Consequently, due execution can no longer be presumed. Besides, the extant circumstances surrounding the controversy constitute preponderant evidence suggesting that forgery was committed. Eddie promptly filed a criminal case for falsification of documents and a civil case to nullify the Deed. Later, the Office of the Davao City Prosecutor found probable cause to indict Vida for falsification. Consequently, the issue of ownership cannot be disregarded in the unlawful detainer case. It bears stressing though that while the RTC aptly resolved the issue of ownership, it is at best preliminary and shall not be determinative of the outcome of the two other cases filed by Eddie against Vida.

Other matters

The Court observes that the MTCC ruling, which the CA affirmed, is based partly on equitable grounds. Notably, the MTCC referred to Verona's medical expenses of ₱1,085,540.21, which Vida had shouldered.[66] The Court commiserates with Vida, if indeed she remains unpaid by Eddie for Verona's medical and burial expenses. However, a creditor cannot resort to procedural shortcuts to collect in kind for sums of money owed by a debtor.

In sum, the Court agrees with the RTC that the dismissal of Vida's complaint for unlawful detainer is in order.

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[65] *Id.* at 241-242.

[66] *Rollo*, p. 196.

WHEREFORE, the instant petition is **GRANTED**. The Decision and Resolution, dated January 23, 2015 and September 7, 2015, respectively, of the Court of Appeals in CA-G.R. SP No. 05256-MIN, are **SET ASIDE**. The Decision dated June 13, 2012 of the Regional Trial Court of Davao City, Branch 14, in Civil Case No. 34,450-2012, is **REINSTATED**. Consequently, Yolanda Vida P. Beltran's complaint for unlawful detainer is **DISMISSED.**

SO ORDERED.

Velasco, Jr. (Chairperson), Bersamin, Jardeleza, and *Caguioa*,[*] *JJ.*, concur.

FIRST DIVISION

[G.R. No. 193150. January 23, 2017]

LOIDA M. JAVIER, *petitioner, vs.* **PEPITO GONZALES,** *respondent*.

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; THE OFFICE OF THE SOLICITOR GENERAL REPRESENTS THE PEOPLE IN PROCEEDINGS BEFORE THE COURT; EXCEPTIONS; PRIVATE PARTIES ARE ALLOWED BY THE COURT TO FILE *CERTIORARI* PETITIONS ASSAILING RULINGS AND ORDERS OF THE REGIONAL TRIAL COURT IN CRIMINAL CASES, AS OFFENDED PARTIES IN CRIMINAL CASES HAVE SUFFICIENT INTEREST AND PERSONALITY AS "PERSONS AGGRIEVED" TO FILE THE *CERTIORARI*

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[*] Designated Fifth Member of the Third Division per Special Order No. 2417 dated January 4, 2017.

PETITIONS.— While the OSG ordinarily represents the People in proceedings before this Court, We have in the past allowed private parties to file certiorari petitions assailing rulings and orders of the RTC in criminal cases. As early as 1969, in *Paredes v. Gopengco*, the Court already held that offended parties in criminal cases have sufficient interest and personality as "persons aggrieved" to file a special civil action of prohibition and certiorari under Sections 1 and 2 of Rule 65. That ruling was in line with the underlying spirit of adopting a liberal construction of the Rules of Court in order to promote their object. Recently, We reiterated this ruling in *Almero v. People*. Similarly, in the case at bar, We find that the ends of substantial justice would be better served and the issues determined in a more just, speedy, and inexpensive manner, by entertaining the present Petition.

2. ID.; CRIMINAL PROCEDURE; JUDGMENT; PROMULGATION OF JUDGMENT; THE PROMULGATION OF JUDGMENT *IN ABSENTIA* IS WARRANTED WHERE THE ACCUSED HAS BEEN NOTIFIED OF THE DATE OF PROMULGATION, BUT DOES NOT APPEAR WITHOUT OFFERING ANY JUSTIFICATION FOR HIS ABSENCE; ESSENTIAL ELEMENTS FOR THE VALIDITY THEREOF.— Section 6, Rule 120 of the Revised Rules of Criminal Procedure allows a court to promulgate a judgment *in absentia* and gives the accused the opportunity to file an appeal within a period of fifteen (15) days from notice to the latter or the latter's counsel; otherwise, the decision becomes final. Records show that respondent was properly informed of the promulgation scheduled on 15 December 2005. The RTC Order dated 30 November 2005 documents the presence of his counsel during the hearing. It is an established doctrine that notice to counsel is notice to client. In addition, the Return of Service states that the Order and Notice of Promulgation were personally delivered to respondent's address. During the promulgation of judgment on 15 December 2005, when respondent did not appear despite notice, and without offering any justification for his absence, the trial court should have immediately promulgated its Decision. The promulgation of judgment *in absentia* is mandatory pursuant to the fourth paragraph of Section 6, Rule 120 of the Rules of Court x x x. If the accused has been notified of the date of promulgation, but does not appear, the promulgation of judgment *in absentia*

is warranted. This rule is intended to obviate a repetition of the situation in the past when the judicial process could be subverted by the accused by jumping bail to frustrate the promulgation of judgment. The only essential elements for its validity are as follows: (a) the judgment was recorded in the criminal docket; and (b) a copy thereof was served upon the accused or counsel.

3. ID.; ID.; ID.; ID.; THE PROMULGATION *IN ABSENTIA* OF A JUDGMENT OF CONVICTION CANNOT BE SET ASIDE BY FILING AN OMNIBUS MOTION; PROPER REMEDY OF THE ACCUSED IS TO SURRENDER AND FILE A MOTION FOR LEAVE TO EXPLAIN HIS UNJUSTIFIED ABSENCE WITHIN FIFTEEN (15) DAYS FROM PROMULGATION OF JUDGMENT.— Respondent was not left without remedy. The fifth paragraph of Section 6, Rule 120, states: If the judgment is for conviction and the failure of the accused to appear was without justifiable cause, he shall lose the remedies available in these rules against the judgment and the court shall order his arrest. Within fifteen (15) days from promulgation of judgment, however, the accused may surrender and file a motion for leave of court to avail of these remedies. He shall state the reasons for his absence at the scheduled promulgation and if he proves that his absence was for a justifiable cause, he shall be allowed to avail of said remedies within fifteen (15) days from notice. However, instead of surrendering and filing a motion for leave to explain his unjustified absence, respondent, through Atty. Benitez, filed an Omnibus Motion before the RTC praying that the promulgation be set aside. We cannot countenance this blatant circumvention of the Rules.

4. ID.; ID.; ID.; ID.; THE FILING OF A MOTION FOR RECONSIDERATION TO QUESTION A DECISION OF CONVICTION CAN ONLY BE RESORTED TO IF THE ACCUSED DID NOT JUMP BAIL, BUT APPEARED IN COURT TO FACE THE PROMULGATION OF JUDGMENT.— Judge Soluren acted with grave abuse of discretion amounting to lack or excess of jurisdiction when she gave due course to respondent's Omnibus Motion. Aside from being the wrong remedy, the motion lacked merit. The filing of a motion for reconsideration to question a decision of conviction can only be resorted to if the accused did not jump

bail, but appeared in court to face the promulgation of judgment. Respondent did not appear during the scheduled promulgation and was deemed by the judge to have jumped bail. The fifth paragraph of Section 6, Rule 120, states that if the judgment is for conviction and the failure of the accused to appear was without justifiable cause, he shall lose the remedies available in the Rules against the judgment, and the court shall order his arrest.

5. ID.; ID.; ID.; DOUBLE JEOPARDY; AN ACQUITTAL RENDERED IN GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION DOES NOT REALLY ACQUIT AND THEREFORE DOES NOT TERMINATE THE CASE AS THERE CAN BE NO DOUBLE JEOPARDY BASED ON A VOID INDICTMENT. — Grave abuse of discretion amounts to lack of jurisdiction, and lack of jurisdiction prevents double jeopardy from attaching. In *People v. Hernandez*, this Court explained that "an acquittal rendered in grave abuse of discretion amounting to lack or excess of jurisdiction does not really 'acquit' and therefore does not terminate the case as there can be no double jeopardy based on a void indictment." Considering that Judge Soluren's order of acquittal was void from the very beginning, it necessarily follows that the CA ruling dismissing the Petition for Certiorari must likewise be reversed and set aside.

CAGUIOA, *J., concurring opinion*:

1. REMEDIAL LAW; CRIMINAL PROCEDURE; MOTION TO QUASH; DOUBLE JEOPARDY; RULE; ELEMENTS.— The rule on double jeopardy espouses that when a person is charged with an offense, and the case is terminated either by acquittal, conviction or any other manner without the consent of the accused, he cannot be charged again with the same or identical offense. For double jeopardy to attach, the following elements must concur: (i) the information against the accused must have been valid, sufficient in form and substance to sustain a conviction of the crime charged, (ii) the information must have been filed with, and judgment rendered by, a court of competent jurisdiction, (iii) the accused must have been arraigned and had pleaded, and (iv) the accused must have been convicted or acquitted, or the case must have been dismissed without his express consent. In order to satisfy the fourth element, it is

necessary that the prior judgment of conviction, acquittal or dismissal be valid, and rendered by a court of competent jurisdiction.

2. ID.; ID.; ID.; THE RULE ON DOUBLE JEOPARDY IS INAPPLICABLE WHERE THE ORDER OF ACQUITTAL WAS VOID FROM THE BEGINNING, AS THE SAME WAS ISSUED AFTER A PRIOR JUDGMENT OF CONVICTION HAD BEEN VALIDLY PROMULGATED, AND AFTER THE REGIONAL TRIAL COURT HAD ALREADY LOST JURISDICTION OVER THE CASE.— In the case of *Villareal* v. *People*, the Court convicted four (4) of the accused thereunder for the crime of reckless imprudence resulting in homicide, despite their previous conviction for the lesser crime of slight physical injuries. The Court found that the extraordinary circumstances of the case precluded the application of the rule on double jeopardy: x x x. In this case, Judge Soluren issued the order of acquittal *after* a prior judgment of conviction had been validly promulgated. Moreover, she issued said order after the records of the case were transmitted to the appellate court for automatic review. Not only did Judge Soluren completely disregard a decision validly promulgated in accordance with the Rules of Court, she subverted the same by issuing an opposing judgment after the RTC had already lost jurisdiction over the case. These exceptionally "unusual" circumstances show that the order of acquittal was void from the beginning, as indeed, this patently erroneous judgment was issued without any jurisdiction. Thus, the fourth element necessary for double jeopardy to attach was not satisfied.

APPEARANCES OF COUNSEL

Ray Paolo J. Santiago for petitioner.
Public Attorney's Office for respondent.

D E C I S I O N

SERENO, *C.J.*:

Two Decisions were promulgated by the trial court in this case: the first one for conviction, and the second for acquittal. We are called upon to resolve the procedural question of whether

the promulgation *in absentia* of the earlier judgment of conviction was valid.

This Petition for Review on Certiorari under Rule 45 seeks a reversal of the Court of Appeals (CA) Decision[1] and Resolution[2] in CA-G.R. SP No. 97629. The CA affirmed the Decision[3] of Branch 40 of the Regional Trial Court of Palayan City, Nueva Ecija (the RTC of Palayan City) in Criminal Case No. 1066-P, penned by Judge Corazon D. Soluren (Judge Soluren). Judge Soluren reversed a previous Decision[4] penned by Judge Erlinda P. Buted (Judge Buted). In the earlier Decision, respondent was convicted of murder with frustrated murder and multiple attempted murder, and was meted the death penalty.

THE ANTECEDENTS FACTS

This case originated from a criminal case for murder with frustrated murder and multiple attempted murder lodged in Branch 96 of the Regional Trial Court of Baler, Aurora (the RTC of Baler). The Information charged respondent Pepito Gonzales as follows:

> That on December 25, 1997 at around 11:30 o'clock in the evening in Barangay Diarabasin, Municipality of Dipaculao, Province of Aurora, Philippines and within the jurisdiction of this Honorable Court, the accused with intent to kill and with the use of treachery and evident premeditation, did then and there, willfully, unlawfully and feloniously throw a grenade inside the house of one Leonardo Hermenigildo while the latter and his companions Rufino Concepcion, who sustained mortal wounds which were the direct and immediate cause of his death thereafter; that as further consequence of said explosion, Leonardo Hermenigildo was also hit and sustained physical injuries fatal enough to cause his death without immediate and able

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[1] Dated 22 March 2010, *rollo*, pp. 34-44; penned by Associate Justice Florito S. Macalino and concurred in by Associate Justices Rosmari D. Carandang and Ramon M. Bato, Jr.

[2] Dated 30 July 2010; *id*. at 45.

[3] Dated 31 October 2006, *id*. at 209-238.

[4] Dated 22 December 2005; *id*. at 157-198.

medical attendance; that Julio Toledo, Ariel Cabasal and Jesus Macatiag were also hit and likewise sustained physical injuries, but the said accused did not perform all the acts of execution which should have produced the crime of multiple murder as a consequence, by reason of causes other than his own spontaneous desistance, that is, the injuries sustained by said Julio Toledo, Ariel Cabasal and Jesus Macatiag were not necessarily mortal.[5]

Gonzales filed a Motion for Bail[6] with the RTC of Baler. Private complainant Carmen Macatiag (Macatiag) — sister of the deceased victim, Rufino Concepcion — filed her Opposition[7] to Gonzales's Motion for Bail. Gonzales then filed a Comment[8] to which Macatiag filed her Reply.[9] The RTC Baler issued an Order[10] granting Gonzales bail.

Thereafter, Macatiag filed with this Court an Urgent Petition for Transfer of Venue.[11] While her petition was pending, she filed a Motion for Reconsideration[12] of the Order of the RTC of Baler granting bail to Gonzales, who filed his Opposition[13] to her motion. The RTC of Baler denied[14] the Motion for Reconsideration and upheld its Order granting bail. Macatiag also filed with the RTC of Baler a Manifestation and Motion to Suspend Proceedings[15] pending the resolution of her previous petition for transfer of venue.

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[5] *Id.* at 12.

[6] *Id.* at 48.

[7] *Id.* at 53.

[8] *Id.* at 61.

[9] *Id.* at 66.

[10] Dated 8 December 1998; *id.* at 71.

[11] On 25 February 1999; *id.* at 73.

[12] *Id.* at 95

[13] *Id.* at 102.

[14] *Id.* at 107.

[15] *Id.* at 105.

On 17 August 1999, the Court granted the transfer of venue and reassigned the case to the RTC of Palayan City, which was then presided by Judge Erlinda Buted.[16] Trial on the merits ensued.

The RTC admitted the prosecution's Formal Offer of Evidence.[17] Gonzales filed an Urgent Motion for Leave to File Demurrer to Evidence.[18] To this motion he attached a Demurrer to Evidence,[19] which the RTC denied.[20] Following the denial, Gonzales presented his evidence and witnesses and filed his Formal Offer of Evidence.[21]

Thereafter, on 30 November 2005, the RTC issued an Order[22] setting the promulgation of the case on 15 December 2005. The Return of Service[23] indicated that the Order dated 30 November 2005 and the Notice of Promulgation dated 6 December 2005 were received on 7 and 12 December 2005 by the sister of private respondent, who refused to sign the Return.

On 15 December 2005, the scheduled date of promulgation, Gonzales failed to appear. His lawyer, Atty. Mario Benitez (Atty. Benitez), personally filed a "Withdrawal of Counsel"[24] with his client's conformity.[25] The promulgation was rescheduled to 22 December 2005.[26] On the same date, a warrant of arrest[27]

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[16] *Id*. at 111.

[17] In an Order dated 5 October 2004; *id*. at 135.

[18] *Id*. at 136.

[19] *Id*. at 138.

[20] In an Order dated 17 May 2005; *id*. at 143.

[21] *Id*. at 148-150. "Formal Offer of Documentary Exhibits for the Accused."

[22] *Id*. at 151-152.

[23] *Id*. at 318.

[24] *Id*. at 153.

[25] *Id*. at 154.

[26] *Id*.

[27] *Id*. at 155.

was issued and the bond forfeited in view of the nonappearance of the accused, who was deemed to have jumped bail.

A Notice of Hearing/Subpoena and Notice of Promulgation of Judgment[28] was issued on 15 December 2005 commanding the parties to appear before the Court on 22 December 2015. Notices were sent to Gonzales and Macatiag.[29]

On 22 December 2005, Gonzales still failed to appear without any justification. Judge Buted appointed a counsel *de oficio* in lieu of Atty. Benitez.[30] The Branch Clerk of Court thereafter read the dispositive portion of Judge Buted's Decision in the presence of the public prosecutor, the counsel *de oficio*, and the heirs of Macatiag. Macatiag had been killed on 14 December 2005, just a day before the first promulgation date, and Gonzales was also an accused in her killing. Gonzales was convicted of the murder charges:

> **WHEREFORE**, the Accused is found **GUILTY** beyond reasonable doubt of the complex crime of **MURDER** with **FRUSTRATED MURDER** and **MULTIPLE ATTEMPTED MURDER** and is hereby sentenced to a single indivisible penalty of **DEATH**.[31]

Thereafter, the Clerk of Court was directed to enter the judgment of conviction in the RTC's criminal docket pursuant to paragraph 4, Section 6, Rule 120 of the Revised Rules of Criminal Procedure.[32] Since the death penalty was still in force at the time the judgment was promulgated, Judge Buted also ordered that the records of the case be immediately forwarded to the CA for automatic review.[33]

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[28] *Id.* at 319.

[29] *Id.*

[30] *Id.* at 156.

[31] *Id.* at 197.

[32] Rule 120, Sec. 6, par. 4 – In case the accused fails to appear at the scheduled date of promulgation of judgment despite notice, the promulgation shall be made by recording the judgment in the criminal docket and serving him a copy thereof at his last known address or through his counsel.

[33] *Rollo*, p. 156.

In less than a month after the judgment of conviction was rendered, or on 6 January 2006, private respondent Gonzales filed, through Atty. Benitez, an Omnibus Motion[34] asking that the judgment promulgated on 22 December 2005 be reconsidered and set aside. Gonzales argued that he had not been properly notified of the promulgation of judgment; that he had not been represented by counsel; and that the RTC had proceeded with deliberate haste in convicting him.

The trial court, now presided by Judge Soluren, gave due course to the motion of Gonzales and granted it through an Order dated 18 April 2006. The Order set aside the judgment of conviction and reinstated his bail.[35]

On 20 November 2006, petitioner Javier, Macatiag's daughter, discovered that the RTC had rendered a Decision[36] dated 31 October 2006 acquitting Gonzales of all charges.[37] On 16 January 2007, she filed a Petition for Certiorari under Rule 65 before the CA, citing grave abuse of discretion amounting to lack or excess of jurisdiction on the part of Judge Soluren. The Office of the Solicitor General filed a Comment[38] dated 12 October 2007 praying that the Petition be denied due course and dismissed for lack of merit. The OSG opined that Judge Soluren did not commit grave abuse of discretion in reversing the earlier Decision of Judge Buted.

THE CA RULING

In its assailed Decision, the CA dismissed the Petition for Certiorari. It ruled out grave abuse of discretion on the part of respondent Judge Soluren in granting private respondent's Omnibus Motion and rendering a new judgment of acquittal. It agreed with the theory of the OSG that the promulgation

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[34] *Id*. at 199.

[35] *Id*. at 204.

[36] *Id*. at 209-238.

[37] *Id*. at 238.

[38] *Id*. at 260-278.

was void, because respondent Gonzales had not been validly notified of the rescheduled promulgation of judgment on 22 December 2005; that since Gonzales's lawyer, Atty. Benitez, had already withdrawn his representation on the first scheduled date of promulgation, respondent had no knowledge that the promulgation had been rescheduled to 22 December 2005; that since he was no longer Gonzales's lawyer, Atty. Benitez was relieved of the duty to inform his client of court notices and processes; that since respondent was not personally notified of the rescheduled promulgation, Judge Buted's promulgation *in absentia* was invalid.

The CA further adopted the OSG's stance that before resorting to a Rule 65 petition for certiorari to question respondent judge's act of acquitting private respondent, petitioner should have first filed a motion for reconsideration. It ruled that a motion for reconsideration is not only a plain and adequate remedy available under the law, but is an indispensible condition that must be satisfied before an aggrieved party can resort to a special civil action for certiorari. The appellate court held that since the remedy of filing a motion for reconsideration was available to petitioner, and none of the exceptions to the filing of that motion existed, the Petition must be dismissed.

THE ISSUES

The main issue in this case is whether the CA erred in affirming the Decision of acquittal issued by Judge Soluren, who had ruled that there was no grave abuse of discretion amounting to lack or excess of jurisdiction on her part when she gave due course to the Omnibus Motion of private respondent questioning his prior conviction.

In order to resolve the main issue, the following issues have to be addressed:

A. Whether there was a valid promulgation of judgment by Judge Buted in her prior Decision of conviction;

B. Whether Judge Soluren's subsequent judgment of acquittal is valid;

C. Whether a special civil action for certiorari under Rule 65 is the proper remedy to question a decision of acquittal.

THE COURT'S RULING

The Petition is impressed with merit.

As a prologue to our ruling, We take cognizance of the unusual circumstances surrounding this case. Petitioner is the daughter of the original private complainant, Carmen Macatiag, who was in turn the sister of the first victim, Rufino Concepcion. When petitioner filed the instant Petition for Review with this Court, the OSG filed a Manifestation and Motion[39] praying that the People of the Philippines be removed as a co-petitioner because the OSG was not joining petitioner in this Petition. The pertinent portion[40] of the OSG's Manifestation and Motion reads:

> [T]he records will show that the OSG already took on a position different from that of the petitioner Loida M. Javier when the case was elevated to the Court of Appeals. Specifically, the OSG in its Comment dated October 12, 2007 and Memorandum dated November 24, 2008 was of the position that Honorable Judge Soluren did not commit grave abuse of discretion when she ruled to acquit Pepito Gonzales. In this regard, the arguments raised by the OSG in the aforementioned pleadings were in fact, adopted by the Court of Appeals in its Decision dated May 22, 2010.

While the OSG ordinarily represents the People in proceedings before this Court, We have in the past allowed private parties to file certiorari petitions assailing rulings and orders of the RTC in criminal cases.[41] As early as 1969, in *Paredes v. Gopengco*,[42] the Court already held that offended parties in criminal cases have sufficient interest and personality as "persons aggrieved" to file a special civil action of prohibition and

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[39] *Id*. at 330-333.

[40] *Id*. at 331.

[41] See *Narciso v. Sta. Romana-Cruz*, 385 Phil. 208-224 (2000); *People v. Calo, Jr.,* 264 Phil. 1007-1015 (1990).

[42] 140 Phil. 81-94 (1969).

certiorari under Sections 1 and 2 of Rule 65. That ruling was in line with the underlying spirit of adopting a liberal construction of the Rules of Court in order to promote their object. Recently, We reiterated this ruling in *Almero v. People*.[43] Similarly, in the case at bar, We find that the ends of substantial justice would be better served and the issues determined in a more just, speedy, and inexpensive manner, by entertaining the present Petition.

We now proceed to the merits of the case.

There are two divergent RTC Decisions: one for conviction, and another for acquittal. Our resolution of this Petition for Review hinges on the validity of the second RTC Decision.

After review of the case and the records, We rule that the Court of Appeals, in affirming Judge Soluren's Decision of acquittal, committed reversible error, which can be remedied by granting this Petition for Review on Certiorari.

Judge Buted's Decision convicting respondent was validly promulgated.

Section 6, Rule 120 of the Revised Rules of Criminal Procedure allows a court to promulgate a judgment *in absentia* and gives the accused the opportunity to file an appeal within a period of fifteen (15) days from notice to the latter or the latter's counsel; otherwise, the decision becomes final.

Records show that respondent was properly informed of the promulgation scheduled on 15 December 2005. The RTC Order dated 30 November 2005[44] documents the presence of his counsel during the hearing. It is an established doctrine that notice to counsel is notice to client.[45] In addition, the Return of Service states that the Order and Notice of Promulgation were personally delivered to respondent's address.

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[43] G.R. No. 188191, 12 March 2014, 718 SCRA 698.

[44] *Rollo*, pp. 151-152.

[45] *Manaya v. Alabang Country Club, Inc.*, 552 Phil. 226 (2007).

During the promulgation of judgment on 15 December 2005, when respondent did not appear despite notice, and without offering any justification for his absence, the trial court should have immediately promulgated its Decision.[46] The promulgation of judgment *in absentia* is mandatory pursuant to the fourth paragraph of Section 6, Rule 120 of the Rules of Court:

> SEC. 6. *Promulgation of judgment.*
>
> x x x x x x x x x
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> In case the accused fails to appear at the scheduled date of promulgation of judgment despite notice, the promulgation ***shall*** be made by recording the judgment in the criminal docket and serving him a copy thereof at his last known address or thru his counsel. (Emphasis supplied)

If the accused has been notified of the date of promulgation, but does not appear, the promulgation of judgment *in absentia* is warranted. This rule is intended to obviate a repetition of the situation in the past when the judicial process could be subverted by the accused by jumping bail to frustrate the promulgation of judgment.[47] The only essential elements for its validity are as follows: (a) the judgment was recorded in the criminal docket; and (b) a copy thereof was served upon the accused or counsel.

In *Almuete v. People*,[48] petitioner's counsel informed the trial court that the accused were either ill or not notified of the scheduled date of promulgation of judgment. The RTC, however, found their absence inexcusable and proceeded to promulgate its Decision as scheduled. The accused went up to the CA, which acquitted them of the charge. This Court reversed the CA and upheld the validity of the promulgation.

In *Estrada v. People*,[49] this Court also affirmed the validity of the promulgation of judgment *in absentia*, given the presence of the essential elements.

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[46] See *Chua v. Court of Appeals*, 549 Phil. 494-504 (2007).

[47] *Id.*

[48] G.R. No. 179611, 12 March 2013, 693 SCRA 167.

[49] 505 Phil. 339 (2005).

Judge Buted's Order dated 22 December 2005[50] fulfilled the requirements set forth by the Rules and prevailing jurisprudence. Pertinent portions of the Order read:

> The judgment of conviction which carries the death penalty was pronounced in the presence of the Public Prosecutor, the counsel *de oficio* of accused and the heirs of complainant Carmen Macatiag, the dispositive portion of which, the OIC Clerk of Court is directed to enter into the Criminal Docket.
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> x x x x x x x x x
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> Let copy of the Decision furnished each the Public Prosecutor, the counsel *de oficio* of the accused, Atty. Bembol Castillo, and the accused at his last known address.

Respondent was not left without remedy. The fifth paragraph of Section 6, Rule 120, states:

> If the judgment is for conviction and the failure of the accused to appear was without justifiable cause, he shall lose the remedies available in these rules against the judgment and the court shall order his arrest. Within fifteen (15) days from promulgation of judgment, however, the accused may surrender and file a motion for leave of court to avail of these remedies. He shall state the reasons for his absence at the scheduled promulgation and if he proves that his absence was for a justifiable cause, he shall be allowed to avail of said remedies within fifteen (15) days from notice.

However, instead of surrendering and filing a motion for leave to explain his unjustified absence, respondent, through Atty. Benitez, filed an Omnibus Motion before the RTC praying that the promulgation be set aside.[51] We cannot countenance this blatant circumvention of the Rules.

Judge Soluren's Decision acquitting respondent is void and has no legal effect.

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[50] *Rollo*, p. 156.

[51] *Id*. at 199.

Judge Soluren acted with grave abuse of discretion amounting to lack or excess of jurisdiction when she gave due course to respondent's Omnibus Motion. Aside from being the wrong remedy, the motion lacked merit.

The filing of a motion for reconsideration to question a decision of conviction can only be resorted to if the accused did not jump bail, but appeared in court to face the promulgation of judgment. Respondent did not appear during the scheduled promulgation and was deemed by the judge to have jumped bail. The fifth paragraph of Section 6, Rule 120, states that if the judgment is for conviction and the failure of the accused to appear was without justifiable cause, he shall lose the remedies available in the Rules against the judgment, and the court shall order his arrest.

The Court underscores the fact that following Gonzales's waiver of the remedies under the Rules, Judge Buted issued an Order dated 22 December 2005. According to the Order, the case records shall be immediately forwarded to the CA for its automatic review of convictions meting out the death penalty.[52] This automatic review was pursuant to Supreme Court Administrative Circular 20-2005 (dated 15 April 2005) as implemented by OCA Circular No. 57-2005 (dated 12 May 2005).

Supreme Court Administrative Circular 20-2005 mandates as follows:

> [A]ll Regional Trial Courts concerned, through the Presiding Judges and Clerks of Court, are hereby DIRECTED to henceforth DIRECTLY forward to the COURT OF APPEALS (Manila for Luzon cases, Cebu Station for Visayas cases, and Cagayan de Oro Station for Mindanao cases) the records of criminal cases whose decisions are subject to (a) automatic review because the penalty imposed is death or (b) ordinary appeals (by notices of appeal) because the penalty imposed is either reclusion perpetua or life imprisonment, notwithstanding a statement in the notice of appeal that the appeal is to the Supreme Court.

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[52] *Id.* at 156.

Meanwhile, OCA Circular No. 57-2005 gives the following directive:

> [A]ll Judges and Clerks of Court of the Regional Trial Courts are hereby reminded that failure to comply with the above-cited Administrative Circular shall warrant appropriate disciplinary action pursuant to Rule 140 of the Rules of Court, as amended by A.M. 01-8-10-SC, which took effect on 11 September 2001, as well as the pertinent rules and regulations of the Civil Service Commission.
>
> This Administrative Circular took effect on 19 April 2005, strict compliance herewith is hereby enjoined.

In utter disregard of this Court's circulars, Judge Soluren capriciously, whimsically, and arbitrarily took cognizance of private respondent's Omnibus Motion, granted it, and rendered a totally opposite Decision of acquittal. What she should have done was dismiss the Omnibus Motion outright, since Judge Buted's Decision of conviction was already subject to automatic review by the CA. By acting on the wrong remedy, which led to the reversal of the conviction, Judge Soluren contravened the express orders of this Court. Her blatant abuse of authority was so grave and so severe that it deprived the court of its very power to dispense justice.

We take this opportunity to correct a capricious, patent, and abusive judgment by reversing and setting aside the Decision.

Judge Soluren retired compulsorily in 2012. Had she still been in the service, some members of this Court would have been minded to refer this matter to the Office of the Court Administrator for investigation into and evaluation of the question of whether the above acts call for the application of administrative sanctions.

Double jeopardy is not triggered when the order of acquittal is void.

Grave abuse of discretion amounts to lack of jurisdiction, and lack of jurisdiction prevents double jeopardy from attaching.[53]

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[53] *Villareal v. People*, 680 Phil. 527 (2012) citing *People v. Hernandez*, 531 Phil. 289 (2006).

In *People v. Hernandez*,[54] this Court explained that "an acquittal rendered in grave abuse of discretion amounting to lack or excess of jurisdiction does not really 'acquit' and therefore does not terminate the case as there can be no double jeopardy based on a void indictment."

Considering that Judge Soluren's order of acquittal was void from the very beginning, it necessarily follows that the CA ruling dismissing the Petition for Certiorari must likewise be reversed and set aside.

WHEREFORE, the foregoing Petition is **GRANTED**. The assailed Decision of the Court of Appeals in CA-G.R. SP No. 97629 dated 22 March 2010 and Resolution dated 30 July 2010 are **REVERSED** and **SET ASIDE**.

The Decision of Branch 40 of the Regional Trial Court of Palayan City, Nueva Ecija dated 31 October 2006 and Order dated 18 April 2006, rendered by public respondent Judge Corazon D. Soluren acquitting respondent Pepito Gonzales, are likewise **REVERSED** and **SET ASIDE** for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction. The Decision dated 22 December 2005 rendered by Judge Erlinda P. Buted is **REINSTATED**.

The Court of Appeals is hereby ordered to conduct the mandatory and automatic review of the Decision dated 22 December 2005 pursuant to Sections 3 and 10, Rule 122 of the Rules of Court. Let the entire records of Criminal Case No. 1066-P entitled *People of the Philippines v. Pepito Gonzales* be immediately **TRANSMITTED** to the Court of Appeals.

The bail granted to respondent Pepito Gonzales is **CANCELLED**. Let copies of this Decision be furnished the Director of the National Bureau of Investigation and the Director-General of the Philippine National Police. The National Bureau of Investigation and the Philippine National Police are hereby **DIRECTED** to cause the **IMMEDIATE ARREST** and **DETENTION** of respondent Pepito Gonzales.

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[54] *Supra* note 53.

SO ORDERED.

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

Caguioa, J., see concurring opinion.

CONCURRING OPINION

CAGUIOA, *J.*:

I concur wholly with the *ponencia* as penned by Chief Justice Sereno. This opinion merely serves to further emphasize the exceptional circumstances which render the rule on double jeopardy particularly inapplicable to this case.

The rule on double jeopardy espouses that when a person is charged with an offense, and the case is terminated either by acquittal, conviction or any other manner without the consent of the accused, he cannot be charged again with the same or identical offense.[1]

For double jeopardy to attach, the following elements must concur: (i) the information against the accused must have been valid, sufficient in form and substance to sustain a conviction of the crime charged, (ii) the information must have been filed with, and judgment rendered by, a court of competent jurisdiction, (iii) the accused must have been arraigned and had pleaded, and (iv) the accused must have been convicted or acquitted, or the case must have been dismissed without his express consent.[2]

In order to satisfy the fourth element, it is necessary that the prior judgment of conviction, acquittal or dismissal be valid, and rendered by a court of competent jurisdiction.

In this case, it has been established that: (i) respondent was duly notified of the December 15, 2015 hearing scheduled for

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[1] *Villareal v. People*, 680 Phil. 527, 555 (2012).

[2] *Wilfred N. Chiok v. People of the Philippines*, G.R. Nos. 179814 & 180021, December 7, 2015, p. 11.

the promulgation of Judge Buted's decision, (ii) respondent was absent during said hearing despite due notice, (iii) notwithstanding his absence, respondent was represented by his counsel in said hearing, (iv) Judge Buted promulgated his decision convicting respondent in accordance with Section 6, Rule 120, which allows promulgation of judgment *in absentia*, (v) Judge Buted immediately ordered the transmission of the case records to the CA for automatic review as respondent's conviction involved the imposition of the death penalty, (vi) respondent's counsel thereafter filed an Omnibus Motion with the RTC praying that the conviction be set aside, and (vii) Judge Soluren, the new presiding judge of the RTC, subsequently granted the Omnibus Motion, set aside respondent's conviction, and issued an order acquitting respondent.

Proceeding from these facts, the *ponencia* holds that the order of acquittal issued by Judge Soluren is void and has no legal effect. The *ponencia* thus orders the reinstatement of respondent's conviction, finding the rule on double jeopardy inapplicable to this case.

I agree.

In the case of *Villareal v. People*,[3] the Court convicted four (4) of the accused thereunder for the crime of reckless imprudence resulting in homicide, despite their previous conviction for the lesser crime of slight physical injuries. The Court found that the extraordinary circumstances of the case precluded the application of the rule on double jeopardy:

The CA's application of the legal framework governing physical injuries — punished under Articles 262 to 266 for intentional felonies and Article 365 for culpable felonies — is therefore tantamount to a whimsical, capricious, and abusive exercise of judgment amounting to lack of jurisdiction. According to the Revised Penal Code, the mandatory and legally imposable penalty in case the victim dies should be based on the framework governing the destruction of the life of a person, punished under Articles 246 to 261 for intentional felonies and Article 365 for culpable felonies,

[3] *Supra* note 1.

and not under the aforementioned provisions. We emphasize that these two types of felonies are distinct from and legally inconsistent with each other, in that the accused cannot be held criminally liable for physical injuries when actual death occurs.

Attributing criminal liability solely to Villareal and Dizon — as if only their acts, in and of themselves, caused the death of Lenny Villa — is contrary to the CA's own findings. From proof that the death of the victim was the cumulative effect of the multiple injuries he suffered, the only logical conclusion is that criminal responsibility should redound to all those who have been proven to have directly participated in the infliction of physical injuries on Lenny. The accumulation of bruising on his body caused him to suffer cardiac arrest. **Accordingly, we find that the CA committed grave abuse of discretion amounting to lack or excess of jurisdiction in finding Tecson, Ama, Almeda, and Bantug criminally liable for slight physical injuries. As an allowable exception to the rule on double jeopardy, we therefore give due course to the Petition in G.R. No. 154954**.[4] (Emphasis and underscoring supplied)

In this case, Judge Soluren issued the order of acquittal *after* a prior judgment of conviction had been validly promulgated. Moreover, she issued said order after the records of the case were transmitted to the appellate court for automatic review. Not only did Judge Soluren completely disregard a decision validly promulgated in accordance with the Rules of Court, she subverted the same by issuing an opposing judgment after the RTC had already lost jurisdiction over the case.

These exceptionally "unusual" circumstances show that the order of acquittal was void from the beginning, as indeed, this patently erroneous judgment was issued without any jurisdiction. Thus, the fourth element necessary for double jeopardy to attach was not satisfied.

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[4] *Id*. at 562.

FIRST DIVISION

[G.R. No. 196347. January 23, 2017]

SUSAN A. YAP, *petitioner, vs.* **ELIZABETH LAGTAPON,** *respondent*.

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ONLY QUESTIONS OF LAW ARE ALLOWED.—** [A]n appeal by *certiorari* under Rule 45 of the Rules is limited in its scope — the Court may only entertain questions of law as jurisdiction over factual questions has been devolved to the trial courts as a matter of efficiency and practicality in the administration of justice. As an arbiter of laws, the Court is not expected to recalibrate the evidence already considered by inferior courts. More importantly, to the extent that the evidence on record amply support the factual findings of the trial court, such findings are deemed conclusive and will not be disturbed on appeal.

2. **ID.; ID.; ANNULMENT OF JUDGMENT; GROUNDS; EXTRINSIC FRAUD OR LACK OF JURISDICTION.—** The remedy of annulment of judgment, embodied in Rule 47 of the Rules, is extraordinary in character, and does not so easily and readily lend itself to abuse by parties aggrieved by final judgments. The grounds for a Rule 47 petition are: (i) extrinsic fraud and (ii) lack of jurisdiction. Extrinsic fraud cannot be a valid ground if it had been availed of, or could have been availed of, in a motion for new trial or petition for relief. On the other hand, lack of jurisdiction means either lack of jurisdiction over the subject matter or nature of the action, or lack of jurisdiction over the person of the defendant.

3. **ID.; EVIDENCE; PRESUMPTIONS; REGULAR PERFORMANCE OF OFFICIAL DUTIES MAY BE OVERCOME ONLY BY CLEAR AND CONVINCING EVIDENCE.—** It is axiomatic that a public official enjoys the presumption of regularity in the discharge of one's official duties and functions. Here, in the absence of clear indicia of partiality or malice, the service of Summons on petitioner Yap is perforce deemed regular and valid. Correspondingly, the Return of Service of Precioso as process server of the RTC constitutes *prima facie* evidence of

> the facts set out therein. x x x To successfully overcome such presumption of regularity, case law demands that the evidence against it must be *clear and convincing*; absent the requisite quantum of proof to the contrary, the presumption stands deserving of faith and credit.

APPEARANCES OF COUNSEL

Manuel Lao Ong for petitioner.
Enrique V. Olmedo for respondent.

D E C I S I O N

CAGUIOA, *J.*:

The presumption of regularity in the performance of official duties is an aid to the effective and unhampered administration of government functions. Without such benefit, every official action could be negated with minimal effort from litigants, irrespective of merit or sufficiency of evidence to support such challenge. To this end, our body of jurisprudence has been consistent in requiring nothing short of clear and convincing evidence to the contrary to overthrow such presumption. This case is no different.

The Case

In this Appeal by Certiorari[1] (Petition) filed under Rule 45 of the Rules of Court, petitioner Susan A. Yap (Yap) is assailing the Decision dated July 27, 2006[2] (questioned Decision) and Resolution dated February 23, 2011[3] issued by the Court of Appeals-Twentieth (20th) Division (CA) in CA-G.R. SP No.

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[1] *Rollo*, pp. 12-31.

[2] *Id.* at 32-41. Penned by Associate Justice Priscilla Baltazar-Padilla, with Associate Justices Pampio A. Abarintos and Marlene Gonzales-Sison concurring.

[3] *Id.* at 42-43. Penned by Associate Justice Edgardo L. Delos Santos, with Associate Justices Agnes Reyes-Carpio and Eduardo B. Peralta, Jr. concurring.

61944, which denied the Petition for Annulment of Judgment (Petition for Annulment) dated November 8, 2000[4] and the subsequent Motion for Reconsideration filed by petitioner Yap. The questioned Decision was rendered in connection with the Decision dated February 12, 1998[5] (RTC Decision) of the Regional Trial Court of Bacolod City, Branch 46 (RTC) in the case filed by herein respondent Elizabeth Lagtapon (Lagtapon), entitled "*Elizabeth Lagtapon v. Susan Yap*" and docketed as Civil Case (CC) No. 97-9991.

The Facts

The factual antecedents, as summarized by the CA, are as follows:

> On 9 October 1997, [respondent Lagtapon] instituted a civil suit against [petitioner Yap] for a sum of money with the Regional Trial Court of Negros Occidental docketed as Civil Case No. 97-9991 and the same was raffled off to the respondent court.
>
> Summons was issued and as per return of service of summons dated 4 November 1997 prepared by the process server of the respondent court in the person of Ray R. Precioso, he served on November 4, 1997 the summons on [petitioner Yap] who, however, refused to acknowledge receipt thereof, thus, compelling him to tender the same and left (*sic*) a copy thereof for her.
>
> As no answer was filed, [respondent Lagtapon] filed a motion to declare [petitioner Yap] in default dated 16 December 1997. The said motion was granted by the respondent court in an order issued on 12 January 1998 declaring [petitioner Yap] in default and allowing [respondent Lagtapon] to present her evidence ex-parte on 9 February 1998.
>
> Accordingly, [respondent Lagtapon] adduced evidence in her favor ex-parte. On 10 February 1998, the respondent court issued an order admitting the documentary exhibits offered by [respondent Lagtapon].
>
> On 12 February 1998, the respondent court rendered the challenged Decision in favor of [respondent Lagtapon] and against [petitioner

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[4] *Id.* at 44-57.

[5] *Id.* at 68-72. Penned by Presiding Judge Emma C. Labayen.

Yap]. Under date of 6 March 1998, [respondent Lagtapon] filed a motion for execution which was favorably acted upon by the respondent court through an order of 21 May 1998.

The Ex-Officio Provincial Sheriff for Negros Occidental issued a notice of sale on execution dated 25 September 2000 setting the auction sale of petitioner's property on 17 October 2000. The property of petitioner that was put up for execution sale consists of a parcel of land identified as Lot 11, Block 2 of the subdivision plan (LRC) Psd-91608 covered by Transfer Certificate of Title No. T-110467 situated at Herminia Street, Villa Valderrama (*sic*), Barangay Mandalagan, Bacolod City.

On or about 11 October 2000, Joey de la Paz, to whom [petitioner Yap] mortgaged the same property, informed her that when he asked his secretary to secure a copy of the title covering the property from the Registry of Deeds of Bacolod City, it was found out that annotated on the title is a notice of embargo relative to Civil Case No. 97-9991, that a notice of sale on execution had already been issued and that the said property was scheduled to be sold at auction on 17 October 2000.

Immediately upon receiving such information, [petitioner Yap] proceeded to the Hall of Justice to verify the truthfulness thereof. It was only then that she discovered that she was sued by [respondent Lagtapon] and a judgment by default against her had long been issued.[6]

Proceeding from such developments, petitioner Yap filed the subject Petition for Annulment with the CA, assailing the RTC Decision on the ground that Summons was not validly served on her, which thus prevented the RTC from acquiring jurisdiction over her person.[7] In particular, petitioner Yap alleged that at the time Summons was allegedly served on November 4, 1997 (as evidenced by the Return of Service),[8] she was not residing in either of the addresses supplied by respondent Lagtapon in her Complaint,[9] namely: (i) Herminia Street, Villa

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[6] *Id.* at 33-35.

[7] *Id.* at 54.

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

[9] *Id.* at 75-80.

Valderama, Bacolod City, and (ii) Frankfurt Street, Jesusa Heights, Bacolod City.[10]

With respect to the first address, petitioner Yap claimed that while she used to reside therein, she had already moved out from the said address sometime in June 1997 and started leasing out the same on July 1998.[11] Hence, the Summons could not have been served on her on November 4, 1997, as she had already vacated from the said address by then.

Meanwhile, regarding the second address, petinioner Yap averred that she never resided at any such place.[12] Allegedly, at the time of the service of Summons, she was residing somewhere else, specifically in "Frankfurt Street, Sunshine Valley Subdivision, Barangay Estefania, Bacolod City" (as compared to "Frankfurt Street, Hesusa (*sic*) Heights, Bacolod City"), which she started leasing from June 1997 (upon vacating the first address) until September 1999.[13]

Simply put, petitioner Yap wholly denied the fact of service of Summons, as reflected in the Return of Service dated November 4, 1997[14] accomplished by the RTC's process server, Roy R. Precioso (Precioso).

Notably, it was stated in the said Return that the Summons, together with a copy of the Complaint and its annexes, was served **personally** on petitioner Yap on November 4, 1997, at about 4:35 p.m., and that the latter refused to sign the same, which prompted Precioso to tender and leave a copy of the Summons with petitioner Yap.[15] While the place of service was not indicated in the Return, it should be noted that Precioso subsequently executed an Affidavit dated February 21, 2001,

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[10] *Id.* at 75.

[11] *Id.* at 35.

[12] *Id.*

[13] *Id.* at 55.

[14] *Id.* at 82.

[15] *Id.*

attesting to the fact that he served the Summons on petitioner Yap at "Frankfurt Street, Hesusa Village, Bacolod City."[16]

Petitioner Yap likewise categorically denied receipt of the Motion to Declare in Default dated December 16, 1997.[17] As indicated in the records, the said Motion was served on petitioner Yap via JRS Express mail, evidenced by JRS Express Cash Airbill No. 734216, and that a certain "Tommy Lim" received it.[18] Petitioner Yap again claimed that she could not have received the same as she was never a resident in the address indicated in the said Airbill, which was also "Frankfurt Street, Hesusa (*sic*) Heights, Bacolod City".[19]

On the other hand, respondent Lagtapon denied all the factual allegations in the Petition for Annulment to the effect that petitioner Yap was never served with Summons on the date indicated, and claimed that petitioner Yap was indeed aware of the proceedings, as borne out by the records of the RTC.[20] In her Answer to Petition for Annulment of Judgment dated March 7, 2001,[21] respondent Lagtapon also raised the following grounds for the dismissal of the said Petition: (i) assuming *arguendo* that petitioner Yap did not receive the RTC Decision, she was constructively notified thereof as well as the corresponding Writ of Execution dated May 22, 1998 issued by the RTC when the Provincial Sheriff of Negros Occidental caused the registration and annotation of the Notice of Embargo or Levy at the back of petitioner Yap's Transfer Certificate of Title No. T-110467.[22] Hence, respondent Lagtapon argued that petitioner Yap's failure to file a petition for relief from judgment

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[16] *Id.* at 146. Annex "4" of the Answer to Petition for Annulment of Judgment dated March 7, 2001.

[17] *Id.* at 48.

[18] *Id.*

[19] *Id.*

[20] *Id.* at 120-121, 128.

[21] *Id.* at 118-140.

[22] *Id.* at 129-130.

within sixty (60) days from the time of the said annotation on May 26, 1998 rendered her Petition for Annulment dismissible;[23] (ii) petitioner Yap failed to file a petition for *certiorari* under Rule 65 to question the Order declaring her in default, the RTC Decision, or the Notice of Embargo or Levy;[24] and (iii) there was no extrinsic fraud extant from the records of the case that would serve as basis for the Petition for Annulment under Rule 47 of the Rules of Court.[25]

Ruling of the CA

In the questioned Decision, the CA denied the Petition for Annulment and upheld the validity of the service of Summons on petitioner Yap. The CA held that petitioner Yap's evidence failed to rebut the presumption of regularity, *i.e.*, that she failed to satisfactorily establish the fact that she was residing elsewhere during the time of the service of Summons, contrary to what was stated in the Return of Service.[26]

In her Motion for Reconsideration dated April 15, 2008,[27] petitioner Yap claimed that the CA "overlooked very important documents which, if taken into consideration, could materially affect the decision it first arrived at".[28] In its Resolution dated February 23, 2011, the CA denied petitioner Yap's Motion for Reconsideration for lack of merit.[29]

Hence, this Petition.

Proceedings before the SC

On June 9, 2011, respondent Lagtapon filed a Motion to Dismiss,[30] which was noted without action by the Court in its

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[23] *Id.* at 129-131.

[24] *Id.* at 131-132.

[25] *Id.* at 132.

[26] See *id.* at 37, 40.

[27] *Id.* at 147-153.

[28] *Id.* at 147.

[29] *Id.* at 42-43.

[30] *Id.* at 162-165.

Resolution dated October 19, 2011.[31] Thus, in her Comment dated January 12, 2012,[32] respondent Lagtapon raised the sole issue of whether the remedy of Annulment of Judgment could still be availed of by petitioner Yap on the ground that "[e]xtrinsic [f]raud cannot be a valid ground if it was not availed of in a Motion for [New] Trial or Petition [f]or Relief of Judgment".[33]

Accordingly, Yap filed her Reply dated September 17, 2012,[34] which was duly noted by the Court in a Resolution dated October 22, 2012.[35]

Issue

At issue in this case is whether the CA committed reversible error in dismissing the Petition for Annulment and ruling that the RTC had validly acquired jurisdiction over petitioner Yap's person through service of summons.

The Court's Ruling

The Petition is denied.

In resolving the principal issue of this case, the Court shall separately discuss the matters raised by the opposing sides according to their nature.

I. Procedural Matters

Questions of fact are not cognizable in a Rule 45 petition.

At its core, the instant controversy hinges on whether Summons was validly served upon petitioner Yap or not. As discussed above, the parties' claims are diametrically opposing: on the one hand, petitioner Yap denies any service of Summons on her person, while on the other, the RTC's process server,

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[31] *Id.* at 169.

[32] *Id.* at 171-175.

[33] *Id.* at 171.

[34] *Id.* at 180-A to 183.

[35] *Id.* at 185.

Precioso, attests to having served Summons on petitioner Yap herself. Resolving this issue would thus necessitate a re-examination and re-weighing of the evidence on record.

In this regard, it has been repeatedly held by the Court that an appeal by *certiorari* under Rule 45 of the Rules is limited in its scope — the Court may only entertain questions of law[36] as jurisdiction over factual questions has been devolved to the trial courts as a matter of efficiency and practicality in the administration of justice. As an arbiter of laws, the Court is not expected to recalibrate the evidence already considered by inferior courts.[37] More importantly, to the extent that the evidence on record amply support the factual findings of the trial court, such findings are deemed conclusive and will not be disturbed on appeal.[38] On this score alone, the Petition, for raising factual issues, may already be denied pursuant to the Court's discretionary appellate jurisdiction.

The remedy of annulment of judgment under Rule 47 of the Rules is based either on extrinsic fraud or lack of jurisdiction.

In her Comment dated January 12, 2012, respondent Lagtapon insists that the instant Petition should be dismissed on the ground that the same is based on extrinsic fraud and that petitioner Yap's failure to avail of the remedies of new trial or petition for relief from judgment on such ground bars a resort to the remedy of annulment of judgment.[39]

Respondent Lagtapon's argument is misplaced.

The remedy of annulment of judgment, embodied in Rule 47 of the Rules, is extraordinary in character, and does not so easily and readily lend itself to abuse by parties aggrieved by final

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[36] RULES OF COURT, Rule 45, Section 1.

[37] See *Miro v. Vda. De Erederos*, 721 Phil. 772, 785-787 (2013).

[38] See *id.* at 784.

[39] See *rollo*, pp. 171-172.

judgments. The grounds for a Rule 47 petition are: (i) extrinsic fraud and (ii) lack of jurisdiction.[40] Extrinsic fraud cannot be a valid ground if it had been availed of, or could have been availed of, in a motion for new trial or petition for relief.[41] On the other hand, lack of jurisdiction means either lack of jurisdiction over the subject matter or nature of the action, or lack of jurisdiction over the person of the defendant.[42]

In the Petition filed by petitioner Yap, she did not specify her exclusive reliance on extrinsic fraud as basis of her Petition under Rule 47. To be precise, petitioner Yap's claim of defective service of Summons brings to fore the lack of jurisdiction of the RTC over her person.[43]

Moreover, the Court agrees with the position of petitioner Yap that she could no longer avail of the remedies of new trial or petition for relief from judgment because, as borne out by the records, she alleged to have become aware of the RTC Decision on October 11, 2000 at the latest, at the time when a writ of execution had already been issued.[44] Clearly, the remedies of appeal or new trial were no longer available to petitioner Yap. Under the Rules, execution shall issue upon the expiration of the period to appeal therefrom, if no appeal has been duly perfected.[45] In the same manner, a motion for new trial can only be filed within the period for taking an appeal.[46] Under the present circumstances, by the time petitioner Yap acquired knowledge of the proceedings, the period for perfecting an appeal had already lapsed. Likewise, the remedy of a petition for relief was no longer available, considering that a writ of execution

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[40] RULES OF COURT, Rule 47, Section 2.

[41] *Id.*

[42] *Yuk Ling Ong v. Co*, G.R. No. 206653, February 25, 2015, 752 SCRA 42, 48.

[43] See *rollo*, p. 27.

[44] *Id.* at 28.

[45] RULES OF COURT, Rule 39, Section 1.

[46] *Id.* at Rule 37, Section 1.

had already been issued as early as May 22, 1998, which was already more than six (6) months after petitioner Yap acquired knowledge of the RTC Decision.[47]

II. Substantive Matters

Be that as it may, even if the foregoing rules were to be relaxed in the interest of substantial justice, the Court finds no reason to arrive at a conclusion different from that reached by the CA. Upon judicious review of the records, the Court rules that the CA committed no reversible error in finding that Summons had been validly served on petitioner Yap.

The Court explains.

It is axiomatic that a public official enjoys the presumption of regularity in the discharge of one's official duties and functions.[48] Here, in the absence of clear indicia of partiality or malice, the service of Summons on petitioner Yap is perforce deemed regular and valid. Correspondingly, the Return of Service of Precioso as process server of the RTC constitutes *prima facie* evidence of the facts set out therein.[49]

The Return of Service states:

> Respectfully returned to the Officer-in-Charge of this Court the herein-attached Summons dated October 15, 1997, DULY SERVED with the following information, to wit:
>
> That on November 4, 1997 at about 4:35 p.m., **the undersigned served a copy of the complaint, its annexes as well as the Summons to the defendant Susan A. Yap, personally**, but she refused to sign said Summons despite the undersigned's explanation to her but nevertheless, the undersigned tendered and leave (*sic*) a copy for her.
>
> For the information of this Honorable Court.
>
> Bacolod City, November 4, 1997.[50] (Emphasis supplied)

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[47] *Rollo*, p. 28.

[48] See *Gatmaitan v. Gonzales*, 525 Phil. 658, 671 (2006).

[49] See *Guanzon v. Arradaza*, 539 Phil. 367, 375 (2006).

[50] *Rollo*, p. 82.

Hence, as far as the circumstances attendant to the service of Summons are concerned, the Court has the right to rely on the factual representation of Precioso that service had indeed been made on petitioner Yap in person. A contrary rule would reduce the Court to a mere fact-finding tribunal at the expense of efficiency in the administration of justice, which, as mentioned earlier, is beyond the ambit of the Court's jurisdiction in a Rule 45 petition.

To successfully overcome such presumption of regularity, case law demands that the evidence against it must be *clear and convincing*; absent the requisite quantum of proof to the contrary, the presumption stands deserving of faith and credit.[51] In this case, the burden of proof to discharge such presumption lay with petitioner Yap.[52]

In her Petition, petitioner Yap makes much of the failure of Precioso to include the place of service in his Return, contrary to Section 18, Rule 14 of the Rules of Court,[53] relying on the pronouncements in *Santiago Syjuco, Inc. v. Castro*.[54] Notably, however, the circumstances attendant in that case are not on all fours with the facts at hand. In *Syjuco*, which cited *Delta Motor Sales Corporation v. Mangosing*,[55] the service of Summons involved a juridical entity and the crux of the defect there was the process server's failure to properly identify the person served inasmuch as Section 11 of Rule 14 of the Rules provides an exclusive list of persons that may be served Summons when the defendant is a corporation. Here, the disputed service of Summons was made personally upon Yap as defendant in CC No. 97-9991 and was made pursuant to Section 6 of the said Rule.

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[51] *Guanzon v. Arradaza*, *supra* note 49.

[52] See *Office of the Ombudsman v. Manalastas*, G.R. No. 208264, July 27, 2016, p. 8.

[53] *Rollo*, p. 22.

[54] 256 Phil. 621 (1989).

[55] 162 Phil. 804 (1976).

Moreover, and as previously adverted to, while such detail was indeed lacking in the said Return, the Court cannot ignore the fact that Precioso subsequently executed an Affidavit supplying the place of service, which, to the mind of this Court, constitutes substantial compliance with the Rules. On this note, the Court agrees with the following disquisition of the CA:

> Petitioner puts in issue the place of her residence at the time of the alleged personal service of summons on her. However it is clear from the foregoing provisions of the Rules of Court that where there is personal service of summons, the place is of no moment. The place becomes material only where the service is by substituted service for in such a case the rule requires, in explicit manner, that the summons be served only either at the defendant's residence or his office/place of business. Insofar as personal service is concerned, what matters is that the defendant has been personally put on notice regarding the institution of an action against him and was furnished with copy (*sic*) of the summons and the complaint. Service to be done personally does not mean that service is possible only at the defendant's actual residence.[56]

This presumption of regularity accorded to Precioso's Return of Service of Summons was, however, according to Petitioner Yap, sufficiently rebutted by the following pieces of evidence:[57]

(i) Affidavits of her neighbors attesting to the fact that Yap had been residing in "Frankfurt Street, Sunshine Valley Subdivision, Barangay Estefania, Bacolod City" beginning June 1997;[58]

(ii) Utility receipts bearing the name of her alleged landlord, Liberato Reyes;[59] and

(iii) Mail matters from the RTC (*i.e.*, Orders dated January 12, 1998 and February 10, 1998) in envelopes which had handwritten notations reading "UNCLAIMED".[60]

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[56] *Rollo*, p. 37.

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

[58] *Id.* at 24, 83-84.

[59] *Id.* at 24, 86-87.

[60] *Id.* at 25-26, 106 and 108.

Directly addressing this argument, the CA, in the questioned Decision, ruled that the above evidence was insufficient to support the claim that petitioner Yap was residing elsewhere at the time of the service of Summons and therefore inadequate to overcome the presumption of regularity.[61] The Court agrees.

With respect to item (i), petitioner Yap would want the Court to rely on statements allegedly made by petitioner Yap's neighbors with respect to a purported lease contract between petitioner Yap and her landlord in lieu of a statement from the landlord himself. In the first place, the records are bereft of any lease contract involving the residence in the Sunshine Valley address. The Court affirms the following observations of the CA on this matter:

> Petitioner contends that when the summons was allegedly served on her on 4 November 1997, she was not residing at both addresses given by private respondent but at Frankfurt Street, Sunshine Valley Subdivision. **The said alleged fact was not established by petitioner to the Court's satisfaction. No contract of lease covering her lease of the said place was given by petitioner. To prove the alleged lease, mere affidavits of alleged neighbors of her in the said area were submitted.** The affidavits of petitioner's witnesses were executed in October 2000 and both affiants made the impression that they could very well recall that petitioner's lease of the residential unit started in June of 1997 (and not other month of that year, for that matter). Nothing in said affidavits would explain why both affiants were able to retain that particular time in their minds as the date when petitioner commenced her lease of the aforesaid dwelling place. **No affidavit from the supposed lessor was submitted. Petitioner put as an excuse her former lessor's reluctance to get involved in the case. To the mind of the Court, the refusal of the said lessor to execute an affidavit for the alleged term, only casts more doubt on petitioner's claim to this effect.**
>
> W[e] also wonder why petitioner agreed to lease the said place from Mr. Reyes from June, 1997 up to September, 1999 without any written lease contract. Petitioner herself is a lessor and she is that kind whose lease of her property even for a short time is covered by

[61] See *id.* at 37.

a written agreement as illustrated by two samples of such contract she attached to her petition involving her property at Herminia Street, one is for one year while the other, for a shorter term of six (6) months.[62] (Emphasis supplied)

While it is true that the trial court cannot dictate what particular evidence the parties must present in order to prove their respective cases, the fact remains that petitioner Yap is still bound to present ***clear and convincing*** evidence to support her claims. Proceeding therefrom, the Court remains unconvinced that petitioner Yap had not and could not have been served Summons as specifically detailed in the Return of Service.

As to item (ii), petitioner Yap implores the Court to examine Central Negros Electric Coop., Inc. Provisionary Receipt No. 156556 dated November 12, 1997[63] and BACIWA Official Receipt No. 1738502 dated September 8, 1997[64] that are attached to a Letter dated February 16, 1998[65] purportedly written by Liberato Reyes and addressed to petitioner Yap.

However, examining the above documents, the Court finds them severely lacking in establishing petitioner Yap's residence in the Sunshine Valley address. First of all, both receipts do not indicate any address corresponding to the purported utility expenses incurred by petitioner Yap during the alleged lease. In the same manner, no address was mentioned in the Letter dated February 16, 1998 — what the Letter simply contained were vague statements regarding the collection of rentals.

Based on the said documents, it would be impossible for the Court to determine where petitioner Yap had her residence at the time Summons was served on her person. Granting that there was indeed a lessor-lessee relationship between petitioner Yap and Liberato Reyes, there is no showing that the property

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

[63] *Id.* at 86.

[64] *Id.* at 87.

[65] *Id.* at 85.

subject of the lease was "Frankfurt Street, Sunshine Valley Subdivision, Barangay Estefania, Bacolod City" and no place else. While it may be true that Liberato Reyes was a lessor of petitioner Yap, there is no way for this Court to know **which** address the latter was occupying specifically, for it may very well be that Liberato Reyes had other properties at the time the alleged lease was entered into. Moreover, that the handwritings thereon were indeed those of Liberato Reyes was not even satisfactorily established.

Most significant, however, is the glaring fact that the Letter was dated several months **after** the service of Summons on November 4, 1997. As pointedly stressed by the CA, that petitioner Yap was residing in a place owned by Liberato Reyes on February 16, 1998 is immaterial in proving her residence at an earlier time, *i.e.*, November 4, 1997.[66]

Taken together, the above pieces of evidence do not, in any respect, tend to establish the fact that petitioner Yap was not served Summons on November 4, 1997 in "Frankfurt Street, Hesusa Village, Bacolod City".[67]

Finally, as regards item (iii), the Court finds that the mail matters from the RTC bearing handwritten notations "UNCLAIMED" are highly inconclusive to establish her non-residence at the Hesusa Village address, let alone her residence at the Sunshine Valley address, considering that they involved orders dated **after** the service of Summons on November of 1997. On the other hand, what is present in the records is evidence of receipt of the Motion to Declare in Default dated December 16, 1997 via JRS Express by a certain "Tommy Lim," albeit denied by petitioner Yap.[68]

All told, the Court hereby upholds the finding of the CA in its questioned Decision that petitioner Yap's evidence does **not**

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[66] See *id.* at 38.

[67] *Id.* at 146. Annex "4" of the Answer to Petition for Annulment of Judgment dated March 7, 2001.

[68] *Id.* at 48.

constitute ***clear and convincing evidence*** to overturn the presumption of regularity attendant to the Return of Service. Following *Umandap v. Sabio, Jr.*,[69] self-serving assertions made by an aggrieved party are insufficient to disregard the statements made in the sheriff's certificate after service of Summons. In light of petitioner Yap's failure to rebut such presumption, the Court finds that the RTC properly acquired jurisdiction over petitioner Yap's person, which renders the RTC Decision valid. Accordingly, the CA correctly dismissed the subject Petition for Annulment.

WHEREFORE, the foregoing premises considered, the Court resolves to **DENY** the instant Petition and **AFFIRM** *in toto* the Decision dated July 27, 2006 and Resolution dated February 23, 2011 of the Court of Appeals-Twentieth (20th) Division in CA-G.R. SP No. 61944.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, del Castillo, and *Perlas-Bernabe, JJ.*, concur.

SECOND DIVISION

[G.R. No. 200009. January 23, 2017]

SPRING HOMES SUBDIVISION CO., INC., SPOUSES PEDRO L. LUMBRES and REBECCA T. ROARING, *petitioners, vs.* **SPOUSES PEDRO TABLADA, JR. and ZENAIDA TABLADA,** *respondents*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PARTIES; INDISPENSABLE PARTY; A PARTY IS INDISPENSABLE,

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[69] 393 Phil. 657, 667 (2000).

NOT ONLY IF HE HAS AN INTEREST IN THE SUBJECT MATTER OF THE CONTROVERSY, BUT ALSO IF HIS INTEREST IS SUCH THAT A FINAL DECREE CANNOT BE MADE WITHOUT AFFECTING THIS INTEREST OR WITHOUT PLACING THE CONTROVERSY IN A SITUATION WHERE THE FINAL DETERMINATION MAY BE WHOLLY INCONSISTENT WITH EQUITY AND GOOD CONSCIENCE.— [I]t must be noted that Spring Homes is not an indispensable party. Section 7, Rule 3 of the Revised Rules of Court defines indispensable parties as parties-in-interest without whom there can be no final determination of an action and who, for this reason, must be joined either as plaintiffs or as defendants. Time and again, the Court has held that a party is indispensable, not only if he has an interest in the subject matter of the controversy, but also if his interest is such that a final decree cannot be made without affecting this interest or without placing the controversy in a situation where the final determination may be wholly inconsistent with equity and good conscience. He is a person whose absence disallows the court from making an effective, complete, or equitable determination of the controversy between or among the contending parties. Conversely, a party is not indispensable to the suit if his interest in the controversy or subject matter is distinct and divisible from the interest of the other parties and will not necessarily be prejudiced by a judgment which does complete justice to the parties in court. If his presence would merely permit complete relief between him and those already parties to the action or will simply avoid multiple litigation, he is not indispensable.

2. ID.; ID.; ID.; NECESSARY PARTY; A PARTY WHO HAS ALREADY SOLD ITS INTEREST OVER THE PROPERTY IS NO LONGER REGARDED AS AN INDISPENSABLE PARTY, BUT IS, AT BEST, CONSIDERED TO BE A NECESSARY PARTY WHOSE PRESENCE IS NECESSARY TO ADJUDICATE THE WHOLE CONTROVERSY, BUT WHOSE INTERESTS ARE SO FAR SEPARABLE THAT A FINAL DECREE CAN BE MADE IN ITS ABSENCE WITHOUT AFFECTING IT; FAILURE TO SUMMON A NECESSARY PARTY DOES NOT DEPRIVE THE REGIONAL TRIAL COURT OF JURISDICTION OVER THE CASE.— [B]y virtue of the second Deed of Absolute Sale between Spring Homes and the Spouses Lumbres, the Spouses Lumbres became the absolute and registered owner

of the subject property herein. As such, they possess that certain interest in the property without which, the courts cannot proceed for settled is the doctrine that registered owners of parcels of land whose title is sought to be nullified should be impleaded as an indispensable party. Spring Homes, however, which has already sold its interests in the subject land, is no longer regarded as an indispensable party, but is, at best, considered to be a necessary party whose presence is necessary to adjudicate the whole controversy, but whose interests are so far separable that a final decree can be made in its absence without affecting it. This is because when Spring Homes sold the property in question to the Spouses Lumbres, it practically transferred all its interests therein to the said Spouses. In fact, a new title was already issued in the names of the Spouses Lumbres. As such, Spring Homes no longer stands to be directly benefited or injured by the judgment in the instant suit regardless of whether the new title registered in the names of the Spouses Lumbres is cancelled in favor of the Spouses Tablada or not. Thus, contrary to the ruling of the RTC, the failure to summon Spring Homes does not deprive it of jurisdiction over the instant case for Spring Homes is not an indispensable party.

3. CIVIL LAW; OBLIGATIONS AND CONTRACTS; SALES; DOUBLE SALE; PRINCIPLE OF *PRIMUS TEMPORE, POTIOR JURE;* OWNERSHIP OF AN IMMOVABLE PROPERTY WHICH IS THE SUBJECT OF A DOUBLE SALE SHALL BE TRANSFERRED TO THE PERSON ACQUIRING IT WHO IN GOOD FAITH FIRST RECORDED IT IN THE REGISTRY OF PROPERTY; IN DEFAULT THEREOF, TO THE PERSON WHO IN GOOD FAITH WAS FIRST IN POSSESSION; AND IN DEFAULT THEREOF, TO THE PERSON WHO PRESENTS THE OLDEST TITLE, PROVIDED THERE IS GOOD FAITH.— The principle of *primus tempore, potior jure* (first in time, stronger in right) gains greater significance in case of a double sale of immovable property. Thus, the Court has consistently ruled that ownership of an immovable property which is the subject of a double sale shall be transferred: (1) to the person acquiring it who in good faith first recorded it in the Registry of Property; (2) in default thereof, to the person who in good faith was first in possession; and (3) in default thereof, to the person who presents the oldest title, provided there is good

faith. The requirement of the law then is two-fold: acquisition in good faith and registration in good faith. Good faith must concur with the registration — that is, the registrant must have no knowledge of the defect or lack of title of his vendor or must not have been aware of facts which should have put him upon such inquiry and investigation as might be necessary to acquaint him with the defects in the title of his vendor. If it is shown that a buyer was in bad faith, the alleged registration they have made amounted to no registration at all. Here, the first buyers of the subject property, the Spouses Tablada, were able to take said property into possession but failed to register the same because of Spring Homes' unjustified failure to deliver the owner's copy of the title whereas the second buyers, the Spouses Lumbres, were able to register the property in their names. But while said the Spouses Lumbres successfully caused the transfer of the title in their names, the same was done in bad faith. As correctly observed by the Court in *Spouses Lumbres v. Spouses Tablada*, the Spouses Lumbres cannot claim good faith since at the time of the execution of their Compromise Agreement with Spring Homes, they were indisputably and reasonably informed that the subject lot was previously sold to the Spouses Tablada. They were also already aware that the Spouses Tablada had constructed a house thereon and were in physical possession thereof. They cannot, therefore, be permitted to freely claim good faith on their part for the simple reason that the First Deed of Absolute Sale between Spring Homes and the Spouses Tablada was not annotated at the back of the subject property's title. It is beyond the Court's imagination how spouses Lumbres can feign ignorance to the first sale when the records clearly reveal that they even made numerous demands on the Spouses Tablada to pay, albeit erroneously, an alleged balance of the purchase price.

4. ID.; ID.; ID.; ID.; KNOWLEDGE GAINED BY THE FIRST BUYER OF THE SECOND SALE CANNOT DEFEAT THE FIRST BUYER'S RIGHTS EXCEPT WHERE THE SECOND BUYER FIRST REGISTERS IN GOOD FAITH THE SECOND SALE AHEAD OF THE FIRST, BUT KNOWLEDGE GAINED BY THE SECOND BUYER OF THE FIRST SALE DEFEATS HIS RIGHTS EVEN IF HE IS FIRST TO REGISTER THE SECOND SALE, SINCE SUCH KNOWLEDGE TAINTS HIS PRIOR REGISTRATION WITH BAD FAITH, AS THE LAW REQUIRES A

CONTINUING GOOD FAITH AND INNOCENCE OR LACK OF KNOWLEDGE OF THE FIRST SALE THAT WOULD ENABLE THE SECOND SALE TO RIPEN INTO FULL OWNERSHIP THROUGH PRIOR REGISTRATION. — Indeed, knowledge gained by the first buyer of the second sale cannot defeat the first buyer's rights except only as provided by law, as in cases where the second buyer first registers in good faith the second sale ahead of the first. Such knowledge of the first buyer does bar her from availing of her rights under the law, among them, first her purchase as against the second buyer. But conversely, knowledge gained by the second buyer of the first sale defeats his rights even if he is first to register the second sale, since such knowledge taints his prior registration with bad faith. Accordingly, in order for the Spouses Lumbres to obtain priority over the Spouses Tablada, the law requires a continuing good faith and innocence or lack of knowledge of the first sale that would enable their contract to ripen into full ownership through prior registration. But from the very beginning, the Spouses Lumbres had already known of the fact that the subject property had previously been sold to the Spouses Tablada, by virtue of a valid Deed of Absolute Sale. In fact, the Spouses Tablada were already in possession of said property and had even constructed a house thereon. Clearly then, the Spouses Lumbres were in bad faith the moment they entered into the second Deed of Absolute Sale and thereafter registered the subject property in their names. For this reason, the Court cannot, therefore, consider them as the true and valid owners of the disputed property and permit them to retain title thereto.

APPEARANCES OF COUNSEL

Restituto M. Mendoza for petitioners.
Roldan M. Noynay for respondents.

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 reverse and set aside

the Decision[1] dated May 31, 2011 and Resolution[2] dated January 4, 2012 of the Court of Appeals (*CA*) in CA-G.R. CV No. 94352 which reversed and set aside the Decision[3] dated September 1, 2009, of the Regional Trial Court *(RTC)*,Branch 92, Calamba City.

The factual antecedents are as follows.

On October 12, 1992, petitioners, Spouses Pedro L. Lumbres and Rebecca T. Roaring, *(Spouses Lumbres)* entered into a Joint Venture Agreement with Spring Homes Subdivision Co., Inc., through its chairman, the late Mr. Rolando B. Pasic, for the development of several parcels of land consisting of an area of 28,378 square meters. For reasons of convenience and in order to facilitate the acquisition of permits and licenses in connection with the project, the Spouses Lumbres transferred the titles to the parcels of land in the name of Spring Homes.[4]

On January 9, 1995, Spring Homes entered into a Contract to Sell with respondents, Spouses Pedro Tablada, Jr. and Zenaida Tablada, *(Spouses Tablada)* for the sale of a parcel of land located at Lot No. 8, Block 3, Spring Homes Subdivision, Barangay Bucal, Calamba, Laguna, covered by Transfer Certificate of Title *(TCT)* No. T-284037. On March 20, 1995, the Spouses Lumbres filed with the RTC of Calamba City a complaint for Collection of Sum of Money, Specific Performance and Damages with prayer for the issuance of a Writ of Preliminary Attachment against Spring Homes for its alleged failure to comply with the terms of the Joint Venture Agreement.[5] Unaware of the pending action, the Spouses Tablada began constructing their house on the subject lot and thereafter occupied the same.

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[1] Penned by Associate Justice Isaias Dicdican, with Associate Justices Ricardo R. Rosario and Edwin D. Sorongon, concurring; *rollo*, pp. 60-79.

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

[3] Penned by Judge Alberto F. Serrano; *id.* at 387-398.

[4] *Id.* at 62.

[5] *Id.*

They were then issued a Certificate of Occupancy by the Office Building Official. Thereafter, on January 16, 1996, Spring Homes executed a Deed of Absolute Sale in favor of the Spouses Tablada, who paid Spring Homes a total of ₱179,500.00, more than the ₱157,500.00 purchase price as indicated in the Deed of Absolute Sale.[6] The title over the subject property, however, remained with Spring Homes for its failure to cause the cancellation of the TCT and the issuance of a new one in favor of the Spouses Tablada, who only received a photocopy of said title.

Subsequently, the Spouses Tablada discovered that the subject property was mortgaged as a security for a loan in the amount of over ₱4,000,000.00 with Premiere Development Bank as mortgagee and Spring Homes as mortgagor. In fact, since the loan remained unpaid, extrajudicial proceedings were instituted.[7] Meanwhile, without waiting for trial on the specific performance and sum of money complaint, the Spouses Lumbres and Spring Homes entered into a Compromise Agreement, approved by the Calamba RTC on October 28, 1999, wherein Spring Homes conveyed the subject property, as well as several others, to the Spouses Lumbres.[8] By virtue of said agreement, the Spouses Lumbres were authorized to collect Spring Homes' account receivables arising from the conditional sales of several properties, as well as to cancel said sales, in the event of default in the payment by the subdivision lot buyers. In its capacity as mortgagee, Premiere Development Bank was included as a party in the Compromise Agreement.[9]

In the exercise of the power granted to them, the Spouses Lumbres started collecting deficiency payments from the subdivision lot buyers. Specifically, they sent demand letters to the Spouses Tablada for the payment of an alleged outstanding balance of the purchase price of the subject property in the

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[6] *Id.*

[7] *Id.* at 63.

[8] *Id.*

[9] *Id.*

amount of ₱230,000.00. When no payment was received, the Spouses Lumbres caused the cancellation of the Contract to Sell previously executed by Spring Homes in favor of the Spouses Tablada. On December 22, 2000, the Spouses Lumbres and Spring Homes executed a Deed of Absolute Sale over the subject property, and as a result, a new title, TCT No. T-473055, was issued in the name of the Spouses Lumbres.[10]

On June 20, 2001, the Spouses Tablada filed a complaint for Nullification of Title, Reconveyance and Damages against Spring Homes and the Spouses Lumbres praying for the nullification of the second Deed of Absolute Sale executed in favor of the Spouses Lumbres, as well as the title issued as a consequence thereof, the declaration of the validity of the first Deed of Absolute Sale executed in their favor, and the issuance of a new title in their name.[11] The Sheriff's Return dated August 1, 2001 indicated that while the original copy of the complaint and the summons were duly served upon the Spouses Lumbres, summons was not properly served upon Spring Homes because it was reportedly no longer existing as a corporate entity.[12]

On August 14, 2001, the Spouses Lumbres filed a Motion to Dismiss the case against them raising as grounds the non-compliance with a condition precedent and lack of jurisdiction of the RTC over the subject matter. They alleged that the Spouses Tablada failed to avail of conciliatory proceedings, and that the RTC has no jurisdiction since the parties, as well as property in question, are all located at Calamba City, and that the action instituted by the Spouses Tablada praying for the nullification of the Compromise Agreement actually corresponds to a nullification of a judgement issued by a co-equal trial court. The Spouses Tablada opposed by alleging that Spring Homes holds office at Parañaque City, falling under the exception from the requirement of barangay conciliatory proceedings and that

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[10] *Id.* at 64.

[11] *Id.*

[12] *Id.*

the action they filed was for nullification of title issued to the Spouses Lumbres as a result of a double sale, which is rightly under the jurisdiction of the trial court. They also emphasized that as non-parties to the Compromise Agreement, the same is not binding upon them. The Motion to Dismiss was eventually denied by the trial court on October 2, 2001.[13]

Interestingly, on even date, the Spouses Lumbres filed an ejectment suit of their own before the Municipal Trial Court in Cities *(MTCC)* of Calamba City demanding that the Spouses Tablada vacate the subject property and pay rentals due thereon. The MTCC, however, dismissed the suit ruling that the Spouses Lumbres registered their title over the subject property in bad faith. Such ruling was reversed by the RTC which found that there was no valid deed of absolute sale between the Spouses Tablada and Spring Homes. Nevertheless, the CA, on appeal, agreed with the MTCC and reinstated the decision thereof. This was affirmed by the Court in *Spouses Lumbres v. Spouses Tablada*[14] on February 23, 2007.

Meanwhile, on the nullification and reconveyance of title suit filed by the Spouses Tablada, the RTC noted that Spring Homes has not yet been summoned. This caused the Spouses Tablada to move for the discharge of Spring Homes as a party on the ground that the corporation had already ceased to exist. The Spouses Lumbres, however, opposed said motion claiming that Spring Homes is an indispensable party.[15] The RTC ordered the motion to be held in abeyance until the submission of proof on Spring Homes' corporate status. In the meantime, trial ensued. Eventually, it was shown that Spring Homes' certificate of registration was revoked on September 29, 2003.[16]

On September 1, 2009, the RTC rendered its Decision dismissing the Spouses Tablada's action for lack of jurisdiction

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[13] *Id.* at 65.

[14] 545 Phil. 471 (2007).

[15] *Rollo,* p. 66.

[16] *Id.*

over the person of Spring Homes, an indispensable party.[17] According to the trial court, their failure to cause the service of summons upon Spring Homes was fatal for Spring Homes was an indispensable party without whom no complete determination of the case may be reached.[18] In support thereof, the RTC cited the pronouncement in *Uy v. CA, et al.*[19] that the absence of an indispensable party renders all subsequent actuations of the court null and void for want of authority to act not only as to the absent parties but even as to those present.[20] In the instant case, the Spouses Tablada prayed that the Deed of Absolute Sale executed by Spring Homes in favor of the Spouses Lumbres be declared null and void and that Spring Homes be ordered to deliver the owner's duplicate certificate of title covering the subject lot. Thus, without jurisdiction over Spring Homes, the case could not properly proceed.[21] The RTC added that the Spouses Tablada's subsequent filing of the motion to discharge does serve as an excuse for at that time, the certificate of registration of Spring Homes had not yet been cancelled or revoked by the Securities and Exchange Commission *(SEC).* In fact, the assumption that it was already dissolved when the suit was filed does not cure the defect, because the dissolution of a corporation does not render it beyond the reach of courts considering the fact that it continues as a body corporate for the winding up of its affairs.[22]

In its Decision dated May 31, 2011, however, the CA reversed and set aside the RTC Decision finding that Spring Homes is not an indispensable party. It held that Spring Homes may be the vendor of the subject property but the title over the same had already been issued in the name of the Spouses Lumbres.

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[17] *Id.* at 398.

[18] *Id.* at 392.

[19] 527 Phil. 117, 128 (2006).

[20] *Rollo,* p. 393.

[21] *Id.*

[22] *Id.* at 394-396.

So any action for nullification of the said title causes prejudice and involves only said spouses, the registered owners thereof. Thus, the trial court may very well grant the relief prayed for by the Spouses Lumbres.[23] In support thereof, the appellate court cited the ruling in *Seno, et al. v. Mangubat, et al.*[24] wherein it was held that in the annulment of sale, where the action was dismissed against defendants who, before the filing of said action, had sold their interests in the subject land to their co-defendant, the said dismissal against the former, who are only necessary parties, will not bar the action from proceeding against the latter as the remaining defendant, having been vested with absolute title over the subject property.[25] Thus, the CA maintained that the RTC's reliance on *Uy v. CA* is misplaced for in said case, it was imperative that an assignee of interests in certain contracts be impleaded, and not the assignor, as the RTC interpreted the ruling to mean. Thus, the doctrine in *Uy* actually bolsters the finding that it is the Spouses Lumbres, as assignee of the subject property, and not Spring Homes, as assignor, who are the indispensable parties.[26]

Moreover, considering that the RTC had already concluded its trial on the case and the presentation of evidence by both parties, the CA deemed it proper to proceed to rule on the merits of the case. At the outset, the appellate court noted that the ruling of the Court in *Spouses Lumbres v. Spouses Tablada* back in 2007 cannot automatically be applied herein for said ruling involves an ejectment case that is effective only with respect to the issue of possession and cannot be binding as to the title of the subject property.

This notwithstanding, the CA ruled that based on the records, the first sale between Spring Homes and the Spouses Tablada must still be upheld as valid, contrary to the contention of the

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[23] *Id.* at 71.

[24] 240 Phil. 121 (1987).

[25] *Rollo,* pp. 71-72.

[26] *Id.* at 72.

Spouses Lumbres that the same was not validly consummated due to the Spouses Tablada's failure to pay the full purchase price of ₱409,500.00. According to the appellate court, the first Deed of Absolute Sale clearly indicated that the consideration for the subject property was ₱157,500.00.[27] The Spouses Lumbres' argument that such Deed of Absolute Sale was executed only for the purpose of securing a loan from PAG-IBIG in favor of the Spouses Tablada was unsubstantiated. In fact, even the second Deed of Absolute Sale executed by Spring Homes in favor of the Spouses Lumbres, as well as several receipts presented, indicated the same amount of ₱157,500.00 as purchase price. As for the amount of ₱409,500.00 indicated in the Contract to Sell executed between Spring Homes and the Spouses Tablada, the CA adopted the findings of the Court in *Spouses Lumbres v. Spouses Tablada* in 2007 and held that the amount of ₱409,500.00 is actually composed not only of the subject parcel of land but also the house to be constructed thereon. But since it was proven that it was through the Spouses Tablada's own hard-earned money that the house was constructed, there existed no balance of the purchase price in the amount of ₱230,000.00 as the Spouses Lumbres vehemently insist, *viz.*:

> Further, the spouses Lumbres alleged that what was legal and binding between Spring Homes and plaintiffs-appellants [spouses Tablada] was **the Contract to Sell** which, in part, **reads**:
>
> 3. That the SELLER, for and in consideration of the payments and other terms and conditions hereinafter to be designated, has offered to sell and the BUYER has agreed to buy certain parcel of land more particularly described as follows:

Blk. No. P- 111	Lot No.	Area Sq. Meter	Price Per sq. Meter	Total Selling Price
3	8	105	₱1,500	
		42	6,000	
				₱409,500

Similar to the ruling of the Supreme Court in Spouses Lumbres v. Spouses Tablada, despite there being no question that the total

[27] *Id.* at 74.

land area of the subject property was One Hundred Five (105) square meters, there appears in the said contract to sell a numerical value of Forty Two (42) square meters computed at the rate of Six Thousand Pesos (₱6,000.00) per square meter. **We agree with the findings of the Supreme Court in this regard that the Forty Two (42) square meters referred only to the land area of the house to be constructed in the subject property. Since the spouses Lumbres failed to disprove the plaintiffs-appellants [spouses Tablada] claim that it was through their own hard earned money that enabled them to fund the construction and completion of their house and not Spring Homes, there existed no balance of the purchase price to begin with. It is important to note that what the plaintiffs-appellants [spouses Tablada] bought from Spring Homes was a vacant lot. Nowhere in the Deed of Absolute Sale executed between plaintiffs-appellants [spouses Tablada] and Spring Homes was it indicated that the improvements found thereon form part of the subject property, lest, that any improvements existed thereto. It was only through the plaintiffs-appellants (spouses Tablada] own efforts that a house was constructed on the subject property.**[28]

The appellate court further stressed that at the time when the Spouses Tablada entered into a contract of sale with Spring Homes, the title over the subject property was already registered in the name of Spring Homes. Thus, the Deed of Absolute Sale between Spring Homes and the Spouses Tablada was valid and with sufficient consideration for every person dealing with a registered land may safely rely on the correctness of the certificate of title issued therefor and the law will, in no way, oblige him to go beyond the certificate to determine the condition of the property.[29]

In the end, the CA upheld the ruling of the Court in *Spouses Lumbres v. Spouses Tablada* that notwithstanding the fact that the Spouses Lumbres, as the second buyer, registered their Deed of Absolute Sale, in contrast to the Spouses Tablada who were not able to register their Deed of Absolute Sale precisely because of Spring Home's failure to deliver the owner's copy of the

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

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

TCT, the Spouses Tablada's right could not be deemed defeated as the Spouses Lumbres were in bad faith for even before their registration of their title, they were already informed that the subject property was already previously sold to the Spouses Tablada, who had already constructed their house thereon.[30] Thus, the CA disposed the case as follows:

> WHEREFORE, in view of the foregoing premises, the instant appeal is hereby GRANTED. The assailed Decision dated September 1, 2009 in Civil Case No. 3117-2001-C is hereby ANNULLED AND SET ASIDE. Accordingly, the Register of Deeds of Calamba, Laguna, is hereby directed to cancel Transfer Certificate of Title No. T-473055 registered in the name of the defendants-appellees spouses Pedro L. Lumbres and Rebecca T. Roaring Lumbres and, in lieu thereof, issue a new one in the name of plaintiffs-appellants.
>
> SO ORDERED.[31]

When their Motion for Reconsideration was denied by the CA in its Resolution dated January 4, 2012, the Spouses Lumbres filed the instant petition invoking the following arguments:

I.

THE COURT OF APPEALS ERRED IN NOT DISMISSING THE APPEAL FOR LACK OF JURISDICTION OF THE TRIAL COURT OVER THE PERSON OF SPRING HOMES AS AN INDISPENSABLE PARTY.

II.

THE COURT OF APPEALS ERRED IN ORDERING THAT RESPONDENTS, NOT PETITIONERS, WERE PURCHASERS OF THE PROPERTY IN GOOD FAITH, WHICH IS NOT IN ACCORD WITH ESTABLISHED FACTS, LAW, AND JURISPRUDENCE.

In the instant petition, the Spouses Lumbres insist that the Spouses Tablada have not yet paid the balance of the purchase price of the subject property in the amount of ₱230,000.00 despite repeated demands.[32] They also insist that since Spring Homes,

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[30] *Id.* at 78.

[31] *Id.* at 79.

[32] *Id.* at 21.

an indispensable party, was not duly summoned, the CA should have affirmed the RTC's dismissal of the instant complaint filed by the Spouses Tablada for lack of jurisdiction.[33] Citing the RTC's Decision, the Spouses Lumbres reiterated that even assuming that Spring Homes had been dissolved at the time of the filing of the complaint, the same does not excuse the failure to implead it for it still continues as a body corporate for three (3) years after revocation of its certificate of incorporation.[34]

Moreover, the Spouses Lumbres faulted the CA in upholding the findings of the Court in the 2007 case entitled *Spouses Lumbres v. Spouses Tablada* for the issue therein only involves physical possession and not ownership. Contrary to the findings of the CA, the Spouses Lumbres claim that the Spouses Tablada were not purchasers in good faith for their failure to react to their repeated demands for the payment of the ₱230,000.00.[35] In fact, the Spouses Tablada even admitted that they would pay the ₱230,000.00 upon the release of the PAG-IBIG loan.[36] Thus, the purported Deed of Absolute Sale between Spring Homes and the Spouses Tablada is void for having no valuable consideration, especially since it was issued merely for purposes of the loan application from PAG-IBIG. On the other hand, the Spouses Lumbres claim that they were in good faith since the First Deed of Absolute Sale between Spring Homes and the Spouses Tablada was not annotated at the back of the subject property's title.[37]

The petition is bereft of merit.

At the outset, it must be noted that Spring Homes is not an indispensable party. Section 7,[38] Rule 3 of the Revised Rules

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[33] *Id.* at 23.

[34] *Id.* at 27.

[35] *Id.* at 40.

[36] *Id.* at 43.

[37] *Id.* at 41.

[38] SECTION 7. *Compulsory joinder of indispensable parties.*- Parties-in-interest without whom no final determination can be had of an action shall be joined either as plaintiffs or defendants.

of Court defines indispensable parties as parties-in-interest without whom there can be no final determination of an action and who, for this reason, must be joined either as plaintiffs or as defendants.[39] Time and again, the Court has held that a party is indispensable, not only if he has an interest in the subject matter of the controversy, but also if his interest is such that a final decree cannot be made without affecting this interest or without placing the controversy in a situation where the final determination may be wholly inconsistent with equity and good conscience.[40] He is a person whose absence disallows the court from making an effective, complete, or equitable determination of the controversy between or among the contending parties.[41] Conversely, a party is not indispensable to the suit if his interest in the controversy or subject matter is distinct and divisible from the interest of the other parties and will not necessarily be prejudiced by a judgment which does complete justice to the parties in court.[42] If his presence would merely permit complete relief between him and those already parties to the action or will simply avoid multiple litigation, he is not indispensable.

In dismissing the complaint for lack of jurisdiction, the trial court relied on *Uy v. CA, et al.*[43] and held that since Spring Homes, an indispensable party, was not summoned, it had no authority to proceed. But as aptly observed by the CA, the doctrine in *Uy* hardly serves as basis for the trial court's conclusions and actually even bolsters the finding that it is the Spouses Lumbres, as assignee of the subject property, and not Spring Homes, as assignor, who are the indispensable parties. In said case, the Public Estates Authority *(PEA)*, tasked to complete engineering works on the Heritage Memorial Park

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[39] 621 Phil. 212, 221 (2009).

[40] *Id.*

[41] *Id.*

[42] 504 Phil. 634, 640-641 (2005).

[43] *Supra* note 19.

project, assigned all of its interests therein to Heritage Park Management Corporation *(HPMC)*. When a complaint was filed against the PEA in connection with the project, the Court affirmed the dismissal thereof holding that HPMC, as assignee of PEA's interest, should have been impleaded, being the indispensable party therein. The pertinent portion of the Decision states:

> Based on the Construction Agreement, PEA entered into it in its capacity as Project Manager, pursuant to the PFTA. **According to the provisions of the PFTA, upon the formation of the HPMC, the PEA would turn over to the HPMC all the contracts relating to the Heritage Park. At the time of the filing of the CIAC Case on May 31, 2001, PEA ceased to be the Project Manager of the Heritage Park Project, pursuant to Section 11 of the PFTA. Through a Deed of Assignment, PEA assigned its interests in all the existing contracts it entered into as the Project Manager for Heritage Park to HPMC.** As early as March 17, 2000, PEA officially turned over to HPMC all the documents and equipment in its possession related to the Heritage Park Project. Petitioner was duly informed of these incidents through a letter dated March 13, 2000. **Apparently, as of the date of the filing of the private respondent HPMC, as the assignee, who stands to be benefited or injured by the judgment in the suit. In its absence, there cannot be a resolution of the dispute of the parties before the court which is effective, complete or equitable. We thus reiterate that HPMC is an indispensable party.**[44]

Moreover, as held by the CA, the pronouncement in *Seno, et al. v. Mangubat, et al.*[45] is instructive. In said case, the petitioner therein entered into an agreement with certain respondents over a parcel of land, which agreement petitioner believed to be merely an equitable mortgage but respondents insisted to be a sale. The agreement, however, was embodied in a document entitled "Deed of Absolute Sale." Consequently, respondents were able to obtain title over the property in their names. When two of the three respondents sold their shares to the third

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[44] *Id.* (Emphasis supplied).

[45] *Supra* note 24.

respondent, the third respondent registered the subject property solely in his name. Thereafter, the third respondent further sold said property to another set of persons. Confronted with the issue of whether the two respondents who sold their shares to the third respondent should be impleaded as indispensable parties in an action filed by petitioner to reform the agreement and to annul the subsequent sale, the Court ruled in the negative, *viz*.:

> **The first issue We need to resolve is whether or not defendants Andres Evangelista and Bienvenido Mangubat are indispensable parties.** Plaintiffs contend that said defendants being more dummies of defendant Marcos Mangubat and therefore not real parties in interest, there is no room for the application of Sec. 7, Rule 3 of the Revised Rules of Court.
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> x x x x x x x x x
>
> **In the present case, there are no rights of defendants Andres Evangelista and Bienvenido Mangubat to be safeguarded if the sale should be held to be in fact an absolute sale nor if the sale is held to be an equitable mortgage. Defendant Marcos Mangubat became the absolute owner of the subject property by virtue of the sale to him of the shares of the aforementioned defendants in the property. Said defendants no longer have any interest in the subject property.** However, being parties to the instrument sought to be reformed, their presence is necessary in order to settle all the possible issues of tile controversy. Whether the disputed sale be declared an absolute sale or an equitable mortgage, the rights of all the defendants will have been amply protected. Defendants-spouses Luzame in any event may enforce their rights against defendant Marcos Mangubat.[46]

Similarly, by virtue of the second Deed of Absolute Sale between Spring Homes and the Spouses Lumbres, the Spouses Lumbres became the absolute and registered owner of the subject property herein. As such, they possess that certain interest in the property without which, the courts cannot proceed for settled is the doctrine that registered owners of parcels of land whose title is sought to be nullified should be impleaded as an

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[46] *Id.* (Emphasis supplied).

indispensable party.[47] Spring Homes, however, which has already sold its interests in the subject land, is no longer regarded as an indispensable party, but is, at best, considered to be a necessary party whose presence is necessary to adjudicate the whole controversy, but whose interests are so far separable that a final decree can be made in its absence without affecting it.[48] This is because when Spring Homes sold the property in question to the Spouses Lumbres, it practically transferred all its interests therein to the said Spouses. In fact, a new title was already issued in the names of the Spouses Lumbres. As such, Spring Homes no longer stands to be directly benefited or injured by the judgment in the instant suit regardless of whether the new title registered in the names of the Spouses Lumbres is cancelled in favor of the Spouses Tablada or not. Thus, contrary to the ruling of the RTC, the failure to summon Spring Homes does not deprive it of jurisdiction over the instant case for Spring Homes is not an indispensable party.

On the merits of the case, the Court likewise affirms the findings of the CA. The issue here involves what appears to be a double sale. *First*, the Spouses Tablada entered into a Contract to Sell with Spring Homes in 1995 which was followed by a Deed of Absolute Sale in 1996. *Second*, in 2000, the Spouses Lumbres and Spring Homes executed a Deed of Absolute Sale over the same property. The Spouses Lumbres persistently insist that the first Deed of Sale executed by the Spouses Tablada is void for having no valuable consideration. They argue that out of the ₱409,500.00 purchase price under the Contract to Sell, the Spouses Tablada merely paid ₱179,500.00, failing to pay the rest in the amount of ₱230,000.00 despite demands.

There is no merit in the contention.

As the CA held, it is clear from the first Deed of Absolute Sale that the consideration for the subject property is ₱157,500.00. In fact, the same amount was indicated as the purchase price

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[47] 719 Phil. 241, 253 (2013).

[48] *Seno, et al. v. Mangubat, et al., supra* note 24.

in the second Deed of Absolute Sale between Spring Homes and the Spouses Lumbres. As for the varying amounts contained in the Contract to Sell, the Court notes that the same has already been duly addressed by the Court in the 2007 *Spouses Lumbres v. Spouses Tablada*[49] case, the pertinent portions of which states:

> In claiming their right of possession over the subject lot, petitioners made much of the judicially approved Compromise Agreement in Civil Case No. 2194-95-C, wherein Spring Homes' rights and interests over the said lot under its Contract to Sell with the respondents were effectively assigned to them. **Petitioners argue that out of the whole ₱409,500.00 purchase price under the respondents Contract to Sell with Spring Homes, the respondents were able to pay only ₱179,500.00, leaving a balance of ₱230,000.00.**
>
> Upon scrutiny, however, the CA astutely observed that despite there being no question that the total land area of the subject lot is 105 square meters, the Contract to Sell executed and entered into by Spring Homes and the respondent spouses states:
>
> 3. That the SELLER, for and in consideration of the payments and other terms and conditions hereinafter to be designated, has offered to sell and the BUYER has agreed to buy certain parcel of land more particularly described as follows:
>
> **The two deeds of absolute sale as well as the respondents' Tax Declaration No. 019-1342 uniformly show that the land area of**

Blk. No. P- 111	Lot No.	Area Sq. Meter	Price Per sq. Meter	Total Selling Price
3	8	105	₱1,500	
		42	6,000	
				₱409,500

the property covered by TCT No. T-284037 is 105 square meters. The parties never contested its actual land area.

However, while there is only one parcel of land being sold, which is Lot 8, Blk. 3, paragraph "1" above of the Contract to Sell speaks of two (2) land areas, namely, "105" and "42," and two (2) prices per square meter, to wit: "₱1,500" and "₱6,000."As

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[49] *Supra* note 14.

correctly observed by the CA:

> It does not require much imagination to understand why figures "3," "8," "105" and "₱1,500" appear in the paragraph "1" of the Contract to Sell. Certainly "3" stands for "Blk. No.," "8" stands for "Lot No.," "105" stands for the land area and "₱1,500" stands for the price per square meter. However, this Court is perplexed as regards figures "42" and "6,000" as they are not accompanied by any "Blk. No." and/or "Lot No." In other words, while there is only one parcel of land being sold, paragraph "1" of the Contract to Sell contains two land areas and two prices per square meter. There is no reason for the inclusion of land area in the computation when it was established beyond cavil that the total area being sold is only 105 square meters. Likewise, there is no explanation why there is another rate for the additional 42 square meters, which was pegged at ₱6,000 per square meter, while that of 105 square meters was only ₱1,500.00.

The CA could only think of one possible explanation: **the Contract to Sell refers only to a single lot with a total land area of 105 square meters. The 42 square meters mentioned in the same contract and therein computed at the rate of ₱6,000 per square meter refer to the cost of the house which would be constructed by the respondents on the subject lot through a Pag-Ibig loan.** The land area of the house to be constructed was pegged at 42 square meters because of the following restrictions in the Contract to Sell:

9. The lot(s) subject matter of this contract are subject to the following restrictions:

a) Any building which may be constructed at anytime in said lot(s) must be strong x x x. Said building must not be constructed at a distance of less than (2) meters from any boundaries of the lot(s).

b) The total area to be voted to buildings or structures shall not exceed eighty percent (80%) of the total area of the lot(s).[50]

Thus, while the Spouses Lumbres would like Us to believe that based on the Contract to Sell, the total selling price of the subject property is ₱409,500.00, the contract itself, as well as

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[50] *Id.* (Emphasis supplied).

the surrounding circumstances following its execution, negate their argument. As appropriately found by the Court, said amount actually pertains to the sum of: (1) the cost of the land area of the lot at 105 square meters priced at ₱1,500 per square meter; and (2) the cost of the house to be constructed on the land at 42 square meters priced at ₱6,000 per square meter. But it would be a grave injustice to hold the Spouses Tablada liable for more than the cost of the land area when it was duly proven that they used their own funds in the construction of the house. As shown by the records, the Spouses Tablada was forced to use their own money since their PAG-IBIG loan application did not materialize, not through their own fault, but because Spring Homes failed, despite repeated demands, to deliver to them the owner's duplicate copy of the subject property's title required by the loan application. In reality, therefore, what Spring Homes really sold to the Spouses Tablada was only the lot in the amount of ₱157,500.00, since the house was constructed thereon using the Spouses Tablada's own money. In fact, nowhere in the Contract to Sell was it stated that the subject property includes any improvement thereon or that the same even exists. Moreover, as previously mentioned, in both the first and second Deeds of Absolute Sale, it was indicated that the amount of the property subject of the sale is only ₱157,500.00. Accordingly, the Court held further in *Spouses Lumbres v. Spouses Tablada:*

Looking at the above-quoted portion of the Contract to Sell, the CA found merit in the respondents' contention that the total selling price of ₱409,500 includes not only the price of the lot but also the cost of the house that would be constructed thereon. We are incline to agree. The CA went on to say:

> **It could be argued that the contract to sell never mentions the construction of any house or building on the subject property. Had it been the intention of the parties that the total selling price would include the amount of the house that would be taken from a loan to be obtained from Pag-Ibig, they could have specified so. However, one should not lose sight of the fact that the contract to sell is an accomplished form.** [Respondents,] trusting Spring Homes, could not be expected to demand that another contract duly reflective of their agreements be utilized instead of the

accomplished form. The terms and conditions of the contract may not contemplate the inclusion of the cost of the house in the total selling price, but the entries typewritten thereon sufficiently reveal the intentions of the parties.

The position of the [respondents] finds support in the documents and subsequent actuations of Bertha Pasic, the representative of Spring Homes. [Respondents] undeniably proved that they spent their own hard-earned money to construct a house thereon after their Pag-Ibig loan did not materialize. It is highly unjust for the [respondents] to pay for the amount of the house when the loan did not materialize due to the failure of Spring Homes to deliver the owner's duplicate copy of TCT No. T 284037.

x x x x x x x x x

If the total selling price was indeed ₱409,500.00, as [petitioners] would like to poster, said amount should have appeared as the consideration in the deed of absolute sale dated January 15, 1996. However, only ₱157,500.00 was stated. The amount stated in the Deed of Absolute Sale dated January 15, 1996 was not only a portion of the selling price, because the Deed of Sale dated December 22, 2000 also reflected ₱157,500.00 as consideration. It is not shown that [petitioners] likewise applied for a loan with Pag-Ibig. **The reasonable inference is that the consistent amount stated in the two Deeds of Absolute Sale was the true selling price as it perfectly jibed with the computation in the Contract to Sell.**

We find the CA's reasoning to be sound. At any rate, the execution of the January 16, 1996 Deed of Absolute Sale in favor of the respondents effectively rendered the previous Contract to Sell ineffective and canceled. Furthermore, we find no merit in petitioners' contention that the first sale to the respondents was void for want of consideration. As the CA pointed out in its assailed decision:

Other than the [petitioners'] self-serving assertion that the Deeds of Absolute Sale was executed solely for the purpose of obtaining a Pag-Ibig loan, no other concrete evidence was tendered to justify the execution of the deed of absolute sale. They failed to overcome the clear and convincing evidence of the [respondents] that as early as July 5, 1995 the latter had already paid the total amount of ₱179,500.00, much bigger than

the actual purchase price for the subject land.[51]

There is, therefore, no factual or legal basis for the Spouses Lumbres to claim that since the Spouses Tablada still had an outstanding balance of ₱230,000.00 from the total purchase price, the sale between Spring Homes and the Spouses Tablada was void, and consequently, they were authorized to unilaterally cancel such sale, and thereafter execute another one transferring the subject property in their names. As correctly held by the Court in *Spouses Lumbres v. Spouses Tablada*,[52] the first Deed of Sale executed in favor of the Spouses Tablada is valid and with sufficient consideration. Thus, in view of this validity of the sale subject of the first Deed of Absolute Sale between Spring Homes and the Spouses Tablada, the Court shall now determine who, as between the two spouses herein, properly acquired ownership over the subject property. In this regard, Article 1544 of the Civil Code reads:

> Art. 1544. If the same thing should have been sold to different vendees, the ownership shall be transferred to the person who may have first taken possession thereof in good faith, if it should be movable property.
>
> **Should it be immovable property, the ownership shall belong to the person acquiring it who in *good faith* first recorded it in the Registry of Property.**
>
> Should there be no inscription, the ownership shall pertain to the person who in good faith was first in the possession, and, in the absence thereof, to the person who presents the oldest title, provided there is good faith. (Emphasis supplied)

The principle of *primus tempore, potior jure* (first in time, stronger in right) gains greater significance in case of a double sale of immovable property.[53] Thus, the Court has consistently ruled that ownership of an immovable property which is the

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[51] *Id.* (Emphasis supplied).

[52] *Id.*

[53] 711 Phil. 644, 658 (2013).

subject of a double sale shall be transferred: (1) to the person acquiring it who in good faith first recorded it in the Registry of Property; (2) in default thereof, to the person who in good faith was first in possession; and (3) in default thereof, to the person who presents the oldest title, provided there is good faith.[54] The requirement of the law then is two-fold: acquisition in good faith and registration in good faith. Good faith must concur with the registration — that is, the registrant must have no knowledge of the defect or lack of title of his vendor or must not have been aware of facts which should have put him upon such inquiry and investigation as might be necessary to acquaint him with the defects in the title of his vendor. If it is shown that a buyer was in bad faith, the alleged registration they have made amounted to no registration at all.[55]

Here, the first buyers of the subject property, the Spouses Tablada, were able to take said property into possession but failed to register the same because of Spring Homes' unjustified failure to deliver the owner's copy of the title whereas the second buyers, the Spouses Lumbres, were able to register the property in their names. But while said the Spouses Lumbres successfully caused the transfer of the title in their names, the same was done in bad faith. As correctly observed by the Court in *Spouses Lumbres v. Spouses Tablada*,[56] the Spouses Lumbres cannot claim good faith since at the time of the execution of their Compromise Agreement with Spring Homes, they were indisputably and reasonably informed that the subject lot was previously sold to the Spouses Tablada. They were also already aware that the Spouses Tablada had constructed a house thereon and were in physical possession thereof. They cannot, therefore, be permitted to freely claim good faith on their part for the simple reason that the First Deed of Absolute Sale between Spring Homes and the Spouses Tablada was not annotated at the back of the subject property's title. It is beyond the Court's

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[54] *Id.*

[55] *Id.*

[56] *Supra* note 14.

imagination how spouses Lumbres can feign ignorance to the first sale when the records clearly reveal that they even made numerous demands on the Spouses Tablada to pay, albeit erroneously, an alleged balance of the purchase price.

Indeed, knowledge gained by the first buyer of the second sale cannot defeat the first buyer's rights except only as provided by law, as in cases where the second buyer first registers in good faith the second sale ahead of the first.[57] Such knowledge of the first buyer does bar her from availing of her rights under the law, among them, first her purchase as against the second buyer. But conversely, knowledge gained by the second buyer of the first sale defeats his rights even if he is first to register the second sale, since such knowledge taints his prior registration with bad faith.[58]

Accordingly, in order for the Spouses Lumbres to obtain priority over the Spouses Tablada, the law requires a continuing good faith and innocence or lack of knowledge of the first sale that would enable their contract to ripen into full ownership through prior registration.[59] But from the very beginning, the Spouses Lumbres had already known of the fact that the subject property had previously been sold to the Spouses Tablada, by virtue of a valid Deed of Absolute Sale. In fact, the Spouses Tablada were already in possession of said property and had even constructed a house thereon. Clearly then, the Spouses Lumbres were in bad faith the moment they entered into the second Deed of Absolute Sale and thereafter registered the subject property in their names. For this reason, the Court cannot, therefore, consider them as the true and valid owners of the disputed property and permit them to retain title thereto.

WHEREFORE, premises considered, the instant petition is **DENIED.** The assailed Decision dated May 31, 2011 and Resolution dated January 4, 2012 of the Court of Appeals in CA-G.R. CV No. 94352 are hereby **AFFIRMED.**

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[57] 621 Phil. 126, 146 (2009).

[58] *Id.*

[59] *Id.*

SO ORDERED.

Carpio (Chairperson), Mendoza, Leonen, and *Jardeleza,*[*] *JJ.*, concur.

SECOND DIVISION

[G.R. No. 206345. January 23, 2017]

NATIONAL HOME MORTGAGE FINANCE CORPORATION, *petitioner, vs.* **FLORITA C. TAROBAL,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; NOT PROPER TO CORRECT ERRORS OF PROCEDURE OR MISTAKE IN THE FINDINGS OR CONCLUSIONS OF THE JUDGE, AS *CERTIORARI* IS STRICTLY CONFINED TO THE DETERMINATION OF THE PROPRIETY OF THE TRIAL COURT'S JURISDICTION, WHETHER IT HAS JURISDICTION OVER THE CASE, AND IF SO, WHETHER THE EXERCISE OF ITS JURISDICTION HAS OR HAS NOT BEEN ATTENDED BY GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION.— The doctrine is that *certiorari* will issue only to correct errors of jurisdiction and that no error or mistake committed by a court will be corrected by *certiorari* unless said court acted without jurisdiction or in excess thereof or with such grave abuse of discretion as would amount to lack of jurisdiction. The writ is available only for these purposes and not to correct errors of procedure or mistake in the findings or conclusions of the judge. It is strictly confined to the

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[*] Designated Additional Member per Special Order No. 2416, dated January 4, 2017.

determination of the propriety of the trial court's jurisdiction whether it has jurisdiction over the case and if so, whether the exercise of its jurisdiction has or has not been attended by grave abuse of discretion amounting to lack or excess of jurisdiction.

2. ID.; ID.; ID.; THE COURT OF APPEALS OVERSTEPPED THE BOUNDS OF ITS AUTHORITY WHEN IT PASSED JUDGMENT ON THE RIGHT OF RESPONDENT OVER THE PROPERTY, AS THE AUTHORITY OF THE COURT OF APPEALS IN *CERTIORARI* PROCEEDING IS CONFINED ONLY TO RULING UPON THE ISSUE OF WHETHER THE REGIONAL TRIAL COURT COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT GRANTED THE *EX PARTE* PETITION FOR THE ISSUANCE OF WRIT OF POSSESSION IN FAVOR OF PETITIONER.— The issue brought by respondent before the CA is whether or not there was grave abuse of discretion on the part of the RTC when it issued the writ of possession without resolving first the motion for reconsideration filed by respondent allegedly in violation of her right to due process. Hence, the subject of the petition for *certiorari* filed by respondent is the questioned Order of the RTC dated July 17, 2011 which granted the *ex parte* petition for the issuance of writ of possession in favor of petitioner. Therefore, the CA erred when it passed judgment on the right of respondent to reacquire the subject property. It overstepped the bounds of its authority in ordering the petitioner to give priority to respondent to repossess the subject property. In the case of *Chua v. Court of Appeals*, wherein the CA passed upon an issue way beyond its competence in a *certiorari* proceedings, We held, thus: x x x. Therefore, the authority of respondent appellate court was confined only to ruling upon the issue of whether the Regional Trial Court committed grave abuse of discretion in issuing the order directing the issuance of a writ of execution against petitioner. Whether the trial court committed a mistake in deciding the case on the merits is an issue way beyond the competence of respondent appellate court to pass upon in a *certiorari* proceeding.

3. ID.; ID.; ID.; ISSUE ON COMPLIANCE WITH THE NOTICE REQUIREMENT IN THE CONDUCT OF FORECLOSURE SALE IS NOT PROPER IN THE PETITION FOR *CERTIORARI*.— [R]espondent raised as an additional issue before the CA — the validity of the foreclosure sale for failure

to allegedly comply with the notice requirement. The CA correctly ruled that any question regarding the validity of the mortgage or its foreclosure cannot be a legal ground for the refusal to issue a writ of possession, and the issue as to whether there was compliance with the notice requirement in the conduct of foreclosure sale is not proper in the petition for *certiorari*.

APPEARANCES OF COUNSEL

Dante Q. Rizada for petitioner.
Tamondong & Associates for respondent.

D E C I S I O N

PERALTA, *J.*:

Before us is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court which seeks the reversal of the Decision[2] dated May 22, 2012, and Resolution[3] dated March 7, 2013 of the Court of Appeals (*CA*) in CA-G.R. SP No. 118824. The CA found no grave abuse of discretion on the part of the Regional Trial Court (*RTC*), Branch 73, Antipolo City, in issuing the Writ of Possession in favor of National Home Mortgage Finance Corporation (*NHMFC*) on a house and lot covered by Transfer Certificate of Title (*TCT No. 580124*) located at Lot 15, Block 20, Phase I, Golden City Subdivision, Brgy. Dolores, Taytay, Rizal.

The factual antecedents are as follows:

Joy M. Dela Cruz (*Dela Cruz*) was the registered owner of a house and lot covered by TCT No. 580124 with an area of 103.60 square meters.[4] On May 15, 1990, she obtained a housing

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[1] *Rollo*, pp. 3-14.

[2] Penned by Associate Justice Rosmari D. Carandang, with Associate Justices Ricardo R. Rosario and Danton Q. Bueser, concurring; *id.* at 15-26.

[3] *Id.* at 27-29.

[4] *Id.* at 18.

loan from China Banking Corporation (*CBC*) in the amount of ₱257,400.00.[5] To secure the loan, she executed a Loan and Mortgage Agreement covering the said property in favor of the bank. Dela Cruz also issued a Promisory Note covering the amount of the loan.

On December 5, 1990, through a Purchase of Loan Agreement, the bank assigned the loan of Dela Cruz to petitioner.[6] Because of Dela Cruz's' failure to pay her monthly amortization and arrearages, petitioner filed an Application for Extra-Judicial Foreclosure of Real Estate Mortgage to foreclose the mortgage account of Dela Cruz. Notice of Sheriff's Sale was issued and published in a newspaper of general circulation for three (3) consecutive weeks.[7]

On the date of the public auction on September 30, 1994, petitioner was the highest bidder. A Certificate of Sale was thereafter issued and registered with the Register of Deeds for the Province of Rizal on February 8, 2008.[8] Despite receipt of the demand to surrender and turn over the possession of the foreclosed property, Dela Cruz failed to heed the demand.[9] She also failed to redeem the property within the one-year period of redemption from the date of the registration of the sale. The period of redemption expired on February 8, 2009.[10]

In 2007,[11] petitioner conducted a Housing Fair[12] and a third party had applied for the subject property. Petitioner published

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[5] *Id.* at 4.

[6] *Id.*

[7] *Id.* at 21.

[8] *Id.* at 22.

[9] *Id.* at 16.

[10] *Id.* at 4.

[11] *Id.* at 4 and 95.

[12] In the Housing Fair Program of 2007, petitioner was authorized to sell, transfer and convey its rights, interests and participation on foreclosed properties mortgaged to it by different individual borrowers for Public and Private Sector Employees and Overseas Filipino Workers (OFW's); *id.* at 101.

in the newspaper, one month prior to the housing fair, all inventories of its foreclosed properties.[13]

On April 23, 2010, petitioner, upon the initiative of the buyer in the Housing Fair, filed an *Ex-Parte* Petition for Writ of Possession before the RTC, Branch 73, Antipolo City, for an issuance of a writ of possession on the subject property.[14]

In an Order dated January 17, 2011, the RTC granted the petition.[15] The RTC ratiocinated that the period of redemption had already expired with no redemption having been made, there was no justifiable ground why the writ of possession should not be issued.[16]

On February 15, 2011, a Motion for Reconsideration was filed by respondent Florita C. Tarobal. She alleged that sometime in May 2005, she bought the subject property as a result of the broker-assisted negotiation with the authorized unit holders. Upon acquisition, respondent and her relatives, took immediate control of the subject property and made the same their family home. Respondent claimed that she was neither notified of the public auction nor was a party to the foreclosure proceedings in violation of her right to due process. Hence, the certificate of sale cannot be enforced against her. She averred that she was lawfully occupying the subject property even at the time of the purported sale. She had introduced improvements, constructions or structures on the subject property in the amount of ₱250,000.00.[17]

On March 17, 2011, a Contract to Sell covering the subject property was executed between petitioner and Gilda J. Torres, the buyer in the Housing Fair Program of petitioner.[18]

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[13] *Rollo*, p. 18.

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

[15] *Id.* at 16.

[16] *Id.* at 17.

[17] *Id.* at 17.

[18] *Id.* at 101.

On March 28, 2011, the RTC issued a Writ of Possession ordering the deputy sheriff to place petitioner in physical possession of the subject property. On March 30, 2011, the Sheriff's Notice to Vacate was issued ordering Dela Cruz and all persons claiming rights under her to voluntarily vacate the property on or before April 3, 2011. On April 5, 2011, the sheriff executed the writ of possession by ejecting Dela Cruz from the subject property, and all persons claiming rights under her as mortgagor, including herein respondent. The subject property was then delivered and turned over to petitioner as the mortgagee,[19] and subsequently to Gilda J. Torres.[20]

On April 6, 2011, respondent, who is a transferee of mortgagor Dela Cruz, filed a Petition for *Certiorari* before the CA. Respondent contended that there was grave abuse of discretion on the part of the RTC when it issued the writ of possession without resolving first her motion for reconsideration in violation of her right to due process.[21] In a Decision dated May 22, 2012, the CA denied the petition for *certiorari*. The *fallo* of the Decision states:

> **WHEREFORE**, finding no grave abuse of discretion amounting to lack or excess of jurisdiction on the part of public respondent, the instant petition is **DENIED**. The assailed Order dated January 17, 2011, the Writ of Possession dated March 28, 2011 and the Notice to Vacate dated March 30, 2011 are **AFFIRMED**. However, respondent National Home Mortgage Finance Corporation is hereby ordered to give priority to herein petitioner Flora C. Tarobal to re-acquire to (sic) subject property under the provisions of the laws and rules related.
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> **SO ORDERED.**[22]

A motion for reconsideration/clarification was filed by the petitioner with regard to the last sentence in the dispositive

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[19] Turn-Over/Delivery of Possession signed by Rolando P. Palmares, Sheriff IV, RTC, Branch 73, Antipolo City, *id.* at 109; *id.* at 18-19.

[20] *Rollo*, p. 5.

[21] *Id.* at 20.

[22] *Id.* at 56.

portion of the Decision ordering petitioner to give priority to herein respondent to reacquire the subject property under the provisions of the laws and rules related. Petitioner argued that re-acquisition by respondent of the subject property would adversely affect or defeat the rights of the buyer in the Housing Fair. It will allegedly violate the rights and interest of the buyer and invalidate whatever binding agreement or contract forged by petitioner and the said buyer. Further, petitioner averred that the Order giving priority to petitioner to re-acquire the subject property "clashes" with the CA's Decision sustaining the propriety of the issuance of the writ of possession.[23]

On March 7, 2013, the motion for reconsideration/clarification was denied by the CA. The CA ratiocinated:

> The propriety of the issuance of the writ of possession is a different matter from the order giving petitioner the priority right to re-acquire the subject property. There is no incompatibility between the two (2) orders. It should be stressed that the writ of possession was properly issued as the period to redeem had lapsed with no redemption having been made by the mortgagor. A Certificate of Sale had been issued to respondent NHMFC being the highest bidder in the public auction sale of the foreclosed property. Hence, it was merely ministerial on the part of the RTC, Branch 73, Antipolo City to issue the writ of possession.
>
> In ordering the respondent NHMFC to give priority to petitioner to re-acquire the subject property, this Court gave **due consideration to the fact that petitioner** who is **presently occupying the subject property** and has introduced improvements, constructions and structures thereon, has vigorously manifested her desire to recover the property by paying the full amount stated at the Housing Fair. Even the Housing and Urban Development Coordinating Council favorably acted on her request that she be given priority to re-acquire the subject property. Petitioner claimed that even before the foreclosure and the Housing Fair, she has been communicating with respondent NHMFC to pay and settle the price of the said property. But the same fell ion (sic) deaf ears. Respondent NHMFC did not refute this assertion of petitioner. It is but fair and just fair that petitioner be

[23] *Id.* at 28.

given priority to re-acquire the subject property under the provisions of the laws and rules related.[24]

Hence, this petition, raising the following issues:

A.) WHETHER OR NOT THE ASSAILED PORTION OF THE COURT OF APPEALS' DECISION IS WITHIN THE FUNCTION, OFFICE AND SCOPE OF THE WRIT OF CERTIORARI UNDER RULE 65 OF THE RULES OF COURT;

B.) WHETHER OR NOT THE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN ORDERING PETITIONER TO GIVE PRIORITY TO RESPONDENT TO REACQUIRE THE FORECLOSED PROPERTY GIVEN THE FACTS AND CIRCUMSTANCES OBTAINING.[25]

It is the contention of the petitioner that the assailed portion of the CA Decision is beyond the issues which are proper in a petition for *certiorari* under Rule 65 of the Rules of Court. Petitioner argued that the CA should have limited itself to whether or not the RTC committed grave abuse of discretion in issuing the assailed Order granting the writ of possession in its favor. According to petitioner, while the CA Decision affirmed its right to possess the subject property, the recognition of respondent's right to re-acquire the subject property is unwarranted and beyond the issues raised in the petition for *certiorari.* As to the endorsement of the Housing and Urban Development Coordinating Council (*HUDCC*), petitioner averred that it is not a directive to petitioner, nor an assurance to respondent, that her request would be acted upon by petitioner, because allegedly there is no more basis to prioritize the request of respondent.

In her Comment,[26] respondent insisted that she be given priority rights to reacquire the subject property and that she

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[24] *Id.* at 28-29. (Emphasis supplied)

[25] *Id.* at 6.

[26] *Id* at 68-82.

would deliver to petitioner the required acquisition price. According to respondent, the endorsement of the HUDCC of her request to acquire the subject property may be considered as a directive to petitioner because HUDCC has the power of supervision over petitioner.

In its Reply,[27] petitioner stated that when respondent filed the petition for *certiorari* with the CA on April 6, 2011, petitioner was already in possession of the subject property since the writ of possession had been implemented. As in fact, respondent prayed that she be restored to the possession and enjoyment of the subject property. It was during the pendency of the case with the CA that respondent sent a written request to the HUDCC offering to reacquire the subject property. Petitioner reiterated that the HUDCC's action on respondent's letter requests merely partakes of an endorsement that respondent be given priority to reacquire the subject property. It is a mere request for a kind and favorable action on respondent's concern, and not an order for the petitioner to accede to respondent's request.

We grant the petition.

The doctrine is that *certiorari* will issue only to correct errors of jurisdiction and that no error or mistake committed by a court will be corrected by *certiorari* unless said court acted without jurisdiction or in excess thereof or with such grave abuse of discretion as would amount to lack of jurisdiction. The writ is available only for these purposes and not to correct errors of procedure or mistake in the findings or conclusions of the judge.[28] It is strictly confined to the determination of the propriety of the trial court's jurisdiction whether it has jurisdiction over the case and if so, whether the exercise of its jurisdiction has or has not been attended by grave abuse of discretion amounting to lack or excess of jurisdiction.[29]

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[27] *Id.* at 93-100.

[28] *Chua v. Court of Appeals*, 338 Phil. 262 (1997).

[29] *Ysidoro v. Doller*, 681 Phil. 1 (2012).

The issue brought by respondent before the CA is whether or not there was grave abuse of discretion on the part of the RTC when it issued the writ of possession without resolving first the motion for reconsideration filed by respondent allegedly in violation of her right to due process. Hence, the subject of the petition for *certiorari* filed by respondent is the questioned Order of the RTC dated July 17, 2011 which granted the *ex parte* petition for the issuance of writ of possession in favor of petitioner. Therefore, the CA erred when it passed judgment on the right of respondent to reacquire the subject property. It overstepped the bounds of its authority in ordering the petitioner to give priority to respondent to repossess the subject property.

In the case of *Chua v. Court of Appeals*,[30] wherein the CA passed upon an issue way beyond its competence in a *certiorari* proceeding, We held, thus:

> Indeed, respondent Court of Appeals acted *ultra jurisdictio* in affirming the judgment rendered by the Regional Trial Court on the ejectment and consignation cases. Elevated by petitioner to the Court of Appeals was only the propriety of the issuance of the writ of execution of the judgment by the trial court. The decision on the merits affirming the judgment of the Metropolitan Trial Court was never appealed, and rightfully so since petitioner earlier filed a motion for reconsideration with the trial court and was awaiting resolution thereof. Therefore, the authority of respondent appellate court was confined only to ruling upon the issue of whether the Regional Trial Court committed grave abuse of discretion in issuing the order directing the issuance of a writ of execution against petitioner. Whether the trial court committed a mistake in deciding the case on the merits is an issue way beyond the competence of respondent appellate court to pass upon in a *certiorari* proceeding.[31]

In the case at bar, respondent purchased the subject property from Dela Cruz through a Deed of Sale with Assumption of Mortgage dated May 3, 2005. She possessed the subject property as a transferee of Dela Cruz and any right she had over the

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[30] *Supra* note 28.

[31] *Id.* at 553-554.

subject property was derived from Dela Cruz. She merely stepped into the shoes of Dela Cruz. Respondent is, therefore, the successor of interest of Dela Cruz to whom the latter had conveyed her interest in the property for the purpose of redemption.[32]

The CA, in finding that there was no grave abuse of discretion on the part of the RTC, thereby affirmed the issuance on March 28, 2011 of the writ of possession ordering the RTC Deputy Sheriff to place petitioner in physical possession of the subject property. The CA likewise affirmed the issuance on March 30, 2011 of the Notice to Vacate against Dela Cruz, the owner/mortgagor of the subject property, and against all persons claiming rights under her as mortgagor, including herein respondent, to voluntarily vacate the property on or before April 3, 2011. The CA also affirmed the sheriff's execution of the writ of possession on April 5, 2011, by ejecting Dela Cruz from the subject property, and all persons claiming rights under her as mortgagor, including herein respondent.

The affirmance of the CA of the issuance of the aforesaid Orders by the RTC in favor of petitioner would then become meaningless, if not ineffectual, since a possible reacquisition of the subject property by respondent would prejudice the buyer in petitioner's Housing Fair Program for whose benefit the petition was filed. The priority given to respondent who reneged in the payment of her loan to petitioner will affect the vested right of the new buyer.

As correctly argued by petitioner, delving into the issue on whether respondent has a right over the property is not for the CA to pass upon. Not even the sale involving the subject property between petitioner and its buyer in the Housing Fair Program was made an issue in the petition before the CA which could have a bearing and materiality; neither its nullity was sought which could justify a reacquisition by respondent. Because in the petition for *certiorari*, the authority of the CA was limited to ruling upon the issue of whether or not the RTC committed grave abuse of discretion in issuing the Order dated January

[32] *Rollo*, p. 23.

17, 2011 granting the petition for the issuance of writ of possession in favor of the petitioner of the subject property.[33]

In the case of *Municipality of Biñan, Laguna v. Court of Appeals*,[34] We reiterated that a special civil action for *certiorari* under Rule 65 is limited only to challenges against errors of jurisdiction, to wit:

> Respondent Court of Appeals has no jurisdiction in a *certiorari* proceeding involving an incident in a case to rule on the merits of the main case itself which was not on appeal before it. The validity of the order of the regional trial court, dated December 14, 1989, authorizing the issuance of a writ of execution during the pendency of the appeal therein was the sole issue raised in the petition for *certiorari* filed in respondent Court of Appeals. [9] The allegation that the decision of the municipal trial court was improvidently and irregularly issued was raised by private respondent only as an additional or alternative argument to buttress his theory that the issuance of a discretionary writ of execution was not in order, as can be gleaned from the text of said petition itself, to wit:
>
> V. ERRORS/ISSUES
>
> x x x x x x x x x
>
> Besides, when the respondent Judge issued the writ, it *(sic)* failed to consider that the judgment rendered by the inferior court was improvidently and irregularly issued, when said court failed to resolve first the pending Motion to Dismiss, a procedural process before any judgment on the merit(s) may be had.
>
> Further, even assuming that the said issue was squarely raised and sufficiently controverted. the same cannot be considered a proper subject of a special civil action for *certiorari* under Rule 65 which is limited only to challenges against errors of jurisdiction.[35]

In the instant case, respondent raised as an additional issue before the CA — the validity of the foreclosure sale for failure

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[33] *Municipality of Biñan, Laguna v. Court of Appeals*, G.R. No. 94733, February 17, 1993, 219 SCRA 69, 77.

[34] *Supra*.

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

to allegedly comply with the notice requirement. The CA correctly ruled that any question regarding the validity of the mortgage or its foreclosure cannot be a legal ground for the refusal to issue a writ of possession, and the issue as to whether there was compliance with the notice requirement in the conduct of foreclosure sale is not proper in the petition for *certiorari*.[36]

Ironically, the CA ruled on the priority right of the respondent to repossess the subject property. Apparently, this Order of the CA to give priority to respondent was based on its findings that respondent is presently occupying the subject property, and because of the endorsement from HUDCC. The ratiocination for the assailed portion of the Decision is hereunder reproduced:

> The foregoing disquisition notwithstanding, We recognize the right of herein petitioner to re-acquire the subject property at the price offered during the Housing Fair, which is ₱300,000.00 more or less. **It should be stressed that petitioner is presently occupying the property** and has introduced improvements, constructions and structures thereon. Through her letter dated August 21, 2011, addressed to NHMFC, **petitioner has manifested her desire to recover the subject property which was being applied by a third party at the Housing Fair**. She is ready to pay the full amount stated at the Housing Fair. Likewise, petitioner is ready to reimburse the minimal deposit or down payment which was given by the private buyer during the housing fair. We take note that **this request of petitioner was favorably endorsed by the Housing and Urban Development Coordinating Council** to the President of NHMFC. Thus, petitioner should be given the priority to re-acquire the subject property.

The aforesaid finding of the CA is incorrect. The respondent has been ejected from the subject property as evidenced by the "*Turn-Over/ Delivery of Possession*"[37] signed by Rolando P. Palmares, Sheriff IV of the RTC. The sheriff executed the writ of possession on April 5, 2011 by ejecting Dela Cruz from the subject property, and all persons claiming rights under her as

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[36] *Rollo*, p. 24, citing the case of *Torbela v. Spouses Rosario*, 678 Phil. 1 (2011).

[37] *Rollo*, p. 109.

mortgagor, including herein respondent. The subject property was then delivered and turned over to petitioner as the mortgagee,[38] which was then subsequently turned over to the buyer in the Housing Fair Program who is presently in actual possession of the subject property.[39] Petitioner stressed that respondent never averred in her pleadings filed with the CA that she was still in possession of the subject property.

As in fact, in her Comment to the instant petition, respondent prayed that she be immediately restored to the possession and enjoyment of the subject property:

PRAYER

WHEREFORE, it is most respectfully prayed of this Honorable Court, after due hearing, to:

1. The Petition filed by NHMFC be DISMISSED;

2. Declare the Petitioner as having priority as endorsed by the concerned government agency, and that she has valid and legal right of possession over the property subject of this case;

Upon her settlement of the price, **that Petitioner** be declared entitled to and **be immediately restored to the possession and enjoyment of the subject of the said property**.

3. Other reliefs just and equitable are also prayed for under the premises.

Lastly, We note the manifestation of petitioner that respondent had the chance to settle her account with petitioner in 2005 but failed to file any application to reacquire the subject property. The respondent did not tender any amount as reservation while the subject property had not been sold to the public yet. Nor did she exercise her right to redeem the subject property during the period of redemption.

WHEREFORE, the petition at bar is **GRANTED**. The Decision of the Court Appeals dated May 22, 2012, and its

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[38] *Id.* at 18-19.

[39] *Id.* at 98.

Resolution dated March 7, 2013 in CA-G.R. SP No. 118824, insofar as it ordered petitioner National Home Mortgage Finance Corporation to give priority to respondent Florita C. Tarobal to reacquire the subject property covered by Transfer Certificate of Title No. 580124 under the provisions of the laws and rules related, are hereby **REVERSED** and **SET ASIDE**.

SO ORDERED.

Carpio (Chairperson), Mendoza, Leonen, and *Jardeleza,*[*] *JJ*., concur.

FIRST DIVISION

[G.R. No. 207971. January 23, 2017]

ASIAN INSTITUTE OF MANAGEMENT, *petitioner, vs.* **ASIAN INSTITUTE OF MANAGEMENT FACULTY ASSOCIATION,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; LABOR UNION; AN EMPLOYER MAY DIRECTLY FILE A PETITION FOR CANCELLATION OF THE UNION'S CERTIFICATE OF REGISTRATION DUE TO MISREPRESENTATION, FALSE STATEMENT OR FRAUD UNDER THE CIRCUMSTANCES ENUMERATED IN ARTICLE 239 OF THE LABOR CODE, AS AMENDED, FOR ALLEGED INCLUSION OF DISQUALIFIED EMPLOYEES IN THE UNION.— In *Holy Child Catholic School v. Hon. Sto. Tomas*, this Court declared that "[i]n case

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[*] Designated Additional Member per Special Order No. 2416, dated January 4, 2017.

of alleged inclusion of disqualified employees in a union, the proper procedure for an employer like petitioner is to directly file a petition for cancellation of the union's certificate of registration due to misrepresentation, false statement or fraud under the circumstances enumerated in Article 239 of the Labor Code, as amended." On the basis of the ruling in the above-cited case, it can be said that petitioner was correct in filing a petition for cancellation of respondent's certificate of registration. Petitioner's sole ground for seeking cancellation of respondent's certificate of registration — that its members are managerial employees and for this reason, its registration is thus a patent nullity for being an absolute violation of Article 245 of the Labor Code which declares that managerial employees are ineligible to join any labor organization — is, in a sense, an accusation that respondent is guilty of misrepresentation for registering under the claim that its members are not managerial employees.

2. **ID; ID.; ID.; ID.; 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 OR THEIR PRIVIES WILL BE FINAL AND CONCLUSIVE IN THE SECOND IF THAT SAME POINT OR QUESTION WAS IN ISSUE AND ADJUDICATED IN THE FIRST SUIT; THE RESOLUTION OF THE PETITION FOR CANCELLATION OF RESPONDENT'S CERTIFICATE OF REGISTRATION DEPENDS ON THE RESOLUTION OF THE ISSUE RELATIVE TO THE NATURE OF THE RESPONDENT'S MEMBERSHIP.—** [T]he issue of whether respondent's members are managerial employees is still pending resolution by way of petition for review on *certiorari* in G.R. No. 197089, which is the culmination of all proceedings in DOLE Case No. NCR-OD-M-0705-007 — where the issue relative to the nature of respondent's membership was first raised by petitioner itself and is there fiercely contested. The resolution of this issue cannot be pre-empted; until it is determined with finality in G.R. No. 197089, the petition for cancellation of respondent's certificate of registration on the grounds alleged by petitioner cannot be resolved. As a matter of courtesy and in order to avoid conflicting decisions, We must await the resolution of the petition in G.R. No. 197089. x x x 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 or their privies will be final and conclusive in the second if that same point or question was in issue and adjudicated in the first suit. x x x Identity of cause of action is not required, but merely identity of issues.

APPEARANCES OF COUNSEL

Laguesma Magsalin Consulta & Gastardo for petitioner.
Yorac Sarmiento Arroyo Chua Coronel & Reyes Law Firm for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

This Petition for Review on *Certiorari*[1] assails the January 8, 2013 Decision[2] of the Court of Appeals (CA) which dismissed the Petition for *Certiorari*[3] in CA-G.R. SP No. 114122, and its subsequent June 27, 2013 Resolution[4] denying herein petitioner's Motion for Reconsideration.[5]

Factual Antecedents

Petitioner Asian Institute of Management (AIM) is a duly registered non-stock, non-profit educational institution. Respondent Asian Institute of Management Faculty Association (AFA) is a labor organization composed of members of the AIM faculty, duly registered Certificate of Registration No. NCR-UR-12-4076-2004.

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[1] *Rollo*, Vol. I, pp. 3-31.

[2] *Id.* at 33-41; penned by Associate Justice Victoria Isabel A. Paredes and concurred in by Associate Justices Japar B. Dimaampao and Elihu A. Ybañez.

[3] *Id.* at 198-226.

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

[5] *Id.* at 269-276.

On May 16, 2007, respondent filed a **petition for certification election**[6] seeking to represent a bargaining unit in AIM consisting of forty (40) faculty members. The case was **docketed as DOLE Case No. NCR-OD-M-0705-007**. Petitioner opposed the petition, claiming that respondent's members are neither rank-and-file nor supervisory, but rather, managerial employees.[7]

On July 11, 2007, petitioner filed a **petition for cancellation of respondent's certificate of registration**[8] **— docketed as DOLE Case No. NCR-OD-0707-001-LRD** — on the grounds of misrepresentation in registration and that respondent is composed of managerial employees who are prohibited from organizing as a union.

On August 30, 2007, the Med-Arbiter in DOLE Case No. NCR-OD-M-0705-007 issued an Order[9] denying the petition for certification election on the ground that AIM's faculty members are managerial employees. This Order was appealed by respondent before the Secretary of the Department of Labor and Employment (DOLE),[10] who reversed the same via a February 20, 2009 Decision[11] and May 4, 2009 Resolution,[12] decreeing thus:

> WHEREFORE, the appeal filed by the Asian Institute of Management Faculty Association (AIMFA) is GRANTED. The Order dated 30 August 2007 of DOLE-NCR Mediator-Arbiter Michael T. Parado is hereby REVERSED and SET ASIDE.
>
> Accordingly, let the entire records of the case be remanded to DOLE-NCR for the conduct of a certification election among the

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[6] *Id*., Vol. II at 456-458.

[7] *Id*., Vol. I at 93-95.

[8] *Id*. at 74-91.

[9] *Id*. at 93-98; penned by Mediator-Arbiter Michael Angelo T. Parado.

[10] Docketed as Case No. OS-A-20-9-07.

[11] *Rollo*, Vol. I, pp. 131-138; penned, by authority of the Secretary, by Undersecretary Romeo C. Lagman.

[12] See CA October 22, 2010 Decision in CA-G.R. SP No. 109487, *id.* at 251.

faculty members of the Asian Institute of Management (AIM), with the following choices:

1. ASIAN INSTITUTE OF MANAGEMENT FACULTY ASSOCIATION (AIMFA); and
2. No Union.

SO ORDERED.[13]

Meanwhile, in DOLE Case No. NCR-OD-0707-001-LRD, an Order[14] dated February 16, 2009 was issued by DOLE-NCR Regional Director Raymundo G. Agravante granting AIM's petition for cancellation of respondent's certificate of registration and ordering its delisting from the roster of legitimate labor organizations. This Order was appealed by respondent before the Bureau of Labor Relations[15] (BLR), which, in a December 29, 2009 Decision,[16] reversed the same and ordered respondent's retention in the roster of legitimate labor organizations. The BLR held that the grounds relied upon in the petition for cancellation are not among the grounds authorized under Article 239 of the Labor Code,[17] and that respondent's members are not managerial employees. Petitioner moved to reconsider, but was rebuffed in a March 18, 2010 Resolution.[18]

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[13] *Id.* at 137.

[14] *Id.* at 139-147.

[15] Docketed as BLR-A-C-19-3-6-09.

[16] *Rollo*, Vol. I, pp. 172-177; penned by Officer-in-Charge Romeo M. Montefalco, Jr.

[17] ART. 239. *Grounds for Cancellation of Union Registration*. – The following may constitute grounds for cancellation of union registration:

(a) Misrepresentation, false statement or fraud in connection with the adoption or ratification of the constitution and by-laws or amendments thereto, the minutes of ratification, and the list of members who took part in the ratification;

(b) Misrepresentation, false statements or fraud in connection with the election of officers, minutes of the election of officers, and the list of voters;

(c) Voluntary dissolution by the members.

[18] *Rollo*, Vol. I, pp. 196-197.

CA-G.R.SP No. 109487 and G.R. No. 197089

Petitioner filed a Petition for *Certiorari* before the CA, questioning the DOLE Secretary's February 20, 2009 Decision and May 4, 2009 Resolution relative to DOLE Case No. NCR-OD-M-0705-007, or respondent's petition for certification election. Docketed as CA G.R. SP No. 109487, the petition is based on the arguments that 1) the bargaining unit within AIM sought to be represented is composed of managerial employees who are not eligible to join, assist, or form any labor organization, and 2) respondent is not a legitimate labor organization that may conduct a certification election.

On October 22, 2010, the CA rendered its Decision[19] containing the following pronouncement:

> AIM insists that the members of its tenure-track faculty are managerial employees, and therefore, ineligible to join, assist or form a labor organization. It ascribes grave abuse of discretion on SOLE[20] for its rash conclusion that the members of said tenure-track faculty are not managerial employees solely because the faculty's actions are still subject to evaluation, review or final approval by the board of trustees ("BOT"). AIM argues that the BOT does not manage the day-to-day affairs, nor the making and implementing of policies of the Institute, as such functions are vested with the tenure-track faculty.
>
> We agree.
>
> Article 212(m) of the Labor Code defines managerial employees as:
>
> 'ART. 212. **Definitions.** – x x x
>
> (m) '**Managerial employee**' is one who is vested with powers or prerogatives **to lay down** and **execute management policies** and/or to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees. Supervisory employees are those who, in the interest of the employer, effectively recommend such managerial actions if the exercise of such authority is not merely

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[19] *Id*. at 250-268; penned by Associate Justice Vicente S.E. Veloso and concurred in by Associate Justices Francisco P. Acosta and Samuel H. Gaerlan.

[20] DOLE Secretary.

routinary or clerical in nature but requires the use of independent judgment. All employees not falling within any of the above definitions are considered rank-and-file employees for purposes of this Book.'

There are, therefore, two (2) kinds of managerial employees under Art. 212(m) of the Labor Code. Those who 'lay down x x x management policies', such as the Board of Trustees, and those who 'execute management policies and/or hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees'.

x x x x x x x x x

On its face, the SOLE's opinion is already erroneous because in claiming that the 'test of supervisory' **or** 'managerial status' depends on whether a person possesses authority to act in the interest of his employer in the matter specified in Article 212(m) of the Labor Code and **Section 1(m)** of its Implementing Rules,' he obviously was referring to the **old definition of a managerial employee**. Such is evident in his use of 'supervisory or managerial status', and reference to '**Section 1(m)** of its Implementing Rules'. For presently, as aforequoted in Article 212(m) of the Labor Code and as amended by Republic Act 6715 which took effect on **March 21, 1989, a managerial employee is already different from a supervisory employee**. x x x

x x x x x x x x x

In further opining that a **managerial** employee is one whose '**authority is not merely routinary or clerical in nature but requires the use of independent judgment**', a description which fits now a **supervisory employee** under **Section 1(t), Rule I, Book V** of the Omnibus Rules Implementing the Labor Code, it then follows that the SOLE was not aware of the change in the law and thus gravely abused its discretion amounting to lack of jurisdiction in concluding that AIM's '**tenure-track**' faculty are **not** managerial employees.

SOLE further committed grave abuse of discretion when it concluded that said tenure-track faculty members are not managerial employees on the basis of a 'footnote' in AIM's Policy Manual, which provides that 'the **policy[-]making authority of the faculty members is merely recommendatory** in nature considering that the faculty standards they formulate are **still subject** to evaluation, review or final **approval by the [AIM]'s Board of Trustees**'. x x x

x x x x x x x x x

Clearly, AIM's tenure-track faculty do not merely recommend faculty standards. They '**determine all faculty standards**', and are thus managerial employees. The standards' being subjected to the approval of the Board of Trustees would not make AIM's tenure-track faculty non-managerial because as earlier mentioned, managerial employees are now of two categories: (1) those who 'lay down policies', such as the members of the Board of Trustees, and those who '**execute** management policies (etc.)', such as AIM's tenure-track faculty.

x x x x x x x x x

It was also grave abuse of discretion on the part of the SOLE when he opined that AIM's tenure-track faculty members are not managerial employees, **relying on an impression** that they were subjected to rigid observance of regular hours of work as professors. x x x

x x x x x x x x x

More importantly, **it behooves the SOLE to deny AFA's appeal in light of the February 16, 2009 Order of Regional Director Agravante delisting AFA from the roster of legitimate labor organizations. If, only legitimate labor organizations are given the right to be certified as sole and exclusive bargaining agent in an establishment**.

x x x x x x x x x

Here, the SOLE committed grave abuse of discretion by giving due course to AFA's petition for certification election, despite the fact that: (1) AFA's members are managerial employees; and (2) AFA is not a legitimate labor organization. These facts rendered AFA ineligible, and without any right to file a petition for certification election, the object of which is to determine the sole and exclusive bargaining representative of qualified AIM employees.

WHEREFORE, the instant petition is **GRANTED**. The assailed Decision dated February 20, 2009 and Resolution dated May 4, 2009 are hereby **REVERSED and SET ASIDE**. The Order dated August 30, 2007 of Mediator-Arbiter Parado is hereby **REINSTATED**.

SO ORDERED.[21] (Emphasis in the original)

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[21] *Rollo*, Vol. I, pp. 260-267.

Respondent sought reconsideration, but was denied. It thus instituted a Petition for Review on *Certiorari* before this Court on July 4, 2011. The Petition, docketed as G.R. No. 197089, remains pending to date.

The Assailed Ruling of the Court of Appeals

Meanwhile, relative to DOLE Case No. NCR-OD-0707-001-LRD or petitioner AIM's petition for cancellation of respondent's certificate of registration, petitioner filed on May 24, 2010 a Petition for *Certiorari*[22] before the CA, questioning the BLR's December 29, 2009 decision and March 18, 2010 resolution. The petition, docketed as CA-G.R. SP No. 114122, alleged that the BLR committed grave abuse of discretion in granting respondent's appeal and affirming its certificate of registration notwithstanding that its members are managerial employees who may not join, assist, or form a labor union or organization.

On January 8, 2013, the CA rendered the assailed Decision, stating as follows:

The petition lacks merit.

x x x x x x x x x

It is therefore incumbent upon the Institute to prove that the BLR committed grave abuse of discretion in issuing the questioned Decision. Towards this end, AIM must lay the basis by showing that any of the grounds provided under Article 239 of the Labor Code, exists, to wit:

> Article 239. Grounds for cancellation of union registration. — The following may constitute grounds for cancellation of union registration:
>
> (a) Misrepresentation, false statement or fraud in connection with the adoption or ratification of the constitution and by-laws or amendments thereto, the minutes of ratification, and the list of members who took part in the ratification;
>
> (b) Misrepresentation, false statements or fraud in connection with the election of officers, minutes of the election of officers, and the list of voters;
>
> (c) Voluntary dissolution by the members.

[22] *Id*. at 198-226.

Article 238 of the Labor Code provides that the enumeration of the grounds for cancellation of union registration, is **exclusive**; in other words, no other grounds for cancellation is acceptable, except for the three (3) grounds stated in Article 239. The scope of the grounds for cancellation has been explained —

> For the purpose of de-certifying a union such as respondent, it must be shown that there was misrepresentation, false statement or fraud in connection with the adoption or ratification of the constitution and by-laws or amendments thereto; the minutes of ratification; or, in connection with the election of officers, the minutes of the election of officers, the list of voters, or failure to submit these documents together with the list of the newly elected-appointed officers and their postal addresses to the BLR.
>
> The bare fact that two signatures appeared twice on the list of those who participated in the organizational meeting would not, to our mind, provide a valid reason to cancel respondent's certificate of registration. The cancellation of a union's registration doubtless has an impairing dimension on the right of labor to self-organization. For fraud and misrepresentation to be grounds for cancellation of union registration under the Labor Code, the nature of the fraud and misrepresentation must be grave and compelling enough to vitiate the consent of a majority of union members.[23]

In this regard, it has also been held that:

> Another factor which militates against the veracity of the allegations in the *Sinumpaang Petisyon* is the lack of particularities on how, when and where respondent union perpetrated the alleged fraud on each member. Such details are crucial for, in the proceedings for cancellation of union registration on the ground of fraud or misrepresentation, what needs to be established is that the specific act or omission of the union deprived the complaining employees-members of their right to choose.[24]

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[23] Citing *Mariwasa Siam Ceramics, Inc. v. The Secretary of Department of Labor and Employment*, 623 Phil. 603 (2009), citing *In Re: Petition for Cancellation of the Union Registration of Air Philippines Flight Attendants Association, Air Philippines Corporation v. Bureau of Labor Relations*, 525 Phil. 331 (2006).

[24] Citing *Dong Seung, Inc. v. Bureau of Labor Relations*, 574 Phil. 368 (2008), citing *Toyota Autoparts, Phils., Inc. v. The Director of the Bureau of Labor Relations*, 363 Phil. 437 (1999).

A cursory reading of the Petition shows that AIM did NOT allege any specific act of fraud or misrepresentation committed by AFA. What is clear is that the Institute seeks the cancellation of the registration of AFA based on Article 245 of the Labor Code on the ineligibility of managerial employees to form or join labor unions. Unfortunately for the petitioner, even assuming that there is a violation of Article 245, such violation will not result in the cancellation of the certificate of registration of a labor organization.

It should be stressed that a Decision had already been issued by the DOLE in the Certification Election case; and the Decision ordered the conduct of a certification election among the faculty members of the Institute, basing its directive on the finding that the members of AFA were not managerial employees and are therefore eligible to form, assist and join a labor union. As a matter of fact, the certification election had already been held on October 16, 2009, albeit the results have not yet been resolved as inclusion/exclusion proceedings are still pending before the DOLE. The remedy available to the Institute is not the instant Petition, but to question the status of the individual union members of the AFA in the inclusion/exclusion proceedings pursuant to Article 245-A of the Labor Code, which reads:

> Article 245-A. Effect of inclusion as members of employees outside the bargaining unit. – The inclusion as union members of employees outside the bargaining unit shall not be a ground for the cancellation of the registration of the union. Said employees are automatically deemed removed from the list of membership of said union.

Petitioner insists that Article 245-A is not applicable to this case as all AFA members are managerial employees. We are not persuaded.

The determination of whether any or all of the members of AFA should be considered as managerial employees is better left to the DOLE because,

> It has also been established that in the determination of whether or not certain employees arc managerial employees, this Court accords due respect and therefore sustains the findings of fact made by quasi-judicial agencies which are supported by substantial evidence considering their expertise in their respective fields.[25]

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[25] Citing *A.D. Gothong Manufacturing Corporation Employees Union-ALU v. Hon. Confesor*, 376 Phil. 168 (1999), citing *Philippine Airlines*

From the discussion, it is manifestly clear that the petitioner failed to prove that the BLR committed grave abuse of discretion; consequently, the Petition must fail.

WHEREFORE, the Petition is hereby **DENIED**. The Decision and Resolution of public respondent Bureau of Labor Relations in BLR-A-C-19-3-6-09 (NCR-OD-0707-001) are hereby **AFFIRMED**.

SO ORDERED.[26] (Emphasis in the original)

Petitioner filed its Motion for Reconsideration, which was denied by the CA via its June 27, 2013 Resolution. Hence, the instant Petition.

In a November 10, 2014 Resolution,[27] the Court resolved to give due course to the Petition.

Issue

Petitioner claims that the CA seriously erred in affirming the dispositions of the BLR and thus validating the respondent's certificate of registration notwithstanding the fact that its members are all managerial employees who are disqualified from joining, assisting, or forming a labor organization.

Petitioner's Arguments

Praying that the assailed CA dispositions be set aside and that the DOLE-NCR Regional Director's February 16, 2009 Order granting AIM's petition for cancellation of respondent's certificate of registration and ordering its delisting from the roster of legitimate labor organizations be reinstated instead, petitioner maintains in its Petition and Reply[28] that respondent's members are all managerial employees; that the CA erred in declaring that even if respondent's members are all managerial

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Employees Association (PALEA) v. Hon. Ferrer-Calleja, 245 Phil. 382 (1988); *Lacorte v. Hon. Inciong*, 248 Phil. 232 (1988); *Arica v. National Labor Relations Commission*, 252 Phil. 803 (1989); *A.M. Oreta & Co., Inc. v. National Labor Relations Commission*, 257 Phil. 224 (1989).

[26] *Rollo*, Vol. I, pp. 37-41.

[27] *Id*., Vol. II at 646-647.

[28] *Id*. at 635-642.

employees, this alone is not a ground for cancellation of its certificate of registration; that precisely, the finding in DOLE Case No. NCR-OD-M-0705-007, which the CA affirmed in CA-G.R. SP No. 109487, is that respondent's members are managerial employees; that respondent's declaration that its members are eligible to join, assist, or form a labor organization is an act of misrepresentation, given the finding in CA-G.R. SP No. 109487 that they are managerial employees; and that the grounds for cancellation of union registration enumerated in Article 239 of the Labor Code are not exclusive.

Respondent's Arguments

In its Comment,[29] respondent maintains that the CA was right to treat petitioner's case for cancellation of its union registration with circumspection; that petitioner's ground for filing the petition for cancellation is not recognized under Article 239; that petitioner's accusation of misrepresentation is unsubstantiated, and is being raised for the first time at this stage; that its members are not managerial employees; and that petitioner's opposition to respondent's attempts at self-organization constitutes harassment, oppression, and violates the latter's rights under the Labor Code and the Constitution.

Our Ruling

In *Holy Child Catholic School v. Hon. Sto. Tomas*,[30] this Court declared that "[i]n case of alleged inclusion of disqualified employees in a union, the proper procedure for an employer like petitioner is to directly file a petition for cancellation of the union's certificate of registration due to misrepresentation, false statement or fraud under the circumstances enumerated in Article 239 of the Labor Code, as amended."

On the basis of the ruling in the above-cited case, it can be said that petitioner was correct in filing a petition for cancellation of respondent's certificate of registration. Petitioner's sole ground

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[29] *Id*., Vol. I at 317-371.

[30] 714 Phil. 427, 453 (2013), citing *Sta. Lucia East Commercial Corporation v. Secretary of Labor and Employment*, 612 Phil. 998, 1007-1008 (2009).

for seeking cancellation of respondent's certificate of registration — that its members are managerial employees and for this reason, its registration is thus a patent nullity for being an absolute vio1ation of Article 245 of the Labor Code which declares that managerial employees are ineligible to join any labor organization — is, in a sense, an accusation that respondent is guilty of misrepresentation for registering under the claim that its members are not managerial employees.

However, the issue of whether respondent's members are managerial employees is still pending resolution by way of petition for review on *certiorari* in G.R. No. 197089, which is the culmination of all proceedings in DOLE Case No. NCR-OD-M-0705-007 — where the issue relative to the nature of respondent's membership was first raised by petitioner itself and is there fiercely contested. The resolution of this issue cannot be pre-empted; until it is determined with finality in G.R. No. 197089, the petition for cancellation of respondent's certificate of registration on the grounds alleged by petitioner cannot be resolved. As a matter of courtesy and in order to avoid conflicting decisions, We must await the resolution of the petition in G.R. No. 197089.

x x x 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 or their privies will be final and conclusive in the second if that same point or question was in issue and adjudicated in the first suit. x x x Identity of cause of action is not required, but merely identity of issues.[31] (Citation omitted)

WHEREFORE, considering that the outcome of this case depends on the resolution of the issue relative to the nature of respondent's membership pending in G.R. No. 197089, this case is ordered **CONSOLIDATED** with G.R. No. 197089.

SO ORDERED.

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

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[31] *Heirs of Parasac v. Republic*, 523 Phil. 164, 183 (2006).

SECOND DIVISION

[G.R. No. 212774. January 23, 2017]

WESLEYAN UNIVERSITY-PHILIPPINES, *petitioner, vs.* **GUILLERMO T. MAGLAYA, SR.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; COURTS; COURT OF APPEALS; POWER OF THE COURT OF APPEALS TO REVIEW DECISIONS OF THE NATIONAL LABOR RELATIONS COMMISSION (NLRC); WHILE THE DECISION OF THE NLRC BECOMES FINAL AND EXECUTORY AFTER THE LAPSE OF TEN (10) CALENDAR DAYS FROM RECEIPT THEREOF BY THE PARTIES, THE ADVERSE PARTY IS NOT PRECLUDED FROM ASSAILING IT *VIA* PETITION FOR *CERTIORARI* BEFORE THE COURT OF APPEALS AND THEN TO THE SUPREME COURT *VIA* A PETITION FOR REVIEW ON *CERTIORARI*.— Settled is the rule that while the decision of the NLRC becomes final and executory after the lapse of ten calendar days from receipt thereof by the parties under Article 223 (now Article 229) of the Labor Code, the adverse party is not precluded from assailing it *via* Petition for *Certiorari* under Rule 65 before the CA and then to this Court *via* a Petition for Review under Rule 45. This Court has explained and clarified the power of the CA to review NLRC decisions, *viz*.: The power of the Court of Appeals to review NLRC decisions *via* Rule 65 or Petition for *Certiorari* has been settled as early as in our decision in *St. Martin Funeral Home v. National Labor Relations Commission.* This Court held that the proper vehicle for such review was a Special Civil Action for *Certiorari* under Rule 65 of the Rules of Court, and that this action should be filed in the Court of Appeals in strict observance of the doctrine of the hierarchy of courts. Moreover, it is already settled that under Section 9 of *Batas Pambansa Blg*. 129, as amended by Republic Act No. 7902[10] (An Act Expanding the Jurisdiction of the Court of Appeals, amending for the purpose of Section Nine of *Batas Pambansa Blg*. 129 as amended, known as the *Judiciary Reorganization Act of 1980),* the Court of Appeals — pursuant to the exercise of its original jurisdiction over Petitions for *Certiorari* — is specifically given

the power to pass upon the evidence, if and when necessary, to resolve factual issues. Consequently, the remedy of the aggrieved party is to **timely file a motion for reconsideration as a precondition for any further or subsequent remedy,** and then seasonably avail of the special civil action of *certiorari* under Rule 65, for a period of sixty (60) days from notice of the decision.

2. ID.; SPECIAL CIVIL ACTIONS; PETITION FOR *CERTIORARI*; ALTHOUGH THE 10-DAY PERIOD FOR FINALITY OF THE DECISION OF THE NLRC MAY ALREADY HAVE LAPSED, THE COURT MAY STILL TAKE COGNIZANCE OF THE PETITION FOR *CERTIORARI* ON JURISDICTIONAL AND DUE PROCESS CONSIDERATIONS IF FILED WITHIN THE REGLEMENTARY PERIOD UNDER RULE 65 OF THE RULES OF COURT.— We find that the application of the doctrine of immutability of judgment in the case at bar is misplaced. To reiterate, although the 10-day period for finality of the decision of the NLRC may already have lapsed as contemplated in the Labor Code, this Court may still take cognizance of the petition for *certiorari* on jurisdictional and due process considerations if filed within the reglementary period under Rule 65. From the abovementioned, WUP was able to discharge the necessary conditions in availing its remedy against the final and executory decision of the NLRC. There is an underlying power of the courts to scrutinize the acts of such agencies on questions of law and jurisdiction even though no right of review is given by statute. Furthermore, the purpose of judicial review is to keep the administrative agency within its jurisdiction and protect the substantial rights of the parties.

3. COMMERCIAL LAW; CORPORATIONS; "CORPORATE OFFICER" IS AN OFFICER OF THE CORPORATION WHOSE OFFICE OR POSITION IS CREATED BY THE CHARTER OF THE CORPORATION OR BY-LAWS AND THE OFFICER IS ELECTED BY THE DIRECTORS OR STOCKHOLDERS, WHILE AN "EMPLOYEE" OCCUPIES NO OFFICE AND GENERALLY IS EMPLOYED NOT BY ACTION OF THE DIRECTORS OR STOCKHOLDERS BUT BY THE MANAGING OFFICER OF THE CORPORATION WHO ALSO DETERMINES THE COMPENSATION TO BE PAID TO SUCH EMPLOYEE;

IT IS ONLY WHEN THE OFFICER CLAIMING TO HAVE BEEN ILLEGALLY DISMISSED IS CLASSIFIED AS SUCH CORPORATE OFFICER THAT THE ISSUE IS DEEMED AN INTRA-CORPORATE DISPUTE WHICH FALLS WITHIN THE JURISDICTION OF THE TRIAL COURTS.— For purposes of identifying an intra-corporate controversy, We have defined corporate officers, thus: "Corporate officers" in the context of Presidential Decree No. 902-A are those officers of the corporation who are **given that character by the Corporation Code or by the corporation's by-laws.** There are three specific officers whom a corporation must have under Section 25 of the Corporation Code. These are the president, secretary and the treasurer. The number of officers is not limited to these three. A corporation may have such other officers as may be provided for by its by-laws like, but not limited to, the vice-president, cashier, auditor or general manager. The number of corporate officers is thus limited by law and by the corporation's by-laws. The president, vice-president, secretary and treasurer are commonly regarded as the principal or executive officers of a corporation, and they are usually designated as the officers of the corporation. However, **other officers are sometimes created by the charter or by-laws of a corporation,** or the board of directors may be empowered under the by-laws of a corporation to create additional offices as may be necessary. This Court expounded that an *"office"* is created by the charter of the corporation and the officer is elected by the directors or stockholders, while an *"employee"* usually occupies no office and generally is employed not by action of the directors or stockholders but by the managing officer of the corporation who also determines the compensation to be paid to such employee. From the foregoing, that the *creation* of the position is under the corporation's charter or by-laws, and that the *election* of the officer is by the directors or stockholders must concur in order for an individual to be considered a corporate officer, as against an ordinary employee or officer. It is only when the officer claiming to have been illegally dismissed is classified as such corporate officer that the issue is deemed an intra-corporate dispute which falls within the jurisdiction of the trial courts.

4. ID.; ID.; ID.; ONE WHO IS INCLUDED IN THE BY-LAWS OF A CORPORATION IN ITS ROSTER OF CORPORATE OFFICERS IS AN OFFICER OF SAID CORPORATION

AND NOT A MERE EMPLOYEE.— It is apparent from the By-laws of WUP that the president was one of the officers of the corporation, and was an honorary member of the Board. He was appointed by the Board and not by a managing officer of the corporation. We held that one who is included in the by-laws of a corporation in its roster of corporate officers is an officer of said corporation and not a mere employee. The alleged "appointment" of Maglaya instead of "election" as provided by the by-laws neither convert the president of university as a mere employee, nor amend its nature as a corporate officer. With the office specifically mentioned in the by-laws, the NLRC erred in taking cognizance of the case, and in concluding that Maglaya was a mere employee and subordinate official because of the manner of his appointment, his duties and responsibilities, salaries and allowances, and considering the Identification Card, the Administration and Personnel Policy Manual which specified the retirement of the university president, and the check disbursement as pieces of evidence supporting such finding.

5. **ID.; ID.; ID.; A CORPORATE OFFICER'S DISMISSAL IS ALWAYS A CORPORATE ACT, OR AN INTRA-CORPORATE CONTROVERSY WHICH ARISES BETWEEN A STOCKHOLDER AND A CORPORATION, AND THE NATURE IS NOT ALTERED BY THE REASON OR WISDOM WITH WHICH THE BOARD OF DIRECTORS MAY HAVE IN TAKING SUCH ACTION.—** A corporate officer's dismissal is always a corporate act, or an intra-corporate controversy which arises between a stockholder and a corporation, and the nature is not altered by the reason or wisdom with which the Board of Directors may have in taking such action. The issue of the alleged termination involving a corporate officer, not a mere employee, is not a simple labor problem but a matter that comes within the area of corporate affairs and management and is a corporate controversy in contemplation of the Corporation Code.

6. **ID.; ID.; ID.; ID.; THE DETERMINATION OF THE RIGHTS OF A CORPORATE OFFICER DISMISSED FROM HIS EMPLOYMENT, AS WELL AS THE CORRESPONDING LIABILITY OF A CORPORATION, IF ANY, IS AN INTRA-CORPORATE DISPUTE SUBJECT TO THE JURISDICTION OF THE REGULAR COURTS.—** The long-established rule is that the jurisdiction over a subject matter is

conferred by law. Perforce, Section 5 (c) of PD 902-A, as amended by Subsection 5.2, Section 5 of Republic Act No. 8799, which provides that the regional trial courts exercise exclusive jurisdiction over all controversies in the election or appointment of directors, trustees, officers or managers of corporations, partnerships or associations, applies in the case at bar. To emphasize, the determination of the rights of a corporate officer dismissed from his employment, as well as the corresponding liability of a corporation, if any, is an intra-corporate dispute subject to the jurisdiction of the regular courts.

7. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; A VOID JUDGMENT FOR WANT OF JURISDICTION IS NO JUDGMENT AT ALL; HENCE, IT CAN NEVER BECOME FINAL AND ANY WRIT OF EXECUTION BASED ON IT IS VOID; DECISION OF THE COURT OF APPEALS IS REVERSED.— As held in *Leonor v. Court of Appeals*, a void judgment for want of jurisdiction is no judgment at all. It 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. Hence, it can never become final and **any writ of execution based on it is void**. Since this Court is now reversing the challenged decision of the CA and affirming the decision of the LA in dismissing the case for want of jurisdiction, Maglaya is not entitled to collect the amount of ₱2,505,208.75 awarded from the time the NLRC decision became final and executory up to the time the CA dismissed WUP's petition for *certiorari*.

APPEARANCES OF COUNSEL

J.V. Bautista Law Offices for petitioner.
Mariano Jesus S. Averia for respondent.

D E C I S I O N

PERALTA, *J.*:

For this Court's resolution is a petition for review on *certiorari* filed by petitioner Wesleyan University-Philippines *(WUP)*

assailing the Resolution[1] dated January 20, 2014 of the Court of Appeals *(CA)* which denied its petition for *certiorari.*

The facts are as follows:

WUP is a non-stock, non-profit, non-sectarian educational corporation duly organized and existing under the Philippine laws on April 28, 1948.[2]

Respondent Atty. Guillermo T. Maglaya, Sr. *(Maglaya)* was appointed as a corporate member on January 1, 2004, and was elected as a member of the Board of Trustees *(Board)* on January 9, 2004 — both for a period of five (5) years. On May 25, 2005, he was elected as President of the University for a five-year term. He was re-elected as a trustee on May 25, 2007.[3]

In a Memorandum dated November 28, 2008, the incumbent Bishops of the United Methodist Church *(Bishops)* apprised all the corporate members of the expiration of their terms on December 31, 2008, unless renewed by the former.[4] The said members, including Maglaya, sought the renewal of their membership in the WUP's Board, and signified their willingness to serve the corporation.[5]

On January 10, 2009, Dr. Dominador Cabasal, Chairman of the Board, informed the Bishops of the cessation of corporate terms of some of the members and/or trustees since the by-laws provided that the vacancy shall only be filled by the Bishops upon the recommendation of the Board.[6]

On March 25, 2009, Maglaya learned that the Bishops created an *Ad Hoc* Committee to plan the efficient and orderly turnover

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[1] Penned by Associate Justice Normandie B. Pizarro, with Presiding Justice Andres B. Reyes, Jr. and Associate Justice Manuel M. Barrios, concurring; *rollo,* pp. 30-32.

[2] *Id.* at 53.

[3] *Id.* at 56.

[4] CA *rollo,* p. 227.

[5] *Id.* at 228.

[6] *Rollo,* p. 57.

of the administration of the WUP in view of the alleged "gentleman's agreement" reached in December 2008, and that the Bishops have appointed the incoming corporate members and trustees.[7] He clarified that there was no agreement and any discussion of the turnover because the corporate members still have valid and existing corporate terms.[8]

On April 24, 2009, the Bishops, through a formal notice to all the officers, deans, staff, and employees of WUP, introduced the new corporate members, trustees, and officers. In the said notice, it was indicated that the new Board met, organized, and elected the new set of officers on April 20, 2009.[9] Manuel Palomo *(Palomo),* the new Chairman of the Board, informed Maglaya of the termination of his services and authority as the President of the University on April 27, 2009.[10]

Thereafter, Maglaya and other former members of the Board *(Plaintiffs)* filed a Complaint for Injunction and Damages before the Regional Trial Court *(RTC)* of Cabanatuan City, Branch 28.[11] In a Resolution[12] dated August 19, 2009, the RTC dismissed the case declaring the same as a nuisance or harassment suit prohibited under Section 1(b),[13] Rule 1 of the Interim Rules

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[7] *Id.*

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

[9] *Id.* at 58.

[10] *Id.* at 104.

[11] *Id.* at 52-67.

[12] Penned by Presiding Judge Tomas B. Talavera, *id.* at 68-74.

[13] (b) *Prohibition against nuisance and harassment suits.* – Nuisance and harassment suits are prohibited. In determining whether a suit is a nuisance or harassment suit, the court shall consider, among others, the following:

(1) The extent of the shareholding or interest of the initiating stockholder or member;
(2) Subject matter of the suit;
(3) Legal and factual basis of the complaint;
(4) Availability of appraisal rights for the act or acts complained of; and

for Intra-Corporate Controversies.[14] The RTC observed that it is clear from the by-laws of WUP that insofar as membership in the corporation is concerned, which can only be given by the College of Bishops of the United Methodist Church, it is a precondition to a seat in the WUP Board.[15] Consequently, the expiration of the terms of the plaintiffs, including Maglaya, as corporate members carried with it their termination as members of the Board.[16] Moreover, their continued stay in their office beyond their terms was only in hold-over capacities, which ceased when the Bishops appointed new members of the corporation and the Board.[17]

The CA, in a Decision[18] dated March 15, 2011, affirmed the decision of the RTC, and dismissed the petition for *certiorari* filed by the plaintiffs for being the improper remedy. The CA held that their status as corporate members of WUP which expired on December 31, 2008 was undisputed. The CA agreed with the RTC that the plaintiffs had no legal standing to question the Bishops' alleged irregular appointment of the new members in their Complaint on May 18, 2009 as the termination of their membership in the corporation necessarily resulted in the conclusion of their positions as members of the Board pursuant to the WUP by-laws.[19]

Thereafter, Maglaya filed on March 22, 2011 the present illegal dismissal case against WUP, Palomo, Bishop Lito C.

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(5) Prejudice or damage to the corporation, partnership, or association in relation to the relief sought.

In case of nuisance or harassment suits, the court may, *motu proprio* or upon motion, forthwith dismiss the case.

[14] *Rollo,* p. 74.

[15] *Id.* at 73.

[16] *Id.*

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

[18] Penned by Associate Justice Michael P. Elbinias, with Associate Justices Noel G. Tijam and Celia C. Librea-Leagogo, concurring; *id.* at 77-86.

[19] *Rollo,* pp. 83-84.

Tangonan *(Tangonan)*, and Bishop Leo A. Soriano *(Soriano)*.[20] Maglaya claimed that he was unceremoniously dismissed in a wanton, reckless, oppressive and malevolent manner on the eve of April 27, 2009.[21] Tangonan and Soriano acted in evident bad faith when they disregarded his five-year term of office and delegated their protege Palomo as the new university president.[22] Maglaya alleged that he faithfully discharged his necessary and desirable functions as President, and received ₱75,000.00 as basic salary, ₱10,000.00 as cost of living allowance, and ₱10,000.00 as representation allowance. He was also entitled to other benefits such as: the use of university vehicles; the use of a post paid mobile cellular phone in his official transactions; the residence in the University Executive House located at Inday Street, Magsaysay Sur, Cabanatuan City, with free water, electricity, and services of a household helper; and receipt of 13th month pay, vacation leave pay, retirement pay, and shares in related learning experience.[23] On May 31, 2006, his basic salary was increased to ₱95,000.00 due to his additional duty in overseeing the operations of the WUP Cardiovascular and Medical Center.

Maglaya presented the following pieces of evidence: copies of his appointment as President, his Identification Card, the WUP Administration and Personnel Policy Manual which specified the retirement of the university president, and the check disbursement in his favor evidencing his salary, to substantiate his claim that he was a mere employee.[24]

WUP, on the other hand, asseverated that the dismissal or removal of Maglaya, being a corporate officer and not a regular employee, is a corporate act or intra-corporate controversy under the jurisdiction of the RTC.[25] WUP also maintained that since

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[20] *Id.* at 105.

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

[22] *Id.* at 94.

[23] *Id.* at 93.

[24] *Id.* at 119.

[25] *Id.* at 107.

Maglaya's appointment was not renewed, he ceased to be a member of the corporation and of the Board; thus, his term for presidency has also been terminated.[26]

Meanwhile, this Court, in a Resolution dated June 13, 2011, denied the petition for review on *certiorari* filed by Maglaya and the other former members of the Board for failure to show any reversible error in the decision of the CA. The same became final and executory on August 24, 2011.[27]

In a Decision[28] dated September 20, 2011, the Labor Arbiter *(LA)* ruled in favor of WUP. The LA held that the action between employers and employees where the employer-employee relationship is merely incidental is within the exclusive and original jurisdiction of the regular courts.[29] Since he was appointed as President of the University by the Board, Maglaya was a corporate officer and not a mere employee. The instant case involves intra-corporate dispute which was definitely beyond the jurisdiction of the labor tribunal.[30] The dispositive portion of the decision reads:

> WHEREFORE, premises considered, the instant complaint is hereby dismissed for lack of jurisdiction.
>
> SO ORDERED.[31]

In a Decision[32] dated April 25, 2012, the National Labor Relations Commission *(NLRC)* in NLRC-LAC No. 01-000470-12, reversed and set aside the Decision of the LA ruling that the illegal dismissal case falls within the jurisdiction of the

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[26] *Id.* at 96.

[27] *Id.* at 87.

[28] Penned by Labor Arbiter Leandro M. Jose; *id.* at 90-100.

[29] *Rollo,* p. 99.

[30] *Id.* at 100.

[31] *Id.*

[32] Penned by Commissioner Teresita D. Castillon-Lora, with Presiding Commissioner Raul T. Aquino, concurring; *id.* at 102-125.

labor tribunals. Since the reasons for his termination cited by WUP were not among the just causes provided under Article 282[33] (now Article 297) of the Labor Code, Maglaya was illegally dismissed. The NLRC observed that the Board did not elect Maglaya, but merely appointed him. Maglaya was appointed for a fixed period of five (5) years from May 7, 2005 to May 6, 2010, while the period of his appointment as member of the corporation was five (5) years from January 2004.[34] The decretal portion of the decision reads:

WHEREFORE, premises considered, the appealed decision is hereby REVERSED and SET ASIDE, declaring:

(a) jurisdiction over this case by virtue of the employer-employee relation of the parties
(b) the illegality of the dismissal of [respondent] by [petitioner]

[Petitioner] therefore [is] hereby ordered to pay [respondent]:

1. separation pay	-	[₱] 375,000.00
2. full backwages	-	1,252,462.50
3. retirement pay	-	500,000.00
4. moral damages	-	100,000.00
5. exemplary damages	-	50,000.00
6. 10% of the above as attorney's fees	-	227,746.25
TOTAL AWARDS	-	[₱]2,505,208.75

based on the attached computation of this Commission's Computation Unit.

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[33] Article 297. [282] *Termination by Employer*. – An employer may terminate an employment for any of the following causes:

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
(b) Gross and habitual neglect by the employee of his duties;
(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and
(e) Other causes analogous to the foregoing.

[34] *Rollo,* p. 116.

SO ORDERED.[35]

Ruling in favor of Maglaya, the NLRC explicated that although the position of the President of the University is a corporate office, the manner of Maglaya's appointment, and his duties, salaries, and allowances point to his being an employee and subordinate.[36] The control test is the most important indicator of the presence of employer-employee relationship. Such was present in the instant case as Maglaya had the duty to report to the Board, and it was the Board which terminated or dismissed him even before his term ends.[37]

Thereafter, the NLRC denied the motion for reconsideration filed by WUP in a Resolution[38] dated February 11, 2013.

In a Resolution, the CA dismissed the petition for *certiorari* filed by WUP. The CA noted that the decision and resolution of the NLRC became final and executory on March 16, 2013.[39] WUP's attempt to resurrect its lost remedy through filing the petition would not prosper since final and executory judgment becomes unalterable and may no longer be modified in any respect.[40] Thus:

WHEREFORE, the petition is DENIED for lack of merit.

SO ORDERED.[41]

Upon denial of his Motion for Reconsideration, WUP elevated the case before this Court raising the issue:

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

[36] *Id.* at 118.

[37] *Id.* at 118-119.

[38] Penned by Commissioner Teresita D. Castillon-Lora, with Presiding Commissioner Joseph Gerard E. Mabilog, concurring, and Commissioner Dolores M. Peralta-Beley, dissenting; *id.* at 128-136.

[39] NLRC Entry of Judgment, *CA rollo,* p. 433.

[40] *Rollo,* pp. 31-32.

[41] *Id.* at 32.

The Court of Appeals committed an error of law when it summarily dismissed the special civil action for *certiorari* raising lack of jurisdiction of the NLRC filed by [WUP] where it was very clear that the NLRC had no jurisdiction over the case involving a corporate officer and where the nature of the controversy is an intra-corporate dispute.

We find the instant petition impressed with merit.

WUP alleges that while the NLRC decision became final and executory on March 16, 2013, it did not mean that the said decision had become immutable and unalterable as the CA ruled. WUP maintains that the remedy of the aggrieved party against a final and executory decision of the NLRC is the filing of the petition for *certiorari* under Rule 65 of the Rules of Court. As such, it was able to meet the conditions set forth in filing the said remedy before the CA.

Settled is the rule that while the decision of the NLRC becomes final and executory after the lapse of ten calendar days from receipt thereof by the parties under Article 223[42] (now Article 229) of the Labor Code, the adverse party is not precluded from assailing it *via* Petition for *Certiorari* under Rule 65 before the CA and then to this Court *via* a Petition for Review under Rule 45.[43]

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[42] Article 229. [223] *Appeal.*— Decisions, awards, or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards, or orders. Such appeal may be entertained only on any of the following grounds:

(a) If there is *prima facie* evidence of abuse of discretion on the part of the Labor Arbiter;
(b) If the decision, order or award was secured through fraud or coercion, including graft and corruption;
(c) If made purely on questions of law; and
(d) If serious errors in the findings of facts are raised which would cause grave or irreparable damage or injury to the appellant.

x x x x x x x x x

The decision of the Commission shall be final and executory after ten (10) calendar days from receipt thereof by the parties.

x x x x x x x x x

[43] *Panuncillo v. CAP Philippines, Inc.*, 544 Phil. 256 (2007).

This Court has explained and clarified the power of the CA to review NLRC decisions, *viz.*:

> The power of the Court of Appeals to review NLRC decisions *via* Rule 65 or Petition for *Certiorari* has been settled as early as in our decision in *St. Martin Funeral Home v. National Labor Relations Commission.* This Court held that the proper vehicle for such review was a Special Civil Action for *Certiorari* under Rule 65 of the Rules of Court, and that this action should be filed in the Court of Appeals in strict observance of the doctrine of the hierarchy of courts. Moreover, it is already settled that under Section 9 of *Batas Pambansa Blg.* 129, as amended by Republic Act No. 7902[10] (An Act Expanding the Jurisdiction of the Court of Appeals, amending for the purpose of Section Nine of *Batas Pambansa Blg.* 129 as amended, known as the *Judiciary Reorganization Act of 1980),* the Court of Appeals — pursuant to the exercise of its original jurisdiction over Petitions for *Certiorari* — is specifically given the power to pass upon the evidence, if and when necessary, to resolve factual issues.[44]

Consequently, the remedy of the aggrieved party is to **timely file a motion for reconsideration as a precondition for any further or subsequent remedy,** and then seasonably avail of the special civil action of *certiorari* under Rule 65, for a period of sixty (60) days from notice of the decision.[45]

Records reveal that WOP received the decision of the NLRC on May 12, 2012, and filed its motion for reconsideration on May 24, 2012.[46] WUP received the Resolution dated February 11, 2013 denying its motion on March 12, 2013.[47] Thereafter, it filed its petition for *certiorari* before the CA on March 26, 2013.[48]

We find that the application of the doctrine of immutability of judgment in the case at bar is misplaced. To reiterate, although

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[44] *PICOP Resources, Incorporated (PRI) v. Tañeca,* G.R. No. 160828, August 9, 2010, 627 SCRA 56, 65-66. (Citation omitted).

[45] *St. Martin Funeral Home v. National Labor Relations Commission,* 356 Phil. 811 (1998). (Emphasis supplied).

[46] CA *rollo,* p. 383.

[47] *Id.* at 4.

[48] *Id.* at 3.

the 10-day period for finality of the decision of the NLRC may already have lapsed as contemplated in the Labor Code, this Court may still take cognizance of the petition for *certiorari* on jurisdictional and due process considerations if filed within the reglementary period under Rule 65.[49] From the abovementioned, WUP was able to discharge the necessary conditions in availing its remedy against the final and executory decision of the NLRC.

There is an underlying power of the courts to scrutinize the acts of such agencies on questions of law and jurisdiction even though no right of review is given by statute.[50] Furthermore, the purpose of judicial review is to keep the administrative agency within its jurisdiction and protect the substantial rights of the parties.[51]

Now on the issue of whether or not the NLRC has jurisdiction over the illegal dismissal case filed by Maglaya.

The said issue revolves around the question on whether Maglaya is a corporate officer or a mere employee. For purposes of identifying an intra-corporate controversy, We have defined corporate officers, thus:

> "Corporate officers" in the context of Presidential Decree No. 902-A are those officers of the corporation who are **given that character by the Corporation Code or by the corporation's by-laws.** There are three specific officers whom a corporation must have under Section 25 of the Corporation Code. These are the president, secretary and the treasurer. The number of officers is not limited to these three. A corporation may have such other officers as may be provided for by its by-laws like, but not limited to, the vice-president, cashier, auditor or general manager. The number of corporate officers is thus limited by law and by the corporation's by-laws.[52]

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[49] *St. Martin Funeral Home v. National Labor Relations Commission, supra* note 45.

[50] *Id.*

[51] *Id.*

[52] *Garcia v. Eastern Telecommunications Phils., Inc.*, 603 Phil. 438 (2009). (Citation omitted).

The president, vice-president, secretary and treasurer are commonly regarded as the principal or executive officers of a corporation, and they are usually designated as the officers of the corporation. However, **other officers are sometimes created by the charter or by-laws of a corporation,** or the board of directors may be empowered under the by-laws of a corporation to create additional offices as may be necessary. This Court expounded that an *"office"* is created by the charter of the corporation and the officer is elected by the directors or stockholders, while an *"employee"* usually occupies no office and generally is employed not by action of the directors or stockholders but by the managing officer of the corporation who also determines the compensation to be paid to such employee.[53]

From the foregoing, that the *creation* of the position is under the corporation's charter or by-laws, and that the *election* of the officer is by the directors or stockholders must concur in order for an individual to be considered a corporate officer, as against an ordinary employee or officer. It is only when the officer claiming to have been illegally dismissed is classified as such corporate officer that the issue is deemed an intra-corporate dispute which falls within the jurisdiction of the trial courts.[54]

In its position paper before the LA, WUP presented its amended By-Laws[55] dated November 28, 1988 submitted to the SEC to prove that Maglaya, as the University President, was a corporate officer whose rights do not fall within the jurisdiction of the labor tribunal. It also presented the Resolution dated August 19, 2009 of the RTC, and the Decision dated March 15, 20 11 of the CA to show that the earlier case was filed by Maglaya and others, as members of the Board, questioning the Bishops' appointment of the new members without their recommendation.

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[53] *Tabang v. NLRC,* 334 Phil. 424 (1997). (Emphasis supplied).

[54] *Cosare v. Broadcom Asia, Inc.,* 726 Phil. 316 (2014).

[55] *Rollo,* pp. 43-51.

The relevant portions of the amended By-Laws provide:

ARTICLE VI. BOARD OF TRUSTEES

x x x x x x x x x

Section 2. *Membership* – (a) The Board of Trustees shall be composed of Ten (10) members of the corporation from among themselves provided, that six (6) shall come from the Ministry and Laity of the United Methodist [C]hurch in the Philippines, three (3) shall be non-Methodist, friends and sympathizers of the Wesleyan University-Philippines and of the United Methodist Church, and one (1) representative of the Wesleyan Alumni Association, as provided in section 1 (c), Article IV hereof, and (b) provided further that the incumbent area bishop and the President of the Wesleyan University-Philippines shall be honorary members of the Board.

x x x x x x x x x[56]

ARTICLE VIII. OFFICERS

Section 1. *Officers* – The officers of the Board of Trustees shall be:

(a) Chairman
(b) Vice-Chairman
(c) Secretary
(d) Treasurer

x x x x x x x x x

Section 6. The President of Wesleyan University-Philippines – The President of the University, who must be an active member of the United Methodist Church in the Philippines at the time of his election shall be in-charge of and be responsible for the administration of the University and other institutions of learning that [m]ay hereafter be established by the corporation, and

(a) May, with the Board of Trustees;

(1) Organize and/or reorganize the administrative set up of the Wesleyan University-Philippines to effect efficiency and upgrade institutional administration and supervision;

(2) Employ, suspend, dismiss, transfer or replace personnel and prescribe and enforce rules and regulations for their proper conduct in the discharge of their duties;

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[56] *Id.* at 45. (Underscoring supplied).

(3) Shall make reports during the different annual conference of the United Methodist Church and to such agencies as may be deemed necessary on the operations of the university and related matters;

(4) Shall prescribe and enforce rules and regulations for the promotion and maintenance of discipline in the proper conduct and discharge of the functions and duties of subordinate administrative officers, professors, teachers, employees and students and other personnel.

(b) Shall make reports and recommendations to the Board of Trustees or to the Chairman of the Board of Trustees on matters pertaining to the institution as he may find necessary;

(c) Shall countersign all checks drawn by the Treasurer from the depository of the University, and

(d) Shall exercise, perform and discharge all such other powers, functions and duties as are interest in the office of the President.

x x x x x x x x x[57]

It is apparent from the By-laws of WUP that the president was one of the officers of the corporation, and was an honorary member of the Board. He was appointed by the Board and not by a managing officer of the corporation. We held that one who is included in the by-laws of a corporation in its roster of corporate officers is an officer of said corporation and not a mere employee.[58]

The alleged "appointment" of Maglaya instead of "election" as provided by the by-laws neither convert the president of university as a mere employee, nor amend its nature as a corporate officer. With the office specifically mentioned in the by-laws, the NLRC erred in taking cognizance of the case, and in concluding that Maglaya was a mere employee and subordinate official because of the manner of his appointment, his duties and responsibilities, salaries and allowances, and considering the Identification Card, the Administration and Personnel Policy

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[57] *Id.* at 47-48.

[58] *Garcia v. Eastern Telecommunications Phils., Inc., supra* note 52.

Manual which specified the retirement of the university president, and the check disbursement as pieces of evidence supporting such finding.

A corporate officer's dismissal is always a corporate act, or an intra-corporate controversy which arises between a stockholder and a corporation, and the nature is not altered by the reason or wisdom with which the Board of Directors may have in taking such action.[59] The issue of the alleged termination involving a corporate officer, not a mere employee, is not a simple labor problem but a matter that comes within the area of corporate affairs and management and is a corporate controversy in contemplation of the Corporation Code.[60]

The long-established rule is that the jurisdiction over a subject matter is conferred by law.[61] Perforce, Section 5 (c) of PD 902-A, as amended by Subsection 5.2, Section 5 of Republic Act No. 8799, which provides that the regional trial courts exercise exclusive jurisdiction over all controversies in the election or appointment of directors, trustees, officers or managers of corporations, partnerships or associations, applies in the case at bar.[62]

To emphasize, the determination of the rights of a corporate officer dismissed from his employment, as well as the corresponding liability of a corporation, if any, is an intra-corporate dispute subject to the jurisdiction of the regular courts.[63]

As held in *Leonor v. Court of Appeals*,[64] a void judgment for want of jurisdiction is no judgment at all. It cannot be the source of any right nor the creator of any obligation. All acts

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[59] *Tabang v. NLRC, supra* note 53.

[60] *Okol v. Slimmers World International,* 623 Phil. 13 (2009).

[61] *Union Motors Corp. v. National Labor Relations Commission,* 373 Phil. 310 (1999).

[62] *Okol v. Slimmers World International, supra* note 60.

[63] *Id.*

[64] 326 Phil. 74 (1996).

performed pursuant to it and all claims emanating from it have no legal effect. Hence, it can never become final and **any writ of execution based on it is void**.[65]

Since this Court is now reversing the challenged decision of the CA and affirming the decision of the LA in dismissing the case for want of jurisdiction, Maglaya is not entitled to collect the amount of ₱2,505,208.75 awarded from the time the NLRC decision became final and executory up to the time the CA dismissed WUP's petition for *certiorari*.

In sum, this Court finds that the NLRC erred in assuming jurisdiction over, and thereafter in failing to dismiss, Maglaya's complaint for illegal dismissal against WUP, since the subject matter of the instant case is an intra-corporate controversy which the NLRC has no jurisdiction.

WHEREFORE, the petition for review on *certiorari* filed by petitioner Wesleyan University-Philippines is hereby **GRANTED**. The assailed Resolution dated January 20, 2014 of the Court of Appeals in CA-G.R. SP No. 129196 is hereby **REVERSED** and **SET ASIDE**. Respondent Atty. Guillermo T. Maglaya, Sr. is hereby **ORDERED** to **REIMBURSE** the petitioner the amount of ₱2,505,208.75 awarded by the National Labor Relations Commission.

SO ORDERED.

Carpio (Chairperson), Mendoza, Leonen, and *Jardeleza,*[*] *JJ.*, concur.

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[65] *Leonor v. Court of Appeals, supra.* (Emphasis supplied).

[*] Designated Additional Member per Special Order No. 2416, dated January 4, 2017.

FIRST DIVISION

[G.R. No. 215009. January 23, 2017]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **CARMEN SANTORIO GALENO,** *respondent*.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; AUTHENTICATION AND PROOF OF DOCUMENTS; DOCUMENTARY EVIDENCE CANNOT BE ACCORDED PROBATIVE WEIGHT WHERE THE PUBLIC OFFICERS WHO ISSUED THE SAME DID NOT TESTIFY IN COURT TO PROVE THE FACTS STATED THEREIN; AT BEST, THEY MAY BE CONSIDERED ONLY AS *PRIMA FACIE* EVIDENCE OF THEIR DUE EXECUTION AND DATE OF ISSUANCE BUT DO NOT CONSTITUTE *PRIMA FACIE* EVIDENCE OF THE FACTS STATED THEREIN.— A scrutiny of the evidence marked and formally offered by respondent before the court *a quo* shows that the former failed to prove that there was sufficient basis to allow the correction of the area of the subject property in OCT No. 46417 from 20,948 square meters to 21,248 square meters. Records reveal that respondent offered in evidence x x x documents x x x. On the strength of these pieces of evidence, respondent sought a reconciliation of the area of the subject property with the records of the DENR. Unfortunately, the x x x documentary evidence are not sufficient to warrant the correction prayed for. The Court cannot accord probative weight upon them in view of the fact that the public officers who issued the same did not testify in court to prove the facts stated therein. In *Republic v. Medida*, the Court held that certifications of the Regional Technical Director, DENR cannot be considered *prima facie* evidence of the facts stated therein x x x As such, *sans* the testimonies of Acevedo, Caballero, and the other public officers who issued respondent's documentary evidence to confirm the veracity of its contents, the same are bereft of probative value and cannot, by their mere issuance, prove the facts stated therein. At best, they may be considered only as *prima facie* evidence of their due execution and date of issuance but do not constitute *prima facie* evidence of the facts stated therein.

2. ID.; ID.; HEARSAY EVIDENCE RULE; THE CONTENTS OF CERTIFICATIONS ARE HEARSAY WHERE THE WITNESS WHO TESTIFIED ON THE VERACITY OF THEIR CONTENTS WAS INCOMPETENT, AS SHE DID NOT PREPARE ANY OF THE CERTIFICATIONS, AND HEARSAY EVIDENCE, WHETHER OBJECTED TO OR NOT, HAS NO PROBATIVE VALUE.— [T]he contents of the certifications are hearsay because respondent's sole witness and attorney-in-fact, Lea Galeno Barraca, was incompetent to testify on the veracity of their contents, as she did not prepare any of the certifications nor was she a public officer of the concerned government agencies. Notably, while it is true that the public prosecutor who represented petitioner interposed no objection to the admission of the foregoing evidence in the proceedings in the court below, it should be borne in mind that "hearsay evidence, whether objected to or not, has no probative value unless the proponent can show that the evidence falls within the exceptions to the hearsay evidence rule," which do not, however, obtain in this case. Verily, while respondent's documentary evidence may have been admitted due to the opposing party's lack of objection, it does not, however, mean that they should be accorded any probative weight. The Court has explained that: The general rule is that hearsay evidence is not admissible. However, the lack of objection to hearsay testimony may result in its being admitted as evidence. But one should not be misled into thinking that such declarations are thereby impressed with probative value. Admissibility of evidence should not be equated with weight of evidence. Hearsay evidence whether objected to or not cannot be given credence for it has no probative value.

3. CIVIL LAW; LAND REGISTRATION; CERTIFICATE OF TITLE; THE ABSENCE OF OPPOSITION FROM GOVERNMENT AGENCIES IS OF NO CONTROLLING SIGNIFICANCE, AS THE STATE CANNOT BE ESTOPPED BY THE OMISSION, MISTAKE OR ERROR OF ITS OFFICIALS OR AGENTS; NEITHER IS THE REPUBLIC BARRED FROM ASSAILING THE DECISION GRANTING THE PETITION FOR CORRECTION OF TITLE, IF ON THE BASIS OF THE LAW AND THE EVIDENCE ON RECORD, SUCH PETITION HAS NO MERIT.— [C]ase law states that the "absence of opposition from government agencies is of no controlling significance

because the State cannot be estopped by the omission, mistake or error of its officials or agents. Neither is the Republic barred from assailing the decision granting the petition for reconstitution [or correction of title, as in this case] if, on the basis of the law and the evidence on record, such petition has no merit." Moreover, "in civil cases, the party having the burden of proof must produce a preponderance of evidence thereon, with plaintiff having to rely on the strength of his own evidence and not upon the weakness of the defendant's." In fine, the Court holds that respondent did not present any competent evidence to prove that the true and correct area of the subject property is 21,298 square meters instead of 20,948 square meters to warrant a correction thereof in OCT No. 46417. Accordingly, respondent's petition for the correction of the said Certificate of Title must be denied, and the present petition be granted.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Maricar P. Villanueva for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated June 27, 2013 and the Resolution[3] dated September 17, 2014 rendered by the Court of Appeals (CA) in CA-G.R. CV No. 02085, affirming the Orders dated October 13, 2006[4] and January 22, 2007[5] of the Regional Trial Court of

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[1] *Rollo*, pp. 27-55.

[2] *Id.* at 62-71-A. Penned by Associate Justice Edgardo L. Delos Santos with Associate Justices Pamela Ann Abella Maxino and Maria Elisa Sempio Diy concurring.

[3] *Id.* at 80-81. Penned by Associate Justice Edgardo L. Delos Santos with Associate Justices Pamela Ann Abella Maxino and Ma. Luisa Quijano-Padilla concurring.

[4] *Id.* at 139-140. Penned by Presiding Judge Gerardo D. Diaz.

[5] *Id.* at 141-142.

Dumangas, Iloilo, Branch 68 (RTC), which allowed the correction of the area of Lot No. 2285 in Original Certificate of Title (OCT) No. 46417 from 20,948 square meters to 21,298 square meters.

The Facts

On September 2, 2003, respondent Carmen Santorio Galeno (respondent) filed a petition[6] for correction of the area of Lot No. 2285 covered by OCT No. 46417, Dingle Cadastre (subject property) before the RTC. She alleged therein that she is one of the co-owners of the subject property by virtue of a Deed of Sale[7] dated July 6, 1962. The survey and subdivision of the subject property was duly approved by the Department of Environment and Natural Resources (DENR) per its Approved Subdivision Plan of Lot No. 2285.[8]

Respondent further alleged that when she and her co-owners had the subject property resurveyed for the purpose of partition, they discovered a discrepancy in the land area of the subject property as appearing in OCT No. 46417,[9] in that the title reflects an area of 20,948 square meters, while the Certification[10] issued by the DENR Office of the Regional Technical Director, Lands Management Services, shows an area of 21,298 square meters. Hence, she sought to correct the area of the subject property in order to avoid further confusion, and claimed to have notified the adjoining owners.[11]

There being no opposition to the petition, the RTC allowed the presentation of respondent's evidence *ex parte* before the Branch Clerk as well as for the satisfaction of the jurisdictional requirements.[12]

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[6] *Id.* at 103-106.

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

[8] *Id.* at 62-63.

[9] See *id.* at 108.

[10] *Id.* at 115.

[11] *Id.* at 63-65.

[12] *Id.* at 64-65.

The RTC Ruling

In an Order[13] dated October 13, 2006, the RTC granted the petition upon a finding that respondent was able to substantiate the allegations in her petition to warrant a correction of the area of the subject property. Hence, it directed the Register of Deeds of the Province of Iloilo to correct such area in OCT No. 46417 from 20,948 to 21,298 square meters.[14]

Herein petitioner Republic of the Philippines (petitioner), through the Office of the Solicitor General (OSG), filed a motion for reconsideration claiming that the adjoining owners had not been notified, stressing that such notice is a jurisdictional requirement.[15] In the Order[16] dated January 22, 2007, the RTC denied the motion, finding that a Notice of Hearing[17] was sent to the adjoining owners. As such, respondent was able to prove compliance with the said jurisdictional requirement.[18]

Aggrieved, petitioner appealed to the CA.[19]

The CA Ruling

In a Decision[20] dated June 27, 2013, the CA affirmed the RTC Order. It found that respondent, by a preponderance of evidence, was able to prove, based on the records of the proper government authority, *i.e.*, the Office of the Technical Director, Land Management Services of the DENR, that the true and correct area of the subject property was 21,298 square meters as shown in the approved plan. Moreover, petitioner failed to rebut with contrary evidence respondent's claim that she and

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[13] *Id.* at 139-140.

[14] *Id.* at 140.

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

[16] *Id.* at 141-142.

[17] *Id.* at 143.

[18] *Id.* at 141.

[19] *Id.* at 144-158.

[20] *Id.* at 62-71-A.

her co-owners followed the boundaries in the technical description of OCT No. 46417 when they caused its resurvey. In fact, no proof had been adduced to show that the boundaries had been altered. Also, the CA pointed out that none of the adjoining owners, who were properly notified of the proceedings and who stand to be adversely affected by the change in the land area of the subject property, objected to respondent's petition.[21]

Petitioner's motion for reconsideration[22] was denied in a Resolution[23] dated September 17, 2014; hence, this petition.

The Issue Before the Court

The issue advanced for the Court's resolution is whether or not the CA erred in upholding the correction of the area of the subject property in OCT No. 46417.

The Court's Ruling

The petition is meritorious.

A scrutiny of the evidence marked and formally offered by respondent before the court *a quo* shows that the former failed to prove that there was sufficient basis to allow the correction of the area of the subject property in OCT No. 46417 from 20,948 square meters to 21,248 square meters.

Records reveal that respondent offered in evidence the following documents: (*a*) the Certification[24] issued by a certain Althea C. Acevedo (Acevedo), Engineer IV, Chief of the Technical Services Section of the Office of the Regional Technical Director, Land Management Services of the DENR in Iloilo City, which states that "the true and correct area of [L]ot 2285, Cad. 246 Dingle Cadastre is 21,928 square meters;"

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[21] *Id.* at 69-71.

[22] *Id.* at 72-78.

[23] *Id.* at 80-81.

[24] *Id.* at 115.

(*b*) the technical description[25] of Lot No. 2285, a copy of which was certified by Ameto Caballero (Caballero), Chief of the Surveys Division, while another copy was certified correct by Acevedo; and (*c*) the approved subdivision plan of Lot No. 2258,[26] certified by Rogelio M. Santome (Santome), Geodetic Engineer; Alfredo Muyarsas (Muyarsas), Chief of the Regional Surveys Division, and Edgardo R. Gerobin (Gerobin), OIC, Regional Technical Director of the Land Management Services, DENR. On the strength of these pieces of evidence, respondent sought a reconciliation of the area of the subject property with the records of the DENR.

Unfortunately, the foregoing documentary evidence are not sufficient to warrant the correction prayed for. The Court cannot accord probative weight upon them in view of the fact that the public officers who issued the same did not testify in court to prove the facts stated therein.

In *Republic v. Medida*,[27] the Court held that certifications of the Regional Technical Director, DENR cannot be considered *prima facie* evidence of the facts stated therein, holding that:

> Public documents are defined under Section 19, Rule 132 of the Revised Rules on Evidence as follows:
>
> (a) The written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country;
>
> (b) Documents acknowledged before a notary public except last wills and testaments; and
>
> (c) Public records, kept in the Philippines, of private documents required by law to be entered therein.
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> Applying Section 24 of Rule 132, the record of public documents referred to in Section 19(a), when admissible for any purpose, may be evidenced by an official publication thereof or by a copy

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

[26] *Id.* at 113.

[27] 692 Phil. 454 (2012).

attested by the officer having legal custody of the record, or by his deputy x x x.

Section 23, Rule 132 of the Revised Rules on Evidence provides:

> "Sec. 23. *Public documents as evidence*. — Documents consisting of entries in public records made in the performance of a duty by a public officer are *prima facie* evidence of the facts stated therein. All other public documents are evidence, even against a third person, of the fact which gave rise to their execution and of the date of the latter."

The CENRO and **Regional Technical Director, FMS-DENR, certifications [do] not fall within the class of public documents contemplated in the first sentence of Section 23 of Rule 132**. The certifications do not reflect "entries in public records made in the performance of a duty by a public officer," such as entries made by the Civil Registrar in the books of registries, or by a ship captain in the ship's logbook. **The certifications are not the certified copies or authenticated reproductions of original official records in the legal custody of a government office. The certifications are not even records of public documents.** x x x[28] (Emphases supplied)

As such, *sans* the testimonies of Acevedo, Caballero, and the other public officers who issued respondent's documentary evidence to confirm the veracity of its contents, the same are bereft of probative value and cannot, by their mere issuance, prove the facts stated therein.[29] At best, they may be considered only as *prima facie* evidence of their due execution and date of issuance but do not constitute *prima facie* evidence of the facts stated therein.[30]

In fact, the contents of the certifications are hearsay because respondent's sole witness and attorney-in-fact, Lea Galeno Barraca, was incompetent to testify on the veracity of their contents,[31] as she did not prepare any of the certifications nor was she a

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[28] *Id.* at 465-466.

[29] *Republic v. T.A.N. Properties, Inc.*, 578 Phil. 441, 454-455 (2008).

[30] *Id.*

[31] See *id.* at 455.

public officer of the concerned government agencies. Notably, while it is true that the public prosecutor who represented petitioner interposed no objection to the admission of the foregoing evidence in the proceedings in the court below,[32] it should be borne in mind that "hearsay evidence, whether objected to or not, has no probative value unless the proponent can show that the evidence falls within the exceptions to the hearsay evidence rule,"[33] which do not, however, obtain in this case. Verily, while respondent's documentary evidence may have been admitted due to the opposing party's lack of objection, it does not, however, mean that they should be accorded any probative weight. The Court has explained that:

> The general rule is that hearsay evidence is not admissible. However, the lack of objection to hearsay testimony may result in its being admitted as evidence. But one should not be misled into thinking that such declarations are thereby impressed with probative value. Admissibility of evidence should not be equated with weight of evidence. Hearsay evidence whether objected to or not cannot be given credence for it has no probative value.[34]

Besides, case law states that the "absence of opposition from government agencies is of no controlling significance because the State cannot be estopped by the omission, mistake or error of its officials or agents. Neither is the Republic barred from assailing the decision granting the petition for reconstitution [or correction of title, as in this case] if, on the basis of the law and the evidence on record, such petition has no merit."[35] Moreover, "in civil cases, the party having the burden of proof must produce a preponderance of evidence thereon, with plaintiff having to rely on the strength of his own evidence and not upon the weakness of the defendant's."[36]

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[32] See *rollo*, p. 69.

[33] *Philippine Home Assurance Corporation v. CA*, 327 Phil. 255, 268 (1996) citing *Baguio v. CA*, G.R. No. 93417, September 14, 1993, 226 SCRA 366, 370.

[34] *People v. Parungao*, 332 Phil. 917, 924 (1996).

[35] *Republic v. Lorenzo*, 700 Phil. 584, 597 (2012). Citations omitted.

[36] *Dantis v. Maghinang, Jr.*, 708 Phil. 575, 588 (2013).

In fine, the Court holds that respondent did not present any competent evidence to prove that the true and correct area of the subject property is 21,298 square meters instead of 20,948 square meters to warrant a correction thereof in OCT No. 46417. Accordingly, respondent's petition for the correction of the said Certificate of Title must be denied, and the present petition be granted.

WHEREFORE, the petition is **GRANTED**. The assailed Decision dated June 27, 2013 and the Resolution dated September 17, 2014 rendered by the Court of Appeals in CA-G.R. CV No. 02085 are hereby **REVERSED** and **SET ASIDE**. Carmen Santorio Galeno's petition for correction of area of Lot No. 2285 on Original Certificate of Title No. 46417 is **DISMISSED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 215331. January 23, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **LUDIGARIO BELEN *y* MARASIGAN,** a*ccused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; RAPE; ELEMENTS OF THREAT AND INTIMIDATION; THE MORAL ASCENDANCY OF AN ACCUSED OVER THE VICTIM RENDERS IT UNNECESSARY TO SHOW PHYSICAL FORCE AND INTIMIDATION SINCE, IN RAPE COMMITTED BY A CLOSE KIN, SUCH AS THE

VICTIM'S FATHER, STEPFATHER, UNCLE, OR THE COMMON-LAW SPOUSE OF HER MOTHER, MORAL INFLUENCE OR ASCENDANCY TAKES THE PLACE OF VIOLENCE OR INTIMIDATION.— We have scrutinized the records of this case and are convinced that appellant had carnal knowledge of AAA with threat and intimidation, thus, against her will and without her consent. AAA categorically declared that in two separate instances, appellant had inserted his penis into her vagina while she was crying. x x x. It was clearly established that the first rape incident was accomplished with the use of a knife which proved that appellant employed threat in AAA's life. As to the second rape, while there was no force and intimidation used by appellant on AAA, the fact that appellant is the live-in partner of her mother and with whom she had been living with since she was 2 years old, established his moral ascendancy as well as physical superiority over AAA. Appellant's moral ascendancy and influence over AAA substitutes for threat and intimidation which made AAA submit herself to appellant's bestial desire. It is doctrinally settled that the moral ascendancy of an accused over the victim renders it unnecessary to show physical force and intimidation since, in rape committed by a close kin, such as the victim's father, stepfather, uncle, or the common-law spouse of her mother, moral influence or ascendancy takes the place of violence or intimidation.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE EVALUATION OF THE TRIAL COURT JUDGE FROM THE VIEWPOINT OF HAVING OBSERVED THE WITNESS ON THE STAND, COUPLED BY THE FACT THAT THE COURT OF APPEALS AFFIRMED THE FINDINGS OF THE TRIAL COURT, IS BINDING ON THE COURT UNLESS IT CAN BE SHOWN THAT FACTS AND CIRCUMSTANCES HAVE BEEN OVERLOOKED OR MISINTERPRETED WHICH, IF CONSIDERED, WOULD AFFECT THE DISPOSITION OF THE CASE IN A DIFFERENT MANNER.— We agree with the RTC's conclusion that AAA testified in a candid and straightforward manner. The evaluation of the trial court judge from the viewpoint of having observed the witness on the stand, coupled by the fact that the CA affirmed the findings of the trial court, is binding on the court unless it can be shown that facts and circumstances have been overlooked or misinterpreted

which, if considered, would affect the disposition of the case in a different manner, which is not present in this case.

3. ID.; ID.; ID.; THE VICTIM'S STRAIGHTFORWARD TESTIMONY THAT APPELLANT HAD RAPED HER TWICE IS NOT NEGATED BY A FINDING OF ONLY ONE LACERATION IN HER HYMEN.— In *People v. Ferrer,* we held: It is settled that laceration is not an element of the crime of rape. The absence of lacerations does not negate rape. The presence of lacerations in the victim's vagina is not necessary to prove rape; neither is a broken hymen an essential element of the crime. x x x. We accordingly reject accused-appellants arguments which hinge on alleged inconsistencies between the statements made by the private complainant *vis-a-vis* the medical examination and report. The medical report is by no means controlling. This Court has repeatedly held that a medical examination of the victim is not indispensable in the prosecution for rape, and no law requires a medical examination for the successful prosecution thereof. The medical examination of the victim or the presentation of the medical certificate is not essential to prove the commission of rape as the testimony of the victim alone, if credible, is sufficient to convict the accused of the crime. The medical examination of the victim as well as the medical certificate is merely corroborative in character. Accordingly, what is crucial is that AAA's testimony meets the test of credibility, which serves as the basis for appellant's conviction. Notably, PSI Cabrera, in his cross examination, had clarified that it is possible that a person being raped or a hymen, or a vagina being penetrated by a penis would create a laceration at the same spot just like a lightning hitting on the same spot. Therefore, AAA's straightforward testimony that appellant had raped her twice is not at all negated by a finding of only one laceration in her hymen.

4. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TESTIMONIES OF RAPE CHILD VICTIMS ARE GIVEN CREDENCE.— We have been consistent in giving credence to testimonies of child victims especially in sensitive cases of rape, as no young girl would concoct a tale of defloration, allow the examination of her private parts and undergo the expense, trouble and inconvenience, not to mention the trauma and scandal of a public trial, unless she was, in fact, raped.

5. ID.; ID.; DEFENSE OF DENIAL; IF UNSUBSTANTIATED BY CLEAR AND CONVINCING EVIDENCE, DENIAL IS A SELF-SERVING ASSERTION THAT DESERVES NO WEIGHT IN LAW BECAUSE DENIAL CANNOT PREVAIL OVER THE POSITIVE, CANDID AND CATEGORICAL TESTIMONY OF THE COMPLAINANT. — Appellant denies the charges and imputes ill motive on the part of AAA and her mother. It is well settled that denial, if unsubstantiated by clear and convincing evidence, is a self-serving assertion that deserves no weight in law because denial cannot prevail over the positive, candid and categorical testimony of the complainant, and as between the positive declaration of the complainant and the negative statement of the appellant, the former deserves more credence.

6. ID.; ID.; CREDIBILITY OF WITNESSES; NO MOTHER IN HER RIGHT MIND WOULD SUBJECT HER CHILD TO THE HUMILIATION, DISGRACE AND TRAUMA ATTENDANT TO A PROSECUTION FOR RAPE IF SHE WAS NOT MOTIVATED SOLELY BY THE DESIRE TO INCARCERATE THE PERSON RESPONSIBLE FOR HER CHILD'S DEFILEMENT.— Appellant's allegation that AAA and her mother filed the cases against him in order to get his properties does not inspire belief. For appellant's allegations of ill motive to be credible, he should substantiate the same by clear and convincing evidence which he failed to do, as he even admitted that the properties are not yet titled in his name but with the government. We have ruled that no mother in her right mind would subject her child to the humiliation, disgrace and trauma attendant to a prosecution for rape if she was not motivated solely by the desire to incarcerate the person responsible for her child's defilement. We find that AAA and her mother are not impelled by any improper motive in filing rape charges against appellant but to obtain justice for what AAA had suffered in the hands of appellant.

7. CRIMINAL LAW; REVISED PENAL CODE; QUALIFIED RAPE; QUALIFYING CIRCUMSTANCES OF RELATIONSHIP AND MINORITY; THE VICTIM'S MINORITY MUST BE PROVED CONCLUSIVELY AND INDUBITABLY AS THE CRIME ITSELF.— We agree with the RTC as affirmed by the CA that appellant is guilty of two counts of simple rape only and not of qualified rape as charged.

Rape is qualified when the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim. Well-settled is the rule that qualifying circumstances must be specifically alleged in the Information and duly proven with equal certainty as the crime itself. The informations alleged that AAA is eight years old and appellant is the common law husband of AAA's mother. The relationship of AAA with appellant was admitted by the latter but AAA's age was not sufficiently proved during trial. The victim's minority must be proved conclusively and indubitably as the crime itself.

8. ID.; ID.; SIMPLE RAPE; PROPER PENALTY.— Article 266-B of RA 8353, otherwise known as the *Anti-Rape Law of 1997*, states that whenever rape is committed through force, threat or intimidation, the penalty shall be *reclusion perpetua.* However, whenever the rape is committed with the use of a deadly weapon, such as a knife in this case, the penalty shall be *reclusion perpetua* to death. In the first incident of rape, it was committed with the use of a knife which is a deadly weapon, thus the penalty imposable is *reclusion perpetua* to death. Article 63(2) of the Revised Penal Code states that when there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied. Since no aggravating nor any mitigating circumstance had been proved, We find that the RTC correctly imposed the penalty of *reclusion perpetua.* As to the second rape incident, since the moral ascendancy of appellant over AAA took the form of threat and intimidation on her, the RTC likewise correctly imposed the penalty of *reclusion perpetua* on the appellant.

9. ID.; ID.; ID.; CIVIL LIABILITY OF ACCUSED-APPELLANT. — We, however, modify the damages awarded by the RTC in the two rape cases pursuant to our ruling in *People v. Ireneo Jugueta*.The civil indemnity, moral damages and exemplary damages should all be increased to ₱75,000.00 for each count of rape. In addition, interest at the rate of six percent (6%) *per annum* shall be imposed on all monetary awards from date of finality of this decision until fully paid.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERALTA, *J.*:

Before us on appeal is the Decision[1] dated July 11, 2014 of the Court of Appeals *(CA)* in CA-G.R. CR-H.C. No. 05610, affirming the Decision[2] dated December 20, 2010 of the Regional Trial Court *(RTC)* of San Mateo, Rizal, Branch 76, which convicted Ludigario Belen y Marasigan *(appellant)* of two counts of simple rape.

On February 2, 2006, appellant was charged with qualified rape under Article 266-A (1) (a), in relation to Article 266-B (6) (1) of the Revised Penal Code, as amended by Republic Act *(RA)* No. 8353 and in further relation to Section 5 (a) of RA 8369 in two separate informations, the accusatory portions of which state:

Criminal Case No. 9563

That sometime in July 1999 in the Municipality of San Mateo, Province of Rizal, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, taking advantage of his moral ascendancy, with intent to cause or gratify his sexual desire, by means of force, violence and intimidation, through the use of a deadly weapon – a knife, did then and there willfully, unlawfully and feloniously, have carnal knowledge of AAA,[3] an eight (8)-year-

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[1] Penned by Associate Justice Vicente S.E. Veloso, with Associate Justices Jane Aurora C. Lantion and Nina Antonio-Valenzuela, concurring, *rollo*, pp. 2-18.

[2] *Id.* at 42-46; Per Judge Josephine Zarate-Fernandez.

[3] The real names of the victim and her immediate family members as well as any information which could establish or compromise her identity are withheld pursuant to *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

old minor, against her will and without her consent; the crime having been attended by the qualifying circumstances of relationship-the complainant being the daughter of his common-law wife, and minority, thereby raising the said crime to that of QUALIFIED RAPE, which is aggravated by the circumstances of treachery, evident premeditation, abuse of superior strength and dwelling, to the damage and prejudice of the said victim.

Contrary to Law.[4]

Criminal Case No. 9564

That sometime in July 1999 in the Municipality of San Mateo, Province of Rizal, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, taking advantage of his moral ascendancy, with intent to cause or gratify his sexual desire, by means of force, violence and intimidation, through the use of a deadly weapon – a knife, did then and there willfully, unlawfully and feloniously, have carnal knowledge of AAA, an eight (8)-year-old minor, against her will and without her consent; the crime having been attended by the qualifying circumstances of relationship-the complainant being the daughter of his common-law wife, and minority, thereby raising the said crime to that of QUALIFIED RAPE, which is aggravated by the circumstances of treachery, evident premeditation, abuse of superior strength and dwelling, to the damage and prejudice of the said victim.

Contrary to Law.[5]

Appellant, assisted by counsel, was arraigned[6] on April 17, 2008 and pleaded not guilty to each charge. Trial thereafter ensued.

The prosecution presented AAA, Police Senior Inspector Dean C. Cabrera *(PSI Cabrera),* the medico-legal officer of the Philippine National Police *(PNP)* Crime Laboratory, and BBB, AAA's mother.

AAA testified that she was 8 years old in 1999 and that appellant is the husband of her mother but they were not

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[4] Records, pp. 1-2.

[5] *Id.*

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

married;[7] and that they were all then living in Purok I, Buntong Palay, San Mateo Rlzal.[8] At 4 o'clock in the afternoon of July 1999, she was playing outside their house when she was called by appellant to go inside the house. Once inside, appellant locked the door and poked a knife at her and ordered her to remove her clothes to which she complied.[9] Appellant instructed her to bend over and he inserted his penis into her vagina.[10] Thereafter, appellant placed himself on top of her, moving up and down while she was crying.[11] The rape incident happened for about half an hour in her mother's room.[12]

At 7 o'clock in the evening of the second week of July 1999, while her mother was at work and she was then sitting at home, appellant entered the house and told her to undress to which she complied as he threatened her not to make noise or tell her mother.[13] Appellant asked her to bend and inserted his penis into her vagina[14] then she was told to lie down and appellant went on top of her and inserted his penis in her vagina and started moving up and down. The rape incident happened for about half an hour while she was crying.[15] Appellant raped her several times more which only stopped when her grandmother took her to her uncle's house in Divisoria.[16] It was only in 2005, when confronted by her mother as to the truth that she was raped by appellant, that she had finally told her that she had been repeatedly sexually molested by appellant.[17] She had never

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[7] TSN, February 4, 2009, p. 3.

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

[9] *Id.* at 5.

[10] *Id.* at 6.

[11] *Id.*

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

[13] *Id.* at 9-10; TSN, March 23, 2009, p. 5.

[14] TSN, March 23, 2009, p. 6.

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

[16] *Id.* at 9.

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

told her mother about her ordeal before because appellant threatened her.[18]

PSI Cabrera testified that he conducted a physical and genital examination on AAA on December 8, 2005 as requested by the Chief of Police of San Mateo, Rizal,[19] and in this connection, he issued a Medico Legal Report stating that the victim sustained deep-healed laceration of the hymen at 6:00 position.[20] He stated that the finding of laceration on the hymen would hardly give any proof to the number of times that a sexual abuse had taken place.[21]

BBB, AAA's mother, testified that appellant is her live-in partner for 10 years,[22] and that she was staying with AAA and appellant in the latter's house in July 1999. On November 11, 2005, AAA told her that appellant had molested her but kept silent because of appellant's threat that he would kill them.[23] Her mother took AAA after the latter finished grade 2 and brought her to an uncles' house in Divisoria.[24] AAA was 8 years old and in grade 2 at the time of the rape incidents.[25]

Appellant denied the charges and claimed that AAA is the daughter of BBB, his live-in partner with whom he separated in 1999;[26] that in 1999, his mother-in-law brought AAA, who was then 7 years old, to Manila to study, and did not visit her since then;[27] that BBB was *masungit*, so he left their house and

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[18] TSN, May 14, 2009, p. 10.

[19] TSN, October 9, 2008 p. 3.

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

[21] *Id.* at 5.

[22] TSN, September 11, 2008, p. 3.

[23] *Id.* at 4.

[24] *Id.*

[25] TSN, November 10, 2008, p. 2.

[26] TSN, July 19, 2010, pp. 3-4.

[27] *Id.* at 4, 8.

lived alone in another house; and that BBB got mad when he left her and told him that she would file a case against him.[28] They filed a case against him to get his property.[29]

On December 20, 2010, the RTC rendered its Decision the dispositive portion of which reads:

> WHEREFORE, judgment is hereby rendered as follows:
>
> 1. In Criminal Case No. 9563, accused Ludigario Belen y Marasigan is hereby found GUILTY beyond reasonable doubt of the crime of Simple Rape and sentencing him to suffer the penalty of Reclusion Perpetua and to pay the victim the amount of Php50,000.00 as civil indemnity, Php50,000.00 as moral damages and Php25,000.00 as exemplary damages.
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> 2. In Criminal Case No. 9564, accused Ludigario Belen y Marasigan is hereby found GUILTY beyond reasonable doubt of the crime of Simple Rape and sentencing him to suffer the penalty of Reclusion Perpetua and to pay the victim the amount of Php50,000.00 as civil indemnity, Php50,000.00 as moral damages and Php25,000.00 as exemplary damages. No pronouncement as to cost.
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> Accused Ludigario Belen y Marasigan is to be credited for the time spent for his preventive detention in accordance with Art. 29 of the Revised Penal Code as amended by RA 6127 and EO 214.
>
> Accused Ludigario Belen y Marasigan is hereby ordered committed to the National Bilibid Prisons in Muntinlupa City for service of sentence.[30]

The RTC found that AAA gave a detailed recount of her sexual ordeal in a candid and straightforward manner; that the medico-legal report stating a deep healed laceration at 6 o'clock position with conclusion that "genital examination reveals remote history of blunt force or penetrating coma" clearly bolstered AAA's allegation that appellant sexually molested her in her younger years. The RTC, however, did not find the two rape

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[28] *Id.* at 4.

[29] *Id.* at 5.

[30] Records p. 122.

incidents as qualified rape even if AAA's birth certificate was marked and offered, since the Local Civil Registrar of San Mateo, Rizal had presented a certification that it had no record of AAA's birth, thus, failing to prove her minority.

Appellant filed his appeal with the CA. After the Solicitor General filed his Appellee's Brief, the case was submitted for decision.

On July 11, 2014, the CA rendered its Decision which denied the appeal and affirmed the RTC decision.

Hence, the instant appeal.

Both parties manifested that they would no longer file supplemental briefs as they had already exhaustively argued their issues in their respective briefs.[31]

Appellant argues that the prosecution miserably failed to overthrow the presumption of innocence in his favor. He contends that the bulk of AAA's testimony was supplied by the prosecutor who even made presumptions and legal conclusions even before hearing the evidence. He claims that AAA's testimony is doubtful as it is inconsistent with the medico-legal report findings of only one laceration in the victim's hymen.

We affirm the lower court's conviction of appellant for two counts of simple rape.

Article 266-A, paragraph (1) of the Revised Penal Code, states the elements of the crime of rape as follows:

> Article 266 – *A. Rape: When and How Committed.* – Rape is committed:
>
> 1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:
>
> a) Through force, threat, or intimidation;
>
> b) When the offended party is deprived of reason or otherwise unconscious;

[31] *Id.* at 30-31; 34-35.

c) By means of fraudulent machination or grave abuse of authority; and

d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

We have scrutinized the records of this case and are convinced that appellant had carnal knowledge of AAA with threat and intimidation, thus, against her will and without her consent. AAA categorically declared that in two separate instances, appellant had inserted his penis into her vagina while she was crying. Her testimony on the first rape incident, to wit:

Q. Where were you sometime in the month of July 1999 around 4:00 in the afternoon which is the subject of this complaint?
A. I was in our house at Purok I, sir.

Q. What were you doing at that time?
A. I was playing, sir.

Q. You were then, as you said, 8 years old?
A. Yes, sir.

Q. And at that time who were there in your house?
A. Ludigario Belen, sir.

Q. While you were playing outside your house, what, if any, transpired at around 4:00 in the afternoon?
A. He called me, sir.

Q. Who called you?
A. Ludigario Belen.

Q. And what did you do after you were called?
A. I approached him, sir.

Q. And what happened next after that?
A. He asked me to go inside the house.

Q. What happened next after that?
A. He locked the door, sir.

Q. And after locking the door of your house, what, if any, did he do if he had done anything?
A. He told me to remove my clothes, sir.

Q. Did you comply?
A. Yes, sir.

Q. Why did you comply?
A. Because he threatened me, sir.

Q. How did he threaten you?
A. He poked a knife at me, sir.

Q. You said that you had undressed, what were you wearing then at that time?
A. I was wearing shorts, sir.

Q. And what were your undergarments?
A. Shorts and panty, sir.

Q. What were your upper garments at that time?
A. T-shirt, sir.

Q. You said that you removed your clothes?
A. Yes, sir.

Q. Including your undergarments?
A. Yes, sir.

Q. After that what transpired next after that?
A. He asked me to bend over, (pinatuwad) sir.

Q. Thereafter, what did he do to you?
A. He removed his shorts, sir.

Q. After he removed his shorts, what did he do if he had done anything?
A. That was the time he raped me, sir.

Q. How did he rape you, can you describe what he did to you?
A. He inserted his penis to my vagina, sir.

Q. After inserting his private part into your private part, what did he do to you?
A. He moved on top of me, sir.

Q. How did he move, can you describe it?
A. In an up and down movement, sir.

Q. When he was doing this, what were you doing?
A. I was just crying, sir.[32]

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[32] TSN, February 4, 2009, pp. 5-6.

As to the second incident of rape, AAA declared:

Q. In the month of July, how many times were you raped?
A. Three times, sir.

Q. More or less, what time of the day would have this occurred, the second time that you were raped?
A. 7:00 o'clock in the evening.

Q. The first incident in July, you said that it was committed at around 4:00 o'clock in the afternoon in 1999?
A. Yes, sir.

Q. The second time was also at 7:00 o'clock in the month of July?
A. Yes, sir.

Q. The second time that this happened to you in the month of July 1999 at around 7:00 o'clock in the evening, what were you doing then, if you can remember?
A. I was seated inside our house, sir.

Q. What were you doing then, at that time?
A. None. I was just sitting, sir.

Q. And what did the accused do to you?
A. He called me, sir.

Q. What is the full name of the accused?
A. Ludigario Belen, sir.

Q. What is his relation to you again?
A. He is my stepfather (tatay-tatayan), sir.

Q. He is not your biological father?
A. No, sir.

Q. So the second time that this happened to you in the year 1999, what did he do while you were inside your house at around 7:00 o'clock in the evening?
A. Inutusan po nya ako na maghubad ako dahil gagalawin nya ako, sir.

Q. Did you do what you were told to do?
A. Yes, sir.

Q. You said that he asked you to remove your clothes, what were you wearing then at that time?
A. Shorts and panty.

Q. After removing it, what if, any, happened next after that?
A. Pinatuwad po nya ako and then he inserted his penis, sir.

Q. Where were you at that time?
A. I was inside the room, sir.

Q. You were on the floor, on what part of the room were you stooping down?
A. Inside the room of my mother, sir.

Q. On the floor or what kind of furniture?
A. On the floor, sir.

Q. After he had done that, what did he do to you?
A. He went on top of me, sir.

Q When you say "moving" what kind of motion was he doing?
A. He was moving up and down, sir.

Q. At that time, what clothes was he wearing?
A. He removed, sir.

Q. Madam witness, you said that he went on top of you, after going on top of you, what did he do?
A. No more, he dressed up, sir.

Q. You said that he was moving back and forth, how did he do that?
A. While he was on top of me and he did that sir.

Q. You said that before that, you were asked to stoop down?
A. Yes, sir.

Q. Then you said that he went on top of you, what did he do to turn you over?

. . . . . .

Q. Madam witness you said that you were first asked to stoop down?
A. Yes, sir.

Q. On the floor
A. Yes, sir.

Q. And then you testified before the Honorable court that he went on top of you?
A. Yes, sir.

Q. So how did it happen that you were facing him when he went on top of you when you said that he first asked you to stoop down, that would mean that if you are stooping down, your back was facing him, not your head facing him?
A. After asking me to stoop down, he told me to lie down, that is why I was facing him, sir.

. . . . . .

Q. After he had gone on top of you, what did he do, if he had done anything?
A. He mashed my breast, sir.

Q. After doing that, what else did he do?
A. He continued what he was doing, sir.

Q. What was he doing?
A. He was moving on top of me, sir.

Q. While he was doing that, what were you doing?
A. I was crying, sir.

Q. Why were you crying when you said he was just on top of you.
A. Because he inserted his penis in my vagina and after that he moved sir.

Q. How long did he continue moving on top of you?
A. More than half an hour, sir.

Q. After that you said that he just left you there inside the room?
A. Yes sir and he told me to dress up.[33]

It was clearly established that the first rape incident was accomplished with the use of a knife which proved that appellant employed threat in AAA's life. As to the second rape, while there was no force and intimidation used by appellant on AAA, the fact that appellant is the live-in partner of her mother and with whom she had been living with since she was 2 years old, established his moral ascendancy as well as physical superiority over AAA. Appellant's moral ascendancy and influence over AAA substitutes for threat and intimidation[34] which made AAA

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[33] TSN, March 23, 2009, pp. 4-8.

[34] *People v. Aguilar*, G.R. No. 185206, August 25, 2010, 629 SCRA 437, 449.

submit herself to appellant's bestial desire. It is doctrinally settled that the moral ascendancy of an accused over the victim renders it unnecessary to show physical force and intimidation since, in rape committed by a close kin, such as the victim's father, stepfather, uncle, or the common-law spouse of her mother, moral influence or ascendancy takes the place of violence or intimidation.[35]

We agree with the RTC's conclusion that AAA testified in a candid and straightforward manner. The evaluation of the trial court judge from the viewpoint of having observed the witness on the stand, coupled by the fact that the CA affirmed the findings of the trial court, is binding on the court unless it can be shown that facts and circumstances have been overlooked or misinterpreted which, if considered, would affect the disposition of the case in a different manner,[36] which is not present in this case.

Appellant argues that most of the details of the alleged rape incidents were elicited from AAA through leading questions; that a reading of the Transcript of Stenographic Notes *(TSN)* showed that she was consistently led to her answers by the trial prosecutor's questions, hence, it cannot be said that her testimony was straightforward and a categorical disclosure of the events that transpired.

We find such argument without merit. We quote with approval the CA's disquisition on the matter, to wit:

> A perusal of the AAA's testimony reveals that the prosecution did not proffer leading questions. Assuming arguendo that the questions are leading, the defense failed to object as soon as the alleged leading questions were asked. It is too late in the day for appellant to object to the formulation of the offer and the manner of questioning adopted

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[35] *People v. Bustamante*, G.R. No. l89836, June 5, 2013, 697 SCRA 411, 422.

[36] *People v. Colentava*, G.R. No. 190348, February 9, 2015, 750 SCRA 165, 181; *People v. Musa*, G.R. No. 143703, November 29, 2001, 371 SCRA 234, 248, citing *People v. Pajo*, G.R. Nos. 135109-13, December 18, 2000, 348 SCRA 492.

by the public prosecutor. Appellant should have interposed his objections in the course of the oral examination of AAA, as soon as the grounds therefor became reasonably apparent. As it were, he raised not a whimper of protest as the public prosecutor recited his offer or propounded questions to AAA. Worse, appellant subjected AAA to cross-examination on the very matters covered by the questions being objected to; therefore, he is barred from challenging the propriety thereof or the admissibility of the answers given.[37]

Appellant contends that while AAA alleged that she was raped many times when she was 8 years old, however, it was shown by the medico-legal report that she had only one laceration in her hymen which was at 6 o'clock position and deeply healed; and that there is a possibility that this laceration could have been done by any other male person aside from appellant since the actual genital examination was only done in 2005 when the victim was no longer living with the appellant under the same roof.

We are not impressed.

In *People v. Ferrer*,[38] we held:

> It is settled that laceration is not an element of the crime of rape. The absence of lacerations does not negate rape. The presence of lacerations in the victim's vagina is not necessary to prove rape; neither is a broken hymen an essential element of the crime. x x x
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> x x x x x x x x x
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> We accordingly reject accused-appellants arguments which hinge on alleged inconsistencies between the statements made by the private complainant *vis-a-vis* the medical examination and report. The medical report is by no means controlling. This Court has repeatedly held that a medical examination of the victim is not indispensable in the prosecution for rape, and no law requires a medical examination for the successful prosecution thereof. The medical examination of the victim or the presentation of the medical certificate is not essential to prove the commission of rape as the testimony of the victim alone,

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[37] *Rollo*, p. 14.

[38] G.R. No.142662, August 14, 2001, 362 SCRA 778, 787.

if credible, is sufficient to convict the accused of the crime. The medical examination of the victim as well as the medical certificate is merely corroborative in character.[39]

Accordingly, what is crucial is that AAA's testimony meets the test of credibility, which serves as the basis for appellant's conviction.[40] Notably, PSI Cabrera, in his cross examination, had clarified that it is possible that a person being raped or a hymen, or a vagina being penetrated by a penis would create a laceration at the same spot just like a lightning hitting on the same spot.[41] Therefore, AAA's straightforward testimony that appellant had raped her twice is not at all negated by a finding of only one laceration in her hymen.

We have been consistent in giving credence to testimonies of child victims especially in sensitive cases of rape,[42] as no young girl would concoct a tale of defloration, allow the examination of her private parts and undergo the expense, trouble and inconvenience, not to mention the trauma and scandal of a public trial, unless she was, in fact, raped.[43]

Appellant denies the charges and imputes ill motive on the part of AAA and her mother. It is well settled that denial, if unsubstantiated by clear and convincing evidence, is a self-serving assertion that deserves no weight in law because denial cannot prevail over the positive, candid and categorical testimony of the complainant, and as between the positive declaration of the complainant and the negative statement of the appellant, the former deserves more credence.[44]

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[39] *People v. Ferrer, supra,* at 788.

[40] *Id.*

[41] TSN, October 9, 2008, p. 7.

[42] *People v. Colentava, supra* note 36, at 182.

[43] *People v. Menaling,* G.R. No. 208676, April 13, 2016.

[44] *People v. Bustamante,* G.R. No. 189836, June 5, 2013, 697 SCRA 411, 423, citing *People v. Mangune,* G.R. No. 186463, November 14, 2012, 685 SCRA 578, 590.

Appellant's allegation that AAA and her mother filed the cases against him in order to get his properties does not inspire belief. For appellant's allegations of ill motive to be credible, he should substantiate the same by clear and convincing evidence which he failed to do, as he even admitted that the properties are not yet titled in his name but with the government.[45] We have ruled that no mother in her right mind would subject her child to the humiliation, disgrace and trauma attendant to a prosecution for rape if she was not motivated solely by the desire to incarcerate the person responsible for her child's defilement.[46] We find that AAA and her mother are not impelled by any improper motive in filing rape charges against appellant but to obtain justice for what AAA had suffered in the hands of appellant.

We agree with the RTC as affirmed by the CA that appellant is guilty of two counts of simple rape only and not of qualified rape as charged. Rape is qualified when the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.[47] Well-settled is the rule that qualifying circumstances must be specifically alleged in the Information and duly proven with equal certainty as the crime itself.[48] The

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[45] TSN, July 19, 2010, p. 7.

[46] *People v. Rullepa*, G.R. No.131516, March 5, 2003, 398 SCRA 567, 581, citing *People v. Perez*, G.R. No. 129213, December 21, 1999, 319 SCRA 622.

[47] Revised Penal Code, Art. 266-B, as amended by Rep. Act No. 8353 (1997).

Article 266-B. Penalties.

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The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

"1) When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim;

[48] *People v. Garcia*, G.R. No. 206095, November 25, 2013, 710 SCRA 571, 584-585.

informations alleged that AAA is eight years old and appellant is the common law husband of AAA's mother. The relationship of AAA with appellant was admitted by the latter but AAA's age was not sufficiently proved during trial. The victim's minority must be proved conclusively and indubitably as the crime itself.[49]

We held in *People v. Pruna*[50] that:

> In order to remove any confusion that may be engendered by the foregoing cases, we hereby set the following guidelines in appreciating age, either as an element of the crime or as a qualifying circumstance.
>
> 1. The best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party.
>
> 2. In the absence of a certificate of live birth, similar authentic documents such as baptismal certificate and school records which show the date of birth of the victim would suffice to prove age.
>
> 3. If the certificate of live birth or authentic document is shown to have been lost or destroyed or otherwise unavailable, the testimony, if clear and credible, of the victims mother or a member of the family either by affinity or consanguinity who is qualified to testify on matters respecting pedigree such as the exact age or date of birth of the offended party pursuant to Section 40, Rule 130 of the Rules on Evidence shall be sufficient under the following circumstances:
>
> a. If the victim is alleged to be below 3 years of age and what is sought to be proved is that she is less than 7 years old;
>
> b. If the victim is alleged to be below 7 years of age and what is sought to be proved is that she is less than 12 years old;
>
> c. If the victim is alleged to be below 12 years of age and what is sought to be proved is that she is less than 18 years old.
>
> 4. In the absence of a certificate of live birth, authentic document, or the testimony of the victims mother or relatives concerning the victims age, the complainants testimony will suffice provided that it is expressly and clearly admitted by the accused.

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[49] *Id.* at 585.

[50] G.R. No. 138471, October 10, 2002, 390 SCRA 577.

5. It is the prosecution that has the burden of proving the age of the offended party. The failure of the accused to object to the testimonial evidence regarding age shall not be taken against him.

6. The trial court should always make a categorical finding as to the age of the victim.

In this case, the prosecution presented a copy of AAA's birth certificate but the same was not authenticated, hence, could not be given any probative value. While attached to the records is AAA's baptismal certificate[51] which showed that she was born on July 27, 1991, which the defense admitted to be a faithful reproduction of the original, however, the same was not offered in evidence. Section 34 of Rule 132 of the Rules of Court provides that the court shall consider no evidence which has not been formally offered and that the purpose for which the evidence is offered must be specified. Furthermore, while BBB testified that her daughter was 8 years old at the time of the rape incidents, she admitted that she did not know when AAA was born, hence, her testimony as to AAA's age could not be considered as sufficient compliance with paragraph no. 3 of the guidelines in the *Pruna* case.

While in *People v. Balo*,[52] we had appreciated pieces of evidence and circumstances which were actually established by the prosecution in determining the age of the victim, to wit:

In the case at bar, several documents were presented in court indicating the very young age of the victim; *first*,while assisted by her grandmother, AAA stated in her *Sinumpaang Salaysay* that she was five (5) years of age; *second*, the Request for Genital Exam indicated that AAA was five (5) years old; *third*, the Sexual Crime (Protocol) Form stated that the age of AAA was five (5) years old; *fourth*, the Initial Medico-Legal Report showed that AAA was five (5) years of age; *fifth*, Medico-Legal Report No. R07-757 reflected that AAA was five (5) years old; *sixth*, the personal circumstances of the victim when she testified on June 24, 2008 stated that AAA was five (5) years old and she likewise answered that she was five

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[51] Records, p. 91.

[52] G.R. No. 217024, August 15, 2016.

(5) years old when asked about her age; and *seventh*, the accused failed to controvert that AAA was four (4) years old at the time the crime was committed when the court inquired about it while he was testifying.

In this particular case, these pieces of evidence, together with the physical appearance of the victim when she testified, would have been sufficient basis for the lower court to ascertain the tender age of the victim when the crime was committed. Furthermore, the Medico-Legal Report prepared by Police S/Insp. Dr. Ebdane, a government physician who took an oath as a civil service official, means that she is competent to examine persons and issue medical certificates which will be used by the government. As such, the Medico-Legal Report carries the presumption of regularity in the performance of her functions and duties. As regards the other documents, under Section 44, 45 Rule 130, Revised Rules of Court, entries in official records made in the performance of official duty are *prima facie* evidence of the facts therein stated. To be sure, in the absence of proof to the contrary, law enforcement agencies of the government similarly enjoy the presumption of regularity in the performance of their official functions. Verily, if baptismal certificates or school records are allowed to be presented in court to establish the age of the victim in the absence of a birth certificate, with more reason should Medico-Legal Reports and comparable documents be allowed to ascertain such circumstance in similar cases.

Consequently, notwithstanding the fact that AAA's original or duly certified birth certificate, baptismal certificate or school records, were never presented by the prosecution, the Court agrees with the lower court and the appellate court that AAA's minority was duly established by the evidence on record.

We, however, find those pieces of evidence wanting in this case. AAA's *Sinumpaang Salaysay* was executed when she was already 14 years old and thus, the initial medico-legal report also showed that she was 14 years old when she was examined. Hence, AAA's allegation that she was 8 years old when she was raped was not proved by these documents.

Article 266-B of RA 8353, otherwise known as the *Anti-Rape Law of 1997*, states that whenever rape is committed through force, threat or intimidation, the penalty shall be *reclusion perpetua*. However, whenever the rape is committed with the

use of a deadly weapon, such as a knife in this case, the penalty shall be *reclusion perpetua* to death. In the first incident of rape, it was committed with the use of a knife which is a deadly weapon, thus the penalty imposable is *reclusion perpetua* to death. Article 63(2) of the Revised Penal Code states that when there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied. Since no aggravating nor any mitigating circumstance had been proved, We find that the RTC correctly imposed the penalty of *reclusion perpetua.* As to the second rape incident, since the moral ascendancy of appellant over AAA took the form of threat and intimidation on her, the RTC likewise correctly imposed the penalty of *reclusion perpetua* on the appellant.

We, however, modify the damages awarded by the RTC in the two rape cases pursuant to our ruling in *People v. Ireneo Jugueta*.[53] The civil indemnity, moral damages and exemplary damages should all be increased to ₱75,000.00 for each count of rape. In addition, interest at the rate of six percent (6%) *per annum* shall be imposed on all monetary awards from date of finality of this decision until fully paid.[54]

WHEREFORE, the instant appeal is **DISMISSED.** The Decision dated July 11, 2014 of the Court of Appeals in CA-G.R. CR-H.C. No. 05610 is **AFFIRMED** with **MODIFICATION** that the award of civil indemnity, moral damages and exemplary damages should all be increased to ₱75,000.00 for each count of rape. The monetary awards shall earn interest at the rate of six percent (6%) *per annum* from date of finality of this decision until fully paid.

SO ORDERED.

Carpio (Chairperson), Velasco, Jr.,[*] *Mendoza,* and *Leonen, JJ.,* concur.

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

[54] *Nacar v. Gallery Frames and/or Felipe Bordey, Jr.,* 716 Phil. 267 (2013).

[*] Designated Additional Member in lieu of Associate Justice Francis H. Jardeleza, per Special Order No. 2416-A dated January 4, 2017.

FIRST DIVISION

[G.R. No. 218466. January 23, 2017]

MANNY RAMOS, ROBERTO SALONGA and SERVILLANO NACIONAL, *petitioners, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

[G.R. No. 221425. January 23, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MANNY RAMOS, ROBERTO SALONGA *a.k.a.* "JOHN," "KONYONG" SALONGA and SERVILLANO NACIONAL @ "INONG" @ DIONISIO NACIONAL,** *accused-appellants.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; APPEALS OF CRIMINAL CASES SHALL BE BROUGHT TO THE COURT BY FILING A PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45 OF THE RULES OF COURT, EXCEPT WHEN THE COURT OF APPEALS IMPOSED THE PENALTY OF "*RECLUSION PERPETUA*, LIFE IMPRISONMENT OR A LESSER PENALTY," IN WHICH CASE, THE APPEAL SHALL BE MADE BY A MERE NOTICE OF APPEAL FILED BEFORE THE COURT OF APPEALS.— [T]he Court notes that Nacional elevated the matter before the Court thru a Notice of Appeal (**G.R. No. 221425**) filed before the CA; on the other hand, Ramos and Salonga filed a petition for review on *certiorari* before the Court (**G.R. No. 218466**). As a general rule, appeals of criminal cases shall be brought to the Court by filing a petition for review on *certiorari* under Rule 45 of the Rules of Court; except when the CA imposed the penalty of "*reclusion perpetua*, life imprisonment or a lesser penalty," in which case, the appeal shall be made by a mere notice of appeal filed before the CA. In this case, Ramos and Salonga clearly availed of a wrong mode of appeal by filing a petition for review on *certiorari* before the Court, despite having been sentenced by the CA of *reclusion perpetua*. Nonetheless, in the interest of substantial

justice, the Court will treat their petition as an ordinary appeal in order to resolve the substantive issue at hand with finality.

2. **ID.; ID.; ID.; IN CRIMINAL CASES, AN APPEAL THROWS THE ENTIRE CASE WIDE OPEN FOR REVIEW AND THE REVIEWING TRIBUNAL CAN CORRECT ERRORS, THOUGH UNASSIGNED IN THE APPEALED JUDGMENT, OR EVEN REVERSE THE TRIAL COURT'S DECISION BASED ON GROUNDS OTHER THAN THOSE THAT THE PARTIES RAISED AS ERRORS.—** [I]t must be stressed that in criminal cases, an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.

3. **CRIMINAL LAW; REVISED PENAL CODE; MURDER; ELEMENTS. ESTABLISHED.—** To successfully prosecute the crime of Murder, the following elements must be established: (*a*) that a person was killed; (*b*) the accused killed him or her; (*c*) the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the Revised Penal Code; and (*d*) the killing is not parricide or infanticide. In the instant case, the prosecution, through the testimony of eyewitness Reynaldo, had established beyond reasonable doubt that: the accused-appellants chased, ganged up, and eventually, killed Rolando, and likewise, it was shown that they deliberately used weapons (*i.e.*, gun and bamboo stick), which rendered Rolando defenseless from their fatal attacks. Thus, such killing was attended with the qualifying circumstance of abuse of superior strength, which perforce warrants accused-appellants' conviction for Murder.

4. **ID.; REPUBLIC ACT NO. 8294; MURDER WITH THE USE OF AN UNLICENSED FIREARM; TO APPRECIATE THE USE OF AN UNLICENSED FIREARM AS AN AGGRAVATING CIRCUMSTANCE, THE PROSECUTION MUST ESTABLISH THE EXISTENCE OF THE SUBJECT FIREARM, AND THE FACT THAT THE ACCUSED WHO OWNED OR POSSESSED THE GUN DID NOT HAVE THE CORRESPONDING LICENSE OR PERMIT TO CARRY IT OUTSIDE HIS RESIDENCE.—** [T]he courts *a quo* erred

in convicting accused-appellants of Murder **with the Use of an Unlicensed Firearm**. Under Section 1 of RA 8294, "[i]f homicide or murder is committed with the use of an unlicensed firearm, such use of an unlicensed firearm shall be considered as an aggravating circumstance." There are two (2) requisites to establish such circumstance, namely: (*a*) the existence of the subject firearm; and (*b*) the fact that the accused who owned or possessed the gun did not have the corresponding license or permit to carry it outside his residence. The *onus probandi* of establishing these elements as alleged in the Information lies with the prosecution. In this case, while it is undisputed that Rolando sustained five (5) gunshot wounds which led to his demise, it is unclear from the records: (*a*) whether or not the police officers were able to recover the firearm used as a murder weapon; and (*b*) assuming *arguendo* that such firearm was recovered, whether or not such firearm was licensed. The Court notes that the disquisitions of the courts *a quo* were silent regarding this matter. As the Information alleged that accused-appellants used an unlicensed firearm in killing Rolando, the prosecution was duty-bound to prove this allegation. Having failed in this respect, the Court cannot simply appreciate the use of an unlicensed firearm as an aggravating circumstance. In view of the foregoing, the Court hereby modifies accused-appellants conviction to simple Murder.

5. ID.; REVISED PENAL CODE; MURDER; PROPER PENALTY.— Under Article 248 of the RPC, as amended by RA 7659, Murder is punishable by *reclusion perpetua* to death. There being no aggravating or mitigating circumstance present (except for abuse of superior strength which was used to qualify the killing to Murder), accused-appellants must be meted the penalty of *reclusion perpetua*.

6. ID.; ID.; ID; CIVIL LIABILITY OF ACCUSED-APPELLANTS. — [T]o conform with existing jurisprudence, accused-appellants must be ordered to jointly and severally pay Rolando's heirs the amounts of ₱50,000.00 as temperate damages, ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages, with six percent (6%) legal interest per annum on all the monetary awards from the date of finality of this judgment until fully paid.

APPEARANCES OF COUNSEL

Ferdinand P. Ignacio for petitioners Manny Ramos. *et al.*

Manolito S. Hidalgo collaborating counsel for petitioners in G.R. No. 218466.

The Solicitor General for respondent in G.R. No. 218466.

Public Attorney's Office for accused-appellants in G.R. No. 221425.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in these consolidated cases[1] is the Decision[2] dated April 28, 2015 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 05095, which affirmed the Decision[3] dated December 8, 2010 of the Regional Trial Court of Burgos, Pangasinan, Branch 70 (RTC) in Criminal Case No. B-243, convicting accused-appellants Manny Ramos (Ramos), Roberto Salonga (Salonga), and Servillano Nacional (Nacional; collectively, accused-appellants) of the crime of Murder Aggravated with the Use of an Unlicensed Firearm, defined and penalized under Article 248 of the Revised Penal Code (RPC) in relation to Republic Act No. (RA) 8294.[4]

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[1] See Petition for Review on *Certiorari* dated June 22, 2015, *rollo* (G.R. No. 218466), pp. 18-41; Notice of Appeal dated May 15, 2015, *rollo* (G.R. No. 221425), pp. 16-19.

[2] *Rollo* (G.R. No. 221425), pp. 2-15. Penned by Associate Justice Eduardo B. Peralta, Jr. with Associate Justices Jose C. Reyes, Jr. and Francisco P. Acosta concurring.

[3] CA *rollo* (G.R. No. 221425), pp. 23-42. Penned by Executive Judge Ma. Ellen M. Aguilar.

[4] Entitled "AN ACT AMENDING THE PROVISIONS OF PRESIDENTIAL DECREE NO. 1866, AS AMENDED, ENTITLED 'CODIFYING THE LAWS OF ILLEGAL/UNLAWFUL POSSESSION, MANUFACTURE, DEALING IN, ACQUISITION, OR DISPOSITION OF FIREARMS, AMMUNITION OR EXPLOSIVES OR INSTRUMENTS USED IN THE MANUFACTURE OF FIREARMS, AMMUNITION OR EXPLOSIVES, AND IMPOSING STIFFER PENALTIES FOR CERTAIN VIOLATIONS THEREOF,

The Facts

The instant cases stemmed from an Information filed before the RTC, charging accused-appellants of the aforementioned crime, the accusatory portion of which states:

> That on or about January 20, 2002, in the evening, at Brgy. Cabanaetan, Municipality of Mabini, Province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, with intent to kill, with treachery and evident premeditation, taking advantage of their superior strength and at night time, armed with an unlicensed firearm, did then and there wilfully, unlawfully and feloniously shoot ROLANDO NECESITO y FABRIGAS which caused his untimely death, to the damage and prejudice of his heirs.[5]

The prosecution alleged that between 9:00 to 10:00 o'clock in the evening of January 20, 2002, eyewitness Reynaldo Necesito (Reynaldo) was walking towards the store of Leonida Fabrigas when he chanced upon accused-appellants having an altercation with the victim, Rolando Necesito (Rolando). From his vantage point, Reynaldo heard Ramos yell, "*Okinam patayan ka!*" (*Son of a bitch! I will kill you!*) and saw accused-appellants chase and eventually surround Rolando at an area around seven (7) meters away from where Reynaldo was hiding. Reynaldo then heard four (4) successive gunshots, making him hide under the trunk of the *duhat* tree for fear of being hit. It was on the sound of the fourth shot when Reynaldo witnessed Rolando fall face down on the ground. To ensure Rolando's demise, Ramos approached Rolando and shot him again. Thereafter, accused-appellants fled the scene.[6]

AND FOR RELEVANT PURPOSES,'" approved on June 6, 1997. Note that the crime was committed prior to the enactment of RA 10591, otherwise known as the "COMPREHENSIVE FIREARMS AND AMMUNITION REGULATION ACT," approved on May 29, 2013.

[5] See CA *rollo* (G.R. No. 221425), p. 23.

[6] *Rollo* (G.R. No. 221425), p. 3.

The next day, Rolando's body was found near the *duhat* tree, prompting police officers to conduct an investigation from which were gathered the following evidence and information: (*a*) a piece of bamboo was recovered three (3) meters away from Rolando's corpse; (*b*) Rolando purportedly had a previous misunderstanding with Ramos sometime in 1997, yet the same was settled before the barangay; and (*c*) Rolando allegedly had a drinking spree with his friends at the time of the incident. An autopsy was likewise conducted on Rolando's body, revealing that there were four (4) incised wounds on his left hand, a stab wound on his left chest, and five (5) gunshot wounds on his body; that based on the nature and sizes of his wounds, it was possible that the firearm used was of the same caliber; and that his injuries could not have been inflicted by a single person.[7]

For their respective parts, accused-appellants similarly invoked the defenses of denial and alibi. Essentially, they insisted that they were somewhere else when the incident occurred. In addition, Ramos maintained that the declarations of Reynaldo against him were motivated by a personal grudge, while Nacional claimed that the *corpus delicti* was not proven with exact certainty since the cadaver that was exhumed and examined was already in an advanced stage of decomposition, having been interred for more than a month.[8]

The RTC Ruling

In a Decision[9] dated December 8, 2010, the RTC found accused-appellants guilty beyond reasonable doubt of the crime charged, and accordingly, sentenced to suffer the penalty of *reclusion perpetua* without the benefit of parole, and ordered to pay jointly and severally Rolando's heirs the amounts of ₱50,000.00 as moral damages, ₱50,000.00 as death indemnity, and ₱25,000.00 as temperate damages.[10]

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[7] *Id.* at 3-5.

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

[9] CA *rollo* (G.R. No. 221425), pp. 23-42.

[10] *Id.* at 41.

In so ruling, the RTC gave credence to the direct, straightforward, and categorical eyewitness testimony of Reynaldo positively identifying each of the accused-appellants as co-perpetrators of the crime, further noting that Reynaldo had no ill-motive to falsely testify against them. On the other hand, it found the defense testimonies to be untenable, as they were riddled with various inconsistencies and contradictions. Further, the RTC found the presence of the circumstance of abuse of superior strength which qualified the killing to Murder, considering that the accused-appellants took advantage of their combined strength and their several weapons to overcome their unarmed victim and assure the success of their felonious design. In view of the foregoing, the RTC concluded that accused-appellants "are equally guilty of the crime of Murder aggravated with the use of unlincensed firearm, there having been proven the existence of implied conspiracy between them."[11]

Aggrieved, accused-appellants appealed to the CA.[12]

The CA Ruling

In a Decision[13] dated April 28, 2015, the CA affirmed accused-appellants' conviction for the crime of Murder with the Use of an Unlicensed Firearm with modification, increasing the awards of civil indemnity and moral damages to ₱75,000.00 each and imposing legal interest of six percent (6%) per annum on all monetary awards from finality of the judgment until fully paid.[14] It held that Reynaldo was able to positively identify accused-appellants as Rolando's killers, given that he was only seven (7) meters away from the *situs criminis*. The CA likewise held that the accused-appellants took advantage of their combined superior strength as they even used several weapons to render the unarmed victim completely defenseless.[15]

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

[12] See Notices of Appeal dated January 31, 2011 and January 20, 2011, CA *rollo* (G.R. No. 221425), pp. 44 and 46.

[13] *Rollo* (G.R. No. 221425), pp. 2-15.

[14] *Id*. at 14.

[15] *Id*. at 10-14.

Hence, the instant consolidated cases.

Dissatisfied, Nacional filed a Notice of Appeal,[16] (**G.R. No. 221425**) while Ramos and Salonga filed a petition for review on *certiorari* before the Court (**G.R. No. 218466**).

The Issues Before the Court

The issue raised for the Court's resolution is whether or not the CA correctly upheld accused-appellants' conviction for the crime of Murder with the Use of an Unlicensed Firearm.

The Court's Ruling

Preliminarily, the Court notes that Nacional elevated the matter before the Court thru a Notice of Appeal[17] (**G.R. No. 221425**) filed before the CA; on the other hand, Ramos and Salonga filed a petition for review on *certiorari* before the Court (**G.R. No. 218466**).[18] As a general rule, appeals of criminal cases shall be brought to the Court by filing a petition for review on *certiorari* under Rule 45 of the Rules of Court;[19] except when the CA imposed the penalty of "*reclusion perpetua*, life imprisonment or a lesser penalty," in which case, the appeal shall be made by a mere notice of appeal filed before the CA.[20] In this case, Ramos and Salonga clearly availed of a wrong mode of appeal by filing

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[16] *Id*. at 16.

[17] *Id*. at 16.

[18] *Rollo* (G.R. No. 218466), pp. 18-41.

[19] Section 3 (e), Rule 122 of the Revised Rules on Criminal Procedure reads:

Section 3. *How appeal taken*. –

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(e) Except as provided in the last paragraph of Section 13, Rule 124, all other appeals to the Supreme Court shall be by petition for review on *certiorari* under Rule 45.

[20] Section 13 (c), Rule 124 of the Revised Rules on Criminal Procedure reads:

Section 13. *Certification or appeal of case to the Supreme Court*. –

x x x x x x x x x

a petition for review on *certiorari* before the Court, despite having been sentenced by the CA of *reclusion perpetua*. Nonetheless, in the interest of substantial justice, the Court will treat their petition as an ordinary appeal in order to resolve the substantive issue at hand with finality.

At the outset, it must be stressed that in criminal cases, an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.[21]

As will be explained hereunder, the accused-appellants should only be held liable for simple Murder, and not Murder with the Use of an Unlicensed Firearm.

To successfully prosecute the crime of Murder, the following elements must be established: (*a*) that a person was killed; (*b*) the accused killed him or her; (*c*) the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the Revised Penal Code; and (*d*) the killing is not parricide or infanticide.[22]

In the instant case, the prosecution, through the testimony of eyewitness Reynaldo, had established beyond reasonable doubt that: the accused-appellants chased, ganged up, and eventually, killed Rolando, and likewise, it was shown that they

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(c) In cases where the Court of Appeals imposes *reclusion perpetua*, life imprisonment or a lesser penalty, it shall render and enter judgment imposing such penalty. The judgment may be appealed to the Supreme Court by notice of appeal filed with the Court of Appeals.

[21] See *People v. Bagamano*, G.R. No. 222658, August 17, 2016, citing *People v. Comboy*, G.R. No. 218399, March 2, 2016.

[22] See *People v. Las Piñas*, G.R. No. 191723, July 23, 2014, 730 SCRA 571, 595, citing *People v. Gabrino*, 660 Phil. 485, 495 (2011).

deliberately used weapons (*i.e.*, gun and bamboo stick), which rendered Rolando defenseless from their fatal attacks. Thus, such killing was attended with the qualifying circumstance of abuse of superior strength,[23] which perforce warrants accused-appellants' conviction for Murder.

The foregoing notwithstanding, the courts *a quo* erred in convicting accused-appellants of Murder **with the Use of an Unlicensed Firearm**.

Under Section 1 of RA 8294, "[i]f homicide or murder is committed with the use of an unlicensed firearm, such use of an unlicensed firearm shall be considered as an aggravating circumstance." There are two (2) requisites to establish such circumstance, namely: (*a*) the existence of the subject firearm; and (*b*) the fact that the accused who owned or possessed the gun did not have the corresponding license or permit to carry it outside his residence. The *onus probandi* of establishing these elements as alleged in the Information lies with the prosecution.[24]

In this case, while it is undisputed that Rolando sustained five (5) gunshot wounds which led to his demise, it is unclear from the records: (*a*) whether or not the police officers were able to recover the firearm used as a murder weapon; and (*b*) assuming *arguendo* that such firearm was recovered, whether

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[23] "Abuse of superior strength is present whenever there is a notorious inequality of forces between the victim and the aggressor, assuming a situation of superiority of strength notoriously advantageous for the aggressor selected or taken advantage of by him in the commission of the crime." "The fact that there were two persons who attacked the victim does not *per se* establish that the crime was committed with abuse of superior strength, there being no proof of the relative strength of the aggressors and the victim." The evidence must establish that the assailants purposely sought the advantage, or that they had the deliberate intent to use this advantage. "To take advantage of superior strength means to purposely use excessive force out of proportion to the means of defense available to the person attacked." The appreciation of this aggravating circumstance depends on the age, size, and strength of the parties. (*Fantastico v. Malicse, Sr.*, G.R. No. 190912, January 12, 2015, 745 SCRA 123, 141-142; citations omitted)

[24] *People v. Castillo*, 382 Phil. 499, 507 (2000), citing *People vs. Eubra*, 340 Phil. 306 (1997).

or not such firearm was licensed. The Court notes that the disquisitions of the courts *a quo* were silent regarding this matter. As the Information alleged that accused-appellants used an unlicensed firearm in killing Rolando, the prosecution was duty-bound to prove this allegation.[25] Having failed in this respect, the Court cannot simply appreciate the use of an unlicensed firearm as an aggravating circumstance.

In view of the foregoing, the Court hereby modifies accused-appellants conviction to simple Murder.

Under Article 248 of the RPC, as amended by RA 7659,[26] Murder is punishable by *reclusion perpetua* to death. There being no aggravating or mitigating circumstance present (except for abuse of superior strength which was used to qualify the killing to Murder), accused-appellants must be meted the penalty of *reclusion perpetua*. Further, to conform with existing jurisprudence, accused-appellants must be ordered to jointly and severally pay Rolando's heirs the amounts of ₱50,000.00 as temperate damages, ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages, with six percent (6%) legal interest per annum on all the monetary awards from the date of finality of this judgment until fully paid.[27]

WHEREFORE, the consolidated appeals are **DENIED**. The Decision dated April 28, 2015 of the Court of Appeals in CA-G.R. CR-HC No. 05095 is hereby **AFFIRMED** with **MODIFICATIONS** as follows: accused-appellants Manny Ramos, Roberto Salonga, and Servillano Nacional are found **GUILTY** beyond reasonable doubt of the crime of Murder defined and penalized under Article 248 of the Revised Penal

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[25] See *id.* at 507-508.

[26] Entitled "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" (December 13, 1993).

[27] See *People v. Jugueta*, G.R. No. 202124, April 5, 2016.

Code, as amended, and accordingly, sentenced to suffer the penalty of *reclusion perpetua*, and ordered to jointly and severally pay Rolando Necesito's heirs the amounts of ₱50,000.00 as temperate damages, ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages with six percent (6%) legal interest per annum on all the monetary awards from the date of finality of this judgment until fully paid.

SO ORDERED.

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

INDEX

INDEX

— Pursuant to Sec. 6 of R.A. No. 9208, the crime committed by the accused was qualified trafficking, as it was committed in a large scale and his four victims were under 18 years of age. (*Id*.)

APPEALS

Appeal in criminal cases — As a general rule, appeals of criminal cases shall be brought to the Court by filing a petition for review on *certiorari* under Rule 45 of the Rules of Court; except when the CA imposed the penalty of *reclusion perpetua*, life imprisonment or a lesser penalty, in which case, the appeal shall be made by a mere notice of appeal filed before the CA. (Ramos *vs.* People, G.R. No. 218466, Jan. 23, 2017) p. 775

— In criminal cases, an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors. (*Id*.)

Appeal to the Court of Appeals — Court of Appeals has the discretion to consider the issue and address the matter where its ruling is necessary: (a) to arrive at a just and complete resolution of the case; (b) to serve the interest of justice; or (c) to avoid dispensing piecemeal justice; this is consistent with its authority to review the totality of the controversy brought on appeal. (Heirs of Teodora Loyola *vs.* CA, G.R. No. 188658, Jan. 11, 2017) p. 143

Factual findings of quasi-judicial bodies — Findings of fact of quasi-judicial bodies, especially when affirmed by the CA, are generally accorded finality and respect; as long as these findings are supported by substantial evidence, they must be upheld. (Maersk Filipinas Crewing Inc. *vs.*, Ramos, G.R. No. 184256, Jan. 18, 2017) p. 375

Petition for review on certiorari to the Supreme Court under Rule 45 — A review of the dismissal of the complaint naturally entailed a calibration of the evidence on record to properly determine whether the material allegations of the complaint were amply supported by evidence;

COMPREHENSIVE AGRARIAN REFORM LAW OF 1988 (R.A. NO. 6657)

to the property; and (8) the nonpayment of taxes or loans secured from any government financing institution on the said land, if any. (Land Bank of the Phils. *vs.* Heirs of Lorenzo Tañada, G.R. No. 170506, Jan. 11, 2017) p. 103

COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165)

Chain of custody — Non-observance of the mandatory requirements under Sec. 21 of R. A. No. 9165 casts doubt on the integrity of the *shabu* supposedly seized from accused-appellant; this creates reasonable doubt in the conviction of accused-appellant for violation of Art. II, Sec. 5 of R.A. No. 9165. (People *vs.* Jaafar *y* Tambuyong, G.R. No. 219829, Jan. 18, 2017) p. 582

— While it may be true that non-compliance with Sec. 21 of R.A. No. 9165 is not fatal to the prosecution's case provided that the integrity and evidentiary value of the seized items are properly preserved by the apprehending officers, this exception will only be triggered by the existence of a ground that justifies departure from the general rule. (*Id*.)

Illegal sale of drugs — In all prosecutions for violations of R.A. No. 9165, the *corpus delicti* is the dangerous drug itself; its existence is essential to a judgment of conviction. (People *vs.* Jaafar *y* Tambuyong, G.R. No. 219829, Jan. 18, 2017) p. 582

Illegal sale of prohibited drugs — The justification that underlies the legitimacy of the buy-bust operation is that the suspect is arrested in *flagranti delicto,* that is, the suspect has just committed, or is in the act of committing, or is attempting to commit the offense in the presence of the arresting police officer or private person; the arresting police officer or private person is favoured in such instance with the presumption of regularity in the performance of official duty. (People *vs.* Amin *y* Ampuan, *a.k.a* "Cocoy," G.R. No. 215942, Jan. 18, 2017) p. 557

— If the heart disease was known to have been present during employment there must be proof that an acute exacerbation clearly precipitated the unusual strain by reason of the nature of his work; for a claim under this category to prosper, petitioner must show that there was an acute exacerbation of the heart disease caused by the unusual strain of work. (*Id*.)

— To be considered as compensable occupational disease only when substantial evidence is adduced to prove any of the following conditions: a) If the heart disease was known to have been present during employment there must be proof that an acute exacerbation clearly precipitated by the unusual strain by reason of the nature of his work; b) The strain of work that brings about an acute attack must be of sufficient severity and must be followed within twenty-four (24) hours by the clinical signs of a cardiac assault to constitute causal relationship; c) If a person who was apparently asymptomatic before subjecting himself to strain of work showed signs and symptoms of cardiac injury during the performance of his work and such symptoms and signs persisted, it is reasonable to claim a causal relationship. (*Id*.)

EMPLOYMENT, TERMINATION OF

Backwages and separation pay — If the Labor Arbiter's decision, which granted separation pay in lieu of reinstatement, is appealed by any party, the employer-employee relationship subsists and until such time when decision becomes final and executory, the employee is entitled to all the monetary awards awarded by the Labor Arbiter. (C.I.C.M. Mission Seminaries (Maryhurst, Maryheights, Maryshore and Maryhill) School of Theology, Inc. *vs.* Perez, G.R. No. 220506, Jan. 18, 2017) p. 596

— When there is an order of separation pay, in lieu of reinstatement or when the reinstatement aspect is waived or subsequently ordered in light of a supervening event making the award of reinstatement no longer possible, the employment relationship is terminated only upon the finality of the decision ordering the separation pay. (*Id*.)

analogous to the foregoing. (Dagasdas *vs*. Grand Placement and General Services Corp., G.R. No. 205727, Jan. 18, 2017) p. 463

— As regards a probationary employee, his or her dismissal may be allowed only if there is just cause or such reason to conclude that the employee fails to qualify as regular employee pursuant to reasonable standards made known to the employee at the time of engagement. (*Id*.)

Twin notice requirement — Valid dismissal requires substantive and procedural due process; as regards the latter, the employer must give the concerned employee at least two notices before his or her termination; the employer must inform the employee of the cause or causes for his or her termination, and thereafter, the employer's decision to dismiss him. (Dagasdas *vs.* Grand Placement and General Services Corp., G.R. No. 205727, Jan. 18, 2017) p. 463

ENTRAPMENT

Distinguished from instigation — Instigation is the means by which the accused is lured into the commission of the offense charged in order to prosecute him; on the other hand, entrapment is the employment of such ways and means for the purpose of trapping or capturing a lawbreaker; in instigation, officers of the law or their agents incite, induce, instigate or lure an accused into committing an offense which he or she would otherwise not commit and has no intention of committing; but in entrapment, the criminal intent or design to commit the offense charged originates in the mind of the accused, and law enforcement officials merely facilitate the apprehension of the criminal by employing ruses and schemes. (People *vs*. Hirang *y* Rodriguez, G.R. No. 223528, Jan. 11, 2017) p. 277

EVIDENCE

Burden of proof — Defined as the duty to establish the truth of a given proposition or issue by such quantum of evidence as the law demands in the case at which the issue arises; in civil cases, the burden of proof is on the plaintiff to

observe the procedures and requirements prescribed by the law; the non-compliance with the prescribed procedure and requirements deprives the trial court of jurisdiction over the subject matter or nature of the case and, consequently, all its proceedings are rendered null and void. (*Id*.)

MANDAMUS

Petition for — A petition for *mandamus* must have been instituted by a party aggrieved by the alleged inaction of any tribunal, corporation, board or person which unlawfully excludes said party from the enjoyment of a legal right. (Laygo *vs*. Mun. Mayor of Solano, Nueva Vizcaya, G.R. No. 188448, Jan. 11, 2017) p. 126

— *Mandamus* will not lie in the absence of any of the following grounds: [a] that the court, officer, board, or person against whom the action is taken unlawfully neglected the performance of an act which the law specifically enjoins as a duty resulting from office, trust, or station; or [b] that such court, officer, board, or person has unlawfully excluded petitioner/relator from the use and enjoyment of a right or office to which he is entitled; neither will the extraordinary remedy of *mandamus* lie to compel the performance of duties that are discretionary in nature. (*Id*.)

— The privilege of operating a market stall under license is always subject to the police power of the city government and may be refused or granted for reasons of public policy and sound public administration; being a delegated police power falling under the general welfare clause of Sec. 16 of the Local Government Code, the grant or revocation of the privilege is, therefore, discretionary in nature. (*Id*.)

MORTGAGES

Contract of — Under Presidential Decree No. 957 (P.D. No. 957), no mortgage on any condominium unit may be constituted by a developer without prior written approval of the National Housing Authority, now HLURB;

SALES

CITATION

Page

I. LOCAL CASES

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

II. FOREIGN CASES

REFERENCES

I. LOCAL AUTHORITIES

A. CONSTITUTION

Page

B. STATUTES

Page

Page

Page

Page

C. OTHERS

D. BOOKS
(Local)

II. FOREIGN AUTHORITIES

Page

BOOKS