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OF THE

PHILIPPINES

FROM

JANUARY 24, 2017 TO JANUARY 31, 2017

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MANILA
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EN BANC

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[A.C. No. 5604. January 24, 2017]

ALBAY ELECTRIC COOPERATIVE, INC., *complainant, vs.* **ATTY. LEVI P. MUÑOZ,** *respondent.*

[A.C. No. 5652. January 24, 2017]

BENJILIEH M. CONSTANTE,[1] *complainant, vs.* **ATTY. LEVI P. MUÑOZ,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; LAWYERS IN GOVERNMENT SERVICE; UTILIZING GOVERNMENT TIME IN PURSUIT OF PRIVATE PRACTICE CONSTITUTES A VIOLATION OF THE CANON 6, RULE 6.02 OF THE CODE OF PROFESSIONAL RESPONSIBILITY.— Munoz's DILG authorization prohibited him from utilizing government time for his private practice. As correctly observed by Commissioner

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[1] Also referred to as "Benjilieh M. Constante-Reyes" elsewhere in the records.

Aguila, Rule XVII of the Omnibus Rules Implementing Book V of Executive Order No. 292 and Other Pertinent Civil Service Laws (Omnibus Rules), requires government officers and employees of all departments and agencies, except those covered by special laws, to render not less than eight (8) hours of work a day for five (5) days a week, or a total of forty (40) hours a week. The number of required weekly working hours may not be reduced, even in cases where the department or agency adopts a flexible work schedule. Notably, Muñoz did not deny Monares' allegation that he made at least eighty-six (86) court appearances in connection with at least thirty (30) cases from April 11, 1996 to August 1, 2001. He merely alleged that his private practice did not prejudice the functions of his office. Court appearances are necessarily made within regular government working hours, from 8:00 in the morning to 12:00 noon, and 1:00 to 5:00 in the afternoon. Additional time is likewise required to study each case, draft pleadings and prepare for trial. The sheer volume of cases handled by Muñoz clearly indicates that government time was necessarily utilized in pursuit of his private practice, in clear violation of the DILG authorization and Rule 6.02 of the CPR.

2. ID.; ID.; ID.; THE AUTHORITY GRANTED BY THE HEAD OF THE DEPARTMENT TO OFFICERS AND EMPLOYEES IN THE PUBLIC SERVICE TO ENGAGE IN THE PRACTICE OF PROFESSION CANNOT BE CONSTRUED AS PERPETUAL; FAILURE TO SECURE THE PROPER AUTHORITY BEFORE ENGAGING IN PRIVATE PRACTICE CONSTITUTES UNAUTHORIZED PRACTICE OF PROFESSION AND VIOLATION OF RULE 1.01 OF THE CODE OF PROFESSIONAL RESPONSIBILITY.— Acting Secretary Aguirre's grant of authority cannot be unreasonably construed to have been perpetual. Moreover, Muñoz cannot claim that he believed in good faith that the authority granted by Governor Bichara for his second and third terms sufficed. Memorandum No. 17 dated September 4, 1986 (Memorandum 17), which Muñoz himself cites in his Joint Petition, is clear and leaves no room for interpretation. The power to grant authority to engage in the practice of one's profession to officers and employees in the public service lies with the head of the department, in accordance with Section 12, Rule XVIII of the Revised Civil Service Rules x x x. Memorandum 17 was issued more than

nine (9) years prior to Muñoz's appointment as Provincial Legal Officer, hence, he cannot feign ignorance thereof. As a local public official, it was incumbent upon Muñoz to secure the proper authority from the Secretary of the DILG not only for his first term, but also his second and third. His failure to do so rendered him liable for unauthorized practice of his profession and violation of Rule 1.01 of the CPR.

3. ID.; ID.; ID.; TESTS OF CONFLICT OF INTEREST; REPRESENTING CONFLICTING INTERESTS WITHOUT THE PERMISSION OF ALL PARTIES INVOLVED CONSTITUTES A VIOLATION OF RULES 15.01 AND 15.03 OF THE CODE OF PROFESSIONAL RESPONSIBILITY.— Muñoz cannot elude Olaybal's allegations of disloyalty. In *Mabini Colleges, Inc. v. Pajarillo*, the Court explained the tests to determine the existence of conflict of interest, thus: There is conflict of interest when a lawyer represents inconsistent interests of two or more opposing parties. **The test is "whether or not in behalf of one client, it is the lawyer's duty to fight for an issue or claim, but it is his duty to oppose it for the other client. In brief, if he argues for one client, this argument will be opposed by him when he argues for the other client.**" This rule covers not only cases in which confidential communications have been confided, but also those in which no confidence has been bestowed or will be used. **Also, there is conflict of interest if the acceptance of the new retainer will require the attorney to perform an act which will injuriously affect his first client in any matter in which he represents him and also whether he will be called upon in his new relation to use against his first client any knowledge acquired through their connection.** Another test of the inconsistency of interests is whether the acceptance of a new relation will prevent an attorney from the full discharge of his duty of undivided fidelity and loyalty to his client or invite suspicion of unfaithfulness or double dealing in the performance thereof. As Muñoz himself detailed in his Joint Petition, he acted as counsel for ALECO under the management of the old BOD x x x. Muñoz thereafter served as retained counsel of ALECO under the direction of the NEA management team. Muñoz could have easily anticipated that his advice would be sought with respect to the prosecution of the members of the old BOD, considering that the latter was deactivated due

to alleged mismanagement. The conflict of interest between Olaybal's board on one hand, and NEA and its management team on the other, is apparent. By representing conflicting interests without the permission of all parties involved, Muñoz violated Rules 15.01 and 15.03 of the CPR.

4. ID.; ID.; ID.; PENALTY OF SUSPENSION FROM THE PRACTICE OF LAW FOR A PERIOD OF THREE (3) YEARS IMPOSED FOR GROSS MISCONDUCT, UNAUTHORIZED PRACTICE OF PROFESSION AND REPRESENTING CONFLICTING INTEREST.— In *Catu v. Rellosa*, the Court imposed the penalty of suspension for six (6) months upon a *punong barangay* who acted as counsel for respondents in an ejectment case without securing the authority of the Secretary of DILG. In *Aniñon v. Sabitsana, Jr.*, the Court imposed the penalty of one (1) year suspension upon a lawyer who accepted a new engagement that required him to oppose the interests of a party whom he previously represented. In view of Muñoz's multiple infractions, the Court finds the recommended penalty of suspension for an aggregate period of three (3) years proper.

D E C I S I O N

CAGUIOA, *J.*:

For resolution is the Joint Petition for Review with Prayer for Absolution and/or Clemency[2] (Joint Petition) dated May 14, 2009 filed by respondent Atty. Levi P. Muñoz (Muñoz), in connection with the complaints for disbarment filed by Arthur O. Monares (Monares), Atty. Oliver O. Olaybal (Olaybal) purportedly representing Albay Electric Cooperative, Inc. (ALECO), and Benjilieh M. Constante (Constante), dated January 17, 2002, February 4, 2002 and March 21, 2002, respectively.

Monares is the plaintiff in Civil Case No. 9923 filed against Ludolfo Muñoz (Ludolfo) before the Regional Trial Court (RTC) of Legazpi City. In his complaint, Monares alleged that Muñoz

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[2] *Rollo* (A.C. No. 5582), Vol. II, pp. 614-642.

represented his brother Ludolfo in the said case during regular government hours while employed as Provincial Legal Officer of Albay City.[3]

Under the chairmanship of Olaybal, ALECO's old board of directors (BOD) engaged Muñoz as retained counsel sometime in June 1998. Olaybal averred that Muñoz did not inform ALECO's old BOD that he was employed as Provincial Legal Officer at such time. Olaybal raised that after its administrator, the National Electrification Administration (NEA), deactivated the old BOD on the ground of mismanagement, Muñoz served as retained counsel of the NEA-appointed team which took over the management of ALECO. Moreover, Olaybal alleged that Muñoz illegally collected payments in the form of notarial and professional fees in excess of what was agreed upon in their retainer agreement.[4]

Constante is the Executive Assistant for Legal Affairs of Sunwest Construction and Development Corporation (Sunwest). Constante claimed that Muñoz filed ten (10) cases against Sunwest on Ludolfo's behalf before the Office of the Ombudsman (Ombudsman) while he was serving as Provincial Legal Officer.[5]

All three (3) complaints prayed that Muñoz be disbarred for unlawfully engaging in private practice. In addition, Olaybal sought Muñoz's disbarment for acts of disloyalty, particularly, for violating the rule against conflict of interest.[6]

To support their position, the complainants raised that Muñoz had been previously disciplined by the Ombudsman for two (2) counts of unauthorized practice of profession in OMB-ADM-1-01-0462, and was meted the penalty of removal and dismissal from service. The complainants further manifested that Muñoz had been convicted by the Municipal Trial Court in Cities

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[3] *Id.* at 544-545.

[4] *Id.* at 545.

[5] *Id.*

[6] *Id.*

(MTCC) of Legazpi City in Criminal Case Nos. 25568 and 25569 for violation of Section 7(b)(2) in relation to Section 11 of Republic Act No. 6713.[7] Muñoz's conviction has since become final pursuant to the Court's Resolution dated June 14, 2004 in G.R. No. 160668.[8]

In his respective comments to the complaints,[9] Muñoz claimed that he had requested Governor Al Francis C. Bichara (Governor Bichara) for authority to continue his private practice shortly after his appointment. This request was granted on July 18, 1995.[10] Thereafter, Muñoz submitted the same request to Rafael C. Alunan III, then Secretary of the Department of the Interior and Local Government (DILG).[11] On September 8, 1995, Acting Secretary Alexander P. Aguirre granted Muñoz's request, under the following conditions:

1. That **no government time**, personnel, funds or supplies **shall be utilized in connection** (sic) and that no conflict of interest with your present position as Provincial Legal Officer shall arise thereby;

2. That the time so devoted outside of office hours, the place(s) and under what circumstances you can engage in private employment shall be fixed by the Governor of Albay to the end that it will not impair in any way your efficiency; and

3. That any violation of the above restrictions will be a ground for the cancellation and/or revocation of this authority.[12] (Emphasis supplied)

Pursuant to the DILG's authorization, Governor Bichara imposed the following conditions upon Muñoz:

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[7] *Id.* at 546, 692-700. OMB-ADM-1-01-0462 is also referred to as OMB-ADM-1-01-0462-1 in some parts of the records.

[8] *Id.* at 754.

[9] *Id.* at 543.

[10] See *rollo* (A.C. No. 5582), Vol. I, pp. 270, 273.

[11] *Id.* at 270, 274.

[12] *Id.* at 276.

a. [Y]ou cannot handle cases against the Province of Albay;

b. [Y]ou will be on call and you will have no fix (sic) working hours provided that the efficiency of the Provincial Legal Office shall not be prejudiced;

c. [Y]ou are exempted in (sic) accomplishing your Daily Time Record considering the limitation already mentioned above; [and]

d. In addition to the above enumeration[,] you are to perform functions subject to limitations in Sec. 481 of RA 7160.[13]

Muñoz emphasized that his authority to engage in private practice was renewed by Governor Bichara on July 3, 1998 for his second term ending in July 2001, and again on July 5, 2001 for his third term ending in July 2004.[14]

The complaints were separately referred by the Court to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.[15] The complaints were then consolidated through the Order dated January 16, 2003 issued by Commissioner Milagros V. San Juan.[16] Subsequently, the complaints underwent a series of re-assignments, until finally assigned to Commissioner Dorotea B. Aguila.[17]

In his Report dated March 11, 2005[18] (IBP Report), Commissioner Aguila recommended that Muñoz be found guilty of gross misconduct and violation of Rules 1.01, 6.02, 15.01 and 15.03 of the Code of Professional Responsibility (CPR). The penalty of suspension from the practice of law for an

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[13] *Id.* at 277.

[14] *Rollo* (A.C. No. 5582) Vol. II, p. 547.

[15] *Rollo* (A.C. No. 5582) Vol. I, p. 289; see *rollo* (A.C. No. 5582) Vol. II, p. 543.

[16] *Rollo* (A.C. No. 5582) Vol. II, p. 544.

[17] *Id.*

[18] *Id.* at 543-553.

aggregate period of four (4) years[19] was recommended. On automatic review, the IBP Board of Governors (IBP-BOG) approved and adopted Commissioner Aguila's recommendation in a Resolution dated October 22, 2005.[20]

On December 22, 2005, Muñoz filed an Ex-Parte Appeal for Mercy, Clemency and Compassion before the IBP-BOG, praying that the recommended penalty be reduced to one (1) year.[21] This appeal was denied on January 28, 2006.[22]

Muñoz filed before this Court an Ex-Parte Appeal for Mercy, Clemency, Forgiveness and Compassion[23] (Appeal) dated April 8, 2006 praying for the reduction of the recommended penalty of suspension for four (4) years to one (1) year or less, and the dismissal of the complaints for disbarment filed against him. As an alternative prayer, Muñoz requested that he be granted special limited authority to practice law until all his pending cases are terminated.[24]

In his Appeal, Muñoz, insisted that when he served as Provincial Legal Officer from June 1995 to May 2002, he engaged in private practice pursuant to the three (3) written authorities issued by Governor Bichara, and the written authority of the DILG issued during his first term, which he claims had never been revoked. Muñoz also argued that no conflict of interest existed between ALECO's old BOD and the NEA management team, since he was engaged as retained counsel of ALECO as an institution, not its management teams.[25]

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[19] *Id.* at 553. Three (3) years for unauthorized practice of law, plus one (1) year for acts of disloyalty.

[20] *Id.* at 541-542.

[21] *Id.* at 555-557 and 559.

[22] *Id.* at 559.

[23] *Id.* at 558-562.

[24] *Id.* at 561.

[25] *Id.* at 559-560.

On August 28, 2006, the Court resolved to remand Muñoz's Appeal to the IBP for disposition.[26]

Acting on Muñoz's Appeal, the IBP-BOG issued a Resolution reducing the recommended period of suspension from four (4) to three (3) years.[27] Unsatisfied, Muñoz filed a Motion for Reconsideration, which the IBP-BOG denied on December 11, 2008.[28]

Aggrieved, Muñoz elevated his case anew to this Court through this Joint Petition. In fine, Muñoz reiterates the allegations in his Appeal, with the additional assertion that the fees he collected from ALECO were contemplated under their retainer agreement.[29]

The Court agrees with the IBP-BOG's findings and recommendations.

Muñoz violated the conditions of his DILG authorization.

Munoz's DILG authorization prohibited him from utilizing government time for his private practice. As correctly observed by Commissioner Aguila, Rule XVII of the Omnibus Rules Implementing Book V of Executive Order No. 292 and Other Pertinent Civil Service Laws (Omnibus Rules), requires government officers and employees of all departments and agencies, except those covered by special laws, to render not less than eight (8) hours of work a day for five (5) days a week, or a total of forty (40) hours a week.[30] The number of required weekly working hours may not be reduced, even in cases where the department or agency adopts a flexible work schedule.[31]

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[26] *Id.* at 570-571.

[27] *Id.* at 597-598.

[28] *Id.* at 595-596.

[29] *Id.* at 618.

[30] OMNIBUS RULES IMPLEMENTING BOOK V OF EXECUTIVE ORDER NO. 292 AND OTHER PERTINENT CIVIL SERVICE LAWS, Rule XVII, Section 5.

[31] *Id.* at Section 6.

Notably, Muñoz did not deny Monares' allegation that he made at least eighty-six (86) court appearances in connection with at least thirty (30) cases from April 11, 1996 to August 1, 2001.[32] He merely alleged that his private practice did not prejudice the functions of his office.

Court appearances are necessarily made within regular government working hours, from 8:00 in the morning to 12:00 noon, and 1:00 to 5:00 in the afternoon.[33] Additional time is likewise required to study each case, draft pleadings and prepare for trial. The sheer volume of cases handled by Muñoz clearly indicates that government time was necessarily utilized in pursuit of his private practice, in clear violation of the DILG authorization and Rule 6.02[34] of the CPR.

Muñoz should have requested for authority to engage in private practice from the Secretary of DILG for his second and third terms.

Acting Secretary Aguirre's grant of authority cannot be unreasonably construed to have been perpetual. Moreover, Muñoz cannot claim that he believed in good faith that the authority granted by Governor Bichara for his second and third terms sufficed.

Memorandum No. 17 dated September 4, 1986 (Memorandum 17) , which Muñoz himself cites in his Joint Petition, is clear and leaves no room for interpretation. The power to grant authority to engage in the practice of one's profession to officers and employees in the public service lies with the head of the department, in accordance with Section 12, Rule XVIII of the Revised Civil Service Rules which provides, in part:

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[32] *Rollo* (A.C. No. 5582), Vol. I, pp. 5-12.

[33] *Rollo* (A.C. No. 5582), Vol. II, pp. 608-609.

[34] Rule 6.02 of Canon 6 provides:

Rule 6.02.— A lawyer in the government service shall not use his public position to promote or advance his private interests, nor allow the latter to interfere with his public duties.

Sec. 12. No officer or employee shall engage directly in any private business, vocation, or profession or be connected with any commercial, credit, agricultural, or industrial undertaking without **a written permission from the head of Department**: Provided, That this prohibition will be absolute in the case of those officers and employees whose duties and responsibilities require that their entire time be at the disposal of the Government: Provided, further, That if an employee is granted permission to engage in outside activities, the time so devoted outside of office hours should be fixed by the chief of the agency to the end that it will not impair in any way the efficiency of the officer or employee x x x. (Emphasis and underscoring supplied)

Memorandum 17 was issued more than nine (9) years prior to Muñoz's appointment as Provincial Legal Officer, hence, he cannot feign ignorance thereof. As a local public official, it was incumbent upon Muñoz to secure the proper authority from the Secretary of the DILG not only for his first term, but also his second and third. His failure to do so rendered him liable for unauthorized practice of his profession and violation of Rule 1.01[35] of the CPR.

Muñoz represented conflicting interests.

Muñoz cannot elude Olaybal's allegations of disloyalty. In *Mabini Colleges, Inc. v. Pajarillo*,[36] the Court explained the tests to determine the existence of conflict of interest, thus:

There is conflict of interest when a lawyer represents inconsistent interests of two or more opposing parties. **The test is "whether or not in behalf of one client, it is the lawyer's duty to fight for an issue or claim, but it is his duty to oppose it for the other client. In brief, if he argues for one client, this argument will be opposed by him when he argues for the other client.**" This rule covers not only cases in which confidential communications have been confided, but also those in which no confidence has been bestowed or will be

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[35] Rule 1.01, Canon 1 provides:

Rule 1.01. — A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

[36] A.C. No. 10687, July 22, 2015, 763 SCRA 288, 294-295, citing *Hornilla v. Salunat*, 453 Phil. 108, 111-112 (2003).

used. **Also, there is conflict of interest if the acceptance of the new retainer will require the attorney to perform an act which will injuriously affect his first client in any matter in which he represents him and also whether he will be called upon in his new relation to use against his first client any knowledge acquired through their connection.** Another test of the inconsistency of interests is whether the acceptance of a new relation will prevent an attorney from the full discharge of his duty of undivided fidelity and loyalty to his client or invite suspicion of unfaithfulness or double dealing in the performance thereof. (Emphasis supplied)

As Muñoz himself detailed in his Joint Petition, he acted as counsel for ALECO under the management of the old BOD in the following cases:

A. Civil Case No. 10007 — ALECO (Petitioner) vs. Eleuterio Adonay, NEA Project Supervisor and his team John Catral et al., **a case filed by Oliver O. Olaybal and his group.** For: Injunction, Accounting with Prayer for Writs of Preliminary Injunction and/or Temporary Restraining Order, **seeking to stop the election of the new set of member (sic) of the Board of Directors** x x x.

B. Civil Case [N]o. 10066 entitled ALBAY ELECTRIC COOPERATIVE, INC. as Petitioner, **also filed by Oliver O. Olaybal**, a case for Prohibition, Mandamus and Receivership, with Preliminary Prohibition and Mandatory Injunction and/or Temporary Restraining and Mandatory Orders. **Among others, this Petition was filed to stop the second scheduled election of the ALECO Board of Directors scheduled for February 23, and 24, 2002.**[37] (Underscoring omitted; additional emphasis supplied)

Muñoz thereafter served as retained counsel of ALECO under the direction of the NEA management team. Muñoz could have easily anticipated that his advice would be sought with respect to the prosecution of the members of the old BOD, considering that the latter was deactivated due to alleged mismanagement. The conflict of interest between Olaybal's board on one hand, and NEA and its management team on the other, is apparent. By representing conflicting interests without the permission

[37] *Rollo* (A.C. No. 5582), Vol. II, pp. 629-630.

of all parties involved, Muñoz violated Rules 15.01 and 15.03 of the CPR.[38]

In *Catu v. Rellosa*,[39] the Court imposed the penalty of suspension for six (6) months upon a *punong barangay* who acted as counsel for respondents in an ejectment case without securing the authority of the Secretary of DILG. In *Aniñon v. Sabitsana, Jr.*,[40] the Court imposed the penalty of one (1) year suspension upon a lawyer who accepted a new engagement that required him to oppose the interests of a party whom he previously represented. In view of Muñoz's multiple infractions, the Court finds the recommended penalty of suspension for an aggregate period of three (3) years proper.

WHEREFORE, Atty. Levi P. Muñoz is found **GUILTY** of gross misconduct and violation of Rules 1.01, 6.02, 15.01 and 15.03 of the Code of Professional Responsibility. He is hereby **SUSPENDED** from the practice of law for a period of three (3) years effective upon receipt of this Decision, with a **STERN WARNING** that a repetition of any violation hereunder shall be dealt with more severely.

SO ORDERED.

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

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[38] Rules 15.01 and 15.03 of Canon 15 provide:

Rule 15.01. — A lawyer, in conferring with a prospective client, shall ascertain as soon as practicable whether the matter would involve a conflict with another client or his own interest, and if so, shall forthwith inform the prospective client.

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Rule 15.03. — A lawyer shall not represent conflicting interests except by written consent of all concerned given after a full disclosure of the facts.

[39] 569 Phil. 539 (2008).

[40] 685 Phil. 322 (2012).

EN BANC

[A.C. No. 11545. January 24, 2017]
(Formerly CBD Case No. 12-3439)

SUSAN LOBERES-PINTAL, *complainant, vs.* **ATTY. RAMONCITO B. BAYLOSIS,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; NOTARY PUBLIC; 2004 RULES ON NOTARIAL PRACTICE; A NOTARY PUBLIC WHO NOTARIZED A DOCUMENT IN THE ABSENCE OF A PARTY VIOLATES NOT ONLY THE RULE ON NOTARIAL PRACTICE BUT ALSO THE CODE OF PROFESSIONAL RESPONSIBILITY WHICH PROSCRIBES A LAWYER FROM ENGAGING IN ANY UNLAWFUL, DISHONEST, IMMORAL, OR DECEITFUL CONDUCT; PROPER PENALTY. — [A]tty. Baylosis was negligent in the performance of his duty as a notary public when he notarized the petition for declaration of the nullity of marriage without the presence of Roldan. This was evidenced by the Certification issued by the Bureau of Immigration that Roldan was not in the Philippines on May 13, 2011 as he had left the Philippines on April 10, 2011 and came back only on September 8, 2011. Atty. Baylosis' contention that he personally interviewed Roldan when the latter went into his office and personally read and signed the petition cannot be accorded a shred of credence. In notarizing a document in the absence of a party, Atty. Baylosis violated not only the rule on notarial practice but also the Code of Professional Responsibility which proscribes a lawyer from engaging in any unlawful, dishonest, immoral, or deceitful conduct. By affixing his signature and notarial seal on the document, he attested that Roldan personally appeared before him on the day it was notarized and verified the contents thereof. His conduct is fraught with dangerous possibilities considering the conclusiveness on the due execution of a document that our courts and the public accord to notarized documents. x x x. Following the pronouncement in *Re: Violation of Rules on Notarial Practice*, Atty. Baylosis should be permanently barred from being commissioned a notary public.

2. ID.; ID.; A NOTARY PUBLIC MUST OBSERVE WITH UTMOST CARE THE BASIC REQUIREMENTS IN THE PERFORMANCE OF HIS DUTIES; OTHERWISE, THE PUBLIC'S CONFIDENCE IN THE INTEGRITY OF THE DOCUMENT WOULD BE UNDERMINED. — It must be emphasized that a lawyer commissioned as a notary public, is mandated to discharge with fidelity the sacred duties appertaining to his office, such duties being dictated by public policy and impressed with public interest. It is for this reason that notar[ies] public must observe with utmost care the basic requirements in the performance of their duties; otherwise, the public's confidence in the integrity of the document would be undermined. In *Gonzales v. Atty. Ramos*, it was written: Notarization is not an empty, meaningless routinary act. It is invested with substantive public interest. The notarization by a notary public converts a private document into a public document, making it admissible in evidence without further proof of its authenticity. A notarial document is, by law, entitled to full faith and credit upon its face. A notary public must observe with utmost care the basic requirements in the performance of his duties; otherwise, the public's confidence in the integrity of the document would be undermined.

3. ID.; ID.; DISBARMENT AND SUSPENSION; THE DESISTANCE OF THE COMPLAINANT OR WITHDRAWAL OF THE COMPLAINT DOES NOT NECESSARILY WARRANT THE DISMISSAL OF AN ADMINISTRATIVE PROCEEDING; RATIONALE.— The Court would like to stress the prevailing ruling that desistance of the complainant or withdrawal of the complaint does not necessarily warrant the dismissal of an administrative proceeding. In *Bautista v. Bernabe*, the Court wrote: A case of suspension or disbarment may proceed regardless of interest or lack of interest of the complainant. What matters is whether, on the basis of the facts borne out by the record, the charge of deceit and grossly immoral conduct has been proven. This rule is premised on the nature of disciplinary proceedings. A proceeding for suspension or disbarment is not a civil action where the complainant is a plaintiff and the respondent lawyer is a defendant. Disciplinary proceedings involve no private interest and afford no redress for private grievance. They are undertaken and prosecuted solely for the public welfare. They are undertaken

> for the purpose of preserving courts of justice from the official ministration of persons unfit to practice in them. The attorney is called to answer to the court for his conduct as an officer of the court. The complainant or the person who called the attention of the court to the attorney's alleged misconduct is in no sense a party, and has generally no interest in the outcome except as all good citizens may have in the proper administration of justice.

D E C I S I O N

***PER CURIAM*:**

This case stemmed from a verified complaint[1] for disbarment filed by complainant Susan Loberes-Pintal (*complainant*) before the Integrated Bar of the Philippines (*IBP*) against respondent Atty. Ramoncito B. Baylosis (*Atty. Baylosis*) for gross violation of the 2004 Rules on Notarial Practice.

The Antecedents:

Complainant filed a complaint for disbarment against Atty. Baylosis for committing perjury, falsification of public documents and the use of falsified documents. She alleged that Roldan C. Pintal (*Roldan*) filed a Petition for Declaration of Nullity of Marriage, entitled *Roldan C. Pintal v. Susan Loberes-Pintal*, docketed as Civil Case No. C-22815 (2011) before the Regional Trial Court of Caloocan City (*RTC*); that Atty. Baylosis conspired with Roldan by making it appear in the petition that he was a resident of Caloocan City when, in truth and in fact, he was a resident of Quezon City; and that Atty. Baylosis notarized the verification and certification against non-forum shopping of the petition on May 13, 2011, but, at that time, Roldan was out of the country. Complainant submitted a Certification[2] from the Barangay Chairman of Barangay 12, Zone 1, District II of Caloocan City, attesting that Roldan was not a resident thereof and a Certification[3] from the Bureau of

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

[2] Annex "D" of the complaint, *id.* at 9.

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

Immigration showing that he was out of the country from April 10, 2011 to September 8, 2011.

In his Answer,[4] Atty. Baylosis denied the accusation and insisted that when Roldan went to his office in January 2011, he personally interviewed him and asked him to submit documents such as his marriage certificate, birth certificate and a personal write-up narrating his personal history, courtship history and marital history; that Roldan provided him a Certification[5] from the Chairman of Barangay 12, Zone 1, District II of Caloocan City, attesting that he was a resident thereof for six *(6)* years; that after the interview, he referred Roldan to a clinical psychologist for evaluation and testing; that due to financial difficulties, it was only in March 2011 that Roldan was able to pay his acceptance fee; that it was also around that time that Roldan read and reviewed the allegations in the petition and affixed his signature in the Verification and Certification portion thereof; that Roldan personally appeared before him, swore in accordance with law and verified his petition in accordance with the Rules of Court; that due to typographical errors in the psychological report, Atty. Baylosis returned the report for correction; that it was only on May 13, 2011, that the corrected report was returned to his office; and that he immediately gave the final draft of the petition together with the report and other documents to his secretary for filing. Atty. Baylosis further averred that the date of recording on May 13, 2011 of the Verification and Certification of the petition was an honest mistake and excusable error on the part of his staff but his claim that Roldan personally appeared before him to attest to the truthfulness of the verification and certification was true.

The Commission on Bar Discipline (*CBD*) set the case for mandatory conference but before its conclusion, on September 7, 2012, complainant filed an Affidavit of Desistance[6]

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[4] *Id.* at 15-18.

[5] *Id.* at 46.

[6] *Id.* at 64-65.

manifesting that she was no longer interested in continuing with the complaint and that she was withdrawing it.

For said reason, the CBD in its Report and Recommendation,[7] recommended the dismissal of the complaint against Atty. Baylosis.

In its Notice of Resolution No. XXI-2014-610,[8] dated September 27, 2014, the IBP-Board of Governors *reversed* and *set aside* the report and recommendation of the CBD. In its Extended Resolution,[9] the IBP-Board of Governors found Atty. Baylosis guilty of violating the 2004 Rules on Notarial Practice when he made it appear that Roldan was present during the notarization of the petition on May 13, 2011 and recommended the immediate revocation of his notarial commission and his disqualification from being commissioned as notary public for two (*2*) years.

The Court's Ruling

The Court agrees with the findings of the IBP except as to its recommended penalty.

Rule IV, Section 2(b) of the 2004 Rules on Notarial Practice specifically provides:

> Section 2. Prohibitions. —(a) x x x
>
> (b) A person shall not perform a notarial act if the person involved as signatory to the instrument or document —
>
> (1) is not in the notary's presence personally at the time of the notarization; and
>
> (2) is not personally known to the notary public or otherwise identified by the notary public through competent evidence of identity as defined by these Rules.

Without a quibble, Atty. Baylosis was negligent in the performance of his duty as a notary public when he notarized

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

[8] *Id.* at 70-71.

[9] *Id.* at 74-79.

the petition for declaration of the nullity of marriage without the presence of Roldan. This was evidenced by the Certification issued by the Bureau of Immigration that Roldan was not in the Philippines on May 13, 2011 as he had left the Philippines on April 10, 2011 and came back only on September 8, 2011. Atty. Baylosis' contention that he personally interviewed Roldan when the latter went into his office and personally read and signed the petition cannot be accorded a shred of credence.

In notarizing a document in the absence of a party, Atty. Baylosis violated not only the rule on notarial practice but also the Code of Professional Responsibility which proscribes a lawyer from engaging in any unlawful, dishonest, immoral, or deceitful conduct.[10] By affixing his signature and notarial seal on the document, he attested that Roldan personally appeared before him on the day it was notarized and verified the contents thereof. His conduct is fraught with dangerous possibilities considering the conclusiveness on the due execution of a document that our courts and the public accord to notarized documents.[11]

It must be emphasized that a lawyer commissioned as a notary public, is mandated to discharge with fidelity the sacred duties appertaining to his office, such duties being dictated by public policy and impressed with public interest.[12] It is for this reason that a notary public must observe with utmost care the basic requirements in the performance of their duties; otherwise, the public's confidence in the integrity of the document would be undermined.[13] In *Gonzales v. Atty. Ramos*,[14] it was written:

> Notarization is not an empty, meaningless routinary act. It is invested with substantive public interest. The notarization by a notary public converts a private document into a public document, making it

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[10] Rule 1.01, Canon 1 of the Code of Professional Responsibility.

[11] *Sistual v. Atty. Ogena*, A.C. 9807, February 2, 2016.

[12] *Soriano v. Atty. Basco*, 507 Phil. 410, 416 (2005).

[13] *Gonzales v. Atty. Ramos*, 499 Phil. 345, 347 (2005).

[14] *Id.*

admissible in evidence without further proof of its authenticity. A notarial document is, by law, entitled to full faith and credit upon its face. A notary public must observe with utmost care the basic requirements in the performance of their duties; otherwise, the public's confidence in the integrity of the document would be undermined.[15]

Following the pronouncement in *Re: Violation of Rules on Notarial Practice*,[16] Atty. Baylosis should be permanently barred from being commissioned a notary public.

The Court would like to stress the prevailing ruling that desistance of the complainant or withdrawal of the complaint does not necessarily warrant the dismissal of an administrative proceeding. In *Bautista v. Bernabe*,[17] the Court wrote:

> A case of suspension or disbarment may proceed regardless of interest or lack of interest of the complainant. What matters is whether, on the basis of the facts borne out by the record, the charge of deceit and grossly immoral conduct has been proven. This rule is premised on the nature of disciplinary proceedings. A proceeding for suspension or disbarment is not a civil action where the complainant is a plaintiff and the respondent lawyer is a defendant. Disciplinary proceedings involve no private interest and afford no redress for private grievance. They are undertaken and prosecuted solely for the public welfare. They are undertaken for the purpose of preserving courts of justice from the official ministration of persons unfit to practice in them. The attorney is called to answer to the court for his conduct as an officer of the court. The complainant or the person who called the attention of the court to the attorney's alleged misconduct is in no sense a party, and has generally no interest in the outcome except as all good citizens may have in the proper administration of justice.[18]

WHEREFORE, finding Atty. Ramoncito B. Baylosis **GUILTY** of violating the Rule on Notarial Practice and Rule 1.01 and Canon 1 of the Code of Professional Responsibility,

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[15] *Id.*

[16] A.M. No. 09-6-1-SC, January 21, 2015.

[17] 517 Phil. 236 (2006).

[18] *Id.* at 241.

the Court hereby imposes the penalty of being **PERMANENTLY BARRED** from being commissioned as a Notary Public with a **STERN WARNING** that repetition of the same or similar conduct in the future will be dealt with more severely.

This order is **IMMEDIATELY EXECUTORY**.

Let copies of this decision be furnished the Office of the Bar Confidant to be attached to the personal record of Atty. Ramoncito B. Baylosis; the Office of the Court Administrator for dissemination to all lower courts; and the Integrated Bar of the Philippines, for proper guidance and information.

SO ORDERED.

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

EN BANC

[A.M. No. P-16-3564. January 24, 2017]
(Formerly OCA IPI No. 10-3503-P)

JUDGE ANDREW U. BARCENA, *complainant, vs.* **CLERK OF COURT II THELMA S. ABADILLA, CASHIER I ROSELLER O. ISRAEL, CLERK IV ULYSSES D. DUPAYA, CLERK III ROY C. ROSALES and JUNIOR PROCESS SERVER JAMES D. LORILLA, all of the Office of the Clerk of Court, Municipal Trial Court, Lal-lo, Cagayan**, *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CHARGES; THE EXISTENCE OF

CONSPIRACY CANNOT BE PRESUMED, BUT MUST BE PROVEN THROUGH CLEAR AND CONVINCING EVIDENCE.— The Court adopts the recommendation of the OCA to dismiss the administrative complaint against Abadilla, Dupaya and Israel for want of sufficient evidence. Judge Barcena failed to present evidence to support his accusation against them. Other than his bare assertion that the respondents conspired in planning and assaulting him, he failed to establish that there was indeed a community of criminal design existing among the respondents to commit the offense. Their mere presence at the office of Judge Barcena prior to the physical assault is not sufficient ground to hold them liable as conspirators. The existence of conspiracy cannot be presumed. Like the physical act constituting the crime, conspiracy must be proven through clear and convincing evidence.

2. ID.; ID.; ID.; IN ADMINISTRATIVE CASES, THE QUANTUM OF PROOF REQUIRED IS SUBSTANTIAL EVIDENCE OR SUCH EVIDENCE AS A REASONABLE MIND MAY ACCEPT AS ADEQUATE TO SUPPORT A CONCLUSION, AND THE COMPLAINANT HAS THE BURDEN OF PROVING BY SUBSTANTIAL EVIDENCE THE ALLEGATIONS IN THE COMPLAINT.— In administrative cases, the quantum of proof required is substantial evidence or such evidence as a reasonable mind may accept as adequate to support a conclusion. The complainant has the burden of proving by substantial evidence the allegations in the complaint. In the case at bench, there was no sufficient and convincing evidence to hold Rosales administratively liable for discourtesy. The affidavit of Quinto was devoid of any indication that the purported derogatory remarks were directed towards Judge Barcena. It merely alleged that Quinto heard Rosales utter the derogatory remarks on the morning of July 15, 2010 and that when he learned that Lorilla attacked Judge Barcena, he told Peter Cusipag what he heard because the said utterances "could have pertained to Judge Barcena."

3. ID.; ID.; COURT PERSONNEL; MISCONDUCT, DEFINED; THE MISCONDUCT IS GRAVE IF IT INVOLVES ANY OF THE ADDITIONAL ELEMENTS OF CORRUPTION, WILLFUL INTENT TO VIOLATE THE LAW, OR TO DISREGARD ESTABLISHED RULES, WHICH MUST BE

ESTABLISHED BY SUBSTANTIAL EVIDENCE.— With respect to Lorilla, the Court agrees with the findings of the OCA that his actuations constituted grave misconduct. Misconduct is a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, unlawful behavior, willful in character, improper or wrong behavior. Any transgression or deviation from the established norm of conduct, work-related or not, amounts to misconduct. The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law, or to disregard established rules, which must be established by substantial evidence.

4. **ID.; ID.; ID.; COURT EMPLOYEES ARE EXPECTED TO BE WELL-MANNERED, CIVIL AND CONSIDERATE IN THEIR ACTUATIONS, BOTH IN THEIR RELATIONS WITH CO-WORKERS AND THE TRANSACTING PUBLIC, AND BOORISHNESS, FOUL LANGUAGE AND ANY MISBEHAVIOR IN COURT PREMISES MUST ALWAYS BE AVOIDED.—** Without a doubt, Lorilla failed to live up to the ethical norm expected of him as an employee of the Judiciary. Shouting at Judge Barcena and physically assaulting him within the court premises in the presence of the court employees clearly exhibit rudeness and disrespect not only towards him but to the court as well. Granting that he was provoked by Judge Barcena's uncouth behavior, his conduct remains inexcusable. Court employees are expected to be well-mannered, civil and considerate in their actuations, both in their relations with co-workers and the transacting public. Boorishness, foul language and any misbehavior in court premises must always be avoided.

5. **ID.; ID.; ID.; FIGHTING OR MISUNDERSTANDING IS A DISGRACEFUL SIGHT REFLECTING ADVERSELY ON THE GOOD IMAGE OF THE JUDICIARY AND DISPLAYS A CAVALIER ATTITUDE TOWARDS THE SERIOUSNESS AND DIGNITY WITH WHICH COURT BUSINESS SHOULD BE TREATED.—** Time and again, the Court has stressed that fighting or misunderstanding is a disgraceful sight reflecting adversely on the good image of the Judiciary. It displays a cavalier attitude towards the seriousness and dignity with which court business should be

treated. Professionalism, respect for the rights of others, good manners, and right conduct are expected of all judicial officers and employees. Their behavior and actuations must be characterized by propriety and decorum and should at all times embody prudence, restraint, courtesy and dignity.

6. ID.; ID.; ID.; GRAVE MISCONDUCT IS A GRAVE OFFENSE PUNISHABLE BY DISMISSAL EVEN FOR THE FIRST OFFENSE.— Under Section 46 (A) (3), Rule 10 of the Revised Rules on Administrative Cases in Civil Service, grave misconduct is a grave offense punishable by dismissal even for the first offense. In the present case, the Court notes that this is not the first time that Lorilla was found administratively liable. In the case of *Aquino v. Israel*, he was found liable for misconduct and fined in the amount of ₱1,000.00 for punching a co- employee. He seemed undeterred despite the earlier warning that any repetition of similar infraction would be dealt with more severely. Given the foregoing, the recommended penalty of suspension for a period of two years is insufficient. The Court imposes upon him the supreme penalty of dismissal. He has no place in the Judiciary.

7. LEGAL ETHICS; JUDGES; COURTESY IS EXPECTED OF A JUDGE, IN HIS CONDUCT AND LANGUAGE, TOWARDS HIS SUBORDINATES, AND THE USE OF VILE AND DEMEANING WORDS SHOULD BE COMPLETELY AVOIDED.— [T]he Court is not unaware of the heavy case load of the first level courts but this incident could have been avoided if proper communication was made to each and every office under Judge Barcena's supervision. Judge Barcena is advised to implement a more efficient and systematic approach in the supervision of employees within his administrative area like keeping a schedule of signing documents. He is also reminded that courtesy is likewise expected of him, in his conduct and language, towards his subordinates. Needless to state, the use of vile and demeaning words should be completely avoided.

D E C I S I O N

***PER CURIAM*:**

Before the Court is an administrative complaint filed by Judge Andrew U. Barcena *(Judge Barcena)*, Presiding Judge, Branch 1, Municipal Trial Court *(MTC)*, Lal-lo, Cagayan, against James D. Lorilla, Junior Process Server *(Lorilla)*; Ulysses Dupaya, Clerk IV *(Dupaya)*; Roy Rosales, Clerk III *(Rosales)*; Roseller Israel, Cashier I *(Israel)*; and Thelma S. Abadilla *(Abadilla)*, Clerk of Court II, all of the Office of the Clerk of Court, MTC *(OCC)*, for gross insubordination and gross disrespect to a judicial authority.

The Complainant's Position

In his Affidavit-Complaint,[1] dated July 16, 2010, Judge Barcena stated that he was also the Acting Presiding Judge of Branch 3, MTC, and the designated Executive Judge of the MTC. He further narrated the events as follows:

> 2. On July 15, 2010 around 11:30 o'clock in the morning, I was inside my chamber at MTC Branch I busy working when Mr. Peter Cusipag, Clerk II in my Court, came in and informed me that four (4) male personnel of the OCC, namely, James D. Lorilla, Junior Process Server; Ulysses D. Dupaya, Clerk IV; Roy C. Rosales, Clerk II; and Roseller O. Israel, Cashier I, were outside my chamber in an angry mood and demanding that I sign their accomplished Performance Evaluation Forms (PEFs) for the period January-June 2010;
>
> 3. At that time, Estelita P. Constantino, Court Stenographer II in my Court, was inside my chamber encoding an Order which I just finished dictating to her;
>
> 4. Mr. Cusipag was already holding the PEFs of OCC personnel including that of Thelma S. Abadilla, Clerk of Court II, which were handed to him by Mr. Lorilla. The PEFs of all the OCC personnel, except that of Ms. Abadilla, were already signed by them as Ratees and by Ms. Abadilla as Rater. I will also sign as the Next Higher Supervisor. The PEF (for supervisor) of Ms. Abadilla was already

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[1] *Id*. at 5-9.

accomplished as she already rated herself when I should be the one rating her performance being the Rater;

5. Mr. Cusipag informed me further that James Lorilla wanted to know if I would sign their PEFs right away;

6. As I was then busy drafting a decision, I just listened to Mr. Cusipag and knowing that I was busy drafting a decision, he went out still holding the PEFs;

7. Sometime in the first week of July, Ms. Judy Cusipag, Records Officer of the OCC, went to my chamber purposely to let me sign the accomplished PEFs of all OCC staff including that of Ms. Abadilla. I instructed her that I will confer with each staff to assess their individual performance before I will sign their PEFs;

8. On July 12, 2010, Ms. Leticia U. Israel, Branch Clerk of Court, MTC Branch III, also went to my office to have their already accomplished PEFs signed. I also instructed her that I will confer with each staff to assess and evaluate their individual ratings before I will sign their PEFs. As my instruction is clear, she did not anymore insist;

9. On that same day, Ms. Abadilla went to my office and again asked me to sign their PEFs. I repeated to her my earlier instruction to Ms. Cusipag that I will confer with each staff to assess and evaluate their performance before I will sign their PEFs;

10. I specifically instructed Ms. Abadilla to hold meanwhile their PEFs anyway the period of submission of performance ratings to the Office of the Court Administrator is not yet due as I know for a fact that the deadline is still in August 10 and reiterated my directive that I will sign their PEFs on the third week of July after I shall have conferred with each staff and review the ratings they themselves have already indicated in their respective PEFs;

11. On July 14, 2010, Ms. Abadilla went again to my office insisting that I should sign their PEFs and again repeated my earlier directive that I will sign those PEFs only after I shall have conferred with each of the staff which I will do on the third week of July as by that time I would be done with the more pressing concerns in the office;

12. That is why I was surprised when Mr. Cusipag informed me that Mr. Lorilla and his three male companions are in my office, demanding that I should sign their PEFs despite my earlier verbal

instructions to Ms. Abadilla, their immediate supervisor, that I would first personally confer with the OCC staff regarding their ratings before I will sign the PEFs;

13. I decided then to inquire from Ms. Abadilla why her process server and other male employees are demanding that I will sign their PEFs right then and how come they have in their possession their PEFs which is a willful disregard of my verbal instructions to her to hold the PEFs and that I would sign them only after I shall have conferred with the OCC staff and evaluated the ratings which they themselves indicated in their PEFs;

14. It was about 12:00 o'clock noon of that fateful day when I went out of my chamber to request one of my staff to call for Ms. Abadilla. I saw my staff Estelita Constantino, Avelina Evangelista and Corazon Vasquez still inside the office. I also notice Mr. Lorilla, with a grim expression on his face, standing near my chamber;

15. Since Mr. Lorilla was there anyway, I instructed him to call his superior, Ms. Abadilla;

16. Much to my surprise, instead of complying with my instruction, Mr. Lorilla suddenly flew into rage, pointed his forefinger right at my face and angrily shouted, "Bakit ayaw mong pirmahan ang rating namin! Bakit si Thelma ang tinatawag mo eh nandito naman ako! Hindi ako natatakot sayo!" (Why do you refuse to sign our ratings! Why do you want to call for Thelma when I am already here! I am not afraid of you!);

17. I was shocked by the vicious tirade and menacing demeanor of Mr. Lorilla but I just ignored him. I repeated my instruction for him to call Ms. Abadilla and then headed towards my chamber as I wanted to avoid the menacing and adversarial demeanor of Mr. Lorilla;

18. As I turned my back from Mr. Lorilla, he suddenly attacked me by fiercely grabbing and strangling my neck with his right arm while his left arm strongly clamped my body, leaving me choking and totally immobilized;

19. While Mr. Lorilla was strangling my neck and clamped my body tightly, I felt a sharp object pointed at my neck;

20. I struggled hard to break free but Mr. Lorilla strangled me harder determined to choke me to death. Ms. Constantino tried to pull Mr. Lorilla away from me but she failed because Mr. Lorilla is a very strong man with big body built;

21. When I was already choking and losing breath, I struggled hard but failed. Then, somebody whom I learned later to be Alex Tugade, Court Utility Worker of MTC Branch II, extricated the hands of Mr. Lorilla from my neck and body although it took him some time before he could totally extricate Mr. Lorilla away from me;

22. I was losing breath and consciousness by the time Mr. Lorilla was extricated from me. It took me some time to catch my breath and breathe normally. When I finally regained my normal breathing and composure from the onslaught of Mr. Lorilla, my entire neck was in deep pain. I also felt a stinging pain just below my left ear and when I examined it, I found a wound just below my left ear;

x x x x x x x x x[2]

On July 19, 2010, Judge Barcena wrote a letter[3] to then Executive Judge Conrado F. Manauis *(Executive Judge Manauis)*, Regional Trial Court, Aparri, Cagayan, *(RTC)* and reported the incident that transpired on July 15, 2010 in his office. Attaching the complaint-affidavit and the affidavits of the court employees who witnessed the said incident, Judge Barcena stated that he would file criminal and administrative charges against Lorilla, Dupaya, Rosales, Israel, and Abadilla.

On even date, Executive Judge Manauis issued the Memorandum[4] requiring the said OCC employees to reply to the affidavit-complaint of Judge Barcena. In compliance, the said court employees submitted their Reply,[5] dated July 29, 2010, stating that they were adopting as part of their reply the counter-affidavits and the affidavits of their witnesses which they executed before the Office of the Provincial Prosecutor *(OPP)* in relation to the criminal case filed by Judge Barcena.

In his letter-referral,[6] dated August 2, 2010, addressed to Deputy Court Administrator Raul B. Villanueva *(DCA*

[2] *Id.* at 5-7.

[3] *Id*. at 4.

[4] *Id*. at 229.

[5] *Id*. at 20-22.

[6] *Id*. at 2.

Villanueva), Executive Judge Manauis recommended that the respondents be charged with gross insubordination and gross disrespect to judicial authority and be subjected to an investigation.

Acting thereon, DCA Villanueva required the respondents to comment on the charges against them.[7] The respondents, in turn, filed their respective comments, reiterating and adopting their reply submitted to the Office of Executive Judge Manauis.

The Respondents' Position

In his Counter-Affidavit,[8] Lorilla averred that:

> 3.9 About 11:30 o'clock in the morning of 15 July 2010, I together with Ulysses D. Dupaya, Roy C. Rosales and Rosseler O. Israel, all staff of OCC, saw Leo Arteta of MTC-Br. 3 allegedly called by Judge Barcena regarding the approval of their PEFs, hence, we also decided to go to Judge Barcena to politely inquire if we can also courteously request Judge Barcena to approve our PEFs;
>
> 3.10 The folder containing our PEFs was left on the table of Ms. Cusipag as she temporarily left our office at that time but she left an instruction to Mr. Ulysses D. Dupaya that we can readily get said folder if ever Judge Barcena needs the same for his approval;
>
> 3.11 As such, we decided to bring the folder containing our PEFs to the chambers of Judge Barcena in order to request for his approval;
>
> 3.12 When we arrived thereat, we inquired from Avelina Evangelista, MTC-Br. 1 staff, if we can respectfully request Judge Barcena to approve our performance rating. Ms Evangelista instructed Mr. Pedro Cusipag, another MTC-Br. 1 staff, to inquire the same inside the chamber of Judge Barcena;
>
> 3.13 When Mr. Pedro Cusipag returned, he informed us to wait for a while because he was still busy, hence, we waited for further instruction;

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[7] *Id.* at 101-105.

[8] *Id.* at 23- 28.

3.14. After a few minutes, I saw Leticia I. Israel, Clerk of Court I of MTC-Br. 1, entered the chambers of Judge Barcena but I do not know if she noticed us as I was then seated behind the back door of MTC-Br. 1 while Ulysses D. Dupaya, Roy C. Rosales and Rosseler O. Israel were seated in benches of the session hall of MTC-Br. 1;

3.15 I noticed that Leticia U. Israel went out then returned back again. Likewise, I observed that Ms. Estelita Constantino, an MTC-Br. 1 staff, was also going in and out the judge's chamber as if looking for a document regarding the deadline of submission of PEF;

3.16 At about 12:00 o'clock noon, Ulysses D. Dupaya, Roy C. Rosales and Rosseler O. Israel told me that they will just go ahead in order to take their lunch. They requested me to stay behind in order to courteously inquire if we can leave the folder containing their PEFs and just return in the afternoon;

3.17 They even retorted that I should be the one to inquire because I have a very good professional relationship with Judge Barcena because they know that Judge Barcena even commented that I should be given an excellent in my performance rating due to my initiative in serving summons, subpoena and other processes of the court, thus, I acceded also to their request;

3.18 As such, I asked Mrs. Constantino in a well-mannered voice if we can leave the folder containing their PEFs and just return in the afternoon. Ms. Constantino, in turn, directed Ms. Corazon Vasquez to go inside the chamber to ask Judge Barcena regarding the same;

3.19 Ms. Corazon Vasquez entered the chambers of Judge Barcena and then she came out.

3.20 Then Judge Barcena also came out of his chambers, then he suddenly threw the folder containing our PEFs against one of the tables thereat;

3.21 At the same time, Judge Barcena lambasted me with insidious as well as insulting words and he shouted repeatedly, at the top his lungs, the words *"Punyeta kyo, kinukulit nyo ako! Tawagin nyo nga ang punyetang Thelmang yan!"* Meaning

"You bastard, you keep on pestering me. You call that bitch Thelma" while finger-pointing me;

3.22 Afterwhich, Judge Barcena approached me and kept on finger pointing me while uttering defamatory and threatening words against me;

3.23 Then all of a sudden, Judge Barcena strongly pushed me away which caused me to lose my balance;

3.24 Considering I was about to fall down, I held the hands of Judge Barcena which caused both of us to fall down;

3.25 When both of us fell down, I was beneath and Judge Barcena was on top of me;

3.26 As I thought that he had a clear intention of harming me, I tried to protect myself as he was grappling me;

3.27 We were even able to stand-up while grappling with each other;

3.28 During the struggle, I might have accidentally and inadvertently scratch my watch against the neck of Judge Barcena but I must categorically state that I was not holding a weapon or any sharp object during the scuffle;

3.29 When I noticed that Alex Tugade of MTC-Br. 2 arrived, I was able to extricate myself from Judge Barcena;

3.30 Thereafter, Ms. Thelma Sac-Abadilla arrived and Judge Barcena turned his ire on her as the latter kept on blaming the former for the incident;

3.31 Judge Barcena was insisting that Ms. Abadilla directed me to go to him but Ms. Abadilla respectfully and courteously replied that she did not know that I and/ or any OCC personnel went to him for the approval of our PEFs.

x x x x x x x x x[9]

In their Joint Counter-Affidavit,[10] Dupaya, Rosales and Israel corroborated the statement of Lorilla and asserted that Abadilla

[9] *Id*. at 23-25.

[10] *Id*. at 29-32.

did not give them their PEFs; that Abadilla did not instruct them to go to Judge Barcena for his signature; that they went to the office of Judge Barcena on their own volition; and that if they were not instructed to wait, they would have left the office of Judge Barcena immediately, but having been told to wait, they did so patiently.

Abadilla, on the other hand, argued in her Counter-Affidavit[11] that the charge of gross insubordination was baseless as there was no specific order or directive of Judge Barcena that she disobeyed. Abadilla asserted that she neither demanded nor insisted that their PEFs be signed or approved by him after they had received his verbal instruction that he would first confer with each and every one of them; and that she neither gave the folder containing the PEFs to her co-respondents nor instructed them to go to the office of Judge Barcena to have them signed. Abadilla further denied any knowledge on her co-respondents' alleged plan to attack Judge Barcena. She recalled that on July 15, 2010, at around 12:00 o'clock noon, she was summoned to the office of Judge Barcena by Corazon Vasquez *(Vasquez)*, a personnel of MTC-Branch I. While on their way to Judge Barcena's office, they heard commotions, and upon entering the room, Judge Barcena shouted at her and accused her as the one who directed Lorilla to see him, and it was he who yelled at her and uttered demeaning and humiliating remarks against her.

The Complainant's Reply

In his Reply-Affidavit,[12] dated August 18, 2010, Judge Barcena insisted that there was conspiracy among respondents Lorilla, Dupaya, Rosales, and Israel to storm his office with the sole and ulterior motive of coercing him into signing their PEFs, and that when he did not sign them, Lorilla boldly and shamelessly assaulted him and almost choked him to death. To prove conspiracy, Judge Barcena submitted the Affidavit[13] of

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

[12] *Id.* at 70-78.

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

Dante Quinto *(Quinto)*, Junior Process Server I, stating that immediately prior to the choking incident, he overheard Rosales utter the following remarks, "*Guyuden yun ta ikugtagugtar tay dita kanal len!"* translated as "Pull him out and we will kick him to the canal."

As to the charge of insubordination against Abadilla, Judge Barcena claimed that after he gave his verbal instruction to confer with each employee before signing their PEFs, Abadilla, in willful disregard of his order, came to his office twice to seek approval of their PEFs; that he also verbally instructed Abadilla to keep in her custody the PEFs of the OCC employees until he could have conferred with each of them, but he was surprised to find out that the said PEFs were in the custody of Lorilla, who was not authorized to keep them.

Supplemental Comment of Dupaya, Rosales and Israel

In their Supplemental Comment,[14] dated December 20, 2010, Dupaya, Rosales and Israel denied that Rosales uttered the words, "*Pull him out and we will kick him to the canal*," and claimed that the same was merely concocted in order to probably justify the unfounded theory of evident premeditation. They further stated that even assuming that the said utterances were made, there was no allegation in the affidavit of Quinto that the utterances were addressed to Judge Barcena.

In its Report,[15] dated March 26, 2012, the Office of the Court Administrator *(OCA)* recommended that the evaluation of the administrative complaint be held in abeyance until after the final resolution of the criminal case for frustrated murder filed by Judge Barcena against the respondents. It was also recommended that Lorilla be suspended until further orders from the Court due to the strained relationship between him and Judge Barcena.

In its Resolution,[16] dated July 18, 2012, the Court noted the March 26, 2012 Report of the OCA.

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[14] *Id*. at 152-159.

[15] *Id.* at 161-165.

[16] *Id.* at 166.

On September 17, 2012, the Court issued another Resolution[17] directing Executive Judge Manauis to investigate the incident and to submit a report thereon and to assign Lorilla to another court pending investigation of the incident. The Court further instructed the Clerk of Court of the RTC to inform the Court of the status of the frustrated murder case against the respondents.

On November 27, 2012, the Court received the Manifestation[18] filed by Judge Oscar T. Zaldivar, Vice-Executive Judge/Acting Executive Judge of the RTC, with the information that Executive Judge Manauis had passed away and that he was inhibiting himself from conducting the investigation of the case because Judge Barcena was his close friend.

On the same date, the Court also received the Manifestation,[19] submitted by Jane S. Paga, Clerk of Court VI, informing the Court that the OPP had filed the Information for Direct Assault with Attempted Murder against Lorilla by reason of the said incident.

Thus, upon the recommendation of the OCA, the Court, in its Resolution,[20] dated June 26, 2013, referred the investigation of the incident to Judge Conrado T. Tabaco *(Investigating Judge)* of RTC-Branch 9.

The Findings of the Investigating Judge

In his Report,[21] dated May 15, 2015, the Investigating Judge found no basis to hold Abadilla, Dupaya, Rosales, and Israel administratively liable for gross insubordination and gross disrespect to judicial authority as the theory of conspiracy had not been established and there was no showing that they disobeyed an order or directive from Judge Barcena. With respect to Lorilla, however, the Investigating Judge found that his act

[17] *Id.* at 167-168.

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

[19] *Id*. at 321.

[20] *Id*. at 418.

[21] *Id*. at 338-349.

constituted grave misconduct, having deviated from the prescribed norms of behavior demanded of court personnel, and recommended that he be suspended for a period of six *(6)* months.

The Report and Recommendation of the OCA

In its Memorandum,[22] dated August 17, 2016, the OCA found Lorilla liable for grave misconduct but dismissed the complaint against Abadilla, Dupaya and Israel for insufficiency of evidence. The OCA was of the view that the complainant failed to prove the existence of conspiracy among the respondents.

With respect to Rosales, the OCA opined that he should be held administratively liable for discourtesy as it gave credence to the statement of Quinto as to the "gutter-like" remarks uttered by Rosales at around 11:20 o'clock in the morning or immediately before the scuffle, for there could be no other conclusion except that those words were directed towards Judge Barcena. The OCA thus recommended that:

1. the instant complaint be **RE-DOCKETED** as a regular administrative matter;

2. respondent Junior Process Server James D. Lorilla, Office of the Clerk of Court, Municipal Trial Court, Lal-lo, Cagayan, be found **GUILTY** of grave misconduct and be penalized with **SUSPENSION** from office without pay for two (2) years, with **WARNING** that a repetition of the same or similar act shall be dealt with more severely;

3. respondent Roy C. Rosales be found **GUILTY** of discourtesy in the course of official duties and that he be **FINED** in the amount of 3,000.00 and **WARNED** that the repetition of a similar offense shall be dealt with severely; and

4. the charges against co-respondents Clerk of Court II Thelma S. Abadilla, Cashier I Roseller O. Israel, and Clerk IV Ulysses D. Dupaya, all of the Office of the Clerk of Court, same court, be **DISMISSED** for insufficiency of evidence.

Respectfully submitted.[23]

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[22] *Id*. at 425-432.

[23] *Id*. at 431-432.

The Ruling of the Court

Liability of Abadilla, Dupaya and Israel

The Court adopts the recommendation of the OCA to dismiss the administrative complaint against Abadilla, Dupaya and Israel for want of sufficient evidence. Judge Barcena failed to present evidence to support his accusation against them. Other than his bare assertion that the respondents conspired in planning and assaulting him, he failed to establish that there was indeed a community of criminal design existing among the respondents to commit the offense. Their mere presence at the office of Judge Barcena prior to the physical assault is not sufficient ground to hold them liable as conspirators. The existence of conspiracy cannot be presumed.[24] Like the physical act constituting the crime, conspiracy must be proven through clear and convincing evidence.[25]

Liability of Rosales

With regard to Rosales, the Court gives him the benefit of the doubt.

In administrative cases, the quantum of proof required is substantial evidence or such evidence as a reasonable mind may accept as adequate to support a conclusion.[26] The complainant has the burden of proving by substantial evidence the allegations in the complaint.

In the case at bench, there was no sufficient and convincing evidence to hold Rosales administratively liable for discourtesy. The affidavit of Quinto was devoid of any indication that the purported derogatory remarks were directed towards Judge Barcena. It merely alleged that Quinto heard Rosales utter the derogatory remarks on the morning of July 15, 2010 and that when he learned that Lorilla attacked Judge Barcena, he told Peter Cusipag what he heard because the said utterances "could

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[24] *People of the Philippines v. Samudio,* 406 Phil. 318, 333 (2001).

[25] *San Juan v. People of the Philippines*, 664 Phil. 547, 562 (2011).

[26] *Office of the Court Administrator v. Caya,* 635 Phil. 211, 217 (2010).

have pertained to Judge Barcena." The affidavit is hereby quoted, thus:

1. On July 15, 2010, around 11:20 o'clock in the morning, I was inside the office of MTC Branch 3, Lal-lo, playing the guitar and practicing for our number in the cultural presentation for the town fiesta when I heard someone utter this statement: "Guyuden yun ta ikugtakugtar tay dita kanal len!" (Pull him out and we will kick him to the canal);
2. I wanted to know who was talking so I looked out of the window and saw that it was Roy Rosales, Clerk I of OCC, MTC, Lal-lo, Cagayan, who uttered said statement;
3. Around 12:00 o'clock noon, I went home for lunch. When I reported back to office around 12:24 o'clock in the afternoon, I was informed of the incident that James Lorilla strangled Judge Barcena inside our office;
4. I also learned that prior to the incident when James Lorilla strangled Judge Barcena, Roy Rosales, Ulysses Dupaya and Roseller Israel went to our office in the company of James Lorilla;
5. So when I heard what happened to Judge Barcena, I suddenly recalled the statement which Roy Rosales uttered earlier that "Guyuden yun ta ikugtakugtar tay dita kanal len!" (Pull him out and we will kick him to the canal);
6. I related to Peter Cusipag about the statement of Roy Rosales which I heard as I thought that the statement could have pertained to Judge Barcena; and
7. I attest to the veracity of the foregoing averments.[27]

Liability of Lorilla

With respect to Lorilla, the Court agrees with the findings of the OCA that his actuations constituted grave misconduct.

Misconduct is a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, unlawful

[27] *Rollo*, p. 79.

behavior, willful in character, improper or wrong behavior.[28] Any transgression or deviation from the established norm of conduct, work-related or not, amounts to misconduct.[29] The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law, or to disregard established rules, which must be established by substantial evidence.[30]

In the present case, Lorilla denied that he assaulted Judge Barcena. He claimed that it was Judge Barcena who lambasted him with the use of insidious and insulting words and suddenly pushed him away. He explained that he merely pulled the hands of Judge Barcena as he was about to lose his balance when the former pushed him. This claim, however, was refuted by the sworn statements of Avelina S. Evangelista *(Evangelista)*[31]and Pedro U. Cusipag *(Cusipag)*.[32] Both Evangelista and Cusipag narrated that Judge Barcena went out of his chamber and asked Lorilla to call Abadilla but instead of complying, he pointed his finger towards Judge Barcena and confronted him in an angry and menacing manner. Thereafter, he forcibly grabbed Judge Barcena and arm-locked his neck and body.

Without a doubt, Lorilla failed to live up to the ethical norm expected of him as an employee of the Judiciary. Shouting at Judge Barcena and physically assaulting him within the court premises in the presence of the court employees clearly exhibit rudeness and disrespect not only towards him but to the court as well. Granting that he was provoked by Judge Barcena's uncouth behavior, his conduct remains inexcusable. Court employees are expected to be well-mannered, civil and considerate in their actuations, both in their relations with

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[28] *Re: Administrative Charge of Misconduct Relative to the Alleged Use of Prohibited Drug of Castor*, 719 Phil. 96, 100 (2013).

[29] *Dela Cruz v. Zapico*, 587 Phil. 435, 445 (2008).

[30] *Tormis v. Paredes*, A.M. No. RTJ-13-2366, February 4, 2015, 749 SCRA 505, 517-518.

[31] *Rollo*, pp. 48-50.

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

co-workers and the transacting public. Boorishness, foul language and any misbehavior in court premises must always be avoided.[33]

Time and again, the Court has stressed that fighting or misunderstanding is a disgraceful sight reflecting adversely on the good image of the Judiciary.[34] It displays a cavalier attitude towards the seriousness and dignity with which court business should be treated.[35] Professionalism, respect for the rights of others, good manners, and right conduct are expected of all judicial officers and employees.[36] Their behavior and actuations must be characterized by propriety and decorum and should at all times embody prudence, restraint, courtesy and dignity.[37]

Under Section 46 (A) (3), Rule 10 of the Revised Rules on Administrative Cases in Civil Service, grave misconduct is a grave offense punishable by dismissal even for the first offense. In the present case, the Court notes that this is not the first time that Lorilla was found administratively liable. In the case of *Aquino v. Israel,*[38] he was found liable for misconduct and fined in the amount of ₱1,000.00 for punching a co-employee. He seemed undeterred despite the earlier warning that any repetition of similar infraction would be dealt with more severely. Given the foregoing, the recommended penalty of suspension for a period of two years is insufficient. The Court imposes upon him the supreme penalty of dismissal. He has no place in the Judiciary.

On a final note, the Court is not unaware of the heavy case load of the first level courts but this incident could have been avoided if proper communication was made to each and every office under Judge Barcena's supervision. Judge Barcena is advised to implement a more efficient and systematic approach in the

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[33] *De Vera, Jr. v. Rimando*, 551 Phil. 471, 478 (2007).

[34] *Aquino v. Israel*, A.M. No. P-04-1800, March 25, 2004, 426 SCRA 266, 270.

[35] *Quiroz v. Orfila,* 338 Phil. 828, 835 (1997).

[36] *Office of the Court Administrator v. Caya*, 635 Phil. 211, 219 (2010).

[37] *Dela Cruz v. Zapico*, 587 Phil. 435, 445 (2008).

[38] *Supra* note 34.

supervision of employees within his administrative area like keeping a schedule of signing documents. He is also reminded that courtesy is likewise expected of him, in his conduct and language, towards his subordinates. Needless to state, the use of vile and demeaning words should be completely avoided.

WHEREFORE, finding James D. Lorilla, Junior Process Server, Office of the Clerk of Court, Municipal Trial Court, Lal-lo, Cagayan, **GUILTY** of Grave Misconduct, the Court hereby orders his **DISMISSAL** from the service with **FORFEITURE** of all benefits, except accrued leave credits, and with prejudice to reemployment in any branch or instrumentality of the government including government-owned or controlled corporations.

The complaint against Thelma S. Abadilla, Clerk of Court II; Roseller O. Israel, Cashier I; Ulysses D. Dupaya, Clerk IV; and Roy Rosales, Clerk III, all of Office of the Clerk of Court, Municipal Trial Court, Lal-lo, Cagayan, is **DISMISSED** for insufficiency of evidence.

SO ORDERED.

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

EN BANC

[A.M. No. P-16-3615. January 24, 2017]
(Formerly A.M. No. 15-8-249-RTC)

MARITA TOLENTINO and FELY SAN ANDRES, *complainants, vs.* **SHERIFF IV GLENN A. UMALI, Regional Trial Court, Branch 10, Malolos City, Bulacan,** *respondent.*

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; RESPONDENT FOUND GUILTY OF GRAVE MISCONDUCT; PROPER PENALTY.— Under Section 46 (A)(3), Rule 10 on the Schedule of Penalties of the Revised Rules on Administrative Cases in the Civil Service (RRACCS), grave misconduct is punishable by dismissal from service in the first instance. The penalty of dismissal shall carry with it cancellation of eligibility, forfeiture of retirement benefits, perpetual disqualification from holding public office and being barred from taking civil service examinations. Umali's bare assertion that his failure to turn over the judgment debt in accordance with Rule 39 of the Rules of Court resulted from a "misunderstanding" is specious, at best. The fact that Umali did not offer any form of explanation as to the nature, cause and incidents of this so-called misunderstanding shows that it was a mere afterthought and a lame excuse offered after his misdeed had been discovered. Moreover, while the Court is aware that it may consider circumstances to mitigate the imposable penalty prescribed under the RRACCS, no such circumstance has been invoked, nor does any appear from the records of the case.

R E S O L U T I O N

***PER CURIAM*:**

For resolution is the Memorandum[1] dated September 21, 2016 of the Office of the Court Administrator (OCA), recommending that respondent Glenn A. Umali (Umali) be found guilty of grave misconduct, and meted the penalty of dismissal from service with forfeiture of retirement and other benefits except accrued leave credits, and perpetual disqualification from re-employment in any government agency or instrumentality.

On February 4 and 5 of 2015, Judge Corazon A. Domingo-Rañola (Judge Rañola), Presiding Judge of the Regional Trial

[1] *Rollo*, pp. 11-14.

Court (RTC) of Malolos City, Branch 10, received separate letter-complaints[2] from Marita Tolentino (Tolentino) and Fely San Andres (San Andres), respectively. The letter-complaints alleged that Umali received the amount of One Hundred Thousand Pesos (₱100,000.00) from San Andres representing payment of the judgment debt awarded in Tolentino's favor in Criminal Case No. 01-7892 then pending before the Municipal Trial Court (MTC) of Pulilan, Bulacan. It appears, however, that such amount was neither delivered to Tolentino or the clerk of court, nor was it deposited to the MTC's bank account. Thus, the letter-complaints requested a conference before Judge Rañola to resolve the issue.

Subsequently, Judge Rañola held the requested conference, during which Umali agreed to pay the unremitted judgment debt on or before March 13, 2015.[3]

Thereafter, Judge Rañola reported the matter to Executive Judge Ma. Theresa V. Mendoza-Arcega (Judge Arcega) of the RTC of Bulacan through a Memorandum dated February 17, 2015.[4] Judge Arcega referred the Memorandum to the OCA for appropriate action.[4-a]

Pursuant to the OCA's directive, Umali filed his undated comment to the letter-complaints, asserting that the matter was merely a result of a misunderstanding, and that it had been resolved, since he already remitted the full amount of the judgment debt in Tolentino's favor.[5]

After an evaluation of the records of the case and the submissions of the parties, the OCA made the following recommendations in its Report dated September 21, 2016:

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[2] *Id.* at 2, 4.

[3] *Id.* at 3.

[4] *Id.*

[4-a] *Id.* at 1.

[5] *Id.* at 6, 11.

The rule is clear - if the judgment obligee is not present to receive the payment, the judgment obligor shall give the payment to the sheriff. Thereafter, the sheriff shall turn over the amount paid to the clerk of court within the same day, or if the same is not possible, the sheriff shall deposit the said amount to the depository bank of the court.

Obviously, respondent Sheriff Umali failed to comply with the above-cited rule. **The records reveal that he did not give the amount paid to the clerk of court, nor did he deposit the money to the court's depository bank. As above-discussed, he only remitted the PhP 100,000.00 to Tolentino after the matter was brought to the attention of Judge Rañola. In short, his payment of the PhP 100,000.00 was a result of their conference with Judge Rañola. There is indeed a strong ground to believe that respondent Sheriff Umali had the initial intention of misappropriating the subject amount; and if it was not because of Tolentino and San Andres' letter (sic) to Judge Rañola, the malversation could have been fully consummated.**

Verily, despite the subsequent payment by respondent Sheriff Umali of PhP 100,000.00 to Tolentino, this Office nevertheless opines that he is guilty of grave misconduct. Apart from the clear showing of respondent Sheriff Umali's flagrant disregard of an established rule, his nonfeasance connotes the presence of corruption. Definitely, this is not a case of simple miscommunication or misunderstanding as contended by respondent Sheriff Umali.

Misconduct has been defined as an intentional wrongdoing or a deliberate violation of a rule of law or standard of behavior, especially by a government official. **A misconduct is grave where the elements of corruption, clear intent to violate the law or flagrant disregard of established rule (sic) are present.**

In view thereof, considering that under Section 52, Rule IV of the Uniform Rules on Administrative Cases in the Civil Service, grave misconduct is a grave offense which is punishable by dismissal even on the first offense, respondent Sheriff Umali may therefore be dismissed from the service.[6] (Emphasis supplied)

The Court agrees with the OCA's recommendation. Under Section 46 (A)(3), Rule 10 on the Schedule of Penalties of the

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

Revised Rules on Administrative Cases in the Civil Service (RRACCS),[7] grave misconduct is punishable by dismissal from service in the first instance. The penalty of dismissal shall carry with it cancellation of eligibility, forfeiture of retirement benefits, perpetual disqualification from holding public office and being barred from taking civil service examinations.[8]

Umali's bare assertion that his failure to turn over the judgment debt in accordance with Rule 39 of the Rules of Court resulted from a "misunderstanding" is specious, at best. The fact that Umali did not offer any form of explanation as to the nature, cause and incidents of this so-called misunderstanding shows that it was a mere afterthought and a lame excuse offered after his misdeed had been discovered. Moreover, while the Court is aware that it may consider circumstances to mitigate the imposable penalty prescribed under the RRACCS, no such circumstance has been invoked, nor does any appear from the records of the case.

WHEREFORE, the Court finds respondent Sheriff IV Glenn A. Umali **GUILTY** of grave misconduct, meriting the penalty of **DISMISSAL** from service, with **FORFEITURE** of retirement and other benefits, except accrued leave credits, and **PERPETUAL DISQUALIFICATION** from re-employment in any government agency or instrumentality, including any government-owned and controlled corporation or financial institution.

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

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[7] Civil Service Commission Resolution No. 1101502, promulgated on November 8, 2011.

[8] *Id.* at Section 52(a).

EN BANC

[A.M. No. RTJ-16-2472. January 24, 2017]
(Formerly OCA IPI No. 13-4141-RTJ)

JUDGE MARTONINO R. MARCOS (Retired), *complainant, vs.* **HON. PERLA V. CABRERA-FALLER, Presiding Judge, Regional Trial Court, Branch 90, Dasmariñas City, Cavite,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; JUDGES; CHARGE OF GROSS IGNORANCE OF THE LAW; AN ORDER DIRECTING THE IMMEDIATE ARCHIVING OF CRIMINAL CASE WITHOUT CITING ANY GROUND FOR THE SUSPENSION OF THE PROCEEDINGS CONSTITUTES GRAVE ABUSE OF DISCRETION; ARCHIVING OF A CRIMINAL CASE WHEN MAY BE ORDERED BY THE JUDGE. — Judge Cabrera-Faller violated Administrative Circular No. 7-A-92 when she issued the June 3, 2013 Order directing the immediate archiving of Criminal Case No. 11862-13, after ordering the issuance of the warrants of arrest against the accused in the same order. The archiving of cases is a generally acceptable measure designed to shelve cases but is done only where no immediate action is expected. A.C. No. 7-A-92 enumerated the circumstances when a judge may order the archiving of a criminal case as follows: (a) If after the issuance of the warrant of arrest, the accused remains at large for six (6) months from the delivery of the warrant to the proper peace officer, and the latter has explained the reason why the accused was not apprehended; or (b) When proceedings are ordered suspended for an indefinite period because: (1) the accused appears to be suffering from an unsound mental condition which effectively renders him unable to fully understand the charge against him and to plead intelligently, or to undergo trial, and he has to be committed to a mental hospital; (2) a valid prejudicial question in a civil action is invoked during the pendency of the criminal case unless the civil and the criminal cases are consolidated; and 3) an interlocutory order or incident in the criminal case is elevated

to, and is pending resolution/ decision for an indefinite period before a higher court which has issued a temporary restraining order or writ of preliminary injunction; and 4) when the accused has jumped bail before arraignment and cannot be arrested by his bondsman. When Judge Cabrera-Faller issued the warrants, she also archived the case. She, however, did not cite any ground in A.C. No. 7-A-92 for the suspension of the proceedings. What she did was unprecedented. She did not even bother to wait for the return of the warrants or wait for the six-month period. By doing so, she exhibited bias, if not incompetence and ignorance of the law and jurisprudence. It could also be that she knew it, but **she opted to completely ignore the law or the regulations.** Certainly, it was a case of grave abuse of discretion as her actuations were not in accord with law or justice.

2. ID.; ID.; ID.; A JUDGE IS NOT REQUIRED TO PERSONALLY EXAMINE THE COMPLAINANT OR HIS WITNESSES, BUT HE/SHE IS OBLIGED TO PERSONALLY EVALUATE THE REPORT AND THE SUPPORTING DOCUMENTS SUBMITTED BY THE PROSECUTOR REGARDING THE EXISTENCE OF PROBABLE CAUSE BEFORE ORDERING THE ISSUANCE OF A WARRANT OF ARREST.— Judge Cabrera-Faller showed manifest bias and partiality, if not gross ignorance of the law, when she issued the June 13, 2013 Order recalling the warrants of arrest against accused Alim, Amante and Rosales claiming that they were issued inadvertently. In the judicial determination of probable cause, no less than the Constitution mandates a judge to *personally* determine the existence of probable cause before issuing a warrant of arrest. This has been embodied in Section 2, Article III of the Philippine Constitution and Section 6, Rule 112 of the Rules of Criminal Procedure. Clearly, Judge Cabrera-Faller was mandated to personally evaluate the report and the supporting documents submitted by the prosecutor regarding the existence of probable cause and, on the basis thereof, to issue a warrant of arrest. Though she was not required to personally examine the complainant or his witnesses, she was obliged to personally evaluate the report and the supporting documents submitted by the prosecutor before ordering the issuance of a warrant of arrest.

3. ID.; ID.; ID.; WHEN THE INEFFICIENCY SPRINGS FROM FAILURE TO CONSIDER SO BASIC AND ELEMENTAL A RULE, LAW OR PRINCIPLE IN THE DISCHARGE OF DUTIES, THE JUDGE IS EITHER INSUFFERABLY INCOMPETENT AND UNDESERVING OF THE POSITION SHE HOLDS OR IS TOO VICIOUS THAT THE OVERSIGHT OR OMISSION WAS DELIBERATELY DONE IN BAD FAITH AND IN GRAVE ABUSE OF JUDICIAL AUTHORITY.— In the June 13, 2013 Order, Judge Cabrera-Faller recalled the warrants of arrest against three of the accused. She, however, failed to explain why she issued the warrants inadvertently. She merely wrote that the warrants of arrest were *"inadvertently issued"* without any explanation why there was such inadvertence in the issuance. The Court cannot accept this. There was clearly an abdication of the judicial function. The records of the case were forwarded by the OCP and they contained not only the information but all the supporting documents like the statement of Cornelio Marcelo and the corroborating statements of Cabansag and Ragaza and those of Rene Andaya and Roger Atienza, the farm overseers at the Veluz Farm. It could only mean that she failed to comply with her constitutional mandate to personally determine the existence of probable cause before ordering the issuance of the warrants of arrest. As the presiding judge, it was her task, upon the filing of the Information, to first and foremost determine the existence or non-existence of probable cause for the arrest of the accused. It was incumbent upon her to assess the resolution, affidavits and other supporting documents submitted by the prosecutor to satisfy herself that probable cause existed and before a warrant of arrest could be issued against the accused. If she did find the evidence submitted by the prosecutor to be insufficient, she could order the dismissal of the case, or direct the investigating prosecutor either to submit more evidence or to submit the entire records of the preliminary investigation, or she could even call the complainant and the witness to answer the courts probing questions to enable her to discharge her duty. Most probably, she did her duty to examine and analyze the attached documents but because she took pity on the young accused (never mind the victim), she chose to ignore or disregard them. Nonetheless, **"when the inefficiency springs from failure to consider so basic and elemental a rule, law or principle**

in the discharge of duties, the judge is either insufferably incompetent and undeserving of the position she holds or is too vicious that the oversight or omission was deliberately done in bad faith and in grave abuse of judicial authority."

4. ID.; ID.; ID.; ALTHOUGH A MOTION TO DISMISS THE CASE OR WITHDRAW THE INFORMATION IS ADDRESSED TO THE COURT, ITS GRANT OR DENIAL MUST ALWAYS BE IN THE FAITHFUL EXERCISE OF JUDICIAL DISCRETION AND PREROGATIVE, FOR THE JUDGE'S ACTION MUST NEITHER IMPAIR THE SUBSTANTIAL RIGHTS OF THE ACCUSED NOR THE RIGHT OF THE STATE AND THE OFFENDED PARTY TO DUE PROCESS OF LAW.— [J]udge Cabrera-Faller should be held administratively accountable for hastily dismissing the Criminal Case No. 11862-13. The Court cannot ignore her lack of prudence for it is the Court's duty to protect and preserve public confidence in our judicial system. The well-settled rule that once a complaint or information is filed before the trial court, any disposition of the case, whether as to its dismissal or the conviction or acquittal of the accused, rests on the sound discretion of the said court is not absolute. Although a motion to dismiss the case or withdraw the Information is addressed to the court, its grant or denial must always be in the faithful exercise of judicial discretion and prerogative. For **the judge's action must neither impair the substantial rights of the accused nor the right of the State and the offended party to due process of law.**

5. ID.; ID.; ID.; A JUDGE MAY DISMISS THE CASE FOR LACK OF PROBABLE CAUSE ONLY IN CLEAR-CUT CASES WHEN THE EVIDENCE ON RECORD PLAINLY FAILS TO ESTABLISH PROBABLE CAUSE — THAT IS WHEN THE RECORDS READILY SHOW UNCONTROVERTED, AND THUS, ESTABLISHED FACTS WHICH UNMISTAKABLY NEGATE THE EXISTENCE OF THE ELEMENTS OF THE CRIME CHARGED.— Judge Cabrera-Faller must be reminded that 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 for it would be unfair to require the prosecution to present all the evidence needed to

secure the conviction of the accused upon the filing of the information against the latter. A judge may dismiss the case for lack of probable cause **only in clear-cut cases** when the evidence on record plainly fails to establish probable cause - that is when the records readily show uncontroverted, and thus, established facts which unmistakably negate the existence of the elements of the crime charged.

6. ID.; ID.; ID.; ALTHOUGH JUDGES ARE GENERALLY NOT ACCOUNTABLE FOR ERRONEOUS JUDGMENTS RENDERED IN GOOD FAITH, SUCH DEFENSE IN SITUATIONS OF INFALLIBLE DISCRETION ADHERES ONLY WITHIN THE PARAMETERS OF TOLERABLE JUDGMENT AND DOES NOT APPLY WHERE THE BASIC ISSUES ARE SO SIMPLE AND THE APPLICABLE LEGAL PRINCIPLE EVIDENT AND BASIC AS TO BE BEYOND PERMISSIBLE MARGINS OF ERROR.— Hazing is commonly characterized by secrecy and silence and to require the prosecution to indicate every step of the planned initiation rite in the information at the inception of the criminal case would be a strenuous task. Although a speedy determination of an action or proceeding implies a speedy trial, it should be borne in mind that speed is not the chief objective of a trial. It must be stressed that a careful and deliberate consideration for the administration of justice is more important than a race to end the trial. Although judges are generally not accountable for erroneous judgments rendered in good faith, such defense in situations of infallible discretion adheres only within the parameters of tolerable judgment and does not apply where the basic issues are so simple and the applicable legal principle evident and basic as to be beyond permissible margins of error.

7. ID.; ID.; ID.; WHEN THE LAW IS SUFFICIENTLY BASIC, A JUDGE OWES IT TO HIS OFFICE TO SIMPLY APPLY IT; ANYTHING LESS THAN THAT WOULD BE CONSTITUTIVE OF GROSS IGNORANCE OF THE LAW.— Time and again, the Court has earnestly reminded judges to be extra prudent and circumspect in the performance of their duties. This exalted position entails a lot of responsibilities, foremost of which is proficiency in the law. They are expected to exhibit more than just a cursory acquaintance with statutes and procedural rules and to apply

them properly in all good faith. **When the law is sufficiently basic, a judge owes it to his office to simply apply it; anything less than that would be constitutive of gross ignorance of the law.**

8. ID.; ID.; ID.; JUDGES ARE DUTY BOUND TO RENDER JUST, CORRECT AND IMPARTIAL DECISIONS AT ALL TIMES IN A MANNER FREE OF ANY SUSPICION AS TO HIS FAIRNESS, IMPARTIALITY OR INTEGRITY, AS PUBLIC CONFIDENCE IN THE JUDICIARY IS ERODED BY IRRESPONSIBLE OR IMPROPER CONDUCT OF JUDGES.— [J]udges are duty bound to render just, correct and impartial decisions at all times in a manner free of any suspicion as to his fairness, impartiality or integrity. The records must be free from the slightest suspicion that the trial court seized upon an opportunity to either free itself from the usual burdens of presiding over a full-blown court battle or worse, to give undue advantage or favors to one of the litigants. Public confidence in the Judiciary is eroded by irresponsible or improper conduct of judges. The appearance of bias or prejudice can be as damaging to public confidence and the administration of justice as actual bias or prejudice.

9. ID.; ID.; CODE OF JUDICIAL CONDUCT; A JUDGE IS EXPECTED TO KEEP ABREAST OF THE LAWS AND PREVAILING JURISPRUDENCE, FOR IGNORANCE OF THE LAW BY A JUDGE CAN EASILY BE THE MAINSPRING OF INJUSTICE.— [R]ule 1.01 of the Code of Judicial Conduct requires a judge to be the embodiment of competence, integrity and independence. They are likewise mandated to be faithful to the law and to maintain professional competence at all times. A judge owes the public and the court the duty to be proficient in the law. He is expected to keep abreast of the laws and prevailing jurisprudence. Basic rules must be at the palms of their hands for ignorance of the law by a judge can easily be the mainspring of injustice. Unfortunately, Judge Cabrera-Faller fell short of this basic canon. Her utter disregard of the laws and rules of procedure, to wit: the immediate archiving of Criminal Case No. 11862-13, the recall of the warrant of arrest which she claimed were issued inadvertently and the hasty dismissal of the case displayed her lack of competence and probity, and can only be considered as

grave abuse of authority. All these constitute gross ignorance of the law and incompetence.

10. ID.; ID.; GROSS IGNORANCE OF THE LAW; PROPER PENALTY; PENALTY OF DISMISSAL FROM SERVICE IMPOSED AGAINST THE RESPONDENT- JUDGE FOR BLATANT VIOLATION OF THE LAW AND RULES AND HER GRIEVOUS EXERCISE OF DISCRETION.— Under Section 8, Rule 140 of the Rules of Court, as amended by A.M. No. 01-8-10-SC, gross ignorance of the law is a serious charge, punishable by dismissal from service, suspension from office without salary and other benefits for more than three *(3)* but not exceeding six *(6)* months, or a fine of more than ₱20,000.00 but not exceeding ₱40,000.00. x x x . Accordingly, considering the blatant violation of the law and rules committed by Judge Cabrera-Faller and her grievous exercise of discretion, the appropriate penalty should be dismissal from the service, with forfeiture of retirement benefits, except leave credits, and with prejudice to re-employment in any branch or instrumentality of the government, including government-owned and controlled corporations.

D E C I S I O N

***PER CURIAM*:**

Before the Court is an administrative complaint[1] against Judge Perla V. Cabrera-Faller *(Judge Cabrera-Faller)* of the Regional Trial Court, Branch 90, Dasmariñas City, Cavite *(RTC),* filed by Martonino R. Marcos, a retired judge *(complainant),* for ignorance of the law, misconduct, violation of the anti-graft and corrupt practices act, and for knowingly rendering an unjust judgment/order.

The Antecedents

The controversy stemmed from the death of complainant's grandson, Marc Andrei Marcos *(Marc Andrei),* during the

[1] *Rollo,* pp. 1-8.

initiation rites of Lex Leonum Fraternitas *(Lex Leonum)* held on July 29, 2012 at the Veluz Farm, Dasmariñas City, Cavite.

A preliminary investigation was conducted and, thereafter, the Office of the City Prosecutor *(OCP)* issued its Resolution,[2] dated May 8, 2013, recommending the prosecution of several members of Lex Leonum for Violation of Republic Act *(R.A.)* No. 8049, otherwise known as *The Anti-Hazing Law*. In the same resolution, the OCP also recommended that Cornelio Marcelo *(Marcelo)*, the person assigned to be the buddy or "angel" of Marc Andrei during the initiation rites, be discharged as a state witness pursuant to the provisions of Section 12 of R.A. No. 6981.[3]

Thereafter, the Information[4] for Violation of R.A. No. 8049 was filed against Jenno Antonio Villanueva *(Villanueva)*, Emmanuel Jefferson Santiago, Richard Rosales *(Rosales)*, Mohamad Fyzee Alim *(Alim)*, Chino Daniel Amante *(Amante)*, Julius Arsenio Alcancia, Edrich Gomez, Dexter Circa, Gian Angelo Veluz, Glenn Meduen, alias Tonton, alias Fidel, alias E.R., and alias Paulo, before the RTC. The case was docketed as Criminal Case No. 11862-13.

Finding probable cause to sustain the prosecution of the accused, Judge Cabrera-Faller issued the Order,[5] dated June 3, 2013, directing the **issuance of a warrant of arrest** and, at the same time, the **archiving of the entire record of the case** until the arrest of the accused.

On June 13, 2013, acting on the Omnibus Motion filed by Rosales, Alim and Amante, Judge Cabrera-Faller issued another Order[6] directing the **recall of the warrants of arrest of the three accused** which she claimed were issued **inadvertently.**

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[2] *Id*. at 18-26.

[3] An Act Providing for a Witness Protection, Security and Benefit Program and for other purposes.

[4] *Rollo*, pp. 13-17.

[5] *Id*. at 9.

[6] *Id*. at 12.

On August 15, 2013, acting on the separate motions for the determination of probable cause and to withhold issuance of warrants of arrest[7] and extremely urgent motion to quash warrant of arrest[8] filed by the accused, Judge Cabrera-Faller issued the *Omnibus Order*,[9] ***quashing, lifting and setting aside the warrants*** *for their arrest* and ultimately ***dismissing*** *the case against all of them for* ***lack of probable cause.***

According to Judge Cabrera-Faller, she found no probable cause to indict the accused for violation of R.A. No. 8049 as the statement of Marcelo and those of the other accused "were not put in juxtaposition with each other for a clearer and sharper focus of their respective weight and substance."[10] To her, "there were nagging questions left unanswered by the testimony of Marcelo and some improbabilities therein that boggle the mind and disturb the conscience into giving it absolute currency and credence."[11] In her view, "the statement of Marcelo simply depicted the stages of initiation rites"[12] and failed to show that the accused conspired to inflict fatal injuries on Marc Andrei.[13] She found the statements of the prosecution witnesses, Marcelo Cabansag *(Cabansag)* and Jan Marcel V. Ragaza *(Ragaza)* either untruthful, immaterial and incompetent or brimming with flip flopping testimonies. She brushed aside the admission of the accused that initiation rites were indeed conducted on July 29, 2012 and that they were allegedly present in the different stages of the initiation rites, and simply believed the version of the accused that it was Marcelo, the recruiter and "angel" of Marc Andrei, who inflicted the fatal blows on him, causing his death. Thus, the decretal portion of the Omnibus Order reads:

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[7] Filed by Gian Veluz and Edrich Gomez, Julius Arsenio A. Alcancia, Dexter S. Garcia, Fyzee Alim, Richard Rosales, and Chino Amante.

[8] Filed by Jenno Antonio Villanueva.

[9] *Rollo*, pp. 749-768.

[10] *Id*. at 766.

[11] *Id*. at 766.

[12] *Id*.

[13] *Id*.

IN VIEW OF THE FOREGOING, the court holds to **grant** the motions filed by the following accused, to wit:

(a) The motion for determination of probable cause filed by the accused Gian Veluz and Edrich Gomez, which was received by this court on May 20, 2013;

(b) The motion for determination of probable cause, filed by the accused Julius Arsenio A. Alcancia and Dexter S. Garcia;

(c) The motion for the determination of probable cause, filed by the accused Mahammad Fyzee Alim, Richard Rosales and Chino Amante, which was received by this court on May 23, 2013; although a warrant was issued inadvertently against the accused on June 3, 2013, the same was lifted and recalled in view of the subject motion;

(d) The motion for the determination of probable cause, filed by Emmanuel Jefferson A. Santiago, which was received by this court on May 29, 2013, although a warrant was issued inadvertently against the accused on June 3, 2013; the same was lifted and recalled in view of the subject motion; [and]

(e) The extremely urgent motion to quash the warrant of arrest, filed by the accused Jenno Antonio Villanueva on June 14, 2013.

ACCORDINGLY, the warrant for the arrest, dated June 3, 2013, is hereby quashed, lifted and set aside, and this case is hereby **DISMISSED** in so far as all the accused named in the information is concerned, for the reasons already afore-stated.

SO ORDERED. [Emphases supplied]

The order of dismissal prompted complainant to file this administrative case against Judge Cabrera-Faller. In his Letter-Complaint,[14] he alleged, among others, that:

1. On June 3, 2013, the Hon. Perla V. Cabrera-Faller issued an Order in Crim. Case No. 11862-13 stating that *"Finding probable cause to sustain the prosecution of the above-named accused for the crime charged in the criminal information, let a warrant for their arrest be issued, in the meantime sent the entire record of this case to the ARCHIVES until the said accused shall have been arrested."*

[14] *Id*. at 1-8.

However, on June 13, 2013, the Hon. Perla V. Cabrera-Faller issued another order recalling the warrant against accused Emmanuel Jefferson A. Santiago because the same was allegedly INADVERTENTLY issued.

The actuations of the Hon. Perla V. Cabrera-Faller clearly demonstrate her incompetence and gross ignorance of the law and jurisprudence. Section 6, Rule 112 of the Rules of Court provides that "*the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. If he finds probable cause, he shall issue a warrant of arrest.*" When she issued the Order dated June 3, 2013, she certified that she personally evaluated the resolution of the prosecutor and its supporting evidence and ruled that there was probable cause so she directed the issuance of warrants of arrest against all the accused. When she subsequently held that the warrant of arrest was inadvertently issued against accused Emmanuel Jefferson A. Santiago, does this mean that she did not personally evaluate the records of the case before directing the issuance of a warrant of arrest against all the accused? Does this mean that the warrants of arrests issued against all the other accused were also INADVERTENTLY issued? Does this mean that the Order dated June 3, 2013 finding probable cause against all the other accused was likewise INADVERTENTLY issued considering the fact that the basis for the issuance of the warrants of arrest against all the accused is the said order dated June 3, 2013? A judge who issues a warrant of arrest INADVERTENTLY has no place in the judiciary because such actuation clearly shows her incompetence and gross ignorance of both substantive and procedural laws.

The Hon. Perla V. Cabrera-Faller could likewise not claim that the warrant of arrest was INADVERTENTLY issued because of the filing of the Omnibus Motion by accused Emmanuel Jefferson A. Santiago. It must be pointed out that when the Hon. Perla V. Cabrera-Faller issued the Order, dated June 3, 2013, finding probable cause against all the accused and directed the issuance of a warrant of arrest against all the accused, the said motion was already filed with the Honorable Court. Despite the fact that the said Omnibus Motion was already filed with the court, the Hon. Perla V. Cabrera-Faller still found probable cause and directed the issuance of warrants of arrests against all the accused in its Order dated June 3, 2013. Consequently, **it could not be said that the warrant of arrest issued against the accused was INADVERTENTLY issued. It could only be surmised**

that there are far more other reasons why the warrant of arrest was recalled but definitely not due to its alleged INADVERTENT issuance. Unless, of course, the Hon. Perla V. Cabrera-Faller admits issuing the Order dated June 3, 2013 without evaluating the resolution of the public prosecutor and its supporting evidence.

Very clearly, the Hon. Perla V. Cabrera-Faller manifested her incompetence and/or gross ignorance of the law by issuing the Order, dated June 13, 2013. She was probably swayed by reasons not based on the law but probably for some other reasons to the great damage and prejudice of the relatives of Marc Andrei Marcos whose life was lost at such a very young age.

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2. On August 15, 2013, Hon. Perla V. Cabrera-Faller again issued an Omnibus Order in Criminal Case No. 11862-13 quashing, lifting and setting aside the warrant of arrest, dated June 3, 2013, and **dismissing** the case against all the accused in Criminal Case No. 11862-13. In issuing the said Omnibus Order, the Hon. Perla V. Cabrera-Faller again demonstrated her incompetence and/ or gross ignorance of the law as well as manifest biased in favor of the accused in the said case.

   In dismissing the case against the accused, the Hon. Perla V. Cabrera-Faller ruled in its Findings and Conclusions that Marcelo's statement and the statements of the accused were not put in juxtaposition with each other for a clearer and sharper focus of their respective weight and substance. She then further held that the information in Criminal Case No. 11862-13 was filed by the Office of the City Prosecutor of Dasmariñas City only on the basis of the lone statement of Cornelio Marcelo, without any corroborating testimony and that the Office of the City Prosecutor of Dasmariñas City, Cavite, was swayed by public pulse, considering the media mileage caused by the incident. **These rulings of the Hon. Perla V. Cabrera-Faller are based solely on her own conjectures and pre-determined decision to dismiss the case as clearly shown by the fact that she recalled the warrants of arrests she earlier directed to be issued even <u>without conducting hearings and without waiting for any comment from the public and private prosecutors.</u>**

   A perusal of the Resolution, dated March 1, 2013, will readily show that the counter-affidavits of the accused who submitted

their counter-affidavits were duly considered in the issuance of the resolution. In fact, a summary of their allegations were even put in the body of the said Resolution. While the Office of the City Prosecutor of Dasmariñas City, Cavite, might not have presented the resolution in the format desired by the Hon. Perla V. Cabrera-Faller, it does not mean that the Office of the City Prosecutor did not weigh the substance of the statements of the accused and the witnesses presented for purposes of determining probable cause. The ruling of the Hon. Perla V. Cabrera-Faller that the information in the case was filed by the Office of the City Prosecutor only on the basis of the statement of Cornelio Marcelo, without any corroborating testimony, likewise shows her incompetence and manifests biased in favor of the accused. **The statement of Cornelio Marcelo was corroborated by the statements of Manuel Adrian Cabansag and Jan Marcel V. Ragasa.** A perusal of the statements of the said neophytes clearly shows that they were subjected to hazing, together with the late Marc Andrei Marcos and other neophytes, at the Veluz Farm in Dasmariñas City, Cavite, by the members of the Lex Leonum Fraternity. **The fact of hazing at the Veluz Farm was likewise corroborated by statements of Rene Andaya and Roger Atienza, farm overseers at the Veluz Farm.** Consequently, the **sweeping ruling by the Hon. Perla V. Cabrera-Faller that the information was filed only on the basis of the statement of Cornelio Marcelo, without corroborating testimony, and that the Office of the City Prosecutor was swayed by public pulse is absolutely false and without any basis.**

In dismissing the case, the Hon. Perla V. Cabrera-Faller likewise held that the statement of Marcelo merely depicted the stages of the initiation rites. However, *she conceded that there were physical infliction of the neophytes but further ruled that the statement did not as much show that the accused conspired to inflict fatal injuries on this particular neophyte, Andrei Marcos, and further ruled that conspiracy was not even established. She further ruled that the story of Marcelo that the neophytes were subjected to excessive beating with paddles and belts during the initiation rites is incredible and uncorroborated.* These **rulings of the Hon. Perla V. Cabrera-Faller show her incompetence and gross ignorance as a judge.** Contrary to said rulings of the Hon. Perla V. Cabrera-Faller, the statement of Cornelio Marcelo did not just depict the stages of initiation rites but detailed what was actually done to Marc Andrei

Marcos and other neophytes during the initiation rites which resulted to the death of the late Marc Andrei Marcos. This was corroborated by the statement of Manuel Adrian Cabansag and Jan Marcel V. Ragasa. Cornelio Marcelo stated that Marc Andrei Marcos was hit with paddle, belt, and/or punched on the thighs and upper arms during the different parts of the initiation rites. This was corroborated by the statements of Manuel Adrian Cabansag and Jan Marcel V. Ragasa, two (2) neophytes who underwent initiation rites with Marc Andrei Marcos and other neophytes, who stated that they were likewise beaten with paddle at their thighs and/or arms during the different stages of the initiation rites. Very clearly, the Hon. Perla V. Cabrera-Faller is incompetent and/ or blindfolded just like the neophytes and failed or refused to see that the statement of Cornelio Marcelo was corroborated by the statements of Manuel Adrian Cabansag and Jan Marcel V. Ragasa.

The Hon. Perla V. Cabrera-Faller likewise ruled that the statement of Marcelo did not show that the accused have conspired to inflict fatal injuries on this particular neophyte, Andrei Marcos, then proceeds to posit the question *"Is it reasonable and normal to suppose that all the accused resolved to paddle and hit Andrei Marcos to death?* Then ruled *finally that no one is to be blamed for the death of Andrei Marcos.* These **rulings** of the Hon. Perla V. Cabrera-Faller **clearly shows her incompetence and gross ignorance of our existing laws.** It likewise shows her manifest bias in favor of the accused in this case. **Section 4 of RA 8049 provides** that ***"If the person subjected to hazing or other forms of initiation rites suffers any physical injury or dies as a result thereof, the officers and members of the fraternity, sorority or organization who actually participated in the infliction of physical harm shall be liable as principals x x x."*** Based on this provision of law, **there is no need to prove that the accused has conspired to inflict fatal injuries to Marc Andrei Marcos during the latter's initiation rites. There is no need to prove that the accused resolved to paddle and hit Marc Andrei Marcos to death. It is more than sufficient to prove that Marc Andrei Marcos was subjected to hazing and initiation rites and he died as a result thereof. In fact, mere presence during the hazing or initiation rites is already a *prima facie* evidence of the participation therein as principal unless he prevented the commission of the acts (Section 4, RA 8049).**

The Hon. Perla V. Cabrera-Faller then ruled that she "cannot

somehow consign the above-named accused to a life of untold infamy and cannot in conscience consign all the accused to the dustbin of history simply on the basis of the uncorroborated and incredible lone statement of Cornelio Marcelo" and proceeded to dismiss the case. In coming up with this ruling and dismissing the case, the Hon. Perla V. Cabrera-Faller again manifested her incompetence and gross ignorance of existing laws. It must be pointed out that the Hon. Perla V. Cabrera-Faller is only called upon to determine the existence of probable cause for purposes of the issuance of warrants of arrest against the accused. She is not being called upon yet to determine the guilt of the accused beyond reasonable doubt. As held by the Supreme Court in Pp. vs. CA, et al. (G.R. No. 126005 January 21, 1999), the judge should not override the public prosecutor's determination of probable cause to hold an accused for trial on the ground that the evidence presented to substantiate the issuance of an arrest warrant was insufficient. If the information is valid on its face, and there is no showing of manifest error, grave abuse of discretion and prejudice on the part of the public prosecutor, the trial court should respect such determination. The Supreme Court further held in the same case that the rights of the people from what could sometimes be an "oppressive" exercise of government prosecutorial powers do need to be protected when circumstances so require. But just as we recognize this need, we also acknowledge that the State must likewise be accorded due process. Thus, when there is no showing of nefarious irregularity or manifest error in the performance of a public prosecutor's duties, courts ought to refrain from interfering with such lawfully and judicially mandated duties.[15] [Emphases and underscoring supplied]

In her Very Respectful Comment,[16] Judge Cabrera-Faller denied the accusations and asserted that:

3) The undersigned very respectfully honors the grief of this grandfather who lost a beloved grandson, but, charging the undersigned judge administratively for performing a judicial function would cause a heavy toll on this respondent judge that always tries her best to dispose of cases pending in the Regional Trial Court of Dasmariñas

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[15] *Id*. at 1-6.

[16] *Id*. at 733-735.

City, Branch 90, with justice and equity, regardless of the personalities involved in a particular case;

4) The **grapevine, as well as newspaper accounts, has it that the private complainant in Criminal Case No. 11862-13 has already received settlement from all of the accused,** except for the self-proclaimed witness for the prosecution, Cornelio Marcelo, allegedly for the amount of 5 million pesos, and now Mr. Martonino R. Marcos charges the undersigned with his perceived notions of corruption and dishonesty. If the alleged "pay-off" is true, then, the cries of injustice of Mr. Martonino R. Marcos has become a charade.

The undersigned respondent judge humbly and modestly states that the questioned order is a twenty-page resolution, where the respective postures of the parties were explicitly and painstakingly incorporated, and in the mind of the undersigned respondent judge, negates corruption, malicious rendering of an unjust judgment and any signs of shoddy disposition of the case. The private complainant has remedies under the law to question the order of this court in Criminal Case No. 11862-13 for violation of the Anti-Hazing Law; in fact, the private complainant, through its private counsel, had filed a motion for reconsideration of the order of this court, and dated August 15, 2013, which is yet pending resolution.

Jurisprudence held that the "alleged errors committed by a judge pertaining to the exercise of his adjudicative functions cannot be corrected through administrative proceedings but should instead be assailed through judicial remedies (A.M. No. MTJ-001311, 459 Phil. 214 [2003]."[17] [Emphasis supplied]

In his Reply,[18] complainant insisted that Judge Cabrera-Faller did not simply commit an error of judgment but she knowingly rendered an unjust judgment which was contrary to law, and prayed that she be held accountable for having committed patent gross ignorance of the law, grave abuse of discretion and complete disregard of the law and the rules of criminal procedure. Furthermore, complainant denied that they had been paid the amount of ₱5 million pesos and asserted that Judge Cabrera-Faller should not have believed or given credence to the "pay-

[17] *Id.* at 733-734.

[18] *Id*. at 736-739.

off," which she heard from the "grapevine." "Pay-off" was a term that she should not have even used as it did not exist under the rules of criminal procedure. Granting that there was a "pay-off," Judge Cabrera-Faller should know the basic rule that payment of civil liability was not equivalent to dismissal of the criminal case.

Report of the OCA

In its Report,[19] dated June 10, 2016, the Office of the Court Administrator *(OCA)* found Judge Cabrera-Faller *liable for gross ignorance of the law* [1] for inadvertently issuing the warrants of arrest against the accused; [2] for sending the record of the case to the archives, even prior to the return/report that the accused could not be apprehended in violation of the six *(6)-month* period under Administrative Circular *(A.C.)* No. 7-A-92; and [3] for precipitately dismissing Criminal Case No. 11862-13. The OCA recommended that Judge Cabrera-Faller be suspended from the service for a period of six *(6)* months without salary and other benefits.

The Ruling of the Court

The findings of the OCA are well-taken, but the Court differs as to the recommended penalty.

Without a quibble, Judge Cabrera-Faller demonstrated lack of knowledge and understanding of the basic rules of procedure when she issued the questioned orders.

A. On the immediate archiving of Criminal Case No. 11862

Judge Cabrera-Faller violated Administrative Circular No. 7-A-92 when she issued the June 3, 2013 Order directing the immediate archiving of Criminal Case No. 11862-13, after ordering the issuance of the warrants of arrest against the accused in the same order. The archiving of cases is a generally acceptable measure designed to shelve cases but is done only where no

[19] *Id*. at 740-747.

immediate action is expected.[20] A.C. No. 7-A-92 enumerated the circumstances when a judge may order the archiving of a criminal case as follows:

> (a) If after the issuance of the warrant of arrest, the accused remains at large for six (6) months from the delivery of the warrant to the proper peace officer, and the latter has explained the reason why the accused was not apprehended; or
>
> (b) When proceedings are ordered suspended for an indefinite period because:
>
> (1) the accused appears to be suffering from an unsound mental condition which effectively renders him unable to fully understand the charge against him and to plead intelligently, or to undergo trial, and he has to be committed to a mental hospital;
>
> (2) a valid prejudicial question in a civil action is invoked during the pendency of the criminal case unless the civil and the criminal cases are consolidated; and
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> 3) an interlocutory order or incident in the criminal case is elevated to, and is pending resolution/ decision for an indefinite period before a higher court which has issued a temporary restraining order or writ of preliminary injunction; and
>
> 4) when the accused has jumped bail before arraignment and cannot be arrested by his bondsman.

When Judge Cabrera-Faller issued the warrants, she also archived the case. She, however, did not cite any ground in A.C. No. 7-A-92 for the suspension of the proceedings. What she did was unprecedented. She did not even bother to wait for the return of the warrants or wait for the six-month period. By doing so, she exhibited bias, if not incompetence and ignorance of the law and jurisprudence. It could also be that she knew it, but **she opted to completely ignore the law or the regulations.** Certainly, it was a case of grave abuse of discretion as her actuations were not in accord with law or justice.

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[20] *Republic of Philippines v. Express Telecommunication Co., Inc.*, 424 Phil. 372, 394 (2002).

B. On the recall of the warrants of arrest that were allegedly issued inadvertently

Judge Cabrera-Faller showed manifest bias and partiality, if not gross ignorance of the law, when she issued the June 13, 2013 Order recalling the warrants of arrest against accused Alim, Amante and Rosales claiming that they were issued inadvertently.

In the judicial determination of probable cause, no less than the Constitution mandates a judge to *personally* determine the existence of probable cause before issuing a warrant of arrest. This has been embodied in Section 2,[21] Article III of the Philippine Constitution and Section 6,[22] Rule 112 of the Rules of Criminal Procedure.

Clearly, Judge Cabrera-Faller was mandated to personally evaluate the report and the supporting documents submitted by the prosecutor regarding the existence of probable cause and, on the basis thereof, to issue a warrant of arrest. Though she was not required to personally examine the complainant or his witnesses, she was obliged to personally evaluate the report

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[21] Section 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined **personally** by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized. [Emphasis supplied]

[22] Section 6. When warrant of arrest may issue. — (a) By the Regional Trial Court. — Within ten (10) days from the filing of the complaint or information, the judge shall **personally** evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. If he finds probable cause, he shall issue a warrant of arrest or a commitment order if the accused has already been arrested pursuant to a warrant issued by the judge who conducted the preliminary investigation or when the complaint or information was filed pursuant to Section 7 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue must be resolved by the court within thirty (30) days from the filing of the complaint of information.

and the supporting documents submitted by the prosecutor before ordering the issuance of a warrant of arrest.

In the June 13, 2013 Order, Judge Cabrera-Faller recalled the warrants of arrest against three of the accused. She, however, failed to explain why she issued the warrants inadvertently. She merely wrote that the warrants of arrest were *"inadvertently issued"* without any explanation why there was such inadvertence in the issuance. The Court cannot accept this. There was clearly an abdication of the judicial function. The records of the case were forwarded by the OCP and they contained not only the information but all the supporting documents like the statement of Cornelio Marcelo and the corroborating statements of Cabansag and Ragaza and those of Rene Andaya and Roger Atienza, the farm overseers at the Veluz Farm.

It could only mean that she failed to comply with her constitutional mandate to personally determine the existence of probable cause before ordering the issuance of the warrants of arrest. As the presiding judge, it was her task, upon the filing of the Information, to first and foremost determine the existence or non-existence of probable cause for the arrest of the accused.[23] It was incumbent upon her to assess the resolution, affidavits and other supporting documents submitted by the prosecutor to satisfy herself that probable cause existed and before a warrant of arrest could be issued against the accused.[24] If she did find the evidence submitted by the prosecutor to be insufficient, she could order the dismissal of the case, or direct the investigating prosecutor either to submit more evidence or to submit the entire records of the preliminary investigation, or she could even call the complainant and the witness to answer the courts probing questions to enable her to discharge her duty.

Most probably, she did her duty to examine and analyze the attached documents but because she took pity on the young accused (never mind the victim), she chose to ignore or disregard

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[23] *Baltazar v. People*, 582 Phil. 275, 290 (2008).

[24] *People of the Philippines v. Grey*, 639 Phil. 535, 549 (2010).

them. Nonetheless, "**when the inefficiency springs from failure to consider so basic and elemental a rule, law or principle in the discharge of duties, the judge is either insufferably incompetent and undeserving of the position she holds or is too vicious that the oversight or omission was deliberately done in bad faith and in grave abuse of judicial authority."**[25]

C. On the hasty dismissal of Criminal Case No. 11862-13

In the same vein, Judge Cabrera-Faller should be held administratively accountable for hastily dismissing the Criminal Case No. 11862-13. The Court cannot ignore her lack of prudence for it is the Court's duty to protect and preserve public condence in our judicial system.

The well-settled rule that once a complaint or information is filed before the trial court, any disposition of the case, whether as to its dismissal or the conviction or acquittal of the accused, rests on the sound discretion of the said court[26] is not absolute. Although a motion to dismiss the case or withdraw the Information is addressed to the court, its grant or denial must always be in the faithful exercise of judicial discretion and prerogative.[27] For **the judge's action must neither impair the substantial rights of the accused nor the right of the State and the offended party to due process of law.**[28] In the case of *People v. Court of Appeals*,[29] the Court elucidated:

> We are simply saying that, as a general rule, if the information is valid on its face and there is no showing of manifest error, grave abuse of discretion or prejudice on the part of the public prosecutor, courts should not dismiss it for "want of evidence," because evidentiary matters should be presented and heard during the trial. The functions

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[25] *Posa v. Mijares*, 436 Phil. 295, 322 (2002).

[26] *Crespo v. Mogul*, 235 Phil. 465 (1987).

[27] *Auto Prominence Corporation v. Winterkorn* , 597 Phil. 47, 58 (2009); *Bago v. Judge Pagayatan*, 602 Phil. 459, 469 (2009).

[28] *Dimatulac v. Judge Villon*, 358 Phil. 328, 365 (1998).

[29] 361 Phil. 401 (1999).

and duties of both the trial court and the public prosecutor in "the proper scheme of things" in our criminal justice system should be clearly understood.

The rights of the people from what could sometimes be an "oppressive" exercise of government prosecutorial powers do need to be protected when circumstances so require. But just as we recognize this need, we also acknowledge that the State must likewise be accorded due process. Thus, when there is no showing of nefarious irregularity or manifest error in the performance of a public prosecutor's duties, courts ought to refrain from interfering with such lawfully and judicially mandated duties.[30]

In the present case, the Court agrees with the observation of the OCA that there was haste in the disposition of Criminal Case No. 11862-13. It must be noted that the Information for the said case was instituted by the OCP on May 10, 2013. Thereafter, on June 3, 2013, Judge Cabrera-Faller issued the order finding probable cause for the issuance of a warrant of arrest. Barely 10 days had lapsed, however, or on June 13, 2013, she recalled the warrants of arrest against three *(3)* accused due to oversight or inadvertence. And on August 15, 2013, in the Omnibus Order, she lifted the warrants of arrest she issued and dismissed the case for lack of probable cause.

Although no direct evidence was presented to show that Judge Cabrera-Faller was influenced by improper considerations, the Court cannot close its eyes in the manner by which Criminal Case No. 11862-13 was dismissed. Her actuations put in serious doubts her integrity and honesty, both as a person and a member of the Bench, qualities which every magistrate should possess.[31]

Judge Cabrera-Faller dismissed Criminal Case No. 11862-13 without taking into consideration the earlier resolution of the OCP and failed to evaluate the evidence in support thereof, which sustained a finding of probable cause against the accused.

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[30] *Id.* at 420.

[31] *The Officers and Members of the IBP Baguio-Benguet Chapter v. Fernando Vil Pamintuan,* Dissenting Opinion of Justice Romeo J. Callejo, Sr., 485 Phil. 473, 521 (2004).

A perusal of the records would show that the OCP resolution was based on the *Sinumpaang Salaysay*[32] and the *Karagdagang Sinumpaang Salaysay*[33] executed by Marcelo, who recounted in detail the initiation rites that transpired on July 29, 2012, and his participation as the designated "buddy or angel" of Marc Andrei, and enumerated the names of those who were present and participated in the said initiation rites. This testimony of Marcelo was corroborated by the two neophytes who were also present during the initiation rites, Cabansag[34] and Ragaza.[35] In their respective statements, they bravely narrated their harrowing experience on that fateful night. The sworn statements and affidavits of these prosecution witnesses all presented a consistent and coherent version of the events that took place on July 29, 2012.

Considering the strong evidence on hand presented by the OCP, it would have been more prudent for Judge Cabrera-Faller to conduct summary hearings in view of the conflicting statements of the prosecution and defense witnesses. Although this is not actually required by the rules, when the direct and circumstantial evidence are so detailed and corroborative of one another in every particular, it behooved upon her to make further inquiries. Precipitate dismissal of the case, in the face of overwhelming evidence, can only raise quizzical eyebrows.

Indeed, in her Omnibus Order[36] dismissing the case, her reasoning that there was *no probable cause* was strained and taxed one's credulity. As earlier stated, Judge Cabrera-Faller wrote that the statement of Marcelo simply depicted the stages of initiation rites and failed to show that the accused conspired to inflict fatal injuries on Marc Andrei. Despite the admission on the part of the accused that initiation rites were indeed

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[32] *Rollo,* pp. 56-65.

[33] *Id.* at 78-82.

[34] Sworn Statement, *id*. at 66-70.

[35] *Sinumpaang Salaysay*, *id*. at 73-77.

[36] *Id*. at 749-768.

conducted on July 29, 2012 and that they were present in the different stages of the initiation rites, she brushed aside these admissions and the narrations of the prosecution witnesses and simply opted to believe the claim of the accused that it was Marcelo, and Marcelo alone, who inflicted the fatal blow on his recruit.

Judge Cabrera-Faller should know that the presence or absence of the elements of the crime is evidentiary in nature and is a matter of defense that may be passed upon after a full-blown trial on the merits.[37] A hearing is absolutely indispensable before a judge can properly determine whether the prosecution's evidence is strong or weak. Under Section 4 of R.A. No. 8049, if the person subjected to hazing or other forms of initiation rites suffers any physical injury or dies as a result thereof, the officers and members of the fraternity, sorority or organization who actually participated in the infliction of physical harm shall be liable as principals, ***and the officers and members present*** during the hazing are ***prima facie*** presumed to have actually participated, unless it can be shown that he or she prevented the commission of the punishable acts.[38] This disputable presumption arises from the mere presence of the offender during the hazing.

Judge Cabrera-Faller must be reminded that 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[39] for it would be unfair to require the prosecution to present all the evidence needed to secure the conviction of the accused upon the filing of the information against the latter.[40]

A judge may dismiss the case for lack of probable cause **only in clear-cut cases** when the evidence on record plainly

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[37] *Andres v. Justice Secretary Cuevas*, 499 Phil. 36, 50 (2005).

[38] *Dungo v. People*, G.R. No. 209464, July 1, 2015.

[39] *Paredes v. Calilung*, 546 Phil. 198, 224 (2007).

[40] *People of the Philippines v. Court of Appeals*, 361 Phil. 401, 415 (1999).

fails to establish probable cause — that is when the records readily show uncontroverted, and thus, established facts which unmistakably negate the existence of the elements of the crime charged.[41]

Hazing is commonly characterized by secrecy and silence and to require the prosecution to indicate every step of the planned initiation rite in the information at the inception of the criminal case would be a strenuous task.[42] Although a speedy determination of an action or proceeding implies a speedy trial, it should be borne in mind that speed is not the chief objective of a trial. It must be stressed that a careful and deliberate consideration for the administration of justice is more important than a race to end the trial.[43]

Although judges are generally not accountable for erroneous judgments rendered in good faith, such defense in situations of infallible discretion adheres only within the parameters of tolerable judgment and does not apply where the basic issues are so simple and the applicable legal principle evident and basic as to be beyond permissible margins of error.[44]

Time and again, the Court has earnestly reminded judges to be extra prudent and circumspect in the performance of their duties. This exalted position entails a lot of responsibilities, foremost of which is proficiency in the law.[45] They are expected to exhibit more than just a cursory acquaintance with statutes and procedural rules and to apply them properly in all good faith.[46] **When the law is sufficiently basic, a judge owes it to**

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[41] *Young v. People*, G.R. No. 213910 (Resolution), February 3, 2016, <http://sc.jucliciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/february2016/213910.pdf> (last visited December 11, 2016).

[42] *Dungo v. People*, G.R. No. 209464, July 1, 2015.

[43] *State Prosecutors v. Judge Muro*, 321 Phil. 474, 481-482 (1995).

[44] *Paso v. Mijares*, 436 Phil. 295, 314 (2002).

[45] *Enriquez v. Judge Caminade*, 519 Phil. 781, 787 (2006).

[46] *Re: Anonymous Letter dated August 12, 2010, complaining against Judge Ofelia T. Pinto, Regional Trial Court, Branch 60, Angeles City, Pampanga,* 696 Phil. 21, 26 (2012).

his office to simply apply it; anything less than that would be constitutive of gross ignorance of the law.[47]

Moreover, judges are duty bound to render just, correct and impartial decisions at all times in a manner free of any suspicion as to his fairness, impartiality or integrity.[48] The records must be free from the slightest suspicion that the trial court seized upon an opportunity to either free itself from the usual burdens of presiding over a full-blown court battle or worse, to give undue advantage or favors to one of the litigants.[49] Public confidence in the Judiciary is eroded by irresponsible or improper conduct of judges.[50] The appearance of bias or prejudice can be as damaging to public confidence and the administration of justice as actual bias or prejudice.[51]

Thus, Rule 1.01 of the Code of Judicial Conduct requires a judge to be the embodiment of competence, integrity and independence. They are likewise mandated to be faithful to the law and to maintain professional competence at all times.[52] A judge owes the public and the court the duty to be proficient in the law. He is expected to keep abreast of the laws and prevailing jurisprudence.[53] Basic rules must be at the palms of their hands[54] for ignorance of the law by a judge can easily be the mainspring of injustice.[55]

Unfortunately, Judge Cabrera-Faller fell short of this basic canon. Her utter disregard of the laws and rules of procedure, to wit: the immediate archiving of Criminal Case No. 11862-

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[47] *De Guzman, Jr. v. Judge Sison*, 407 Phil. 351, 368-369 (2001).

[48] *Angping v. Judge Ros*, 700 Phil. 503, 512 (2012).

[49] *Tabao v. Judge Espina*, 368 Phil. 579, 598 (1999).

[50] *Dela Cruz v. Judge Bersamira*, 402 Phil. 671, 681 (2001).

[51] *Borromeo-Garcia v. Pagayatan*, 588 Phil. 11, 21 (2008).

[52] Rule 3.01, Canon 3 of the Code of Judicial Conduct (1989).

[53] *Corpuz v. Judge Siapno*, 452 Phil. 104, 113 (2003).

[54] *Abbariao v. Judge Beltran*, 505 Phil. 510, 517 (2005).

[55] *Judge Español v. Judge Mupas*, 484 Phil. 636, 664 (2004).

13, the recall of the warrant of arrest which she claimed were issued inadvertently and the hasty dismissal of the case displayed her lack of competence and probity, and can only be considered as grave abuse of authority. All these constitute gross ignorance of the law and incompetence.[56]

Under Section 8, Rule 140 of the Rules of Court, as amended by A.M. No. 01-8-10-SC, gross ignorance of the law is a serious charge, punishable by dismissal from service, suspension from office without salary and other benefits for more than three *(3)* but not exceeding six *(6)* months, or a fine of more than ₱20,000.00 but not exceeding ₱40,000.00.[57] In the case of *Chua Keng Sin v. Judge Mangeten*,[58] the respondent judge was found guilty of gross ignorance of the law due to procedural lapses in disposing the motions in the criminal case pending before his sala. The Court stated that his careless disposition of the motions was a reflection of his incompetence as a judge in discharging his official duties, thus, he could not be relieved from the consequences of his actions simply because he was a newly appointed judge and his case load was heavy.

Accordingly, considering the blatant violation of the law and rules committed by Judge Cabrera-Faller and her grievous exercise of discretion, the appropriate penalty should be dismissal from the service, with forfeiture of retirement benefits, except leave credits, and with prejudice to reemployment in any branch or instrumentality of the government, including government-owned and controlled corporations.

WHEREFORE, finding respondent Judge Perla V. Cabrera-Faller, Presiding Judge of Regional Trial Court, Branch 90, Dasmariñas City, Cavite, **GUILTY** of gross ignorance of the law and for violating Rule 1.01 and Rule 3. 01, Canon 3 of the

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[56] *Re: Anonymous Letter dated August 12, 2010, complaining against Judge Ofelia T. Pinto, Regional Trial Court, Branch 60, Angeles City, Pampanga*, *supra* note 46, at 28.

[57] Section 11, Rule 140, as amended by A.M. No. 01-8-10-SC (2001).

[58] A.M. No. MTJ-15-1851, February 11, 2015, 750 SCRA 262.

Code of Judicial Conduct, the Court imposes the penalty of **DISMISSAL** from the service, with **FORFEITURE** of retirement benefits, except leave credits, and with prejudice to reemployment in any branch or instrumentality of the government, including government-owned and controlled corporations.

SO ORDERED.

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

Velasco, Jr., J., no part.

EN BANC

[G.R. No. 184450. January 24, 2017]

JAIME N. SORIANO, MICHAEL VERNON M. GUERRERO, MARY ANN L. REYES, MARAH SHARYN M. DE CASTRO and CRIS P. TENORIO, *petitioners, vs.* **SECRETARY OF FINANCE and the COMMISSIONER OF INTERNAL REVENUE,** *respondents.*

[G.R. No. 184508. January 24, 2017]

SENATOR MANUEL A. ROXAS, *petitioner, vs.* **MARGARITO B. TEVES, in his capacity as Secretary of the Department of Finance and LILIAN B. HEFTI, in her Capacity as Commissioner of the Bureau of Internal Revenue,** *respondents.*

[G.R. No. 184538. January 24, 2017]

TRADE UNION CONGRESS OF THE PHILIPPINES (TUCP), represented by its president, DEMOCRITO T. MENDOZA, *petitioner, vs.* **MARGARITO B. TEVES, in his capacity as Secretary of the Department of Finance and LILIAN B. HEFTI, in her capacity as Commissioner of the Bureau of Internal Revenue,** *respondents.*

[G.R. No. 185234. January 24, 2017]

SENATOR FRANCIS JOSEPH G. ESCUDERO, TAX MANAGEMENT ASSOCIATION OF THE PHILIPPINES, INC. and ERNESTO G. EBRO, *petitioners, vs.* **MARGARITO B. TEVES, in his capacity as Secretary of the Department of Finance and SIXTO S. ESQUIVIAS IV, in his capacity as Commissioner of the Bureau of Internal Revenue,** *respondents.*

SYLLABUS

1. TAXATION; NATIONAL INTERNAL REVENUE CODE OF 1997 (REPUBLIC ACT NO. 8424, AS AMENDED BY REPUBLIC ACT NO. 9504); INCOME TAX; PERSONAL AND ADDITIONAL EXEMPTIONS PROVIDED BY REPUBLIC ACT NO. 9504 SHOULD BE APPLIED TO THE ENTIRE TAXABLE YEAR 2008; RATIONALE.— The personal and additional exemptions established by R.A. 9504 should be applied to the entire taxable year 2008. x x x In this case, Senator Francis Escudero's sponsorship speech for Senate Bill No. 2293 reveals two important points about R.A. 9504: (1) it is a piece of social legislation; and (2) its intent is to make the proposed law immediately applicable, that is, to taxable year 2008: x x x In sum, R.A. 9504, like R.A. 7167 in *Umali*, was a piece of social legislation clearly intended to afford *immediate* tax relief to individual taxpayers, particularly low-income compensation earners. x x x Therefore, following *Umali*, the test is whether the new set of personal and additional

exemptions was available at the time of the filing of the income tax return. In other words, while the status of the individual taxpayers is determined at the close of the taxable year, their personal and additional exemptions — and consequently the computation of their taxable income — are reckoned when the tax becomes due, and not while the income is being earned or received. The NIRC is clear on these matters. The taxable income of an individual taxpayer shall be computed on the basis of the calendar year. The taxpayer is required to fi1e an income tax return on the 15th of April of each year covering income of the preceding taxable year. The tax due thereon shall be paid at the time the return is filed. It stands to reason that the new set of personal and additional exemptions, adjusted as a form of social legislation to address the prevailing poverty threshold, should be given effect at the most opportune time as the Court ruled in *Umali*. x x x In *Umali*, the Court ruled that the application of the law was prospective, even if the amending law took effect after the close of the taxable year in question, but before the deadline for the filing of the return and payment of the taxes due for that year. Here, not only did R.A. 9504 take effect before the deadline for the filing of the return and payment for the taxes due for taxable year 2008, it took effect way before the close of that taxable year. Therefore, the operation of the new set of personal and additional exemption in the present case was all the more prospective. x x x [T]he rule of full taxable year treatment for the availment of personal and additional exemptions was established, not by the amendments introduced by R.A. 9504, but by the provisions of the 1997 Tax Code itself. The new law merely introduced a change in the amounts of the basic and additional personal exemptions. Hence, the fact that R.A. 9504 took effect only on 6 July 2008 is irrelevant.

2. ID.; ID.; ID.; ID.; THE POLICY OF FULL TAXABLE YEAR TREATMENT IS ESTABLISHED, NOT BY AMENDMENTS INTRODUCED BY REPUBLIC ACT NO. 9504, BUT BY THE PROVISIONS OF THE 1997 TAX CODE, WHICH ADOPTED THE POLICY FROM AS EARLY AS 1969; EXPLAINED.— [T]he legislative policy of full taxable year treatment of the personal and additional exemptions has been in our jurisdiction continuously since 1969. The prorating approach has long since been abandoned. Had

Congress intended to revert to that scheme, then it should have so stated in clear and unmistakeable terms. There is nothing, however, in R.A. 9504 that provides for the reinstatement of the prorating scheme. On the contrary, the change-of-status provision utilizing the full-year scheme in the 1997 Tax Code was left untouched by R.A. 9504. We now arrive at this important point: the policy of full taxable year treatment is established, not by the amendments introduced by R.A. 9504, but by the provisions of the 1997 Tax Code, which adopted the policy from as early as 1969. There is, of course, nothing to prevent Congress from again adopting a policy that prorates the effectivity of basic personal and additional exemptions. This policy, however, must be explicitly provided for by law — to amend the prevailing law, which provides for full-year treatment. As already pointed out, R.A. 9504 is totally silent on the matter. This silence cannot be presumed by the BIR as providing for a half-year application of the new exemption levels. Such presumption is unjust, as incomes do not remain the same from month to month, especially for the MWEs. Therefore, there is no legal basis for the BIR to reintroduce the prorating of the new personal and additional exemptions. In so doing, respondents overstepped the bounds of their rule-making power. It is an established rule that administrative regulations are valid only when these are consistent with the law. Respondents cannot amend, by mere regulation, the laws they administer. To do so would violate the principle of non-delegability of legislative powers.

3. POLITICAL LAW; ADMINISTRATIVE LAW; PRINCIPLE OF NON-DELEGABILITY OF LEGISLATIVE POWERS; TWO ACCEPTED TESTS FOR A VALID DELEGATION OF LEGISLATIVE POWER TO THE EXECUTIVE BRANCH, CITED; NOT SATISFIED IN CASE AT BAR.— The prorated application of the new set of personal and additional exemptions for the year 2008, which was introduced by respondents, cannot even be justified under the exception to the canon of non-delegability; that is, when Congress makes a delegation to the executive branch. The delegation would fail the two accepted tests for a valid delegation of legislative power; the completeness test and the sufficient standard test. The first test requires the law to be complete in all its terms and conditions,

such that the only thing the delegate will have to do is to enforce it. The sufficient standard test requires adequate guidelines or limitations in the law that map out the boundaries of the delegate's authority and canalize the delegation. In this case, respondents went beyond enforcement of the law, given the absence of a provision in R.A. 9504 mandating the prorated application of the new amounts of personal and additional exemptions for 2008. x x x An administrative agency may not enlarge, alter or restrict a provision of law. It cannot add to the requirements provided by law. To do so constitutes lawmaking, which is generally reserved for Congress. In *CIR v. Fortune Tobacco*, we applied the *plain meaning* rule when the Commissioner of Internal Revenue ventured into unauthorized administrative lawmaking: x x x We are not persuaded that RR 10-2008 merely clarifies the law. The CIR's clarification is not warranted when the language of the law is plain and clear.

4. TAXATION; NATIONAL INTERNAL REVENUE CODE OF 1997 (REPUBLIC ACT NO. 8424, AS AMENDED BY REPUBLIC ACT NO. 9504); INCOME TAX; PERSONAL AND ADDITIONAL EXEMPTIONS; MINIMUM WAGE EARNER (MWE); THE ONLY QUALIFICATION TO BE ENTITLED TO THE EXEMPTION PROVIDED BY REPUBLIC ACT NO. 9504 IS THAT ONE MUST BE A MINIMUM WAGE EARNER; SUSTAINED.— Sections 1 and 3 of RR 10-2008 add a requirement not found in the law by effectively declaring that an MWE who receives other benefits in excess of the statutory limit of ₱30,000 is no longer entitled to the exemption provided by R.A. 9504. ***The BIR added a requirement not found in the law.*** x x x Nowhere in the provisions of R.A. 9504 would one find the qualifications prescribed by the assailed provisions of RR 10-2008. The provisions of the law are clear and precise; they leave no room for interpretation — they do not provide or require any other qualification as to who are MWEs. To be exempt, one must be an MWE, a term that is clearly defined. Section 22(HH) says he/she must be one who is paid the statutory minimum wage if he/she works in the private sector, or not more than the statutory minimum wage in the non-agricultural sector where he/she is assigned, if he/she is a government employee. Thus, one is either an MWE or he/she is not. x x x In Article 99, minimum wage rates are to be prescribed by the Regional Tripartite Wages

and Productivity Boards. In Articles 102 to 105, specific instructions are given in relation to the payment of wages. They must be paid in legal tender at least once every two weeks, or twice a month, at intervals not exceeding 16 days, directly to the worker, except in case of *force majeure* or death of the worker. These are the wages for which a minimum is prescribed. Thus, the minimum wage exempted by R.A. 9504 is that which is referred to in the Labor Code. It is distinct and different from other payments including allowances, honoraria, commissions, allowances or benefits that an employer may pay or provide an employee. Likewise, the other compensation incomes an MWE receives that are also exempted by R.A. 9504 are all mandated by law and are based on this minimum wage. x x x In other words, the law exempts from income taxation the most basic compensation an employee receives — the amount afforded to the lowest paid employees by the mandate of law. In a way, the legislature grants to these lowest paid employees additional income by no longer demanding from them a contribution for the operations of government. This is the essence of R.A. 9504 as a social legislation. The government, by way of the tax exemption, affords increased purchasing power to this sector of the working class.

5. ID.; ID.; ID.; ID.; THE PROPER INTERPRETATION OF REPUBLIC ACT NO. 9504 IS THAT IT IMPOSES TAXES ONLY ON THE TAXABLE INCOME RECEIVED IN EXCESS OF THE MINIMUM WAGE, BUT THE MINIMUM WAGE EARNERS WILL NOT LOSE THEIR EXEMPTION AS SUCH; EXPLAINED.— In sum, the proper interpretation of R.A. 9504 is that it imposes taxes only on the taxable income received in excess of the minimum wage, but the MWEs will not lose their exemption as such. Workers who receive the statutory minimum wage their basic pay remain MWEs. The receipt of any other income during the year does not disqualify them as MWEs. They remain MWEs, entitled to exemption as such, but the taxable income they receive other than as MWEs may be subjected to appropriate taxes. x x x We are mindful of the strict construction rule when it comes to the interpretation of tax exemption laws. The canon, however, is tempered by several exceptions, one of which is when the taxpayer falls within the purview of the exemption by clear legislative intent. In this situation, the rule of liberal interpretation

applies in favor of the grantee and against the government. In this case, there is a clear legislative intent to exempt the minimum wage received by an MWE who earns additional income on top of the minimum wage. As previously discussed, this intent can be seen from both the law and the deliberations. Accordingly, we see no reason why we should not liberally interpret R.A. 9504 in favor of the taxpayers.

APPEARANCES OF COUNSEL

Jaime N. Soriano for himself and all the other petitioners.
Poblador Bautista & Reyes for petitioners in G.R. No. 185234.
Cadiz & Tabayoyong for petitioner in G.R. No. 184508.
The Solicitor General for public respondents.

D E C I S I O N

SERENO, *C.J.*:

Before us are consolidated Petitions for Certiorari, Prohibition and Mandamus, under Rule 65 of the 1997 Revised Rules of Court. These Petitions seek to nullify certain provisions of Revenue Regulation No. (RR) 10-2008. The RR was issued by the Bureau of Internal Revenue (BIR) on 24 September 2008 to implement the provisions of Republic Act No. (R.A.) 9504. The law granted, among others, income tax exemption for minimum wage earners (MWEs), as well as an increase in personal and additional exemptions for individual taxpayers.

Petitioners assail the subject RR as an unauthorized departure from the legislative intent of R.A. 9504. The regulation allegedly restricts the implementation of the MWEs' income tax exemption only to the period starting from 6 July 2008, instead of applying the exemption to the entire year 2008. They further challenge the BIR's adoption of the prorated application of the new set of personal and additional exemptions for taxable year 2008. They also contest the validity of the RR's alleged imposition of a condition for the availment by MWEs of the exemption provided by R.A. 9504. Supposedly, in the event they receive

other benefits in excess of ₱30,000, they can no longer avail themselves of that exemption. Petitioners contend that the law provides for the unconditional exemption of MWEs from income tax and, thus, pray that the RR be nullified.

ANTECEDENT FACTS

R.A. 9504

On 19 May 2008, the Senate filed its Senate Committee Report No. 53 on Senate Bill No. (S.B.) 2293. On 21 May 2008, former President Gloria M. Arroyo certified the passage of the bill as urgent through a letter addressed to then Senate President Manuel Villar. On the same day, the bill was passed on second reading in the Senate and, on 27 May 2008, on third reading. The following day, 28 May 2008, the Senate sent S.B. 2293 to the House of Representatives for the latter's concurrence.

On 04 June 2008, S.B. 2293 was adopted by the House of Representatives as an amendment to House Bill No. (H.B.) 3971.

On 17 June 2008, R.A. 9504 entitled "An Act Amending Sections 22, 24, 34, 35, 51, and 79 of Republic Act No. 8424, as Amended, Otherwise Known as the National Internal Revenue Code of 1997," was approved and signed into law by President Arroyo. The following are the salient features of the new law:

1. It increased the basic personal exemption from ₱20,000 for a single individual, ₱25,000 for the head of the family, and ₱32,000 for a married individual to ₱50,000 for each individual.
2. It increased the additional exemption for each dependent not exceeding four from ₱8,000 to ₱25,000.
3. It raised the Optional Standard Deduction (OSD) for individual taxpayers from 10% of gross income to 40% of the gross receipts or gross sales.
4. It introduced the OSD to corporate taxpayers at no more than 40% of their gross income.

5. It granted MWEs exemption from payment of income tax on their minimum wage, holiday pay, overtime pay, night shift differential pay and hazard pay.[1]

Section 9 of the law provides that it shall take effect 15 days following its publication in the *Official Gazette* or in at least two newspapers of general circulation. Accordingly, R.A. 9504 was published in the *Manila Bulletin* and *Malaya* on 21 June 2008. On 6 July 2008, the end of the 15-day period, the law took effect.

RR 10-2008

On 24 September 2008, the BIR issued RR 10-2008, dated 08 July 2008, implementing the provisions of R.A. 9504. The relevant portions of the said RR read as follows:

SECTION 1. Section 2.78.1 of RR 2-98, as amended, is hereby further amended to read as follows:

Sec. 2.78.1. *Withholding of Income Tax on Compensation Income*.–

x x x x x x x x x

The amount of '*de minimis*' benefits conforming to the ceiling herein prescribed shall not be considered in determining the ₱30,000.00 ceiling of 'other benefits' excluded from gross income under Section 32 (b) (7) (e) of the Code. Provided that, the excess of the '*de minimis*' benefits over their respective ceilings prescribed by these regulations shall be considered as part of 'other benefits' and the employee receiving it will be subject to tax only on the excess over the ₱30,000.00 ceiling. **Provided, further, that MWEs receiving 'other benefits'**

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[1] R.A. 9504—Section 2. Section 24 (A) of Republic Act No. 8424, as amended, otherwise known as the National Internal Revenue Code of 1997, is hereby further amended to read as follows:

x x x x x x x x x

Provided, That minimum wage earners as defined in Section 22 (HH) of this Code shall be exempt from the payment of income tax on their taxable income: *Provided, further*, That the holiday pay, overtime pay, night shift differential and hazard pay received by such minimum wage earners shall likewise be exempt from income tax.

x x x x x x x x x

exceeding the ₱30,000.00 limit shall be taxable on the excess benefits, as well as on his salaries, wages and allowances, just like an employee receiving compensation income beyond the SMW.

x x x x x x x x x

(B) *Exemptions from Withholding Tax on Compensation*. — The following income payments are exempted from the requirements of withholding tax on compensation:

x x x x x x x x x

(13) Compensation income of MWEs who work in the private sector and being paid the Statutory Minimum Wage (SMW), as fixed by Regional Tripartite Wage and Productivity Board (RTWPB)/ National Wages and Productivity Commission (NWPC), applicable to the place where he/she is assigned.

The aforesaid income shall likewise be exempted from income tax.

'*Statutory Minimum Wage*' (SMW) shall refer to the rate fixed by the Regional Tripartite Wage and Productivity Board (RTWPB), as defined by the Bureau of Labor and Employment Statistics (BLES) of the Department of Labor and Employment (DOLE). The RTWPB of each region shall determine the wage rates in the different regions based on established criteria and shall be the basis of exemption from income tax for this purpose.

Holiday pay, overtime pay, night shift differential pay and hazard pay earned by the aforementioned MWE shall likewise be covered by the above exemption. **Provided, however, that an employee who receives/earns additional compensation such as commissions, honoraria, fringe benefits, benefits in excess of the allowable statutory amount of ₱30,000.00, taxable allowances and other taxable income other than the SMW, holiday pay, overtime pay, hazard pay and night shift differential pay shall not enjoy the privilege of being a MWE and, therefore, his/her entire earnings are not exempt from income tax, and consequently, from withholding tax.**

MWEs receiving other income, such as income from the conduct of trade, business, or practice of profession, except income subject to final tax, in addition to compensation income are not exempted from income tax on their entire income earned during the taxable

year. This rule, notwithstanding, **the SMW, holiday pay, overtime pay, night shift differential pay and hazard pay shall still be exempt from withholding tax**.

For purposes of these regulations, hazard pay shall mean the amount paid by the employer to MWEs who were actually assigned to danger or strife-torn areas, disease-infested places, or in distressed or isolated stations and camps, which expose them to great danger of contagion or peril to life. Any hazard pay paid to MWEs which does not satisfy the above criteria is deemed subject to income tax and consequently, to withholding tax.

x x x x x x x x x

SECTION 3. Section 2.79 of RR 2-98, as amended, is hereby further amended to read as follows:

Sec. 2.79. *Income Tax Collected at Source on Compensation Income*. —

(A) *Requirement of Withholding*. — Every employer must withhold from compensation paid an amount computed in accordance with these Regulations. Provided, that no withholding of tax shall be required on the SMW, including holiday pay, overtime pay, night shift differential and hazard pay of MWEs in the private/public sectors as defined in these Regulations. **Provided, further, that an employee who receives additional compensation such as commissions, honoraria, fringe benefits, benefits in excess of the allowable statutory amount of ₱30,000.00, taxable allowances and other taxable income other than the SMW, holiday pay, overtime pay, hazard pay and night shift differential pay shall not enjoy the privilege of being a MWE and, therefore, his/her entire earnings are not exempt from income tax and, consequently, shall be subject to withholding tax.**

x x x x x x x x x

For the year 2008, however, being the initial year of implementation of R.A. 9504, there shall be a transitory withholding tax table for the period from July 6 to December 31, 2008 (Annex "D") determined by prorating the annual personal and additional exemptions under R.A. 9504 over a period of six months. Thus, for individuals, regardless of personal status, the prorated personal exemption is ₱25,000, and for each qualified dependent child (QDC), ₱12,500.

x x x x x x x x x

SECTION 9. Effectivity. —

These Regulations shall take effect beginning July 6, 2008. (Emphases supplied)

The issuance and effectivity of RR 10-2008 implementing R.A. 9504 spawned the present Petitions.

G.R. No. 184450

Petitioners Jaime N. Soriano, et al. primarily assail Section 3 of RR 10-2008 providing for the prorated application of the personal and additional exemptions for taxable year 2008 to begin only effective 6 July 2008 for being contrary to Section 4 of Republic Act No. 9504.[2]

Petitioners argue that the prorated application of the personal and additional exemptions under RR 10-2008 is not "the legislative intendment in this jurisdiction."[3] They stress that Congress has always maintained a policy of "full taxable year treatment"[4] as regards the application of tax exemption laws. They allege further that R.A. 9504 did not provide for a prorated application of the new set of personal and additional exemptions.[5]

G.R. No. 184508

Then Senator Manuel Roxas, as principal author of R.A. 9504, also argues for a *full taxable year* treatment of the income tax benefits of the new law. He relies on what he says is clear legislative intent. In his "Explanatory Note of Senate Bill No. 103," he stresses "the very spirit of enacting the subject tax exemption law"[6] as follows:

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[2] *Rollo* (G.R. No. 184450), p. 14.

[3] *Id.* at 9.

[4] *Id.*

[5] *Id.* at 8.

[6] *Rollo* (G.R. No. 184508), p. 16.

With the poor, every little bit counts, and by lifting their burden of paying income tax, we give them opportunities to put their money to daily essentials as well as savings. **Minimum wage earners can no longer afford to be taxed and to be placed in the cumbersome income tax process in the same manner as higher-earning employees.** It is our obligation to ease their burdens in any way we can.[7] (Emphasis Supplied)

Apart from raising the issue of legislative intent, Senator Roxas brings up the following legal points to support his case for the full-year application of R.A. 9504's income tax benefits. He says that the pro rata application of the assailed RR deprives MWEs of the financial relief extended to them by the law;[8] that *Umali v. Estanislao*[9] serves as jurisprudential basis for his position that R.A. 9504 should be applied on a full-year basis to taxable year 2008;[10] and that the social justice provisions of the 1987 Constitution, particularly Articles II and XIII, mandate a full application of the law according to the spirit of R.A. 9504.[11]

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[7] *Id.*

[8] *Rollo* (G.R. No. 184450), p. 18.

[9] G.R. Nos. 104037 & 104069, 29 May 1992, 209 SCRA 446.

[10] *Id.* at 18.

[11] Petitioner Sen. Roxas cites the following provisions of the 1987 Constitution:

Article II

DECLARATION OF PRINCIPLES AND STATE POLICIES

x x x x x x x x x

Section 9. The State shall promote a just and dynamic social order that will ensure the prosperity and independence of the nation and free the people from poverty through policies that provide adequate social services, promote full employment, a rising standard of living, and an improved quality of life for all.

Section 10. The State shall promote social justice in all phases of national development.

x x x x x x x x x

Section 18. The State affirms labor as a primary social economic force. It shall protect the rights of workers and promote their welfare.

On the scope of exemption of MWEs under R.A. 9504, Senator Roxas argues that the exemption of MWEs is absolute, regardless of the amount of the other benefits they receive. Thus, he posits that the Department of Finance (DOF) and the BIR committed grave abuse of discretion amounting to lack and/or excess of jurisdiction. They supposedly did so when they provided in Section 1 of RR 10-2008 the condition that an MWE who receives "other benefits" exceeding the ₱30,000 limit would lose the tax exemption.[12] He further contends that the real intent of the

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Article XIII:

SOCIAL JUSTICE AND HUMAN RIGHTS

Section 1. The Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good.

To this end, the State shall regulate the acquisition, ownership, use, and disposition of property and its increments.

Section 2. The promotion of social justice shall include the commitment to create economic opportunities based on freedom of initiative and self-reliance.

LABOR

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.

It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.

The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.

The State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production and the right of enterprises to reasonable returns to investments, and to expansion and growth.

xxx xxx xxx

[12] *Rollo* (G.R. No. 184508), p. 23.

law is to grant income tax exemption to the MWE without any limitation or qualification, and that while it would be reasonable to tax the benefits in excess of ₱30,000, it is unreasonable and unlawful to tax both the excess benefits and the salaries, wages and allowances.[13]

G.R. No. 184538

Petitioner Trade Union Congress of the Philippine contends that the provisions of R.A. 9504 provide for the application of the tax exemption for the full calendar year 2008. It also espouses the interpretation that R.A. 9504 provides for the unqualified tax exemption of the income of MWEs regardless of the other benefits they receive.[14] In conclusion, it says that RR 10-2008, which is only an implementing rule, amends the original intent of R.A. 9504, which is the substantive law, and is thus null and void.

G.R. No. 185234

Petitioners Senator Francis Joseph Escudero, the Tax Management Association of the Philippines, Inc., and Ernesto Ebro allege that R.A. 9504 unconditionally grants MWEs exemption from income tax on their taxable income, as wel1 as increased personal and additional exemptions for other individual taxpayers, for the whole year 2008. They note that the assailed RR 10-2008 restricts the start of the exemptions to 6 July 2008 and provides that those MWEs who received "other benefits" in excess of ₱30,000 are not exempt from income taxation. Petitioners believe this RR is a "patent nullity"[15] and therefore void.

Comment of the OSG

The Office of the Solicitor General (OSG) filed a Consolidated Comment[16] and took the position that the application of R.A.

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[13] *Id.* at 24.

[14] *Rollo* (G.R. No. 184538), pp. 11-12.

[15] *Rollo* (G.R. No. 185234), p.7.

[16] *Rollo* (G.R. No. 184450), pp. 99-149; (G.R. No. 184538), pp. 80-128; and (G.R. No. 185234), pp. 97-146.

9504 was intended to be prospective, and not retroactive. This was supposedly the general rule under the rules of statutory construction: law will only be applied retroactively if it clearly provides for retroactivity, which is not provided in this instance.[17]

The OSG contends that *Umali v. Estanislao* is not applicable to the present case. It explains that R.A. 7167, the subject of that case, was intended to adjust the personal exemption levels to the poverty threshold prevailing in 1991. Hence, the Court in that case held that R.A. 7167 had been given a retroactive effect. The OSG believes that the grant of personal exemptions no longer took into account the poverty threshold level under R.A. 9504, because the amounts of personal exemption far exceeded the poverty threshold levels.[18]

The OSG further argues that the legislative intent of non-retroactivity was effectively confirmed by the "Conforme" of Senator Escudero, Chairperson of the Senate Committee on Ways and Means, on the draft revenue regulation that became RR 10-2008.

ISSUES

Assailing the validity of RR 10-2008, all four Petitions raise common issues, which may be distilled into three major ones:

First, whether the increased personal and additional exemptions provided by R.A. 9504 should be applied to the entire taxable year 2008 or prorated, considering that R.A. 9504 took effect only on 6 July 2008.

Second, whether an MWE is exempt for the entire taxable year 2008 or from 6 July 2008 only.

Third, whether Sections 1 and 3 of RR 10-2008 are consistent with the law in providing that an MWE who receives other benefits in excess of the statutory limit of ₱30,000[19] is no longer entitled to the exemption provided by R.A. 9504.

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[17] *Rollo* (G.R. No. 184450), p. 90.

[18] *Id.* at 101-103.

[19] As provided under Section 32(7)(e) of R.A. 8428, which reads:

THE COURT'S RULING

I.

Whether the increased personal and additional exemptions provided by R.A. 9504 should be applied to the entire taxable year 2008 or prorated, considering that the law took effect only on 6 July 2008

The personal and additional exemptions established by R.A. 9504 should be applied to the entire taxable year 2008.

Umali is applicable.

Umali v. Estanislao[20] supports this Court's stance that R.A. 9504 should be applied on a full-year basis for the entire taxable year 2008.[21] In *Umali*, Congress enacted R.A. 7167 amending the 1977 National Internal Revenue Code (NIRC). The amounts of basic personal and additional exemptions given to individual income taxpayers were adjusted to the poverty threshold level. R.A. 7167 came into law on 30 January 1992. Controversy arose when the Commission of Internal Revenue (CIR) promulgated

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(e) *13th Month Pay and Other Benefits*. — Gross benefits received by officials and employees of public and private entities: *Provided, however*, That the total exclusion under this subparagraph shall not exceed Thirty thousand pesos (₱30,000) which shall cover:

(i) Benefits received by officials and employees of the national and local government pursuant to Republic Act No. 6686;

(ii) Benefits received by employees pursuant to Presidential Decree No. 851, as amended by Memorandum Order No. 28, dated August 13, 1986;

(iii) Benefits received by officials and employees not covered by Presidential Decree No. 851, as amended by Memorandum Order No. 28, dated August 13, 1986; and

(iv) Other benefits such as productivity incentives and Christmas bonus: *Provided, further*, That the ceiling of Thirty thousand pesos (₱30,000) may be increased through rules and regulations issued by the Secretary of Finance, upon recommendation of the Commissioner, after considering, among others, the effect on the same of the inflation rate at the end of the taxable year.

[20] G.R. Nos. 104037 & 104069, 29 May 1992, 209 SCRA 446.

[21] *Rollo* (G.R. No. 184450), pp. 18-19.

RR 1-92 stating that the regulation shall take effect on compensation income earned beginning 1 January 1992. The issue posed was whether the increased personal and additional exemptions could be applied to compensation income earned or received during calendar year 1991, given that R.A. 7167 came into law only on 30 January 1992, when taxable year 1991 had already closed.

This Court ruled in the affirmative, considering that the increased exemptions were already available on or before 15 April 1992, the date for the filing of individual income tax returns. Further, the law itself provided that the new set of personal and additional exemptions would be immediately available upon its effectivity. While R.A. 7167 had not yet become effective during calendar year 1991, the Court found that it was a piece of social legislation that was in part intended to alleviate the economic plight of the lower-income taxpayers. For that purpose, the new law provided for adjustments "to the poverty threshold level" prevailing at the time of the enactment of the law. The relevant discussion is quoted below:

> [T]he Court is of the considered view that Rep. Act 7167 should cover or extend to compensation income earned or received during calendar year 1991.
>
> Sec. 29, par.(L), Item No. 4 of the National Internal Revenue Code, as amended, provides:
>
> > Upon the recommendation of the Secretary of Finance, the President shall automatically adjust not more often than once every three years, the personal and additional exemptions taking into account, among others, the movement in consumer price indices, levels of minimum wages, and bare subsistence levels.
>
> As the personal and additional exemptions of individual taxpayers were last adjusted in 1986, the President, upon the recommendation of the Secretary of Finance, could have adjusted the personal and additional exemptions in 1989 by increasing the same even without any legislation providing for such adjustment. But the President did not.
>
> However, House Bill 28970, which was subsequently enacted by Congress as Rep. Act 7167, was introduced in the House of

Representatives in 1989 although its passage was delayed and it did not become effective law until 30 January 1992. A perusal, however, of the sponsorship remarks of Congressman Hernando B. Perez, Chairman of the House Committee on Ways and Means, on House Bill 28970, provides an indication of the intent of Congress in enacting Rep. Act 7167. The pertinent legislative journal contains the following:

> At the outset, Mr. Perez explained that the Bill Provides for increased personal additional exemptions to individuals in view of the higher standard of living.
>
> The Bill, he stated, limits the amount of income of individuals subject to income tax to enable them to spend for basic necessities and have more disposable income.
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> x x x x x x x x x
>
> Mr. Perez added that inflation has raised the basic necessities and that it had been three years since the last exemption adjustment in 1986.
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> x x x x x x x x x
>
> Subsequently, Mr. Perez stressed the necessity of passing the measure to mitigate the effects of the current inflation and of the implementation of the salary standardization law. Stating that it is imperative for the government to take measures to ease the burden of the individual income tax tilers, Mr. Perez then cited specific examples of how the measure can help assuage the burden to the taxpayers.
>
> He then reiterated that the increase in the prices of commodities has eroded the purchasing power of the peso despite the recent salary increases and emphasized that the Bill will serve to compensate the adverse effects of inflation on the taxpayers. xxx (Journal of the House of Representatives, May 23, 1990, pp. 32-33).

It will also be observed that Rep. Act 7167 speaks of the adjustments that it provides for, as adjustments "to the poverty threshold level." Certainly, "the poverty threshold level" is the poverty threshold level at the time Rep. Act 7167 was enacted by Congress, not poverty threshold levels *in futuro*, at which time there may be need of further adjustments in personal exemptions. **Moreover, the Court can not lose sight of the fact that these personal and additional exemptions**

are fixed amounts to which an individual taxpayer is entitled, as a means to cushion the devastating effects of high prices and a depreciated purchasing power of the currency. In the end, it is the lower-income and the middle-income groups of taxpayers (not the high-income taxpayers) who stand to benefit most from the increase of personal and additional exemptions provided for by Rep. Act 7167. To that extent, the act is a social legislation intended to alleviate in part the present economic plight of the lower income taxpayers. It is intended to remedy the inadequacy of the heretofore existing personal and additional exemptions for individual taxpayers.

And then, Rep. Act 7167 says that the increased personal exemptions that it **provides for shall be available thenceforth, that is, after Rep. Act 7167 shall have become effective. In other words, these exemptions are available upon the filing of personal income tax returns which is, under the National Internal Revenue Code, done not later than the 15th day of April after the end of a calendar year. Thus, under Rep. Act 7167, which became effective, as aforestated, on 30 January 1992, the increased exemptions are literally available on or before 15 April 1992 (though not before 30 January 1992)**. But these increased exemptions can be available on 15 April 1992 only in respect of compensation income earned or received during the calendar year 1991.

The personal exemptions as increased by Rep. Act 7167 cannot be regarded as available in respect of compensation income received during the 1990 calendar year; the tax due in respect of said income had already accrued, and been presumably paid, by 15 April 1991 and by 15 July 1991, at which time Rep. Act 7167 had not been enacted. To make Rep. Act 7167 refer back to income received during 1990 would require language explicitly retroactive in purport and effect, language that would have to authorize the payment of refunds of taxes paid on 15 April 1991 and 15 July 1991: such language is simply not found in Rep. Act 7167.

The personal exemptions as increased by Rep. Act 7167 cannot be regarded as available only in respect of compensation income received during 1992, as the implementing Revenue Regulations No. 1-92 purport to provide. Revenue Regulations No. 1-92 would in effect postpone the availability of the increased exemptions to 1 January-15 April 1993, and thus literally defer the effectivity of Rep. Act 7167 to 1 January 1993. Thus, the implementing

regulations collide frontally with Section 3 of Rep. Act 7167 which states that the statute "shall take effect upon its approval." The objective of the Secretary of Finance and the Commissioner of Internal Revenue in postponing through Revenue Regulations No. 1-92 the legal effectivity of Rep. Act 7167 is, of course, entirely understandable—to defer to 1993 the reduction of governmental tax revenues which irresistibly follows from the application of Rep. Act 7167. But the law-making authority has spoken and the Court can not refuse to apply the law-maker's words. Whether or not the government can afford the drop in tax revenues resulting from such increased exemptions was for Congress (not this Court) to decide.[22] (Emphases supplied)

In this case, Senator Francis Escudero's sponsorship speech for Senate Bill No. 2293 reveals two important points about R.A. 9504: (1) it is a piece of social legislation; and (2) its intent is to make the proposed law immediately applicable, that is, to taxable year 2008:

Mr. President, distinguished colleagues, Senate Bill No. 2293 seeks, among others, to exempt minimum wage earners from the payment of income and/or withholding tax. **It is an attempt to help our people cope with the rising costs of commodities that seem to be going up unhampered these past few months.**

Mr. President, a few days ago, the Regional Tripartite and Wages Productivity Board granted an increase of ₱20 per day as far as minimum wage earners arc concerned. By way of impact, Senate Bill No. 2293 would grant our workers an additional salary or take-home pay of approximately ₱34 per day, given the exemption that will be granted to all minimum wage earners. It might be also worthy of note that on the part of the public sector, the Senate Committee on Ways and Means included, as amongst those who will be exempted from the payment of income tax and/or withholding tax, government workers receiving Salary Grade V. We did not make any distinction so as to include Steps 1 to 8 of Salary Grade V as long as one is employed in the public sector or in government.

In contradistinction with House Bill No. 3971 approved by the House of Representatives pertaining to a similar subject matter, the

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[22] *Umali v. Estanislao, supra* at 451-454.

House of Representatives, very much like the Senate, adopted the same levels of exemptions which are:

> From an allowable personal exemption for a single individual of ₱20,000, to a head of family of ₱25,000, to a married individual of ₱32,000, both the House and the Senate versions contain a higher personal exemption of ₱50,000.

Also, by way of personal additional exemption as far as dependents are concerned, up to four, the House, very much like the Senate, recommended a higher ceiling of ₱25,000 for each dependent not exceeding four, thereby increasing the maximum additional exemptions and personal additional exemptions to as high as ₱200,000, depending on one's status in life.

The House also, very much like the Senate, recommended by way of trying to address the revenue loss on the part of the government, an optional standard deduction (OSD) on gross sales, and/or gross receipts as far as individual taxpayers are concerned. However, the House, unlike the Senate, recommended a Simplified Net Income Tax Scheme (SNITS) in order to address the remaining balance of the revenue loss.

By way of contrast, the Senate Committee on Ways and Means recommended, in lieu of SNITS, an optional standard deduction of 40% for corporations as far as their gross income is concerned.

Mr. President, if we total the revenue loss as well as the gain brought about by the 40% OSD on individuals on gross sales and receipts and 40% on gross income as far as corporations are concerned, with a conservative availment rate as computed by the Department of Finance, the government would still enjoy a gain of ₱.78 billion or ₱780 million if we use the high side of the computation however improbable it may be.

For the record, we would like to state that if the availment rate is computed at 15% for individuals and 10% for corporations, the potential high side of a revenue gain would amount to approximately ₱18.08 billion.

Mr. President, we have received many suggestions increasing the rate of personal exemptions and personal additional exemptions. We have likewise received various suggestions pertaining to the expansion

of the coverage of the tax exemption granted to minimum wage earners to encompass as well other income brackets.

However, the only suggestion other than or outside the provisions contained in House Bill No. 3971 that the Senate Committee on Ways and Means adopted, was an expansion of the exemption to cover overtime, holiday, nightshift differential, and hazard pay also being enjoyed by minimum wage earners. It entailed an additional revenue loss of ₱1 billion approximately on the part of the government. However, Mr. President, that was taken into account when I stated earlier that there will still be a revenue gain on the conservative side on the part of government of ₱780 million.

Mr. President, [my distinguished colleagues in the Senate, ***we wish to provide a higher exemption for our countrymen because of the incessant and constant increase in the price of goods****. Nonetheless, not only Our Committee, but also the Senate and Congress, must act responsibly in recognizing that much as we would like to give all forms of help that we can and must provide to our people, we also need to recognize the need of the government to defray its expenses in providing services to the public. This is the most that we can give at this time because the government operates on a tight budget and is short on funds when it comes to the discharge of its main expenses.]*[23]

Mr. President, time will perhaps come and we can improve on this version, but at present, this is the best, I believe, that we can give our people. But by way of comparison, it is still ₱10 higher

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[23] Translated in the vernacular. The original paragraph is quoted below:

Mr. President, *mga kagalang-galang kong kasamahan dito sa Senado,* ***gusto sana naming ibigay ang mas mataas na*** **exemption** ***para sa ating mga kababayan dahil na rin sa walang tigil at walang humpay na pagtaas ng presyo ng bilihin. Subalit kinakailangang maging responsible, hindi lamang ng ating Komite kundi pati na rin ang Senado at ang Kongreso sa pagkilala, na bagaman nais nating ibigay ang lahat ng tulong na puwede at dapat nating ibigay sa ating mga kababayan****, kinakailangan din nating kilalanin ang pangangailangan ng gobyerno pagdating sa pagtustos ng mga gastusing ito na may kinalaman sa pagbibigay ng serbisyo sa ating mga kababayan. Ito po ang pinakamataas na puwede nating ibigay sa kasalukuyang panahon dahil na rin mahigpit sa pondo ngayon at gipit sa pondo ang pamahalaan pagdating sa pagtustos ng mga pangunahing gastusin nito.*

than what the wage boards were able to give minimum wage earners. **Given that, we were able to increase their take-home pay by the amount equivalent to the tax exemption we have granted.**

We urge our colleagues, Mr. President, to pass this bill in earnest so that we can immediately grant relief to our people.

Thank you, Mr. President. (Emphases Supplied)[24]

Clearly, Senator Escudero expressed a sense of urgency for passing what would subsequently become R.A. 9504. He was candid enough to admit that the bill needed improvement, but because time was of the essence, he urged the Senate to pass the bill immediately. The idea was immediate tax relief to the individual taxpayers, particularly low-compensation earners, and an increase in their take-home pay.[25]

Senator Miriam Defensor-Santiago also remarked during the deliberations that "the increase in personal exemption from ₱20,000 to ₱50,000 is timely and appropriate given the increased cost of living. Also, the increase in the additional exemption for dependent children is necessary and timely."[26]

Finally, we consider the President's certification of the necessity of the immediate enactment of Senate Bill No. 2293. That certification became the basis for the Senate to dispense

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[24] IV Record, Senate 14th Congress 1st Session 218-219, 20 May 2008.

[25] During the interpellation by Senator Juan Ponce-Enrile, Senator Escudero said that the increased personal and additional exemptions translates to a tax-free income of ₱200,000 to a family of six. The pertinent legislative journal reads:

> In reply to Senator Enrile's queries, Senator Escudero stated that the proposed measure seeks to increase the current personal exemption for a married individual from ₱32,000 to ₱50,000 and the current additional exemption per children from ₱8,000 to ₱25,000, so a couple with four children would have a total non-taxable income of ₱200,000, translating to an additional income of ₱104,000 for the family. xxx (II Journal, Senate 14th Congress 1st Session 1471, 20 May 2008).

[26] IV Record, Senate Fourteenth Congress First Session 291, 20 May 2008.

with the three-day rule[27] for passing a bill. It evinced the intent of the President to afford wage earners immediate tax relief from the impact of a worldwide increase in the prices of commodities. Specifically, the certification stated that the purpose was to "address the urgent need to cushion the adverse impact of the global escalation of commodity prices upon the most vulnerable within the low income group by providing expanded income tax relief."[28]

In sum, R.A. 9504, like R.A. 7167 in *Umali*, was a piece of social legislation clearly intended to afford *immediate* tax relief to individual taxpayers, particularly low-income compensation earners. Indeed, if R.A. 9504 was to take effect beginning taxable year 2009 or half of the year 2008 only, then the intent of Congress to address the increase in the cost of living in 2008 would have been negated.

Therefore, following *Umali*, the test is whether the new set of personal and additional exemptions was available at the time of the filing of the income tax return. In other words, while the status of the individual taxpayers is determined at the close of the taxable year,[29] their personal and additional exemptions — and consequently the computation of their taxable income — are reckoned when the tax becomes due, and not while the income is being earned or received.

The NIRC is clear on these matters. The taxable income of an individual taxpayer shall be computed on the basis of the

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[27] Article VI, Section 26(2) of the 1987 Constitution states:

(2) No bill passed by either House shall become a law unless it has passed three readings on separate days, and printed copies thereof in its final form have been distributed to its Members three days before its passage, except when the President certifies to the necessity of its immediate enactment to meet a public calamity or emergency. Upon the last reading of a bill, no amendment thereto shall be allowed, and the vote thereon shall be taken immediately thereafter, and the *yeas* and *nays* entered in the Journal.

[28] IV Record, Senate 14th Congress 1st Session 319, 27 May 2008.

[29] Section 35(C), Republic Act No. 8424 (1997).

calendar year.[30] The taxpayer is required to file an income tax return on the 15th of April of each year covering income of the preceding taxable year.[31] The tax due thereon shall be paid at the time the return is filed.[32]

It stands to reason that the new set of personal and additional exemptions, adjusted as a form of social legislation to address the prevailing poverty threshold, should be given effect at the most opportune time as the Court ruled in *Umali*.

The test provided by *Umali* is consistent with *Ingalls v. Trinidad*,[33] in which the Court dealt with the matter of a married person's reduced exemption. As early as 1923, the Court already provided the reference point for determining the taxable income:

> [T]hese statutes dealing with the manner of collecting the income tax and with the deductions to be made in favor of the taxpayer have reference to the time when the return is filed and the tax assessed. If Act No. 2926 took, as it did take, effect on January 1, 1921, its provisions must be applied to income tax returns filed, and assessments made from that date. This is the reason why Act No. 2833, and Act No. 2926, in their respective first sections, refer to income received *during the preceding civil year*. (Italics in the original)

There, the exemption was reduced, not increased, and the Court effectively ruled that income tax due from the individual taxpayer is properly determined upon the filing of the return. This is done after the end of the taxable year, when all the incomes for the immediately preceding taxable year and the corresponding personal exemptions and/or deductions therefor have been considered. Therefore, the taxpayer was made to pay a higher tax for his income earned during 1920, even if the reduced exemption took effect on 1 January 1921.

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[30] Section 43, Republic Act No. 8424 (1997).

[31] Section 51 (C), Republic Act No. 8424 (1997).

[32] Section 56, Republic Act No. 8424 (1997).

[33] *Ingalls v. Trinidad*, 46 Phil. 807, 808-809 (1923).

In the present case, the increased exemptions were already available much earlier than the required time of filing of the return on 15 April 2009. R.A. 9504 came into law on 6 July 2008, more than nine months before the deadline for the filing of the income tax return for taxable year 2008. Hence, individual taxpayers were entitled to claim the increased amounts for the entire year 2008. This was true despite the fact that incomes were already earned or received prior to the law's effectivity on 6 July 2008.

Even more compelling is the fact that R.A. 9504 became effective during the taxable year in question. In *Umali*, the Court ruled that the application of the law was prospective, even if the amending law took effect after the close of the taxable year in question, but before the deadline for the filing of the return and payment of the taxes due for that year. Here, not only did R.A. 9504 take effect before the deadline for the filing of the return and payment for the taxes due for taxable year 2008, it took effect way before the close of that taxable year. Therefore, the operation of the new set of personal and additional exemption in the present case was all the more prospective.

Additionally, as will be discussed later, the rule of full taxable year treatment for the availment of personal and additional exemptions was established, not by the amendments introduced by R.A. 9504, but by the provisions of the 1997 Tax Code itself. The new law merely introduced a change in the amounts of the basic and additional personal exemptions. Hence, the fact that R.A. 9504 took effect only on 6 July 2008 is irrelevant.

***The present case is substantially identical with* Umali *and not with* Pansacola.**

Respondents argue that *Umali* is not applicable to the present case. They contend that the increase in personal and additional exemptions were necessary in that case to conform to the 1991 poverty threshold level; but that in the present case, the amounts

under R.A. 9504 far exceed the poverty threshold level. To support their case, respondents cite figures allegedly coming from the National Statistical Coordination Board. According to those figures, in 2007, or one year before the effectivity of R.A. 9504, the poverty threshold per capita was ₱14,866 or ₱89,196 for a family of six.[34]

We are not persuaded.

The variance raised by respondents borders on the superficial. The message of *Umali* is that there must be an event recognized by Congress that occasions the immediate application of the increased amounts of personal and additional exemptions. In *Umali*, that event was the failure to adjust the personal and additional exemptions to the prevailing poverty threshold level. In this case, the legislators specified the increase in the price of commodities as the basis for the immediate availability of the new amounts of personal and additional exemptions.

We find the facts of this case to be substantially identical to those of *Umali*.

First, both cases involve an amendment to the prevailing tax code. The present petitions call for the interpretation of the effective date of the increase in personal and additional exemptions. Otherwise stated, the present case deals with an amendment (R.A. 9504) to the prevailing tax code (R.A. 8424 or the 1997 Tax Code). Like the present case, *Umali* involved an amendment to the then prevailing tax code — it interpreted the effective date of R.A. 7167, an amendment to the 1977 NIRC, which also increased personal and additional exemptions.

Second, the amending law in both cases reflects an intent to make the new set of personal and additional exemptions immediately available after the effectivity of the law. As already pointed out, in *Umali*, R.A. 7167 involved social legislation intended to adjust personal and additional exemptions. The adjustment was made in keeping with the poverty threshold level prevailing at the time.

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[34] *Rollo* (G.R. No. 184450), p. 145.

Third, both cases involve social legislation intended to cure a social evil — R.A. 7167 was meant to adjust personal and additional exemptions in relation to the poverty threshold level, while R.A. 9504 was geared towards addressing the impact of the global increase in the price of goods.

Fourth, in both cases, it was clear that the intent of the legislature was to hasten the enactment of the law to make its beneficial relief immediately available.

Pansacola *is not applicable.*

In lieu of *Umali*, the OSG relies on our ruling in *Pansacola v. Commissioner of Internal Revenue*.[35] In that case, the 1997 Tax Code (R.A. 8424) took effect on 1 January 1998, and the petitioner therein pleaded for the application of the new set of personal and additional exemptions provided thereunder to taxable year 1997. R.A. 8424 explicitly provided for its effectivity on 1 January 1998, but it did not provide for any retroactive application.

We ruled against the application of the new set of personal and additional exemptions to the previous taxable year 1997, in which the filing and payment of the income tax was due on 15 April 1998, even if the NIRC had already taken effect on 1 January 1998. This court explained that the NIRC could not be given retroactive application, given the specific mandate of the law that it shall take effect on 1 January 1998; and given the absence of any reference to the application of personal and additional exemptions to income earned prior to 1 January 1998. We further stated that what the law considers for the purpose of determining the income tax due is the **status** at the close of the taxable year, as opposed to the **time** of filing of the return and payment of the corresponding tax.

The facts of this case are not identical with those of *Pansacola*.

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[35] 537 Phil. 296 (2006). The OSG raised this argument in its Comment filed in G.R. No. 184450 on 19 February 2009; See *rollo* (G.R. No. 184450), pp. 83-106.

First, *Pansacola* interpreted the effectivity of an *entirely* new tax code — R.A. 8424, the Tax Reform Act of 1997. The present case, like *Umali*, involves a mere amendment of some specific provisions of the prevailing tax code: R.A. 7167 amending then P.D. 1158 (the 1977 NIRC) in *Umali* and R.A. 9504 amending R.A. 8424 herein.

Second, in *Pansacola*, the new tax code specifically provided for an effective date — the beginning of the following year — that was to apply to all its provisions, including new tax rates, new taxes, new requirements, as well as new exemptions. The tax code did not make any exception to the effectivity of the subject exemptions, even if transitory provisions[36] specifically provided for different effectivity dates for certain provisions.

Hence, the Court did not find any legislative intent to make the new rates of personal and additional exemptions available to the income earned in the year previous to R.A. 8424's effectivity. In the present case, as previously discussed, there was a clear intent on the part of Congress to make the new amounts of personal and additional exemptions immediately available for the entire taxable year 2008. R.A. 9504 does not even need a provision providing for retroactive application because, as mentioned above, it is actually prospective — the new law took effect during the taxable year in question.

Third, in *Pansacola*, the retroactive application of the new rates of personal and additional exemptions would result in an absurdity — new tax rates under the new law would not apply, but a new set of personal and additional exemptions could be availed of. This situation does not obtain in this case, however, precisely because the new law does not involve an entirely new tax code. The new law is merely an amendment to the rates of personal and additional exemptions.

Nonetheless, R.A. 9504 can still be made applicable to taxable year 2008, even if we apply the *Pansacola* test. We stress that

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[36] *See* Republic Act No. 8424 (1997), Section 5 (Transitory Provisions) and Section 7 (Repealing Clauses).

Pansacola considers the close of the taxable year as the reckoning date for the effectivity of the new exemptions. In that case, the Court refused the application of the new set of personal exemptions, since they were not yet available at the close of the taxable year. In this case, however, at the close of the taxable year, the new set of exemptions was already available. In fact, it was already available during the taxable year — as early as 6 July 2008 — when the new law took effect.

There may appear to be some dissonance between the Court's declarations in *Umali* and those in *Pansacola*, which held:

> Clearly from the abovequoted provisions, what the law should consider for the purpose of determining the tax due from an individual taxpayer is his status and qualified dependents at the close of the taxable year and not at the time the return is filed and the tax due thereon is paid. Now comes Section 35(C) of the NIRC which provides,
>
> x x x x x x x x x
>
> Emphasis must be made that Section 35(C) of the NIRC allows a taxpayer to still claim the corresponding full amount of exemption for a taxable year, e.g. if he marries; have additional dependents; he, his spouse, or any of his dependents die; and if any of his dependents marry, turn 21 years old; or become gainfully employed. It is as if the changes in his or his dependents status took place at the close of the taxable year.
>
> **Consequently, his correct taxable income and his corresponding allowable deductions e.g. personal and additional deductions, if any, had already been determined as of the end of the calendar year.**
>
> xxx. Since the NIRC took effect on January 1, 1998, the increased amounts of personal and additional exemptions under Section 35, can only be allowed as deductions from the individual taxpayers gross or net income, as the case maybe, for the taxable year 1998 to be filed in 1999. The NIRC made no reference that the personal and additional exemptions shall apply on income earned before January 1, 1998.[37]

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[37] *Pansacola v. CIR, supra*, at 306-307.

It must be remembered, however, that the Court therein emphasized that *Umali* was interpreting a social legislation:

> In *Umali*, we noted that despite being given authority by Section 29(1)(4) of the National Internal Revenue Code of 1977 to adjust these exemptions, no adjustments were made to cover 1989. Note that Rep. Act No. 7167 is entitled "*An Act Adjusting the Basic Personal and Additional Exemptions Allowable to Individuals for Income Tax Purposes to the Poverty Threshold Level, Amending for the Purpose Section 29, Paragraph (L), Items (1) and (2) (A), of the National Internal Revenue Code, As Amended, and For Other Purposes.*" Thus, we said in *Umali*, that the adjustment provided by Rep. Act No. 7167 effective 1992, should consider the poverty threshold level in 1991, the time it was enacted. And we observed therein that since the exemptions would especially benefit lower and middle-income taxpayers, the exemption should be made to cover the past year 1991. To such an extent, Rep. Act No. 7167 was a social legislation intended to remedy the non-adjustment in 1989. And as cited in *Umali*, this legislative intent is also clear in the records of the House of Representatives' Journal.
>
> This is not so in the case at bar. There is nothing in the NIRC that expresses any such intent. **The policy declarations in its enactment do not indicate it was a social legislation that adjusted personal and additional exemptions according to the poverty threshold level nor is there any indication that its application should retroact.** xxx.[38] (Emphasis Supplied)

Therefore, the seemingly inconsistent pronouncements in *Umali* and *Pansacola* are more apparent than real. The circumstances of the cases and the laws interpreted, as well as the legislative intents thereof, were different.

The policy in this jurisdiction is full taxable year treatment.

We have perused R.A. 9504, and we see nothing that expressly provides or even suggests a prorated application of the exemptions for taxable year 2008. On the other hand, the policy of full taxable year treatment, especially of the personal and

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[38] *Id.* at 307-308.

additional exemptions, is clear under Section 35, particularly paragraph C of R.A. 8424 or the 1997 Tax Code:

SEC. 35. Allowance of Personal Exemption for Individual Taxpayer. —

(A) In General. - For purposes of determining the tax provided in Section 24(A) of this Title, there shall be allowed a basic personal exemption as follows:

x x x x x x x x x

(B) Additional Exemption for Dependents. - There shall be allowed an additional exemption of ... for each dependent not exceeding four (4).

x x x x x x x x x

(C) *Change of Status*. - If the taxpayer marries or should have additional dependent(s) as defined above during the taxable year, the taxpayer may claim the corresponding additional exemption, as the case may be, **in full for such year**.

If the taxpayer dies during the taxable year, his estate may still claim the personal and additional exemptions for himself and his dependent(s) **as if he died at the close of such year**.

If the spouse or any of the dependents dies or if any of such dependents marries, becomes twenty-one (21) years old or becomes gainfully employed during the taxable year, the **taxpayer may still claim the same exemptions** as if the spouse or any of the dependents died, or as if such dependents married, became twenty-one (21) years old or became gainfully employed **at the close of such year**. (Emphases supplied)

Note that paragraph C does not allow the prorating of the personal and additional exemptions provided in paragraphs A and B, even in case a status - changing event occurs during the taxable year. Rather, it allows the fullest benefit to the individual taxpayer. This manner of reckoning the taxpayer's status for purposes of the personal and additional exemptions clearly demonstrates the legislative intention; that is, for the state to give the taxpayer the maximum exemptions that can be availed, notwithstanding the fact that the latter's actual status would qualify only for a lower exemption if prorating were employed.

We therefore see no reason why we should make any distinction between the income earned prior to the effectivity of the amendment (from 1 January 2008 to 5 July 2008) and that earned thereafter (from 6 July 2008 to 31 December 2008) as none is indicated in the law. The principle that the courts should not distinguish when the law itself does not distinguish squarely applies to this case.[39]

We note that the prorating of personal and additional exemptions was employed in the 1939 Tax Code. Section 23(d) of that law states:

Change of status. — If the status of the taxpayer insofar as it affects the personal and additional exemptions for himself or his dependents, changes during the taxable year, **the amount of the personal and additional exemptions shall be apportioned, under rules and regulations prescribed by the Secretary of Finance, in accordance with the number of months before and after such change**. For the purpose of such apportionment a fractional part of a month shall be disregarded unless it amounts to more than half a month, in which case it shall be considered as a month.[40] (Emphasis supplied)

On 22 September 1950, R.A. 590 amended Section 23(d) of the 1939 Tax Code by restricting the operation of the prorating of personal exemptions. As amended, Section 23(d) reads:

(d) Change of status. — If the status of the taxpayer insofar as it affects the personal and additional exemption for himself or his dependents, changes during the taxable year **by reason of his death**, the amount of the personal and additional exemptions shall be apportioned, under rules and regulations prescribed by the Secretary of Finance, in accordance with the number of months before and after such change. For the purpose of such apportionment a fractional part of a month shall be disregarded unless it amounts to more than half a month, in which case it shall be considered as a month.[41] (Emphasis supplied)

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[39] See *Philippine British Assurance Co., Inc. v. Intermediate Appellate Court*, 234 Phil. 512 (1987).

[40] *National Internal Revenue Code*, Commonwealth Act No. 466 (1939).

[41] *Amending the NIRC Re: Income Tax,* Republic Act No. 590 (1950).

Nevertheless, in 1969, R.A. 6110 ended the operation of the prorating scheme in our jurisdiction when it amended Section 23(d) of the 1939 Tax Code and adopted a full taxable year treatment of the personal and additional exemptions. Section 23(d), as amended, reads:

(d) Change of status.—

If the taxpayer married or should have additional dependents as defined in subsection (c) above during the taxable year the taxpayer may claim the corresponding personal exemptions in full for such year.

If the taxpayer should die during the taxable year, his estate may still claim the personal and additional deductions for himself and his dependents as if he died at the close of such year.

If the spouse or any of the dependents should die during the year, the taxpayer may still claim the same deductions as if they died at the close of such year.

P.D. 69 followed in 1972, and it retained the full taxable year scheme. Section 23(d) thereof reads as follows:

(d) Change of status. — If the taxpayer marries or should have additional dependents as defined in subsection (c) above during the taxable year the taxpayer may claim the corresponding personal exemptions in full for such year.

If the taxpayer should die during the taxable year, his estate may still claim the personal and additional deductions for himself and his dependents as if he died at the close of such year.

If the spouse or any of the dependents should die or become twenty-one years old during the taxable year, the taxpayer may still claim the same exemptions as if they died, or as if such dependents became twenty-one years old at the close of such year.

The 1977 Tax Code continued the policy of full taxable year treatment. Section 23(d) thereof states:

(d) Change of status. — If the taxpayer married or should have additional dependents as defined in subsection (c) above during the taxable year, the taxpayer may claim the corresponding personal exemption in full for such year.

If the taxpayer should die during the taxable year, his estate may still claim the personal and additional exemptions for himself and his dependents as if he died at the close of such year.

If the spouse or any of the dependents should die or become twenty-one years old during the taxable year, the taxpayer may still claim the same exemptions as if they died, or as if such dependents became twenty-one years old at the close of such year.

While Section 23 of the 1977 Tax Code underwent changes, the provision on full taxable year treatment in case of the taxpayer's change of status was left untouched.[42] Executive Order No. 37, issued on 31 July 1986, retained the *change of status* provision verbatim. The provision appeared under Section 30(1)(3) of the NIRC, as amended:

(3) Change of status. — If the taxpayer married or should have additional dependents as defined above during the taxable year, the taxpayer may claim the corresponding personal and additional exemptions, as the case may be, in full for such year.

If the taxpayer should die during the taxable year, his estate may still claim the personal and additional exemptions for himself and his dependents as if he died at the close of such year.

If the spouse or any of the dependents should die or if any of such dependents becomes twenty-one years old during the taxable year, the taxpayer may still claim the same exemptions as if they died, or if such dependents become twenty-one years old at the close of such year.

Therefore, the legislative policy of full taxable year treatment of the personal and additional exemptions has been in our jurisdiction continuously since 1969. The prorating approach has long since been abandoned. Had Congress intended to revert

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[42] See *An Act Amending Certain Provisions of the National Internal Revenue Code of 1977, as Amended, and for Other Purposes*, Batas Pambansa Blg. 135, (1981), *Amendments to Section 23 and Section 45 of the NIRC of 1977, As Amended, Granting Special Additional Personal Exemption to Individual Taxpayers*, P.D. No. 1868 (1983) and Executive Order No. 999 (1985).

to that scheme, then it should have so stated in clear and unmistakeable terms. There is nothing, however, in R.A. 9504 that provides for the reinstatement of the prorating scheme. On the contrary, the change-of-status provision utilizing the full-year scheme in the 1997 Tax Code was left untouched by R.A. 9504.

We now arrive at this important point: the policy of full taxable year treatment is established, not by the amendments introduced by R.A. 9504, but by the provisions of the 1997 Tax Code, which adopted the policy from as early as 1969.

There is, of course, nothing to prevent Congress from again adopting a policy that prorates the effectivity of basic personal and additional exemptions. This policy, however, must be explicitly provided for by law — to amend the prevailing law, which provides for full-year treatment. As already pointed out, R.A. 9504 is totally silent on the matter. This silence cannot be presumed by the BIR as providing for a half-year application of the new exemption levels. Such presumption is unjust, as incomes do not remain the same from month to month, especially for the MWEs.

Therefore, there is no legal basis for the BIR to reintroduce the prorating of the new personal and additional exemptions. In so doing, respondents overstepped the bounds of their rule-making power. It is an established rule that administrative regulations are valid only when these are consistent with the law.[43] Respondents cannot amend, by mere regulation, the laws they administer.[44] To do so would violate the principle of non--delegability of legislative powers.[45]

The prorated application of the new set of personal and additional exemptions for the year 2008, which was introduced by respondents, cannot even be justified under the exception

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[43] *CIR v. Fortune Tobacco Corporation*, 581 Phil. 146 (2008).

[44] *Commissioner of Internal Revenue v. Central Luzon Drug Corp.*, 496 Phil. 307 (2005).

[45] *Tatad v. Secretary of the Department of Energy*, 346 Phil. 321 (1997).

to the canon of non-delegability; that is, when Congress makes a delegation to the executive branch.[46] The delegation would fail the two accepted tests for a valid delegation of legislative power; the completeness test and the sufficient standard test.[47] The first test requires the law to be complete in all its terms and conditions, such that the only thing the delegate will have to do is to enforce it.[48] The sufficient standard test requires adequate guidelines or limitations in the law that map out the boundaries of the delegate's authority and canalize the delegation.[49]

In this case, respondents went beyond enforcement of the law, given the absence of a provision in R.A. 9504 mandating the prorated application of the new amounts of personal and additional exemptions for 2008. Further, even assuming that the law intended a prorated application, there are no parameters set forth in R.A. 9504 that would delimit the legislative power surrendered by Congress to the delegate. In contrast, Section 23(d) of the 1939 Tax Code authorized not only the prorating of the exemptions in case of change of status of the taxpayer, but also authorized the Secretary of Finance to prescribe the corresponding rules and regulations.

II.

Whether an MWE is exempt for the entire taxable year 2008 or from 6 July 2008 only

The MWE is exempt for the entire taxable year 2008.

As in the case of the adjusted personal and additional exemptions, the MWE exemption should apply to the entire taxable year 2008, and not only from 6 July 2008 onwards.

We see no reason why *Umali* cannot be made applicable to the MWE exemption, which is undoubtedly a piece of social

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[46] *Id.*

[47] *Id.*

[48] *Id.*

[49] *Id.*

legislation. It was intended to alleviate the plight of the working class, especially the low-income earners. In concrete terms, the exemption translates to a ₱34 per day benefit, as pointed out by Senator Escudero in his sponsorship speech.[50]

As it stands, the calendar year 2008 remained as one taxable year for an individual taxpayer. Therefore, RR 10-2008 cannot declare the income earned by a minimum wage earner from 1 January 2008 to 5 July 2008 to be taxable and those earned by him for the rest of that year to be tax-exempt. To do so would be to contradict the NIRC and jurisprudence, as taxable income would then cease to be determined on a yearly basis.

Respondents point to the letter of former Commissioner of Internal Revenue Lilia B. Hefti dated 5 July 2008 and petitioner Sen. Escudero's signature on the *Conforme* portion thereof. This letter and the conforme supposedly establish the legislative intent not to make the benefits of R.A. 9504 effective as of 1 January 2008.

We are not convinced. The *conforme* is irrelevant in the determination of legislative intent.

We quote below the relevant portion of former Commissioner Hefti's letter:

> Attached herewith are salient features of the proposed regulations to implement RA 9504 xxx. We have tabulated critical issues raised during the public hearing and comments received from the public which we need immediate written resolution based on the inten[t]ion of the law more particularly the effectivity clause. Due to the expediency and clamor of the public for its immediate implementation, may we request your confirmation on the proposed recommendation within five (5) days from receipt hereof. Otherwise, we shall construe your affirmation.[51]

We observe that a Matrix of Salient Features of Proposed Revenue Regulations per R.A. 9504 was attached to the letter.[52]

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[50] *See* note 22.

[51] *Rollo* (G.R. No. 185234), p. 132; Annex 1, p. 1.

[52] *Rollo* (G.R. No. 184450), pp. 108-115.

The Matrix had a column entitled "Remarks" opposite the Recommended Resolution. In that column, noted was a suggestion coming from petitioner TMAP:

> *TMAP suggested that it should be retroactive considering that it was [for] the benefit of the majority and to alleviate the plight of workers.* Exemption should be applied for the whole taxable year as provided in the NIRC. xxx *Umali v. Estanislao* [ruled] that the increase[d] exemption in 1992 [was applicable] [to] 1991.
>
> *Majority issues raised during the public hearing last July 1, 2008 and emails received suggested [a] retroactive implementation.*[53] (Italics in the original)

The above remarks belie the claim that the *conforme* is evidence of the legislative intent to make the benefits available only from 6 July 2008 onwards. There would have been no need to make the remarks if the BIR had merely wanted to confirm was the availability of the law's benefits to income earned starting 6 July 2008. Rather, the implication is that the BIR was requesting the conformity of petitioner Senator Escudero to the proposed implementing rules, subject to the remarks contained in the Matrix. Certainly, it cannot be said that Senator Escudero's *conforme* is evidence of legislative intent to the effect that the benefits of the law would not apply to income earned from 1 January 2008 to 5 July 2008.

Senator Escudero himself states in G.R. No. 185234:

> In his bid to ensure that the BIR would observe the effectivity dates of the grant of tax exemptions and increased basic personal and additional exemptions under Republic Act No. 9504, Petitioner Escudero, as Co-Chairperson of the Congressional Oversight Committee on Comprehensive Tax Reform Program, and his counterpart in the House of Representatives, Hon. Exequiel B. Javier, conveyed through a letter, dated 16 September 2008, to Respondent Teves the legislative intent that "Republic Act (RA) No. 9504 must be made applicable to the entire taxable year 2008" considering that it was "a social legislation intended to somehow alleviate the plight of minimum wage earners or low income taxpayers". They also jointly

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[53] *Rollo* (G.R. No. 185234), p. 133.

expressed their "fervent hope that the corresponding Revenue Regulations that will be issued reflect the true legislative intent and rightful statutory interpretation of R.A. No. 9504."[54]

Senator Escudero repeats in his Memorandum:

> On 16 September 2008, the Chairpersons (one of them being herein Petitioner Sen. Escudero) of the Congressional Oversight Committee on Comprehensive Tax Reform Program of both House of Congress wrote Respondent DOF Sec. Margarito Teves, and requested that the revenue regulations (then yet still to be issued)[55] to implement Republic Act No. 9504 reflect the true intent and rightful statutory interpretation thereof, specifically that the grant of tax exemption and increased basic personal and additional exemptions be made available for the entire taxable year 2008. Yet, the DOF promulgated Rev. Reg. No. 10-2008 in contravention of such legislative intent. xxx.[56]

We have gone through the records and we do not see anything that would to suggest that respondents deny the senator's assertion.

Clearly, Senator Escudero's assertion is that the legislative intent is to make the MWE's tax exemption and the increased basic personal and additional exemptions available for the entire year 2008. In the face of his assertions, respondents' claim that his *conforme* to Commissioner Hefti's letter was evidence of legislative intent becomes baseless and specious. The remarks described above and the subsequent letter sent to DOF Secretary Teves, by no less than the Chairpersons of the Bi-cameral Congressional Oversight Committee on Comprehensive Tax Reform Program, should have settled for respondents the matter of what the legislature intended for R.A. 9504's exemptions.

Accordingly, we agree with petitioners that RR 10-2008, insofar as it allows the availment of the MWE's tax exemption

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[54] *Id.* at 14-15; Petition, pp. 12-13.

[55] RR 10-2008 was issued on 24 September 2008 (see http://www.bir.gov.ph/index.php/archive/2008-revenue-regulations.html (last accessed on 23 November 2016).

[56] *Rollo* (G.R. No. 185234), pp. 280-281; Memorandum, pp. 4-5.

and the increased personal and additional exemptions beginning only on 6 July 2008 is in contravention of the law it purports to implement.

A clarification is proper at this point. Our ruling that the MWE exemption is available for the entire taxable year 2008 is premised on the fact of one's status as an MWE; that is, whether the employee during the entire year of 2008 was an MWE as defined by R.A. 9504. When the **wages** received exceed the minimum wage anytime during the taxable year, the employee necessarily loses the MWE qualification. Therefore, wages become taxable as the employee ceased to be an MWE. But the exemption of the employee from tax on the income previously earned **as an MWE** remains.

This rule reflects the understanding of the Senate as gleaned from the exchange between Senator Miriam Defensor-Santiago and Senator Escudero:

> Asked by Senator Defensor-Santiago on how a person would be taxed if, during the year, he is promoted from Salary Grade 5 to Salary Grade 6 in July and ceases to be a minimum wage employee, Senator Escudero said that the tax computation would be based starting on the new salary in July.[57]

As the exemption is based on the employee's status as an MWE, the operative phrase is "when the employee ceases to be an MWE. Even beyond 2008, it is therefore possible for one employee to be exempt early in the year for being an MWE for that period, and subsequently become taxable in the middle of the same year with respect to the compensation income, as when the pay is increased higher than the minimum wage. The improvement of one's lot, however, cannot justly operate to make the employee liable for tax on the income earned as an MWE.

Additionally, on the question of whether one who ceases to be an MWE may still be entitled to the personal and additional

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[57] II JOURNAL, SENATE 14TH CONGRESS, 1ST SESSION 1513, 26 May 2008; *Rollo* (G.R. No. 184508), p. 124, Consolidated Comments.

exemptions, the answer must necessarily be yes. The MWE exemption is separate and distinct from the personal and additional exemptions. One's status as an MWE does not preclude enjoyment of the personal and additional exemptions. Thus, when one is an MWE during a part of the year and later earns higher than the minimum wage and becomes a non-MWE, only earnings for that period when one is a non-MWE is subject to tax. It also necessarily follows that such an employee is entitled to the personal and additional exemptions that any individual taxpayer with taxable gross income is entitled.

A different interpretation will actually render the MWE exemption a totally oppressive legislation. It would be a total absurdity to disqualify an MWE from enjoying as much as ₱150,000[58] in personal and additional exemptions just because sometime in the year, he or she ceases to be an MWE by earning a little more in wages. Laws cannot be interpreted with such absurd and unjust outcome. It is axiomatic that the legislature is assumed to intend right and equity in the laws it passes.[59]

Critical, therefore, is how an employee ceases to become an MWE and thus ceases to be entitled to an MWE's exemption.

III.

Whether Sections 1 and 3 of RR 10-2008 are consistent with the law in declaring that an MWE who receives other benefits in excess of the statutory limit of ₱30,000 is no longer entitled to the exemption provided by R.A. 9504, is consistent with the law.

Sections 1 and 3 of RR 10-2008 add a requirement not found in the law by effectively declaring that an MWE who receives other benefits in excess of the statutory limit of ₱30,000 is no longer entitled to the exemption provided by R.A. 9504.

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[58] ₱25,000 for each dependent not exceeding four and the basic personal exemption of ₱50,000.

[59] *Commissioner of Internal Revenue v. TMX Sales, Inc.*, 82 Phil. 199 (1992).

The BIR added a requirement not found in the law.

The assailed Sections 1 and 3 of RR 10-2008 are reproduced hereunder for easier reference.

SECTION 1. Section 2.78.1 of RR 2-98, as amended, is hereby further amended to read as follows:

Sec. 2.78.1. Withholding of Income Tax on Compensation Income. —

(A) Compensation Income Defined. — x x x

x x x x x x x x x

(3) Facilities and privileges of relatively small value. — Ordinarily, facilities, and privileges (such as entertainment, medical services, or so-called "courtesy" discounts on purchases), otherwise known as "*de minimis* benefits," furnished or offered by an employer to his employees, are not considered as compensation subject to income tax and consequently to withholding tax, if such facilities or privileges are of relatively small value and are offered or furnished by the employer merely as means of promoting the health, goodwill, contentment, or efficiency of his employees.

The following shall be considered as "*de minimis*" benefits not subject to income tax, hence, not subject to withholding tax on compensation income of both managerial and rank and file employees:

(a) Monetized unused vacation leave credits of employees not exceeding ten (10) days during the year and the monetized value of leave credits paid to government officials and employees;

(b) Medical cash allowance to dependents of employees not exceeding ₱750.00 per employee per semester or ₱125 per month;

(c) Rice subsidy of ₱1,500.00 or one (1) sack of 50-kg. rice per month amounting to not more than ₱1,500.00;

(d) Uniforms and clothing allowance not exceeding ₱4,000.00 per annum;

(e) Actual yearly medical benefits not exceeding ₱10,000.00 per annum;

(f) Laundry allowance not exceeding ₱300.00 per month;

(g) Employees achievement awards, e.g., for length of service or safety achievement, which must be in the form of a tangible personal property other than cash or gift certificate, with an annual monetary value not exceeding ₱10,000.00 received by the employee under an established written plan which does not discriminate in favor of highly paid employees;

(h) Gifts given during Christmas and major anniversary celebrations not exceeding ₱5,000.00 per employee per annum;

(i) Flowers, fruits, books, or similar items given to employees under special circumstances, e.g., on account of illness, marriage, birth of a baby, etc.; and

(j) Daily meal allowance for overtime work not exceeding twenty-five percent (25%) of the basic minimum wage.[60]

The amount of '*de minimis*' benefits conforming to the ceiling herein prescribed shall not be considered in determining the ₱30,000.00 ceiling of 'other benefits' excluded from gross income under Section 32(b)(7)(e) of the Code. Provided that, the excess of the '*de minimis*' benefits over their respective ceilings prescribed by these regulations shall be considered as part of 'other benefits' and the employee receiving it will be subject to tax only on the excess over the ₱30,000.00 ceiling. **Provided, further, that MWEs receiving 'other benefits' exceeding the ₱30,000.00 limit shall be taxable on the excess benefits, as well as on his salaries, wages and allowances, just like an employee receiving compensation income beyond the SMW.**

Any amount given by the employer as benefits to its employees, whether classified as '*de minimis*' benefits or fringe benefits, shall constitute [a] deductible expense upon such employer.

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[60] Total of the *de minimis* benefits, excluding items (a), (i) and (j), could amount to ₱51,350 annually.

Where compensation is paid in property other than money, the employer shall make necessary arrangements to ensure that the amount of the tax required to be withheld is available for payment to the Bureau of Internal Revenue.

x x x x x x x x x

(B) Exemptions from Withholding Tax on Compensation. - The following income payments are exempted from the requirements of withholding tax on compensation:

x x x x x x x x x

(13) **Compensation income of MWEs who work in the private sector and being paid the Statutory Minimum Wage (SMW)**, as fixed by Regional Tripartite Wage and Productivity Board (RTWPB)/National Wages and Productivity Commission (NWPC), applicable to the place where he/she is assigned.

The aforesaid income shall likewise be exempted from income tax.

"Statutory Minimum Wage" (SMW) shall refer to the rate fixed by the Regional Tripartite Wage and Productivity Board (RTWPB), as defined by the Bureau of Labor and Employment Statistics (BLES) of the Department of Labor and Employment (DOLE). The RTWPB of each region shall determine the wage rates in the different regions based on established criteria and shall be the basis of exemption from income tax for this purpose.

Holiday pay, overtime pay, night shift differential pay and hazard pay earned by the aforementioned MWE shall likewise be covered by the above exemption. Provided, however, that **an employee who receives/earns additional compensation such as commissions, honoraria, fringe benefits, benefits in excess of the allowable statutory amount of ₱30,000.00, taxable allowances and other taxable income other than the SMW, holiday pay, overtime pay, hazard pay and night shift differential pay shall not enjoy the privilege of being a MWE and, therefore, his/her entire earnings are not exempt form income tax**, and consequently, from withholding tax.

MWEs receiving other income, such as income **from the conduct of trade, business, or practice of profession**, except income subject to final tax, in addition to compensation income

are not exempted from income tax on their entire income earned during the taxable year. **This rule, notwithstanding, the [statutory minimum wage], [h]oliday pay, overtime pay, night shift differential pay and hazard pay shall still be exempt from withholding tax.**

For purposes of these regulations, hazard pay shall mean xxx.

In case of hazardous employment, xxx

The NWPC shall officially submit a Matrix of Wage Order by region xxx

Any reduction or diminution of wages for purposes of exemption from income tax shall constitute misrepresentation and therefore, shall result to the automatic disallowance of expense, *i.e.* compensation and benefits account, on the part of the employer. The offenders may be criminally prosecuted under existing laws.

(14) Compensation income of employees in the public sector with compensation income of not more than the SMW in the non-agricultural sector, as fixed by RTWPB/NWPC, applicable to the place where he/she is assigned.

The aforesaid income shall likewise be exempted from income tax.

The basic salary of MWEs in the public sector shall be equated to the SMW in the non-agricultural sector applicable to the place where he/she is assigned. The determination of the SMW in the public sector shall likewise adopt the same procedures and consideration as those of the private sector.

Holiday pay, overtime pay, night shift differential pay and hazard pay earned by the aforementioned MWE in the public sector shall likewise be covered by the above exemption. **Provided, however, that a public sector employee who receives additional compensation such as commissions, honoraria, fringe benefits, benefits in excess of the allowable statutory amount of ₱30,000.00**, taxable allowances and other taxable income other than the SMW, holiday pay, overtime pay, night shift differential pay and hazard pay **shall not enjoy**

the privilege of being a MWE and, therefore, his/her entire earnings are not exempt from income tax and, consequently, from withholding tax.

MWEs receiving other income, such as income from the conduct of trade, business, or practice of profession, except income subject to final tax, in addition to compensation income are not exempted from income tax on their entire income earned during the taxable year. **This rule, notwithstanding, the SMW, Holiday pay, overtime pay, night shift differential pay and hazard pay shall still be exempt from withholding tax.**

For purposes of these regulations, hazard pay shall mean xxx

In case of hazardous employment, x x x

x x x x x x x x x

SECTION 3. Section 2.79 of RR 2-98, as amended, is hereby further amended to read as follows:

Sec. 2.79. *Income Tax Collected at Source on Compensation Income*. —

(A) *Requirement of Withholding*. — Every employer must withhold from compensation paid an amount computed in accordance with these Regulations. Provided, that no withholding of tax shall be required on the SMW, including holiday pay, overtime pay, night shift differential and hazard pay of MWEs in the private/public sectors as defined in these Regulations. **Provided, further, that an employee who receives additional compensation such as commissions, honoraria, fringe benefits, benefits in excess of the allowable statutory amount of ₱30,000.00, taxable allowances and other taxable income other than the SMW, holiday pay, overtime pay, hazard pay and night shift differential pay shall not enjoy the privilege of being a MWE and, therefore, his/her entire earnings are not exempt from income tax and, consequently, shall be subject to withholding tax.**

x x x x x x x x x

> For the year 2008, however, being the initial year of implementation of R.A. 9504, there shall be a transitory withholding tax table for the period from July 6 to December 31, 2008 (Annex "D") determined by prorating the annual personal and additional exemptions under R.A. 9504 over a period of six months. Thus, for individuals, regardless of personal status, the prorated personal exemption is ₱25,000, and for each qualified dependent child (QDC), ₱12,500.

On the other hand, the pertinent provisions of law, which are supposed to be implemented by the above-quoted sections of RR 10-2008, read as follows:

> SECTION 1. Section 22 of Republic Act No. 8424, as amended, otherwise known as the National Internal Revenue Code of 1997, is hereby further amended by adding the following definitions after Subsection (FF) to read as follows:
>
> Section 22. Definitions. — when used in this Title:[61]
>
> (A) x x x
>
> (FF) x x x
>
> (GG) **The term 'statutory minimum wage' shall refer to the rate fixed by the Regional Tripartite Wage and Productivity Board**, as defined by the Bureau of Labor and Employment Statistics (BLES) of the Department of Labor and Employment (DOLE).
>
> (HH) **The term 'minimum wage earner' shall refer to a worker in the private sector paid the statutory minimum wage, or to an employee in the public sector with compensation income of not more than the statutory minimum wage** in the non-agricultural sector where he/she is assigned.
>
> SECTION 2. Section 24(A) of Republic Act No. 8424, as amended, otherwise known as the National Internal Revenue Code of 1997, is hereby further amended to read as follows:
>
> SEC. 24. Income Tax Rates. —

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[61] Title II, Tax on Income, R.A. 8424, as amended.

(A) Rates of Income Tax on Individual Citizen and Individual Resident Alien of the Philippines. —

1) x x x

x x x x x x x x x; and

(c) On the taxable income defined in Section 31 of this Code, other than income subject to tax under Subsections (B), (C) and (D) of this Section, derived for each taxable year from all sources within the Philippines by an individual alien who is a resident of the Philippines.

(2) Rates of Tax on Taxable Income of Individuals.—The tax shall be computed in accordance with and at the rates established in the following schedule:

x x x x x x x x x

For married individuals, the husband and wife, subject to the provision of Section 51 (D) hereof, shall compute separately their individual income tax based on their respective total taxable income: Provided, That if any income cannot be definitely attributed to or identified as income exclusively earned or realized by either of the spouses, the same shall be divided equally between the spouses for the purpose of determining their respective taxable income.

***Provided*, That minimum wage earners as defined in Section 22(HH) of this Code shall be exempt from the payment of income tax on their taxable income: Provided, further, That the holiday pay, overtime pay, night shift differential pay and hazard pay received by such minimum wage earners shall likewise be exempt from income tax.**

x x x x x x x x x

SECTION 5. Section 51(A)(2) of Republic Act No. 8424, as amended, otherwise known as the National Internal Revenue Code of 1997, is hereby further amended to read as follows:

SEC. 51. Individual Return. —

(A) Requirements. —

(1) Except as provided in paragraph (2) of this Subsection, the following individuals are required to file an income tax return:

(a) x x x

x x x x x x x x x

(2) The following individuals shall not be required to file an income tax return:

(a) x x x

(b) An individual with respect to pure compensation income, as defined in Section 32(A)(1), derived from sources within the Philippines, the income tax on which has been correctly withheld under the provisions of Section 79 of this Code:

Provided, That an individual deriving compensation concurrently from two or more employers at any time during the taxable year shall file an income tax return;

(c) x x x; and

(d) **A minimum wage earner as defined in Section 22(HH)** of this Code or an individual who is exempt from income tax pursuant to the provisions of this Code and other laws, general or special.

x x x x x x x x x

SECTION 6. Section 79(A) of Republic Act No. 8424, as amended, otherwise known as the National Internal Revenue Code of 1997, is hereby further amended to read as follows:

SEC. 79. Income Tax Collected at Source. —

(A) **Requirement of Withholding. - Except in the case of a minimum wage earner as defined in Section 22(HH) of this Code**, every employer making payment of wages shall deduct and withhold upon such wages a tax determined in accordance with the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner. (Emphases supplied)

Nowhere in the above provisions of R.A. 9504 would one find the qualifications prescribed by the assailed provisions of RR 10-2008. The provisions of the law are clear and precise; they leave no room for interpretation — they do not provide or require any other qualification as to who are MWEs.

To be exempt, one must be an MWE, a term that is clearly defined. Section 22(HH) says he/she must be one who is paid the statutory minimum wage if he/she works in the private sector, or not more than the statutory minimum wage in the non-agricultural sector where he/she is assigned, if he/she is a government employee. Thus, one is either an MWE or he/she is not. Simply put, MWE is the status acquired upon passing the litmus test — whether one receives wages not exceeding the prescribed minimum wage.

The minimum wage referred to in the definition has itself a clear and definite meaning. The law explicitly refers to the rate fixed by the Regional Tripartite Wage and Productivity Board, which is a creation of the Labor Code.[62] The Labor Code clearly describes wages and Minimum Wage under Title II of the Labor Code. Specifically, Article 97 defines "wage" as follows:

> (f) "Wage" paid to any employee shall mean the remuneration or earnings, however designated, capable of being expressed in terms of money, whether fixed or ascertained on a time, task, piece, or commission basis, or other method of calculating the same, which is payable by an employer to an employee under a written or unwritten contract of employment for work done or to be done, or for services rendered or to be rendered and includes the fair and reasonable value, as determined by the Secretary of Labor and Employment, of board, lodging, or other facilities customarily furnished by the employer to the employee. "Fair and reasonable value" shall not include any profit to the employer, or to any person affiliated with the employer.

While the Labor Code's definition of "wage" appears to encompass any payments of any designation that an employer pays his or her employees, the concept of minimum wage is distinct.[63] "Minimum wage" is wage mandated; one that

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[62] *See* Article 122, Presidential Decree 442, as amended by R.A. 6727 (1989).

[63] In *Employers Confederation of the Philippines v. National Wages and Productivity Commission*, 278 Phil. 747, 755 (1991), we held as follows:

> The concept of "minimum wage" is, however, a different thing, and certainly, it means more than setting a floor wage to upgrade existing wages, as ECOP takes it to mean. "Minimum wages" underlies the effort of the

employers may not freely choose on their own to designate in any which way.

In Article 99, minimum wage rates are to be prescribed by the Regional Tripartite Wages and Productivity Boards. In Articles 102 to 105, specific instructions are given in relation to the payment of wages. They must be paid in legal tender at least once every two weeks, or twice a month, at intervals not exceeding 16 days, directly to the worker, except in case of *force majeure* or death of the worker.

These are the wages for which a minimum is prescribed. Thus, the minimum wage exempted by R.A. 9504 is that which is referred to in the Labor Code. It is distinct and different from other payments including allowances, honoraria, commissions, allowances or benefits that an employer may pay or provide an employee.

Likewise, the other compensation incomes an MWE receives that are also exempted by R.A. 9504 are all mandated by law and are based on this minimum wage.

Additional compensation in the form of overtime pay is mandated for work beyond the normal hours based on the employee's regular wage.[64] Those working between ten o'clock in the evening and six o'clock in the morning are required to be paid a night shift differential based on their regular wage.[65]

State, as Republic Act No. 6727 expresses it, "to promote productivity-improvement and gain-sharing measures to ensure a decent standard of living for the workers and their families; to guarantee the rights of labor to its just share in the fruits of production; to enhance employment generation in the countryside through industry dispersal; and to allow business and industry reasonable returns on investment, expansion and growth," 25 and as the Constitution expresses it to affirm "labor as a primary social economic force." 26 As the Court indicated, the statute would have no need for a board if the question were simply "how much." The State is concerned, in addition, that wages are not distributed unevenly, and more important, that social justice is subserved.

[64] Labor Code, Art. 87.

[65] Labor Code, Art. 86.

Holiday/premium pay is mandated whether one works on regular holidays or on one's scheduled rest days and special holidays. In all of these cases, additional compensation is mandated, and computed based on the employee's regular wage.[66]

R.A. 9504 is explicit as to the coverage of the exemption: the wages that are not in excess of the minimum wage as determined by the wage boards, including the corresponding holiday, overtime, night differential and hazard pays.

In other words, the law exempts from income taxation the most basic compensation an employee receives — the amount afforded to the lowest paid employees by the mandate of law. In a way, the legislature grants to these lowest paid employees additional income by no longer demanding from them a contribution for the operations of government. This is the essence of R.A. 9504 as a social legislation. The government, by way of the tax exemption, affords increased purchasing power to this sector of the working class.

This intent is reflected in the Explanatory Note to Senate Bill No. 103 of Senator Roxas:

> This bill seeks to exempt minimum wage earners in the private sector and government workers in Salary Grades 1 to 3, amending certain provisions of Republic Act 8424, otherwise known as the National Internal Revenue Code of 1997, as amended.
>
> **As per estimates by the National Wages and Productivity Board, there are 7 million workers earning the minimum wage and even below. While these workers are in the verge of poverty, it is unfair and unjust that the Government, under the law, is taking away a portion of their already subsistence-level income.**
>
> **Despite this narrow margin from poverty, the Government would still be mandated to take a slice away from that family's meager resources. Even if the Government has recently exempted minimum wage earners from withholding taxes, they are still liable to pay income taxes at the end of the year. The law must be amended to correct this injustice.** (Emphases supplied)

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[66] Labor Code, Arts. 93 and 94.

The increased purchasing power is estimated at about ₱9,500 a year.[67] RR 10-2008, however, takes this away. In declaring that once an MWE receives other forms of taxable income like commissions, honoraria, and fringe benefits in excess of the non-taxable statutory amount of ₱30,000, RR 10-2008 declared that the MWE immediately becomes ineligible for tax exemption; and otherwise non-taxable minimum wage, along with the other taxable incomes of the MWE, becomes taxable again.

Respondents acknowledge that R.A. 9504 is a social legislation meant for social justice,[68] but they insist that it is too generous, and that consideration must be given to the fiscal position and financial capability of the government.[69] While they acknowledge that the intent of the income tax exemption of MWEs is to free low-income earners from the burden of taxation, respondents, in the guise of clarification, proceed to redefine which incomes may or may not be granted exemption. These respondents cannot do without encroaching on purely legislative prerogatives.

By way of review, this ₱30,000 statutory ceiling on benefits has its beginning in 1994 under R. A. 7833, which amended then Section 28(b)(8) of the 1977 NIRC. It is substantially carried over as Section 32(B) (Exclusion from Gross Income) of Chapter VI (Computation of Gross Income) of Title II (Tax on Income) in the 1997 NIRC (R.A. 8424). R.A. 9504 does not amend that provision of R.A. 8424, which reads:

SEC. 32. Gross Income. —

(A) General Definition. — x x x

(B) Exclusions from Gross Income. — The following items shall not be included in gross income and shall be exempt from taxation under this title:

(1) x x x

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[67] *Rollo* (G.R. No. 184508), p. 16; *See* for example, Roxas Petition, p. 14.

[68] *Id.* at 111, 115; Consolidated Comment, pp. 13, 17.

[69] *Id.* at 115; Consolidated Comment, p. 17.

x x x x x x x x x

(7) Miscellaneous Items. -

(a) xxx

x x x x x x x x x

(e) 13th Month Pay and Other Benefits. - Gross benefits received by officials and employees of public and private entities: Provided, however, That the total exclusion under this subparagraph shall not exceed Thirty thousand pesos (₱30,000) which shall cover:

(i) Benefits received by officials and employees of the national and local government pursuant to Republic Act No. 6686[70];

(ii) Benefits received by employees pursuant to Presidential Decree No. 851[71], as amended by Memorandum Order No. 28, dated August 13, 1986;

(iii) Benefits received by officials and employees not covered by Presidential decree No. 851, as amended by Memorandum Order No. 28, dated August 13, 1986; and

(iv) Other benefits such as productivity incentives and Christmas bonus: Provided, further, That the ceiling of Thirty thousand pesos (₱30,000) may be increased through rules and regulations issued by the Secretary of Finance, upon recommendation of the Commissioner, after considering among others, the effect on the same of the inflation rate at the end of the taxable year.

(f) x x x

The exemption granted to MWEs by R.A. 9504 reads:

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[70] *An Act Authorizing Annual Christmas Bonus to National and Local Government Officials and Employees Starting CY 1988*, R.A. No. 6686, 14 December 1988.

[71] *Requiring All Employers to Pay Their Employees at 13th Month Pay*, P.D. No. 851, 16 December 1976.

Provided, That minimum wage earners as defined in Section 22(HH) of this Code ***shall be exempt from the payment of income tax on their taxable income***: *Provided, further*, That the holiday pay, overtime pay, night shift differential pay and hazard pay received by such minimum wage earners shall likewise be exempt from income tax.

"Taxable income" is defined as follows:

SEC. 31. Taxable Income Defined. — The term taxable income means the ***pertinent items of gross income***specified in this Code, less the deductions and/or personal and additional exemptions, if any, authorized for such types of income by this Code or other special laws.

A careful reading of these provisions will show at least two distinct groups of items of compensation. On one hand are those that are further exempted from tax by R.A. 9504; on the other hand are items of compensation that R.A. 9504 does not amend and are thus unchanged and in no need to be disturbed.

First are the different items of compensation subject to tax prior to R.A. 9504. These are included in the ***pertinent items of gross income*** in Section 31. "Gross income" in Section 32 includes, among many other items, "compensation for services in whatever form paid, including, but not limited to salaries, wages, commissions, and similar items." R.A. 9504 particularly exempts the minimum wage and its incidents; it does not provide exemption for the many other forms of compensation.

Second are the other items of income that, prior to R.A. 9504, were excluded from gross income and were therefore not subject to tax. Among these are other payments that employees may receive from employers pursuant to their employer-employee relationship, such as bonuses and other benefits. These are either mandated by law (such as the 13th month pay) or granted upon the employer's prerogative or are pursuant to collective bargaining agreements (as productivity incentives). These items were not changed by R.A. 9504.

It becomes evident that the exemption on benefits granted by law in 1994 are now extended to wages of the least paid

workers under R.A. 9504. Benefits not beyond ₱30,000 were exempted; wages not beyond the SMW are now exempted as well. Conversely, benefits in excess of ₱30,000 are subject to tax and now, wages in excess of the SMW are still subject to tax.

What the legislature is exempting is the MWE's minimum wage and other forms statutory compensation like holiday pay, overtime pay, night shift differential pay, and hazard pay. These are not bonuses or other benefits; these are wages. Respondents seek to frustrate this exemption granted by the legislature.

In respondents' view, anyone receiving 13th month pay and other benefits in excess of ₱30,000 cannot be an MWE. They seek to impose their own definition of "MWE" by arguing thus:

> It should be noted that the intent of the income tax exemption of MWEs is to free the low-income earner from the burden of tax. R.A. No. 9504 and R.R. No. 10-2008 define who are the low-income earners. Someone who earns beyond the incomes and benefits above-enumerated is definitely not a low-income earner.[72]

We do not agree.

As stated before, nothing to this effect can be read from R.A. 9504. The amendment is silent on whether compensation-related benefits exceeding the ₱30,000 threshold would make an MWE lose exemption. R.A. 9504 has given definite criteria for what constitutes an MWE, and R.R. 10-2008 cannot change this.

An administrative agency may not enlarge, alter or restrict a provision of law. It cannot add to the requirements provided by law. To do so constitutes lawmaking, which is generally reserved for Congress.[73] In *CIR v. Fortune Tobacco*,[74] we applied

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[72] *Rollo* (G.R. No. 185234), p. 119.

[73] *CIR v. Luzon Drug Company*, 496 Phil. 307 (2005).

[74] *Commissioner of lnternal Revenue v. Fortune Tobacco Corp.*, 581 Phil. 146 (2008).

the *plain meaning* rule when the Commissioner of Internal Revenue ventured into unauthorized administrative lawmaking:

> [A]n administrative agency issuing regulations may not enlarge, alter or restrict the provisions of the law it administers, and it cannot engraft additional requirements not contemplated by the legislature. **The Court emphasized that tax administrators are not allowed to expand or contract the legislative mandate and that the "plain meaning rule" or *verba legis* in statutory construction should be applied such that where the words of a statute are clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation.**
>
> As we have previously declared, rule-making power must be confined to details for regulating the mode or proceedings in order to carry into effect the law as it has been enacted, and **it cannot be extended to amend or expand the statutory requirements or to embrace matters not covered by the statute**. Administrative regulations must always be in harmony with the provisions of the law because any resulting discrepancy between the two will always be resolved in favor of the basic law.[75] (Emphases supplied)

We are not persuaded that RR 10-2008 merely clarifies the law. The CIR's clarification is not warranted when the language of the law is plain and clear.[76]

The deliberations of the Senate reflect its understanding of the outworking of this MWE exemption in relation to the treatment of benefits, both those for the ₱30,000 threshold and the *de minimis* benefits:

> **Senator Defensor Santiago.** Thank you. Next question: How about employees who are only receiving a minimum wage as base pay, but are earning significant amounts of income from sales, commissions which may be even higher than their base pay? Is their entire income from commissions also tax-free? **Because strictly speaking, they are minimum wage earners.** For purposes of ascertaining entitlement to tax exemption, is the basis only the base pay or should it be the aggregate compensation that is being received, that is, inclusive of commissions, for example?

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[75] *Id.* at 162-163.

[76] *Republic of the Philippines v. Court of Appeals*, 359 Phil. 530 (1998).

Senator Escudero. Mr. President, what is included would be only the base pay and, if any, the hazard pay, holiday pay, overtime pay and night shift differential received by a minimum wage earner. **As far as commissions are concerned, only to the extent of ₱30,000 would be exempted. Anything in excess of ₱30,000 would already be taxable if it is being received by way of commissions.** Add to that *de minimis* benefits being received by an employee, such as rice subsidy or clothing allowance or transportation allowance would also be exempted; but they are exempted already under the existing law.

Senator Defensor Santiago. I would like to thank the sponsor. That makes it clear.[77] (Emphases supplied)

Given the foregoing, the treatment of bonuses and other benefits that an employee receives from the employer in excess of the ₱30,000 ceiling cannot but be the same as the prevailing treatment prior to R.A. 9504 — anything in excess of ₱30,000 is taxable; no more, no less.

The treatment of this excess cannot operate to disenfranchise the MWE from enjoying the exemption explicitly granted by R.A. 9504.

The government's argument that the RR avoids a tax distortion has no merit.

The government further contends that the "clarification" avoids a situation akin to wage distortion and discourages tax evasion. They claim that MWE must be treated equally as other individual compensation income earners "when their compensation does not warrant exemption under R.A. No. 9504. Otherwise, there would be gross inequity between and among individual income taxpayers."[78] For illustrative purposes, respondents present three scenarios:

37.1. In the first scenario, a minimum wage earner in the National Capital Region receiving ₱382.00 per day has an annual salary of

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[77] IV RECORD, SENATE 14TH CONGRESS, 1ST SESSION 286-287, 26 May 2008.

[78] *Rollo* (G.R. No. 185234), p. 121.

₱119,566.00, while a non-minimum wage earner with a basic pay of ₱385.00 per day has an annual salary of ₱120,505.00. The difference in their annual salaries amounts to only ₱939.00, but the non-minimum wage earner is liable for a tax of ₱8,601.00, while the minimum wage earner is tax-exempt?

37.2. In the second scenario, the minimum wage earner's "other benefits" exceed the threshold of ₱30,000.00 by ₱20,000.00. The non-minimum wage earner is liable for ₱8,601.00, while the minimum wage earner is still tax-exempt.

37.3. In the third scenario, both workers earn "other benefits" at ₱50,000.00 more than the ₱30,000 threshold. The non-minimum wage earner is liable for the tax of ₱18,601.00, while the minimum wage earner is still tax-exempt.[79] (Underscoring in the original)

Again, respondents are venturing into policy-making, a function that properly belongs to Congress. In *British American Tobacco v. Camacho*, we explained:[80]

We do not sit in judgment as a supra-legislature to decide, after a law is passed by Congress, which state interest is superior over another, or which method is better suited to achieve one, some or all of the state's interests, or what these interests should be in the first place. This policy-determining power, by constitutional fiat, belongs to Congress as it is its function to determine and balance these interests or choose which ones to pursue. Time and again we have ruled that **the judiciary does not settle policy issues**. The Court can only declare what the law is and not what the law should be. Under our system of government, policy issues are within the domain of the political branches of government and of the people themselves as the repository of all state power. Thus, the legislative classification under the *classification freeze provision*, after having been shown to be rationally related to achieve certain legitimate state interests and done in good faith, must, perforce, end our inquiry.

Concededly, the finding that the assailed law seems to derogate, to a limited extent, one of its avowed objectives (i.e. promoting fair competition among the players in the industry) would suggest that, by Congress's own standards, the current excise tax system on sin

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[79] *Rollo* (G.R. No. 184538), pp. 236-237.

[80] 584 Phil. 489, 547-548 (2008).

products is imperfect. But, certainly, we cannot declare a statute unconstitutional merely because it can be improved or that it does not tend to achieve all of its stated objectives. This is especially true for tax legislation which simultaneously addresses and impacts multiple state interests. Absent a clear showing of breach of constitutional limitations, Congress, owing to its vast experience and expertise in the field of taxation, must be given sufficient leeway to formulate and experiment with different tax systems to address the complex issues and problems related to tax administration. **Whatever imperfections that may occur, the same should be addressed to the democratic process to refine and evolve a taxation system which ideally will achieve most, if not all, of the state's objectives.**

In fine, petitioner may have valid reasons to disagree with the policy decision of Congress and the method by which the latter sought to achieve the same. But its remedy is with Congress and not this Court. (Emphases supplied and citations deleted)

Respondents cannot interfere with the wisdom of R.A. 9504. They must respect and implement it as enacted.

Besides, the supposed undesirable "income distortion" has been addressed in the Senate deliberations. The following exchange between Senators Santiago and Escudero reveals the view that the distortion impacts only a few — taxpayers who are single and have no dependents:

Senator Santiago .... It seems to me awkward that a person is earning just ₱1 above the minimum wage is already taxable to the full extent simply because he is earning ₱1 more each day, or o more than ₱30 a month, or ₱350 per annum. Thus, a single individual earning ₱362 daily in Metro Manila pays no tax but the same individual if he earns ₱363 a day will be subject to tax, under the proposed amended provisions, in the amount of ₱4,875 — I no longer took into account the deductions of SSS, etcetera - although that worker is just ₱360 higher than the minimum wage.

x x x x x x x x x

I repeat, I am raising respectfully the point that a person who is earning just ₱1 above the minimum wage is already taxable to the full extent just for a mere ₱1. May I please have the Sponsor's comment.

Senator Escudero .... I fully subscribe and accept the analysis and computation of the distinguished Senator, Mr. President, because this was the very concern of this representation when we were discussing the bill. It will create wage distortions up to the extent wherein a person is paying or rather receiving a salary which is only higher by ₱6,000 approximately from that of a minimum wage earner. So anywhere between ₱1 to approximately ₱6,000 higher, there will be a wage distortion, although distortions disappears as the salary goes up.

However, Mr. President, as computed by the distinguished Senator, **the distortion is only made apparent if the taxpayer is single or is not married and has no dependents. Because at two dependents, the distortion would already disappear; at three dependents, it would not make a difference anymore because the exemption would already cover approximately the wage distortion that would be created as far as individual or single taxpayers are concerned**.[81] (Emphases in the original)

Indeed, there is a distortion, one that RR 10-2008 actually engenders. While respondents insist that MWEs who are earning purely compensation income will lose their MWE exemption the moment they receive benefits in excess of ₱30,000, RR 10-2008 does not withdraw the MWE exemption from those who are earning other income outside of their employer-employee relationship. Consider the following provisions of RR 10-2008:

Section 2.78.1 (B):

(B) Exemptions from Withholding Tax on Compensation. — The following income payments are exempted from the requirements of withholding tax on compensation:

x x x x x x x x x

(13) **Compensation income of MWEs who work in the private sector and being paid the Statutory Minimum Wage (SMW)**, as fixed by Regional Tripartite Wage and Productivity Board (RTWPB)/ National Wages and Productivity Commission (NWPC), applicable to the place where he/she is assigned.

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[81] IV Record, Senate 14TH Congress 1ST Session 287, 26 May 2008.

x x x x x x x x x

Holiday pay, overtime pay, night shift differential pay and hazard pay earned by the aforementioned MWE shall likewise be covered by the above exemption. Provided, however, that an employee who receives/earns additional compensation such as commissions, honoraria, fringe benefits, benefits in excess of the allowable statutory amount of ₱30,000.00, taxable allowances and other taxable income other than the SMW, holiday pay, overtime pay, hazard pay and night shift differential pay shall not enjoy the privilege of being a MWE and, therefore, his/her entire earnings are not exempt from income tax, and consequently, from withholding tax.

MWEs receiving other income, such as income **from the conduct of trade, business, or practice of profession**, except income subject to final tax, in addition to compensation income are not exempted from income tax on their entire income earned during the taxable year. **This rule, notwithstanding, the SMW, Holiday pay, overtime pay, night shift differential pay and hazard pay shall still be exempt from withholding tax.**

x x x x x x x x x

(14) Compensation income of employees in the public sector with compensation income of not more than the SMW in the non-agricultural sector, as fixed by RTWPB/NWPC, applicable to the place where he/she is assigned.

x x x x x x x x x

Holiday pay, overtime pay, shift differential pay and hazard pay earned by the aforementioned MWE in the pulic sector shall likewise be covered by the above exemption. Provided, however, that a public sector employee who receives additonal compensation such as commissioners, honoraria, fringe benefits, benefits in excess of the allowable statutory amount of ₱30,000.00, taxable allowances and other taxable income other than the SMW, holiday pay, overtime pay, night shift differential pay and hazard pay shall not enjoy the privilige of being a MWE and, therefore, his/her entire earnings are not exempt from income tax and, consequently, from withholding tax.

MWEs receiving other income, **such as income from the conduct of trade, business, or practice of profession**, except income subject to final tax, in addition to compensation income are not exempted

from income tax on their entire income earned during the taxable year. **This rule, notwithstanding, the SMW, Holiday pay, overtime pay, night shift differential pay and hazard pay shall still be exempt from withholding tax.**

These provisions of RR 10-2008 reveal a bias against those who are purely compensation earners. In their consolidated comment, respondents reason:

> Verily, **the interpretation as to who is a minimum wage earner as petitioners advance will open the opportunity for tax evasion** by the mere expedient of pegging the salary or wage of a worker at the minimum and reflecting a worker's other incomes as some other benefits. **This situation will not only encourage tax evasion, it will likewise discourage able employers from paying salaries or wages higher than the statutory minimum.** This should never be countenanced.[82]

Again, respondents are delving into policy-making they presume bad faith on the part of the employers, and then shift the burden of this presumption and lay it on the backs of the lowest paid workers. This presumption of bad faith does not even reflect pragmatic reality. It must be remembered that a worker's holiday, overtime and night differential pays are all based on the worker's regular wage. Thus, there will always be pressure from the workers to increase, not decrease, their basic pay.

What is not acceptable is the blatant inequity between the treatment that RR 10-2008 gives to those who earn purely compensation income and that given to those who have other sources of income. Respondents want to tax the MWEs who serve their employer well and thus receive higher bonuses or performance incentives; but exempts the MWEs who serve, in addition to their employer, their other business or professional interests.

We cannot sustain respondent's position.

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[82] *Rollo* (G.R. No. 184508), p. 105; Consolidated Comment, p. 28.

In sum, the proper interpretation of R.A. 9504 is that it imposes taxes only on the taxable income received in excess of the minimum wage, but the MWEs will not lose their exemption as such. Workers who receive the statutory minimum wage their basic pay remain MWEs. The receipt of any other income during the year does not disqualify them as MWEs. They remain MWEs, entitled to exemption as such, but the taxable income they receive other than as MWEs may be subjected to appropriate taxes.

R.A. 9504 must be liberally construed.

We are mindful of the strict construction rule when it comes to the interpretation of tax exemption laws.[83] The canon, however, is tempered by several exceptions, one of which is when the taxpayer falls within the purview of the exemption by clear legislative intent. In this situation, the rule of liberal interpretation applies in favor of the grantee and against the government.[84]

In this case, there is a clear legislative intent to exempt the minimum wage received by an MWE who earns additional income on top of the minimum wage. As previously discussed, this intent can be seen from both the law and the deliberations.

Accordingly, we see no reason why we should not liberally interpret R.A. 9504 in favor of the taxpayers.

R.A. 9504 is a grant of tax relief long overdue.

We do not lose sight of the fact that R.A. 9504 is a tax relief that is long overdue.

Table 1 below shows the tax burden of an MWE over the years. We use as example one who is a married individual without dependents and is working in the National Capital Region (NCR). For illustration purposes, R.A. 9504 is applied as if the worker being paid the statutory minimum wage is not tax exempt:

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[83] *Commissioner of Internal Revenue v. Arnoldus Carpentry Shop, Inc.*, 242 Phil. 688 (1998).

[84] *Id.*

Table 1 - Tax Burden of MWE over the years

Law	Effective	NCR Minimum Daily Wage[85]		Taxable Income[86]	Tax Due (Annual)	Tax Burden[87]
RA 7167[88]	1992	WO 3 (1993 Dec)	₱135.00	₱24,255	₱1,343.05	3.2%
RA 7496[89]		WO 5 (1997 May)	₱185.00	₱39,905	₱3,064.55	5.3%
RA 8424[90] (1997 NIRC)	1998	WO 6 (1998 Feb)	₱198.00	₱29,974	₱2,497.40	4.0%
		WO 13 (2007 Aug)	₱362.00	₱81,306	₱10,761.20	9.5%
		WO 14 (2008 June)	₱382.00	₱87,566	₱12,013.20	10.0%
RA 9504[91]	2008	WO 14 (2008 Aug)	₱382.00	₱69,566	₱8,434.90	7.1%
		WO 20 (2016 June)	₱491.00	₱103,683	₱15,236.60	9.9%

As shown on Table 1, we note that in 1992, the tax burden upon an MWE was just about 3.2%, when Congress passed R.A. 7167, which increased the personal exemptions for a married

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[85] Assuming full 313 working days are worked and paid, with no OT or worked holiday pay (365 days less 53 days off, holidays not worked but paid). Rates used are for the National Capital Region, for non-agricultural workers.

[86] For illustration purposes, taxable Income is computed assuming a married worker without dependents works and gets paid for each working day in a year (365 days less 52 days off), and the same minimum wage rate is assumed uniformly earned for the whole year.

[87] The tax burden is here computed by dividing the tax due by the amount earned by the minimum wage earner (minimum wage multiplied by the days worked & paid).

[88] R.A. 7167 (1991 December)) increased the Personal Exemption, the maximum being ₱18,000 for married individuals or a maximum of ₱9,000 for each married individual computing tax separately. The exemption was amended by R.A. 7497 (May 1992) providing for a maximum of Php18,000 for each married individual deriving taxable income.

[89] R.A. 7496 (May 1992) revised the tax table.

[90] R.A. 8424 (effective 1998), the Tax Reform Act of 1997 (1997 NIRC), revised the tax table & increased personal exemptions, among others. Married individuals without dependents are now entitled to ₱32,000.

[91] R.A. 9504 (2008), among others, amended the Personal Exemption, now uniform at ₱50,000 for each individual taxpayer; and granted exemption to minimum wage earners (MWEs). For purposes of illustration, we compute the tax liabilily of an MWE, as if he is not exempt (as RR 10-2008 provides for individuals paid the SMW but happens to have other income the BIR deems disqualifying the MWE from entitlement to the exemption).

individual without dependents from ₱12,000 to ₱18,000; and R.A. 7496, which revised the table of graduated tax rates (tax table).

Over the years, as the minimum wage increased, the tax burden of the MWE likewise increased. In 1997, the MWE's tax burden was about 5.3%. When R.A. 8424 became effective in 1998, some relief in the MWE's tax burden was seen as it was reduced to 4.0%. This was mostly due to the increase in personal exemptions, which were increased from ₱18,000 to ₱32,000 for a married individual without dependents. It may be noted that while the tax table was revised, a closer scrutiny of Table 3 below would show that the rates actually increased for those who were earning less.

As the minimum wage continued to increase, the MWE's tax burden likewise did — by August 2007, it was 9.5%. This means that in 2007, of the ₱362 minimum wage, the MWE's take-home pay was only ₱327.62, after a tax of ₱34.38.

This scenario does not augur well for the wage earners. Over the years, even with the occasional increase in the basic personal and additional exemptions, the contribution the government exacts from its MWEs continues to increase as a portion of their income. This is a serious social issue, which R.A. 9504 partly addresses. With the ₱20 increase in minimum wage from ₱362 to ₱382 in 2008, the tax due thereon would be about ₱30. As seen in their deliberations, the lawmakers wanted all of this amount to become additional take-home pay for the MWEs in 2008.[92]

The foregoing demonstrates the effect of inflation. When tax tables do not get adjusted, inflation has a profound impact in terms of tax burden. "**Bracket creep**," "the process by which inflation pushes individuals into higher tax brackets,"[93] occurs, and its deleterious results may be explained as follows:

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[92] *See* Escudero speech on SB 2293, quoted in pp. 12-13 hereof.

[93] *Black's Law Dictionary*, 6th ed., p. 187.

[A]n individual whose dollar income increases from one year to the next might be obliged to pay tax at a higher marginal rate (say 25% instead of 15%) on the increase, this being a natural consequence of rate progression. If, however, due to inflation the benefit of the increase is wiped out by a corresponding increase in the cost of living, **the effect would be a heavier tax burden with no real improvement in the taxpayer's economic position. Wage and salary-earners are especially vulnerable. Even if a worker gets a raise in wages this year, the raise will be illusory if the prices of consumer goods rise in the same proportion. If her marginal tax rate also increased, the result would actually be a decrease in the taxpayer's real disposable income**.[94]

Table 2 shows how MWEs get pushed to higher tax brackets with higher tax rates due only to the periodic increases in the minimum wage. This unfortunate development illustrates how "bracket creep" comes about and how inflation alone increases their tax burden:

Table 2

Law	Effective	NCR Minimum Daily Wage[95]		**Highest Applicable Tax Rate(Bracket Creep)**	Tax Due (Annual)	Tax Burden[96]
RA 7167[97]	1992	WO 3 (1993 Dec)	₱135.00	**11%**	₱1,343.05	3.2%
RA 7496[98]		WO 5 (1997 May)	₱185.00	**11%**	₱3,064.55	5.3%

[94] FEDERAL INCOME TAXATION, *Marvin A. Chirelstein*, 11th edition (2009), p. 7.

[95] Assuming full 313 working days are worked and paid, with no OT or worked holiday pay (365 days less 53 days off, holidays not worked but paid).

[96] The tax burden is computed by dividing the tax due by the amount earned by the minimum wage earner (minimum wage multiplied by the days worked & paid).

[97] R.A. 7167 (1992) increased the Personal Exemption, the maximum being ₱18,000 for a married without dependents (which we use in our example).

[98] R.A. 7496 (1992) revised the tax table.

RA 8424[99] (1997 NIRC)	1998	WO 6 (1998 Feb)	₱198.00	**10%**	₱2,497.40	4.0%
		WO 13 (2007 Aug)	₱362.00	**20%**	₱10,761.20	9.5%
		WO 14 (2008 June)	₱382.00	**20%**	₱12,013.20	10.0%
RA 9504[100]	2008	WO 14 (2008 Aug)	₱382.00	**15%**	₱8,434.90	7.1%
		WO 20 (2016 June)	₱491.00	**20%**	₱15,236.60	9.9%

The overall effect is the diminution, if not elimination, of the progressivity of the rate structure under the present Tax Code. We emphasize that the graduated tax rate schedule for individual taxpayers, which takes into account the ability to pay, is intended to breathe life into the constitutional requirement of equity.[101]

R.A. 9504 provides relief by declaring that an MWE, one who is paid the statutory minimum wage (SMW), is exempt from tax on that income, as well as on the associated statutory payments for hazardous, holiday, overtime and night work.

R.R. 10-2008, however, unjustly removes this tax relief. While R.A. 9504 grants MWEs zero tax rights from the beginning or for the whole year 2008, RR 10-2008 declares that certain workers — even if they are being paid the SMW, "shall not enjoy the privilege."

Following RR10-2008's "disqualification" injunction, the MWE will continue to be pushed towards the higher tax brackets

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[99] R.A. 8424 (1998) amended the NIRC, which revised the tax table & increased personal exemptions, among others. Married individuals without dependents are now entitled to ₱32,000.

[100] R.A. 9504 (2008), among others, amended the Personal Exemption, now uniform at ₱50,000; and granted exemption to minimum wage earners (MWE). For purposes of illustration, we compute the tax liability of an MWE, as if he is not exempt (as RR 10-2008 provides for individuals paid the SMW but happens to have other income that the BIR deems disqualifying the MWE from entitlement to the exemption).

[101] Reynaldo Geronimo, Bar Reviewer on Taxation, Income Tax CD Version, 2009. Further, Article VI, Section 28(1) of the 1987 Constitution reads:

SECTION 28. (1) The rule of taxation shall be uniform and equitable. The Congress shall evolve a progressive system of taxation.

and higher rates. As Table 2 shows, as of June 2016, an MWE would already belong to the 4th highest tax bracket of 20% (see also Table 3), resulting in a tax burden of 9.9%. This means that for every ₱100 the MWE earns, the government takes back ₱9.90.

Further, a comparative view of the tax tables over the years (Table 3) shows that while the highest tax rate was reduced from as high as 70% under the 1977 NIRC, to 35% in 1992, and 32% presently, the lower income group actually gets charged higher taxes. Before R.A. 8424, one who had taxable income of less than ₱2,500 did not have to pay any income tax; under R.A. 8424, he paid 5% thereof. The MWEs now pay 20% or even more, depending on the other benefits they receive including overtime, holiday, night shift, and hazard pays.

Table 3 - Tax Tables: Comparison of Tax Brackets and Rates

Taxable Income Bracket	Rates under R.A. 7496 (1992)	Rates under R.A. 8424 (1998)	Rates under R.A. 9504 (2008)
Not Over ₱2,500	0%	5%	5%
Over ₱2.500 but not over ₱5,000	1%		
Over ₱5,000 but not over ₱10,000	3%		
Over ₱10,000 but not over ₱20,000	7%	10%	10%
Over ₱20,000 but not over ₱30,000	11%		
Over ₱30,000 but not over ₱40,000		15%	15%
Over ₱40,000 but not over ₱60,000	15%		
Over ₱60,000 but not over ₱70,000	19%		
Over ₱70,000 but not over ₱100,000		20%	20%
Over ₱100,000 but not over ₱140,000	24%		
Over ₱140,000 but not over ₱250,000		25%	25%
Over ₱250,000 but not over ₱500,000	29%	30%	30%
Over ₱500,000	35%	34%	32%

The relief afforded by R.A. 9504 is thus long overdue. The law must be now given full effect for the entire taxable year 2008, and without the qualification introduced by RR 10-2008. The latter cannot disqualify MWEs from exemption from taxes

on SMW and on their on his SMW, holiday, overtime, night shift differential, and hazard pay.

CONCLUSION

The foregoing considered, we find that respondents committed grave abuse of discretion in promulgating Sections 1 and 3 of RR 10-2008, insofar as they provide for (a) the prorated application of the personal and additional exemptions for taxable year 2008 and for the period of applicability of the MWE exemption for taxable year 2008 to begin only on 6 July 2008; and (b) the disqualification of MWEs who earn purely compensation income, whether in the private or public sector, from the privilege of availing themselves of the MWE exemption in case they receive compensation - related benefits exceeding the statutory ceiling of ₱30,000.

As an aside, we stress that the progressivity of the rate structure under the present Tax Code has lost its strength. In the main, it has not been updated since its revision in 1997, or for a period of almost 20 years. The phenomenon of "bracket creep" could be prevented through the inclusion of an indexation provision, in which the graduated tax rates are adjusted periodically without need of amending the tax law. The 1997 Tax Code, however, has no such indexation provision. It should be emphasized that indexation to inflation is now a standard feature of a modern tax code.[102]

We note, however, that R.A. 8424 imposes upon respondent Secretary of Finance and Commissioner of Internal Revenue the positive duty to periodically review the other benefits, in consideration of the effect of inflation thereon, as provided under Section 32(B)(7)(e) entitled "*13th Month Pay and Other Benefits*":

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[102] Lyman Stone, Inflation Indexing in the Individual Income Tax Testimony before the Maryland House Ways and Means Committee, Tax Foundation (18 February 2014) accessed at http://taxfoundation.org/article/intlation-indexing-individual-income-tax. Last visited 26 December 2016.

(iv) Other benefits such as productivity incentives and Christmas bonus: Provided, further, That the ceiling of Thirty thousand pesos (₱30,000) may be increased through rules and regulations issued by the Secretary of Finance, upon recommendation of the Commissioner, after considering among others, the effect on the same of the inflation rate at the end of the taxable year.

This same positive duty, which is also imposed upon the same officials regarding the *de minimis* benefits provided under Section 33(C)(4), is a duty that has been exercised several times. The provision reads:

(C) Fringe Benefits Not Taxable. — The following fringe benefits are not taxable under this Section:

(1) x x x

x x x x x x x x x

(4) *De minimis* benefits as defined in the rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner.

WHEREFORE, the Court resolves to

(a) **GRANT** the Petitions for Certiorari, Prohibition, and Mandamus; and

(b) **DECLARE NULL and VOID** the following provisions of Revenue Regulations No. 10-2008:

(i) Sections 1 and 3, insofar as they disqualify MWEs who earn purely compensation income from the privilege of the MWE exemption in case they receive bonuses and other compensation-related benefits exceeding the statutory ceiling of ₱30,000;

(ii) Section 3 insofar as it provides for the prorated application of the personal and additional exemptions under R.A. 9504 for taxable year 2008, and for the period of applicability of the MWE exemption to begin only on 6 July 2008.

(c) **DIRECT** respondents Secretary of Finance and Commissioner of Internal Revenue to grant a refund, or allow the application of the refund by way of withholding tax adjustments, or allow a claim for tax credits by (i) all individual taxpayers whose incomes for taxable year 2008 were the subject of the prorated increase in personal and additional tax exemption; and (ii) all MWEs whose minimum wage incomes were subjected to tax for their receipt of the 13th month pay and other bonuses and benefits exceeding the threshold amount under Section 32(B)(7)(e) of the 1997 Tax Code.

SO ORDERED.

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

THIRD DIVISION

[A.M. No. RTJ-14-2401. January 25, 2017]
(Formerly OCA IPI No. 12-3841-RTJ)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **Executive Judge ILLUMINADA P. CABATO, Regional Trial Court [RTC], Baguio City; Clerk of Court IV ARMANDO G. YDIA, Process Server I SONNY S. CARAGAY, Clerk of Court III OFELIA T. MONDIGUING, Sheriff III JOSE E. ORPILLA, and Clerk III VILMA C. WAYANG, all of the Office of the Clerk of Court, Municipal Trial Court in Cities [MTCC], Baguio City; Judge ROBERTO R. MABALOT, Clerk of Court III LOURDES G. CAOILI, and Utility Worker I ANTINO M. WAKIT, all of Branch I, MTCC, Baguio City; Judge JENNIFER P.**

HUMINDING, Court Stenographer II PERLA B. DELA CRUZ, Court Stenographer II GRACE F. DESIERTO, Court Stenographer II CAROLYN B. DUMAG, Court Stenographer II MARY ROSE VIRGINIA O. MATIC, and Clerk IV LOURDES D. WANGWANG, all of Branch 2, MTCC, Baguio City; Clerk of Court REMEDIOS BALDERAS-REYES, Sheriff IV RUBEN L. ATIJERA, Cash Clerk II MERLIN ANITA N. CALICA, Process Server EDWIN V. FANGONIL, Sheriff IV ROMEO R. FLORENDO, Librarian II NAMNAMA L. LOPEZ, Clerk III JEFFREY G. MENDOZA, Clerk II ROLANDO G. MONTES, Court Stenographer III VENUS D. SAGUID, and Utility Worker I FRANCISCO D. SIAPNO, all of the Office of the Clerk of Court, RTC, Baguio City; Clerk of Court GAIL M. BACBAC-DEL ISEN, Court Stenographer III RESTITUTO A. CORPUZ, Court Stenographer MARLENE A. DOMAOANG, and Legal Researcher II FLORENCE F. SALANGO, all of Branch 3, RTC, Baguio City; Judge MIA JOY C. OALLARES-CAWED, Legal Researcher II ELIZABETH G. AUCENA, Clerk of Court V RUTH B. BAWAYAN, Court Stenographer III JOY P. CHILEM-AGUILBA, Court Stenographer III LEONILA P. FERNANDEZ, Process Server ESPERANZA N. JACOB, Court Clerk III REYNALDO R. RAMOS, Court Interpreter III MELITA C. SALINAS, and Court Clerk III WILMA M. TAMANG, all of Branch 4, RTC, Baguio City; Judge ANTONIO M. ESTEVES, Utility Worker JONATHAN R. GERONIMO, Court Stenographer III PRECY T. GOZE, Clerk of Court V ALEJANDRO EPIFANIO D. GUERRERO, and Court Stenographer III VIRGINIA M. RAMIREZ, all of Branch 5, RTC, Baguio City; Clerk of Court MYLENE MAY ADUBE-CABUAG, Process Server ROBERTO G. COROÑA, JR., Court Stenographer III VICTORIA J. DERASMO, Clerk of Court III BOBBY D. GALANO, Utility Worker MANOLO V. MARIANO III, and Clerk III ROWENA

C. PASAG, all of Branch 6, RTC, Baguio City; Judge MONA LISA TIONGSON-TABORA, Process Server ROMEO E. BARBACHANO, Court Stenographer EDNA P. CASTILLO, Court Stenographer III DOLORES M. ESERIO, Court Interpreter III GEORGE HENRY A. MANIPON, Court Stenographer III ANITA MENDOZA, Clerk III DOMINADOR B. REMIENDO, and Clerk III DOLORES G. ROMERO, all of Branch 7, RTC, Baguio City; Utility Worker GILBERT L. EVANGELISTA, Process Server EDUARDO B. RODRIGO, Court Stenographer III ELIZABETH M. LOCKEY, Court Stenographer III ANALIZA G. MADRONIO, Clerk III EVANGELINE N. GONZALES, Court Stenographer III MARILOU M. TADAO, Court Stenographer III AGNES P. MACA-EY, Sheriff IV MARANI S. BACOLOD, Clerk III EDGARDO R. ORATE, and Legal Researcher JESSICA D. GUANSING, all of Branch 59, RTC, Baguio City; Clerk of Court ROGER NAFIANOG, Court Stenographer III RUTH C. LAGAN, Court Stenographer III ELEANOR V. NIÑALGA, Clerk III ANGELINA M. SANTIAGO, Utility Worker LEO P. VALDEZ, and Clerk III SAMUEL P. VIDAD, all of Branch 60, RTC, Baguio City; Judge ANTONIO C. REYES, Court Interpreter III ELEANOR BUCAYCAY, Legal Researcher II JOAN G. CASTILLO, Clerk of Court V JERICO G. GAY-YA, Clerk III CONCEPCION SOLIVEN Vda. PULMANO, and Sheriff IV ALBERT G. TOLENTINO, all of Branch 61, RTC, Baguio City, *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; FAILURE OF COURT PERSONNEL TO ENTER THEIR TIME-IN AND TIME-OUT IN THE OFFICE LOGBOOK IS CLASSIFIED AS A LIGHT OFFENSE; PENALTY.— Relevantly, Rule 10, Article 46 (F)

(3) of the Revised Rules on Administrative Case in the Civil Service provides: F. The following light offenses are punishable by **reprimand** for the first offense; suspension of one (I) to thirty (30) days for the second offense; and dismissal from the service for the third offense: xxx **3. Violation of reasonable office rules and regulations;** Thus, considering that the above court personnel will only be administratively liable for the first time with this case, the proper punishment for them would only be a Reprimand with a stern warning that the repetition of the same or any similar act or omission shall be dealt with more severely.

2. ID.; ID.; ID.; THE COURT PERSONNEL WHO EFFECTIVELY CLAIM THAT THE INVESTIGATORS FALSIFIED THEIR REPORT HAS THE BURDEN OF PROVING THE SAME; CASE AT BAR.— Anent the group of court personnel that entered untruthful time-outs in their attendance log books/sheets, most alleged that the OCA team arrived shortly after 5:00 pm. Thus, they argued that they had already left when the investigators arrived. x x x These court personnel effectively claim that the OCA team falsified their report. Having made such contention, they have the burden of proving the same; however, the OCA team had no motive for doing so. x x x Thus, unless the OCA team was motivated by some reason to distinguish respondents from the other personnel, the allegations cannot be given any credit.

3. ID.; ID.; REVISED RULES ON ADMINISTRATIVE CASE IN THE CIVIL SERVICE (RRACCS); FALSIFICATION OF OFFICIAL DOCUMENTS AS A GRAVE OFFENSE IS PUNISHABLE WITH DISMISSAL FROM THE SERVICE, HOWEVER, THE COURT MAY ACCORD SOME MEASURE OF COMPASSION IN THE IMPOSITION OF THE PROPER PENALTY; RATIONALE.— With regard to the penalty, *Office of the Court Administrator v. Kasilag* is relevant: Jurisprudence on this matter is clear. **Falsification of a DTR by a court personnel is a grave offense.** The nature of this infraction is precisely what the OCA states: **the act of falsifying an official document** is in itself grave because of its possible deleterious effects on government service. x x x Section 46 (A) (6) of the Revised Rules on Administrative Case in the Civil Service (RRACCS)

punishes Falsification of official documents with dismissal from the service: x x x In the instant case, however, the Court agrees with the penalty recommended by the OCA in consonance with the ruling in *Office of the Court Administrator v. Hernandez,* to wit: In previous cases, the Court accorded some measure of compassion to erring employees. x x x The OCA reached a middle ground from the penalties above and imposed a Fine of Ten Thousand Pesos (PhP10,000.00) on each erring court personnel. Considering, however, the fact that this is the first time that the herein respondents will be held administratively liable, the Court deems it proper to instead impose the fine of Five Thousand Pesos (PhP5,000.00) with a stern warning that a repetition of the same offense shall be dealt with more severely.

4. ID.; ID.; JUDGES AND CLERKS OF COURT; JUDGES AND CLERKS OF COURT MUST BE ADMONISHED FOR THEIR FAILURE TO PROPERLY SUPERVISE THEIR SUBORDINATES.— As to the findings and penalties for the certifications made by the judges and clerks of court of the Baguio courts, it would be in line with jurisprudence to admonish rather than reprimand them. x x x Verily, the abovementioned judges and clerks of court must be Admonished for their failure to properly supervise their subordinates, particularly in the logging of their attendance.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

For the consideration of the Court is the Administrative Matter for Agenda dated September 12, 2014[1] prepared by the Office of the Court Administrator.

The Facts

In a letter dated September 16, 2010, Sheriff IV Oliver N.

[1] Penned by Court Administrator Jose Midas P. Marquez, Deputy Court Administrator Raul Bautista Villanueva and OCA Chief of Office-Legal Office Wilhelmina D. Geronga; *Rollo,* pp. 1368-1460.

Landingin of the Regional Trial Court (RTC), Branch 7 in Baguio City, complained of bias and partiality against Judge Mona Lisa T. Tabora of the same office. He submitted with the letter a video compact disc (VCD) showing two persons purportedly punching in the Daily Time Record (DTR) Bundy Cards of his other co-employees in the early hours of the morning. By doing so, Landingin alleges that it was made to appear that his co-employees arrived on time when in fact, they usually arrived late. Landingin, thus, concludes that Judge Tabora acted with partiality by refusing to sign his DTR Bundy Card while affixing her signature on the DTR Bundy Cards of his other co-employees.

Acting on the letter, the Office of the Court Administrator issued a Memorandum dated March 7, 2011 directing the conduct of a discreet investigation of the anomalies in the RTC and Municipal Trial Court in Cities (MTCC) in Baguio City.

Thus, a discreet investigation was conducted of the Baguio City courts from May 2 to 6, 2011. On May 3, 2011, the investigating team made a preliminary investigation at the Hall of Justice building housing the courts. They found that instead of using the bundy clocks, the court personnel were manually entering their arrival times in their bundy clock cards and office logbooks. The team also observed that numerous court personnel were arriving after 8:00am and leaving the court premises before 5:00pm, and that instances of loafing were prevalent.

On May 4, 2011, the team spoke with Landingin, who identified the person appearing in the VCD as Dominador Remiendo, Clerk III of RTC, Branch 7 in Baguio City.

Considering that the bundy clocks were not working at the time, the team decided to just inspect the logbooks of each and every branch/office of the Baguio courts to identify those making untruthful entries therein, thereby committing acts of dishonesty and falsification.

On May 5, 2011 at 4:45pm, the members of the investigating team divided themselves into three (3) pairs and conducted on-the-spot inspections of the logbooks of the MTCs, RTCs and

OCCs and found that several employees indeed left the premises either without logging their time out or writing down a time-out of 5:00pm before 5:00pm. A roll call of the employees was conducted which netted the following findings:

MUNICIPAL TRIAL COURT IN CITIES

Office of the Clerk of Court

Employee Name	Position	Observation
Ofelia T. Mondiguing	Clerk of Court III	Not logged
Vilma C. Wayang	Clerk III	Not logged
Sonny S. Caragay	Process Server I	Left office without entering time-out
Jose E. Orpilla	Sheriff III	Left office without entering time-out

Branch 1

Lourdes G. Caoili	Branch Clerk of Court	Untruthful 5pm time-out
Antino M. Wakit	Utility Worker I	Left office without entering time-out

Branch 2

Perla B. Dela Cruz	Court Stenographer II	Untruthful 5pm time-out
Lourdes D. Wangwang	Clerk IV	Untruthful 5pm time-out
Grace F. Desierto	Court Stenographer II	Left office without entering time-out
Carolyn B. Dumag	Court Stenographer II	Left office without entering time-out
Mary Rose Virginia O. Matic	Court Stenographer II	Left office without entering time-out

REGIONAL TRIAL COURT

Office of the Clerk of Court

Employee Name	Position	Obser vation
Ruben L. Atijera	Sheriff IV	Failed to enter his

		time-in and time-out for the afternoon session
Merlin Anita N. Calica	Cash Clerk III	Not logged
Edwin V. Fangonil	Process Server	Not logged
Namnama L. Lopez	Librarian II	Not logged
Romeo R. Florendo	Sheriff IV	Left office without entering time-out
Jeffrey G. Mendoza	Clerk III	Left office without entering time-out
Rolando G. Montes	Clerk II	Left office without entering time-out
Francisco D. Siapno	Utility Worker I	Left office without entering time-out
Venus D. Saguid	Court Stenographer III	Made double entries for the afternoon session

Branch 3

Restituto A. Corpuz	Court Stenographer III	Not logged
Marlene A. Domaoang	Court Stenographer III	Not logged
Florence F. Salango	Legal Researcher II	Not logged

Branch 4

Joy P. Chilem-Aguilba	Court Stenographer III	Not logged
Elizabeth G. Aucena	Legal Researcher II	Not logged
Ruth B. Bayawan	Clerk of Court V	Not logged (But she "certified" the photocopy of the logbook secured by the legal team)
Ronaldo B. Pangan	Sheriff IV	Not logged
Leonila P. Fernandez	Court Stenographer III	Left office without entering time-out
Maria Esperanza N. Jacob	Process Server	Left office without entering time-out
Melita C. Salinas	Court Interpreter III	Left office without entering time-out

Wilma M. Tamang	Court Clerk IIII	Left office without entering time-out
Reynaldo R. Ramos	Court Clerk III	Untruthful 5pm time-out

Branch 5

Precy T. Goze	Court Stenographer III	Not logged
Alejandro Epifania D.Guerrero	Clerk of Court V	Not logged
Virgina M. Ramirez	Court Stenographer III	Not logged
Jonathan R. Geronimo	Utility Worker	Left office without entering time-out

Branch 6

Victoria J. Derasmo	Court Stenographer III	Untruthful 5pm time-out
Manolo V. Mariano, III	Utility Worker	Untruthful 5pm time-out
Rowena C. Pasag	Clerk III	Untruthful 5pm time-out
Roberto G. Coroña, Jr.	Process Server	Left office without entering time-out
Bobby D. Galano	Clerk III	Left office without entering time-out

Branch 7

Dolores M. Eserio	Court Stenographer III	Untruthful 5pm time-out
George Henry A. Manipon	Court Interpreter III	Untruthful 5pm time-out
Dolores G. Romero	Clerk III	Untruthful 5pm time-out
Romeo E. Barbachano	Process Server	Left office without entering time-out

Edna P. Castillo	Court Stenographer III	Left office without entering time-out
Anita A. Mendoza	Court Stenographer III	Left office without entering time-out
Dominador B. Remiendo	Clerk III	Left office without entering time-out

Branch 59

Jessica D. Guansing	Legal Researcher II	Not logged
Gilbert L. Evangelista	Utility Worker	Left office without entering time-out

Branch 60

Ruth C. Lagan	Court Stenographer III	Not logged
Eleonor V. Niñalga	Court Stenographer III	Not logged
Angelina M. Santiago	Clerk III	Not logged
Leo P. Valdez	Utility Worker	Not logged (in the p.m. entry)
Samuel P. Vidad	Clerk III	Left office without entering time-out

Branch 61

Eleonor I. Bucaycay	Court Interpreter III	Not logged
Joan G. Castillo	Legal Researcher II	Not logged
Jerico G. Gay-Ya	Clerk of Court V	Untruthful 5pm time-out
Concepcion Soliven Vda. Pulmano	Clerk III	Left office without entering time-out
Albert G. Tolentino	Sheriff IV	Left office without entering time-out

The team also made the following findings:

1. Ruth B. Bawayan, Clerk of Court V, Branch 4, RTC, Baguio City, affixed her signature, inscribed the correct time and date thereat, and certified as a true copy the photocopy obtained by the team during the inspection. However, she herself failed to make the proper entries for her attendance in their logbook for that day.

2. Venus D. Saguid, Court Stenographer III, OCC, RTC, Baguio City, made an untruthful "5:02" time-out, affixed her signature and certified as correct all the entries in the logbook for May 5, 2011, despite the fact that the entries therein were still incomplete.

3. For most of April 2011, Manolo V. Mariano, III, merely affixed his name and signature in their logbook for the morning session without the corresponding time-in and time-out and most of the time failed to make any entry for the afternoon session.

4. The following personnel of Branch 59 already left their office and were about to leave the building when the roll call was conducted prior to 5pm:

a. Gilbert L. Evangelista
b. Eduardo B. Rodrigo
c. Elizabeth M. Lockey
d. Analiza G. Madronio
e. Evangeline N. Gonzales
f. Marilou M. Tadao
g. Agnes P. Maca-ey
h. Marani S. Bacolod
i. Edgardo R. Orate

The team left the Hall of Justice building at 6:00pm.

Afterwards, the team coordinated with the Office of Administrative Services - Office of the Court Administrator and obtained certified true copies of the May 2011 Daily Time Records/bundy clock cards of the above-mentioned court personnel. The team members then compared their findings

during the investigation and the entries made by the personnel concerned for May 5, 2011, as shown below:

MUNICIPAL TRIAL COURT IN CITIES
Office of the Clerk of Court

Employee Name	Position	Observation	Entry made in DTR/Cards
Ofelia T. Mondiguing	Clerk of Court III	Not logged	Domestic Emergency
Vilma C. Wayang	Clerk III	Not logged	Forced Leave
Sonny S. Caragay	Process Server I	Left office without entering time-out	5pm time-out
Jose E. Orpilla	Sheriff III	Left office without entering time-out	5pm time-out

Branch 1

Lourdes G. Caoili	Branch Clerk of Court	Untruthful 5pm time-out	5pm time-out
Antino M. Wakit	Utility Worker I	Left office without entering time-out	5pm time-out

Branch 2

Perla B. Dela Cruz	Court Stenographer II	Untruthful 5pm time-out	5pm time-out
Lourdes D. Wangwang	Clerk IV	Untruthful 5pm time-out	5pm time-out
Grace F. Desierto	Court Stenographer II	Left office without entering time-out	4:40pm time-out
Carolyn B. Dumag	Court Stenographer II	Left office without entering time-out	Blank
Mary Rose Virginia O. Matic	Court Stenographer II	Left office without entering time-out	5pm time-out

REGIONAL TRIAL COURT
Office of the Clerk of Court

Employee Name	Position	Observation	Entry made in DTR/Cards
Ruben L. Atijera	Sheriff IV	Failed to enter his time-in and time-out for the afternoon session	OB on field; 5pm time-out
Merlin Anita N. Calica	Cash Clerk III	Not logged	Sick leave
Edwin V. Fangonil	Process Server	Not logged	Sick leave
Namnama L. Lopez	Librarian II	Not logged	Sick leave
Romeo R. Florendo	Sheriff IV	Left office without entering time-out	OB on field; 5pm time-out
Jeffrey G. Mendoza	Clerk III	Left office without entering time-out	Half-day off (4/30 duty)
Rolando G. Montes	Clerk II	Left office without entering time-out	5pm time-out
Francisco D. Siapno	Utility Worker I	Left office without entering time-out	5pm time-out
Venus D. Saguid	Court Stenographer III	Made double entries for the afternoon session	5pm time-out

Branch 3

Restituto A. Corpuz	Court Stenographer III	Not logged	On leave
Marlene A. Domaoang	Court Stenographer III	Not logged	Sick leave
Florence F. Salango	Legal Researcher II	Not logged	On leave

Branch 4

Joy P. Chilem-Aguilba	Court Stenographer III	Not logged	Vacation leave
Elizabeth G. Aucena	Legal Researcher II	Not logged	Vacation leave
Ruth B. Bawayan	Clerk of Court V	Not logged(But she "certified" the photocopy of the logbook secured by the legal team)	7:10pm time-out
Ronaldo B. Pangan	Sheriff IV	Not logged	On LWOP (Bar Exams) per OAS-OCA communication
Leonila P. Fernandez	Court Stenographer III	Left office without entering time-out	5pm time-out
Maria Esperanza N. Jacob	Process Server	Left office without entering time-out	5:10pm time-out
Melita C. Salinas	Court Interpreter III	Left office without entering time-out	6:25pm time-out
Wilma M. Tamang	Court Clerk III	Left office without entering time-out	5pm time-out
Reynaldo R. Ramos	Court Clerk III	Untruthful 5pm time- out	5pm time-out

Branch 5

Precy T. Goze	Court Stenographer III	Not logged	On leave
Alejandro Epifanio D. Guerrero	Clerk of Court V	Not logged	On leave
Virginia M. Ramirez	Court Stenographer III	Not logged	Sick Leave
Jonathan R. Geronimo	Utility Worker	Left office without entering time-out	Sick Leave

Branch 6

Victoria J. Derasmo	Court Stenographer III	Untruthful 5pm time-out	5pm time-out
Manolo V. Mariano, III	Utility Worker	Untruthful 5pm time-out	5pm time-out
Rowena C. Pasag	Clerk III	Untruthful 5pm time-out	5pm time-out
Roberto G. Coroña, Jr.	Process Server	Left office without entering time-out	5pm time-out
Bobby D. Galano	Clerk III	Left office without entering time-out	5pm time-out

Branch 7

Dolores M. Eserio	Court Stenographer III	Untruthful 5pm time-out	5pm time-out
George Henry A. Manipon	Court Interpreter III	Untruthful 5pm time-out	5pm time-out
Dolores G. Romero	Clerk III	Untruthful 5pm time-out	5pm time-out
Romeo E. Barbachano	Process Server	Left office without entering time-out	5pm time-out
Edna P. Castillo	Court Stenographer III	Left office without entering time-out	5pm time-out
Anita A. Mendoza	Court Stenographer III	Left office without entering time-out	5pm time-out
Dominador B. Remiendo	Clerk III	Left office without entering time-out	5pm time-out

Branch 59

Jessica D. Guansing	Legal Researcher II	Not logged	On leave
Gilbert L. Evangelista	Utility Worker	Left office without entering time-out	5pm time-out

Branch 60

Ruth C. Lagan	Court Stenographer III	Not logged	Vacation leave
Eleonor V. Niñalga	Court Stenographer III	Not logged	Sick leave
Angelina M. Santiago	Clerk III	Not logged	PL
Leo P. Valdez	Utility Worker	Not logged (in the p.m. entry)	On leave
Samuel P. Vidad	Clerk III	Left office without entering time-out	Sick leave

Branch 61

Eleonor I. Bucaycay	Court Interpreter III	Not logged	Leave
Joan G. Castillo	Legal Researcher II	Not logged	Sick leave
Jerico G. Gay-Ya	Clerk of Court V	Untruthful 5pm time-out	5:02pm time-out
Concepcion Soliven Vda. Pulmano	Clerk III	Left office without entering time-out	Half-day/change to sick leave
Albert G. Tolentino	Sheriff IV	Left office without entering time-out	5pm time-out

On January 16, 2012, the investigating team issued a Memorandum,[2] recommending that several court personnel be made to file their comments on charges of Dishonesty within ten (10) days from notice. The team also recommended that the clerks of court and/or judges of the Baguio courts be, likewise, made to file their comments and explain why they verified as

[2] *Rollo*, pp. l-19.

true and correct the bundy cards of the identified personnel despite the untruthful entries. Further, the team recommended that utility worker Manolo V. Mariano III of Branch 6, be made to file a comment why he made sporadic entries in the logbook for the Month of April 2011. Finally, the team recommended that Clerk III Dominador B. Remiendo be made to file a comment on the charge of Gross Misconduct.

The Court Administrator's Recommendation

After the various respondents filed their respective comments, the Office of the Court Administrator issued Administrative Matter for Agenda (AMA) dated September 12, 2014, now subject of this review.

In the AMA, the OCA classified the above court personnel into four (4) groups: 1) the personnel who have no entries in the attendance log books/sheets; 2) the personnel who have no time-outs in the attendance log books/sheets; 3) the personnel who made untruthful time-outs in the attendance log books/sheets; 4) the Judges and the Clerks of Court who certified the DTRs of the above court personnel.

I. Personnel Who Have No Entries In The Attendance Log Books/Sheets

As to the first group, the OCA made the following findings in the AMA:

The OCA excused the following employees after verifying that they had filed the corresponding leave applications, explaining their failure to log their time-in and time-out:

1. Clerk of Court III Ofelia T. Mondiguing;
2. Clerk III Vilma C. Wayang;
3. Cash Clerk II Merlin Anita N. Calica;
4. Process Server Edwin V. Fangonil;
5. Librarian II Namnama L. Lopez;
6. Court Stenographer III Restituto A. Corpuz;
7. Court Stenographer Marlene A. Domaoang;
8. Legal Researcher II Florence F. Salango;

9. Legal Researcher II Elizabeth G. Aucena;
10. Court Stenographer III Joy P. Chilem-Aguilba;
11. Utility Worker Jonathan R. Geronimo;
12. Court Stenographer III Precy T. Goze;
13. Clerk of Court V Alejandro Epifania D. Guerrero;
14. Court Stenographer III Virginia M. Ramirez;
15. Legal Researcher Jessica D. Guansing;
16. Court Steographer III Eleonor V. Ninalga;
17. Clerk III Angelina M. Santiago;
18. Utility Worker Leo P. Valdez;
19. Clerk III Samuel P. Vidad;
20. Court Interpreter III Eleanor I. Bucaycay; and
21. Clerk III Concepcion Soliven Vda. Pulmano.[3]

Further, the following Sheriffs and Process Servers were also excused by the OCA after establishing that they were serving orders, returns and/or other court processes at the time:

1. Process Server I Sonny S. Caragay;
2. Sheriff III Jose E. Orpilla;
3. Process Server Roberto G. Coroña, Jr.;
4. Sheriff IV Bobby D. Galano; and
5. Sheriff IV Albert G. Tolentino. [4]

Meanwhile, the OCA identified the following personnel as present that day but were allowed by their superiors to leave due to some personal reasons, and failed to enter their time-outs:

1. Utility Worker Jonathan R. Geronimo;
2. Utility Worker Leo P. Valdez;
3. Clerk III Concepcion Soliven Vda. Pulmano;
4. Clerk III Samuel P. Vidad;
5. Court Stenographer II Carolyn B. Dumag; and
6. Court Stenographer II Grace F. Desierto.[5]

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[3] *Id*. at 1430-1431.

[4] *Id*. at 1433.

[5] *Id*. at 1431-1433.

As to these six (6) court personnel, the OCA found them liable for simple negligence for having failed to enter their respective time-outs. Thus, the OCA recommends that they each be found liable for Simple Negligence and fined the amount of Two Thousand Pesos (₱2,000.00) with a stern warning that a repetition of the same offense shall be dealt with more severely.[6]

II. Personnel Who Have No Time-Outs In The Attendance Log Books/Sheets

As to this group, the OCA made the following findings:

The OCA excused the following personnel from any sanction:

Clerk II Rolando G. Montes — the OCA found his explanation sufficient that he had not yet entered his time-out considering that he left the library, where he was assigned, at 5pm and it took him some time to reach the OCC where the logbooks could be found. Thus, he was not able to log his time-out as the investigating team was already holding the logbooks.[7]

Clerk III Jeffrey G. Mendoza — the OCA also found his explanation reasonable that he was on half-day, thus, his time-out at 12nn.[8]

However, in the AMA, the OCA found the following negligent:

Utility Worker I Francisco D. Siapno — According to Siapno, he arrived at his office, OCC-RTC, while the OCA team was there at around 5pm. The team instructed him to remain in the office while they photocopied the logbooks. Despite such instructions, he left. Siapno's failure to heed the OCA team's instruction to stay constitutes negligence.[9]

Utility Worker Gilbert L. Evangelista — In his explanation, Evangelista discussed his failure to enter his afternoon time-

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[6] *Id.* at 1457.

[7] *Id.* at 1434.

[8] *Id.* at 1434-1435.

[9] *Id.* at 1435.

in but failed to explain his failure to log his time-out. His lack of explanation for such failure is to be considered an admission and supports the findings of negligence on his part.[10]

Sheriff IV Ruben L. Atijera and Sheriff IV Romeo R. Florendo — In their Comment, both sheriffs explained that they were at the office when the investigating team arrived. However, they stated that they only entered their time-ins and time-outs the next day because the investigating team took the logbooks and photocopied the same. The OCA determined that they were negligent in not waiting for the logbook to be photocopied and then entering their time-ins and time-outs.[11]

Court Stenographer Mary Rose Virginia O. Matic — She admitted having left the office to go to her dentist without entering her time-out. This was clear negligence on her part.[12]

Utility Worker II Antino M. Wakit — Wakit claimed to have left the court at 4:45pm to go to Prosecutor Brian Sagsago with Clerk of Court Lourdes G. Caoili to deliver some case records. Thus, he claimed that he was in the Hall of Justice until 5:30pm. The OCA still found him liable for failing to log his time-out for the afternoon.[13]

Court Stenographer III Anita A. Mendoza, Court Stenographer III Edna P. Castillo, Process Server Romeo E. Barbachano, and Clerk III Dominador B. Remiendo — They all claim that they left their stations at 5:00pm and that the investigating team only arrived at their court at 5:10pm. However, they admitted that they inadvertently forgot to log their time-out in the logbooks. Such is an admission of their negligence.[14]

Court Stenographer III Leonila P. Fernandez, Process Server I Maria Esperanza N. Jacob, Court Interpreter III Melita C. Salinas

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[10] *Id.* at 1435-1436.

[11] *Id.* at 1436.

[12] *Id.*

[13] *Id.* at 1436-1437.

[14] *Id.* at 1437-1438.

and Clerk III Wilma M. Tamang — They refuted the OCA team's finding that they left the office without entering their timeouts. They alleged that they were present when the OCA team made their roll call for their court. The OCA, however, found that such contradiction cannot overcome the finding of the OCA team that they were not present when the roll call was conducted.[15]

Additionally, the OCA team found that Clerk of Court Ruth B. Bawayan failed to indicate her time-in and time-out that particular day in the logbooks.[16]

As such, the OCA recommended that the above court employees, considering that their mistakes were due to inadvertence more than anything else, were liable for simple negligence in the performance of their duties and that they pay a fine in the amount of Two Thousand Pesos (PhP2,000.00) each with a stern warning that a repetition of the same or any similar act or omission shall be dealt with more severely.[17]

III. Personnel Who Entered Untruthful Time-Outs In Their Attendance Log Books/ Sheets

Anent this group, the OCA made the following findings:

Process Server Eduardo B. Rodrigo, Court Stenographer III Analiza G. Madronio, Clerk III Evangeline N. Gonzales, Court Stenographer Marilou M. Tadao, Court Stenographer Agnes P. Maca-ey, Sheriff Marani S. Bacolod, and Clerk III Edgardo Orate — These court personnel all claimed that they were in their court at 5:00pm when the OCA team arrived contrary to the latter's finding that they were about to leave the premises of the Hall of Justice. Upon examining the allegations of the court personnel, the OCA concluded that their arguments were self-serving coupled with serious inconsistencies and, thus, failed

[15] *Id.* at 1438.

[16] *Id.* at 1438-1439.

[17] *Id.* at 1457-1458.

to discredit the unprejudiced and objective findings of the OCA team.[18]

Court Stenographer III Victoria J. Derasmo, Clerk III Rowena C. Pasag — They both claimed that they were at their posts until 5:00pm and correspondingly entered a timeout of 5:00pm and that the OCA team arrived at their court at 5:15pm after they had left. In support of their claim, they presented the affidavits of Branch Clerk of Courts Adube-Cabuag and officemate Jean Gonzales. The OCA dismissed their contentions stating that:

> This is evidently a gratuitous claim with no other purpose than to absolve [themselves] from any administrative liability. The same reasoning applies to the affidavits executed by Branch Clerk of Court Adube Cabuag and Jean Gonzales which, if accepted, would consequently exculpate each and every personnel of Branch 6, RTC from any accountability and would reduce the team's findings into something futile and hollow.[19]

Court Interpreter Henry A. Manipon — He directly refuted the allegation of the OCA Team that he was not there when the team arrived at 5:10pm and not at 5:00pm. He further alleged that he entered his log-out as 5:00pm at the insistence of the OCA investigators. The OCA found such allegations preposterous and did not give the same any merit.[20]

Court Stenographer II Perla B. Dela Cruz — She admitted having logged her time-out as 5:00pm prior to such actual time.[21]

Court Stenographer III Dolores M. Eserio — Eserio alleged that she left the office at 5:05pm and that the OCA team arrived shortly after she left at 5:10pm. Her allegations are plainly self-serving and hearsay as she could not have known the exact time that the OCA team arrived as she had already left by then.

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[18] *Id.* at 1443.

[19] *Id.* at 1443-1444.

[20] *Id.* at 1444.

[21] *Id.*

The OCA concluded that her allegations are clearly unmeritorious.[22]

Clerk III Dolores G. Romero — She alleged that, contrary to the claim of the OCA team, she was present when a roll call was conducted and that upon the instructions of the team, she went ahead and entered a time-out of 5:00pm despite the time being later than that. The OCA found that her testimony is unbelievable considering that she followed the OCA team's instructions to enter a log-out of 5:00pm despite its, allegedly, being later than that.[23]

Clerk III Reynaldo R. Ramos — Ramos claimed that he correctly logged out at 5:00pm and was within the vicinity of the staff room when the OCA team arrived. He further alleged that he tried to go back to the staff room but was prevented from doing so. The OCA considered such allegations bereft of merit considering the lack of relevant information such as who prevented him from re-entering the staff room.[24]

Clerk of Court III Lourdes G. Caoili — She admitted having entered a time-out of 5:00pm at 4:45pm as she was still tasked to bring to Prosecutor Brian Sagsago the records of a criminal case and, thus, the Office of the Clerk of Court where the logbooks were kept would already be closed when she returned later on. The OCA found that despite her reason, her admission that she entered a false time-out renders her administratively liable.[25]

Clerk IV Lourdes D. Wangwang -— Wangwang also admitted having entered a time-out of 5:00pm despite the actual time being 4:53pm as she had to attend to an urgent personal matter.[26]

Utility Worker Manolo V. Mariano — He directly refuted the findings of the OCA team claiming to have been present when the team made a roll call in his court at past 5:00pm.

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[22] *Id*.

[23] *Id.* at 1445.

[24] *Id.* at 1445-1446.

[25] *Id.* at 1446.

[26] *Id.* at 1447.

Mariano's claim was considered by the OCA as self- serving and therefore bereft of merit.[27]

Clerk of Court V Jerico G. Gay-ya — He admitted having entered a false time-out of 5:02pm at 4:40pm as he still had to bring the records of a civil case to the Baguio City Legal Office. He alleged that he returned to the office at 5:05. The OCA determined that even if indeed he actually went to the Baguio City Legal Office, the fact remains that he made an untruthful time-out in the logbooks.[28]

From the foregoing, the OCA thus found the above court personnel liable for Serious Dishonesty and recommended that, considering that this would be their first time to be administratively liable, the above court personnel be fined in the amount of PhP10,000.00 each with a stern warning that a repetition of the same offense shall be dealt with more severely.

Court Stenographer Venus D. Saguid — Saguid explained that her double entry of her afternoon time-in was by sheer inadvertence. This coupled with the fact that she was present during the roll call by the OCA team shows that her entries were not untruthful. The OCA thus exonerated her from any administrative liability.[29]

IV. Certification by the Judges and Clerks of Court of the respondent Court Personnel's Daily Time Record

Insofar as the Judges and Clerks of Court who erroneously certified as correct the daily time records of the above respondent court personnel, the OCA made the following findings:

x x x [T]he respondent judges and clerks of courts unwittingly and unwillingly abetted the commission by the respondents concerned

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[27] *Id*.

[28] *Id.* at 1447-1448.

[29] *Id.* at 1448.

of the charges leveled against them, except for Clerk of Court Armando G. Ydia (OCC, MTCC, Baguio City) and Clerk of Court Gail M. Bacbac-Del Isen (Branch 3, RTC, Baguio City) who were able to extricate themselves from any culpability since the court employees who are under their respective supervision x x x have given sufficient explanations as to why they should not be held administratively liable in the instant matter. For their laxity and their neglect to strictly scrutinize the truthfulness of the entries in the DTRs of their subordinates, this Office believes that the following have committed simple negligence in the performance of their official duties:

1. Judge Roberto R. Mabalot (Branch 1, MTCC)
2. Judge Jennifer P. Huminding (Branch 2, MTCC)
3. Judge Mia Joy C. Oallares-Cawed (Branch 4, RTC)
4. Judge Antonio M. Esteves (Branch 5, RTC)
5. Judge Mona Lisa Tiongson-Tabora (Branch 7, RTC)
6. Judge Illuminada P. Cabato (Branch 59, RTC)
7. Judge Antonio C. Reyes (Branch 61, RTC)
8. Clerk of Court Remedios Balderas-Reyes (Clerk of Court, OCC, RTC)
9. Clerk of Court Ruth B. Bawayan (Branch 4, RTC)
10. Clerk of Court Alejandro Epifanio D. Guerrero (Branch 5, RTC)
11. Clerk of Court Mylene May Adube-Cabuag (Branch 6, RTC)
12. Acting Clerk of Court Jessica Guansing (Branch 59, RTC)
13. Clerk of Court Roger L. Nafianog (Branch 60, RTC)
14. Clerk of Court Jerico G. Gay-ya (Branch 61, RTC)[30]

Additionally, Clerk of Court Jerico G. Gay-ya was also charged by the OCA team of prematurely certifying as true and correct all the entries in the log sheet for that day despite the fact that the entries thereat were still incomplete.

Thus, the OCA made the following disquisition on the penalties to be imposed on the above respondents:

While this office believes that simple negligence attended the failure of the aforementioned judges and clerks of court to verify the truthfulness of the entries in their personnel's respective DTRs, we deemed it better to observe some leeway in the imposition of the penalty against them considering that they only indirectly derived

[30] *Id.* at 1449-1450.

their respective accountability from their personnel's transgression. Hence, insofar as the aforecited judges and clerks of courts are concerned, we deem it appropriate to recommend that they be merely reprimanded but with a stern warning that a repetition of the same will be dealt with more severely. Relative thereto, taking into consideration the fact that (1) Judge Antonio M. Esteves passed away on 10 January 2013, and that (2) Judge Illuminada P. Cabato compulsorily retired on 29 November 2012, reprimanding them would no longer be possible. Thus, the charge against the two (2) magistrates may be considered as already moot and academic.

Insofar as the recommended penalties for both respondents Ruth B. Bawayan (Clerk of Court, Branch 4, RTC, Baguio City) and Jerico G. Gay-ya (Clerk of Court, Branch 61, RTC, Baguio City) is concerned, however, Section 50, Rule 10 of the RRACCS provides that "[i]f the respondent is found guilty of two (2) or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge and the rest shall be considered as aggravating circumstances." Hence it is recommended that Ruth B. Bawayan be found liable for simple negligence (on two [2] counts) and be fined the amount of Five Thousand Pesos (₱5,000.00) while Jerico G. Gay-ya be found liable for serious dishonesty and simple negligence and be fined in the amount of Ten Thousand Pesos (₱l0,000.00).[31]

Utility Worker Manolo V. Mariano — He had very few entries in their logbooks for April 2011 indicating a pattern to completely disregard and ignore the duty to make entries therein. Mariano admitted his mistake and apologized for the same, vowing to never repeat the same while asking for compassion. His actions comprise a ground for serious dishonesty. Given the previous finding that Mariano was also guilty of serious dishonesty for making a false entry in their logbook, the OCA made the following recommendation:

x x x However, considering that this could be the first time that Mariano may be held administratively liable for dishonesty, plus that fact that he admitted his wrongdoing and pleaded for compassion, this Office, applying the *OCA v. Cyril Jotic* case, deems it proper to recommend instead the penalty of suspension for a period of ten (10) months without pay and other benefits, with a stern warning

[31] *Id.* at 1451.

that a repetition of the same will be dealt with more severely. Applying Section 50, Rule 10 of the RRACCS, the earlier recommended penalty of ₱10,000.00 for the first count of serious dishonesty against respondent Mariano is deemed absorbed by the penalty of suspension.[32]

Clerk III Dominador Remiendo — He was videotaped punching in the daily time records of his co-employees. Remiendo admitted his wrongdoing explaining that he did not intend to perpetuate fraud but to foster good relations and camaraderie as an act of goodwill and charity for his co-employees who were all in the staffrooms finishing their morning jobs and preparing for their lunch break. The OCA opined that such actions constitute a clear case of serious dishonesty and gross misconduct. Thus, the OCA recommends:

For this, respondent Remiendo must be held administratively liable. As mentioned above, Section 46 (A) (1) and (3), Rule 10 of the RRACCS classifies serious dishonesty and grave misconduct as grave offenses punishable by dismissal from the service even on the first offense. While in a number of decisions, the Court deemed it necessary to temper the penalty from dismissal to suspension, this Office believes that it is crucial that in this case, the penalty of dismissal be imposed on the wrongdoer. It is high time that the Court send a strong message to all court employees nationwide that punctuality in going to work and honesty in the punching of DTRs and/or in making entries in attendance logbooks be taken with utmost seriousness and importance.[33]

Court Stenographer Ruth C. Lagan and Legal Researcher Joan G. Castillo — They both have resigned from their posts. The OCA thus concludes that since the Court has already lost jurisdiction over them, it is recommended that the instant administrative matter be dismissed as to them.[34]

In summary, the OCA made the following recommendations in its AMA dated September 12, 2014.

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[32] *Id.* at 1452-1453.

[33] *Id.* at 1454.

[34] *Id.* at 1455.

The Court's Ruling

The Court is disposed to modify the recommendations of the OCA.

Court Personnel who had no entries in the logbooks or did not enter their log-out

The first two (2) groups delineated by the OCA as those who had no entries in the attendance log books/sheets and those who left their offices without entering their time-outs are correctly administratively liable. These are:

1. Utility Worker Jonathan R. Geronimo;
2. Utility Worker Leo P. Valdez;
3. Clerk III Concepcion Soliven Vda. Pulmano;
4. Clerk III Samuel P. Vidad;
5. Court Stenographer II Carolyn B. Dumag;
6. Court Stenographer II Grace F. Desierto.
7. Utility Worker Jonathan R. Geronimo
8. Utility Worker Leo P. Valdez
9. Clerk III Samuel P. Vidad
10. Court Stenographer II Carolyn B. Dumag
11. Court Stenographer II Grace F. Desierto
12. Utility Worker I Francisco D. Siapno
13. Utility Worker Gilbert L. Evangelista
14. Sheriff IV Ruben L. Atijera
15. Sheriff IV Romeo R. Florendo
16. Court Stenographer Mary Rose Virginia O. Matic
17. Utility Worker II Antino M. Wakit
18. Court Stenographer III Anita A. Mendoza
19. Court Stenographer III Edna P. Castillo
20. Process Server Romeo E. Barbachano
21. Court Stenographer III Leonila P. Fernandez
22. Process Server I Maria Esperanza N. Jacob
23. Court Interpreter III Melita C. Salinas
24. Clerk III Wilma M. Tamang

They are, however, not liable for simple negligence but rather for Violation of Reasonable Office Rules and Regulations.

OCA Circular 7-2003 requires that:

4. Every Clerk of Court shall:

4.1. Maintain a registry book (logbook) in **which all officials and employees of that court shall indicate their daily time of arrival in and departure from the office;** (Emphasis supplied)

In *Contreras v. Monge,*[35] the Court classified the failure of court personnel to enter their time-in and time-out in the office logbook as a light offense, to wit:

Respondent was previously reprimanded in AM. No. P-05-2040. **Her act of not logging in and out of the attendance logbook was,** without doubt, her second violation of civil service rules. **A light offense such as a violation of reasonable *office* rules and regulations**, if violated for the second time, is punishable by suspension for one to 30 days. (Emphasis supplied)

Relevantly, Rule 10, Section 46 (F) (3) of the Revised Rules on Administrative Case in the Civil Service provides:

F. The following light offenses are punishable by **reprimand** for the first offense; suspension of one (1) to thirty (30) days for the second offense; and dismissal from the service for the third offense:

x x x x x x x x x

3. Violation of reasonable office rules and regulations; (Emphasis supplied)

Thus, considering that the above court personnel will only be administratively liable for the first time with this case, the proper punishment for them would only be a Reprimand with a stern warning that the repetition of the same or any similar act or omission shall be dealt with more severely.

Court Personnel who made untruthful time-outs

Anent the group of court personnel that entered untruthful time-outs in their attendance log books/sheets, most alleged

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[35] A.M. No. P-06-2264, September 29, 2009, 601 SCRA 218, 226.

that the OCA team arrived shortly after 5:00pm. Thus, they argued that they had already left when the investigators arrived. This is in direct contradiction to the report and findings of the OCA team who conducted their investigation and roll calls before 5:00pm. As such, the allegations of the court personnel on this matter are unmeritorious. These are:

1. Process Server Eduardo B. Rodrigo
2. Court Stenographer III Elizabeth M. Lockey
3. Court Stenographer III Analiza G. Madronio
4. Clerk III Evangeline N. Gonzales
5. Court Stenographer Marilou M. Tadao
6. Court Stenographer Agnes P. Maca-ey
7. Sheriff IV Marani S. Bacolod
8. Clerk III Edgardo R. Orate
9. Court Stenographer III Victoria J. Derasmo
10. Clerk III Rowena C. Pasag
11. Court Interpreter III George Henry A. Manipon
12. Court Stenographer II Perla B. Dela Cruz
13. Court Stenographer III Dolores M. Eserio
14. Clerk III Dolores G. Romero
15. Clerk III Reynaldo R. Ramos
16. Clerk of Court III Lourdes G. Caoili
17. Clerk IV Lourdes F. Wangwang
18. Utility Worker Manolo V. Mariano
19. Clerk of Court V Jerico G. Gay-ya

These court personnel effectively claim that the OCA team falsied their report. Having made such contention, they have the burden of proving the same; however, the OCA team had no motive for doing so. The rule, as stated in *Flores-Tumbaga v. Tumbaga*,[36] is that:

> The presumption is that witnesses are not actuated by any improper motive absent any proof to the contrary and that their testimonies must accordingly be met with considerable, if not conclusive, favor under the rules of evidence because it is not expected that said

[36] A.M. No. P-06-2196, October 22, 2012, 684 SCRA 285, 290-291.

witnesses would prevaricate and cause the damnation of one who brought them no harm or injury.

Thus, respondent's bare denial vis-a-vis the positive testimonies of the witnesses, the latter should prevail. (Emphasis supplied)

Here, the OCA team reported that they conducted the roll call of the court personnel before 5:00pm and found that the above court personnel already logged their time-out as 5:00pm. There was no reason for the OCA team to falsify its report. As such, petitioners' contention herein is bereft of merit.

Specifically as to Derasmo, Pasag, and Mariano, it bears noting that, after examining the Attendance — Log Sheet of RTC Branch 6 for May 5, 2011, they, along with Peralta, Ferrer, Sacpa, Fagel, and Gonzales logged time-outs of 5:00pm or after. It is, therefore, unbelievable that the OCA team would select the three court personnel at random and allege that they were no longer at the court when, in fact, they were. Respondents have not given any reason why the OCA team would do so.

The same principle applies to Manipon, Eserio and Romero who argue that they were also present when the roll call was conducted by the OCA team. Again, it is illogical for the OCA team to make false allegations against them and yet say that the other court personnel of Branch 7, namely Fukai, Perez, Madayag and Pangan were present when the roll call was conducted.

As the Court ruled in *People v. Villaflores:*[37]

Well-entrenched is the rule that evidence should first be believable and logical before it can be accorded weight. To be given any credence, it must not only proceed from the mouth of a credible witness; it must be credible in itself as a common experience and observation that mankind can deem probable under the circumstances. (Emphasis supplied)

Thus, unless the OCA team was motivated by some reason to distinguish respondents from the other personnel, the allegations cannot be given any credit.

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[37] G.R. Nos. 135063-64, December 5, 2001, 371 SCRA 429, 442.

With regard to the penalty, *Office of the Court Administrator v. Kasilag*[38] is relevant:

Jurisprudence on this matter is clear. Falsification **of a DTR by a court personnel is a grave offense.** The nature of this infraction is precisely what the OCA states: the **act of falsifying an official document** is in itself grave because of its possible deleterious effects on government service. At the same time, it is also an act of dishonesty, which violates fundamental principles of public accountability and integrity. Under Civil Service regulations, falsification of an official document and dishonesty are distinct offenses, but both may be committed in one act, as in this case. (Emphasis supplied)

Section 46 (A) (6) of the RRACCS punishes Falsification of official documents with dismissal from the service:

Section 46. *Classification of Offenses.* - Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service.

A. **The following grave offenses shall be punishable by dismissal from the service:**

x x x x x x x x x

6. Falsification of official document; (Emphasis supplied)

In the instant case, however, the Court agrees with the penalty recommended by the OCA in consonance with the ruling in *Office of the Court Administrator v. Hernandez,*[39] to wit:

In previous cases, the Court accorded some measure of compassion to erring employees. In *Office of the Court Administrator v. Magbanua,* the Court found Process Server Magbanua guilty of dishonesty for making false and inaccurate entries in his DTR and yet only **imposed a fine equivalent to one month salary**. The Court ratiocinated that the law is concerned for the working man, and respondent's unemployment would bring untold hardships and sorrows on his

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[38] A.M. No. P-08-2573, June 19, 2012, 673 SCRA 673, 588.

[39] A.M. No. P-13-3130, September 22, 2014, 735 SCRA 640, 645.

dependents. In addition, the Court regarded as mitigating circumstance, the fact that Magbanua had been an employee of the court since 1985. Also, in Leave Division, Office of Administrative Services, Office of the Court Administrator. Gutierrez III, **the Court only imposed the penalty of a ₱5,000.00 fine for therein respondent's falsication of his DTR,** since he readily admitted his wrongdoing and it was the very first time that an administrative case was filed against him in the five years that he had been in government service. (Emphasis supplied)

The OCA reached a middle ground from the penalties above and imposed a Fine of Ten Thousand Pesos (PhP10,000.00) on each erring court personnel. Considering, however, the fact that this is the first time that the herein respondents will be held administratively liable, the Court deems it proper to instead impose the fine of Five Thousand Pesos (PhP5,000.00) with a stern warning that a repetition of the same offense shall be dealt with more severely.

Judges and Clerks of Court that certified the DTRs of the erring court personnel

As to the findings and penalties for the certifications made by the judges and clerks of court of the Baguio courts, it would be in line with jurisprudence to admonish rather than reprimand them. In *Re: Complaint of Executive Judge Tito Gustilo, RTC, Iloilo City, Against Clerk of Court Magdalena Lometillo, RTC, Iloilo City*,[40] the Court ruled in this wise:

> WHEREFORE, for her failure to properly supervise the personnel under her, respondent Atty. Magdalena Lometillo, Clerk of Court, Regional Trial Court, Iloilo City, is **ADMONISHED** to be more circumspect in the discharge of her official duties xxx (Emphasis supplied)

In the more recent case of *Re: Audit Report on Attendance of Court Personnel of Regional Trial Court, Branch 32, Manila*,[41] the Court stated thus:

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[40] A.M. No. 00-4-06-SC, January 15, 2002, 373 SCRA 83, 90.

[41] A.M. No. P-04-1838, August 31, 2006, 500 SCRA 351, 363.

As to the administrative liability of Judge Nabong, he would have been **admonished** for not being stricter with his subordinates in the observance of the rules on the use of the logbook. (Emphasis supplied)

Verily, the abovementioned judges and clerks of court must be Admonished for their failure to properly supervise their subordinates, particularly in the logging of their attendance.

Ruth B. Bawayan, Clerk of Court, Branch 4, RTC; Jerico G. Gay-ya, Clerk of Court, Branch 61, RTC

With regard to Bawayan, as discussed above, she is likewise guilty of failing to log her time-in and time-out on the day of the inspection and was penalized with Reprimand. The more serious penalty shall, therefore, be imposed pursuant to Section 50, Rule 10 of the RRACCS, which states:

Section 50. *Penalty for the Most Serious Offense.* — If the respondent is found guilty of two (2) or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge and the rest shall be considered as aggravating circumstances.

Thus, her previous penalty of being Admonished for certifying as correct the DTRs of the erring court personnel will be absorbed by the penalty of Reprimand earlier imposed.

The same principle will apply to Gay-ya who was earlier found above to have entered an untruthful time-out in the logbooks and fined the amount of PhP5,000.00. Such fine shall, therefore, absorb the penalty herein imposed.

Utility Worker, Manolo V. Mariano III

As to the case of Utility Worker Manolo V. Mariano III, while it may seem that his situation is similar to the OCA' s second group of personnel who failed to log their time-in and time-out in the log books, the extent of the proven failure of Mariano to perform his duty differentiates his case from the others.

The OCA recommends the imposition of the penalty of Suspension for ten (10) months on Mariano, following this Court ruling in the case of *Office of the Court Administrator v. Cyril Jotic* as Mariano committed a Grave Offense punishable at the first instance with dismissal from the service.

It is, however, submitted that Mariano's case is more factually similar to the case of *Dipolog v. Montealto*,[42] an administrative case against court personnel who, among others, "failed to comply with the requirement that they fill out their respective DTRs upon arrival at, and departure from, the office;" In that case, the Court ruled that the court personnel were guilty of Dishonesty but only imposed a penalty of six (6) months suspension.

Moreover, the Court takes notice of the fact that, as distinguished from *Jotic* and *Dipolog,* Mariano herein admitted his mistake, apologized for the same, and undertakes never to repeat the same. Additionally, this would be the first time that Mariano will be held administratively liable. As such, Mariano shall be imposed a Suspension from work of three (3) months and one (1) day with the warning that a repetition of the same offense would be dealt with more severely.

Mariano was earlier found liable for making an untruthful time-out on the date of the inspection and was Fined the amount of PhP5,000.00. Such penalty is absorbed by the imposition of the instant penalty of Suspension.

Dominador B. Remiendo,
Clerk III, Branch 7, RTC

Finally, as to Clerk III Dominador B. Remiendo, he was the person identified in the videotape punching in the DTRs of his officemates. This is clearly an act of Dishonesty and Falsification of Official Document, both of which are grave offenses punishable in the first instance with dismissal from the service. The OCA recommends the imposition of such extreme penalty to make him a strong example to all the court personnel in the country.

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[42] A.M. No. P-04-1901, November 23, 2004, 443 SCRA 465, 474.

We disagree with this recommendation.

As aptly stated by the Court in *Velasco v. Obispo*,[43] dismissal should not be imposed if a less punitive penalty would suffice:

> The Court also ruled that where a penalty less punitive would suffice, whatever missteps may be committed by the employee ought not to be visited with a consequence so severe. It is not only for the law's concern for the workingman; there is, in addition, his family to consider. Unemployment brings untold hardships and sorrows on those dependent on wage earners. Applying the rationale in the aforesaid judicial precedents and rules, the Court considers as mitigating circumstances the fact that this is the first infraction of Obispo and more importantly, the lack of bad faith on his part in committing the act complained of. xxx

Here, this would be the first time that Remiendo would be held administratively liable. Further, he admits his error and apologized for the same. Considering the above extenuating circumstances and following the ruling in *Velasco,* Remiendo is hereby Suspended for a period of six (6) months with a stern warning that a repetition of this offense shall be met with a harsher penalty.

On a final note, court personnel are reminded of their sworn duty to always act with honesty, as eloquently put by this Court in the case of *Gubatanga v. Boday:*[44]

> This Court will not tolerate dishonesty. Persons involved in the dispensation of justice, from the highest official to the lowest employee, must live up to the strictest standards of integrity, probity, uprightness and diligence in the public service. As the assumption of public office is impressed with paramount public interest, which requires the highest standards of ethical standards, persons aspiring for public office must observe honesty, candor and faithful compliance with the law. It has been consistently stressed that even minor employees mirror the image of the courts they serve; thus, they are required to preserve the judiciary's good name and standing as a true temple of justice.

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[43] A.M. No. P-13-3160, November 10, 2014, 739 SCRA 327, 335.

[44] A.M. No. P-16-3447, April 19, 2016.

WHEREFORE, premises considered, the Court rules as follows:

1. Dominador B. Remiendo, Clerk III, Branch 7, Regional Trial Court, Baguio City, is hereby found **LIABLE** for Falsification of Official Document and Serious Dishonesty, and is hereby meted the penalty of **SUSPENSION** for a period of six (6) months without pay and other benefits during the said period, with a stern warning that a repetition of the same offense will be dealt with more severely;

2. Manolo V. Mariano III, Utility Worker, Branch 6, Regional Trial Court, Baguio City, is found **LIABLE** for Falsification of Official Document and Serious Dishonesty and is hereby meted the penalty of **SUSPENSION** for a period of three (3) months without pay and other benefits during the said period, with a stern warning that a repetition of the same offense will be dealt with more severely;

3. Jerico G. Gay-ya, Clerk of Court, Branch 61, Regional Trial Court, Baguio City, is found **LIABLE** for Falsification of Official Document and Simple Negligence and is hereby meted the penalty of **FINE** in the amount of Five Thousand Pesos (₱5,000.00), with a stern warning that a repetition of the same offense shall be dealt with more severely;

4. The following employees are found **LIABLE** for Falsication of Official Document and are hereby meted the penalty of **FINE** in the amount of Five Thousand Pesos (₱5,000.00) each, with a stern warning that a repetition of the same will be dealt with more severely:

a. Eduardo B. Rodrigo (Process Server, Branch 59, RTC, Baguio City)
b. Elizabeth M. Lockey (Court Stenographer III, Branch 59, RTC, Baguio City)
c. Analiza G. Madronio (Court Stenographer III, Branch 59, Baguio City)
d. Evangeline N. Gonzales (Clerk III, Branch 59, RTC, Baguio City)
e. Marilou M. Tadao (Court Stenographer, Branch 59, RTC, Baguio City)
f. Agnes P. Maca-ey (Court Stenographer, Branch 59, RTC,

Baguio City)

g. Marani S. Bacolod (Sheriff IV, Branch 59, RTC, Baguio City)

h. Edgardo R. Orate (Clerk III, Branch 59, RTC, Baguio City)

i. Victoria J. Derasmo (Court Stenographer III, Branch 6, RTC, Baguio City)

j. Rowena C. Pasag (Clerk III, Branch 6, RTC, Baguio City)

k. George Henry A. Manipon (Court Interpreter II), Branch 7, RTC, Baguio City)

1. Perla B. Dela Cruz (Court Stenographer II, Branch 2, MTCC, Baguio City)

m. Dolores M. Eserio (Court Stenographer III, Branch 7, RTC, Baguio City)

n. Dolores G. Romero (Clerk III, Branch 7, RTC, Baguio City)

o. Reynaldo R. Ramos (Clerk III, Branch 4, RTC, Baguio City)

p. Lourdes G. Caoili (Clerk of Court III, Branch 1, MTCC, Baguio City)

q. Lourdes F. Wangwang (Clerk IV, Branch 2, MTCC, Baguio City);

5. Ruth B. Bawayan, Clerk of Court, Branch 4, Regional Trial Court, Baguio City, is found **LIABLE** for Violation of Reasonable Office Rules and Regulations and Simple Negligence and is hereby meted the penalty of **REPRIMAND,** with a stern warning that a repetition of the same offense shall be dealt with more severely;

6. The following employees are found **LIABLE** for Violation of Reasonable Office Rules and Regulations and are hereby meted the penalty of **REPRIMAND,** with a stern warning that a repetition of the same shall be dealt with more severely:

a. Jonathan R. Geronimo (Utility Worker, Branch 5, RTC, Baguio City)

b. Leo P. Valdez (Utility Worker, Branch 60, RTC, Baguio City)

c. Concepcion Soliven Vda. Pulmano (Clerk III, Branch 61, RTC, Baguio City)

d. Samuel P. Vidad (Clerk III, Branch 60, RTC, Baguio City)
e. Carolyn B. Dumag (Court Stenographer II, Branch 2, MTCC, Baguio City)
f. Grace F. Desierto (Court Stenographer II, Branch 2, MTCC, Baguio City)
g. Francisco D. Siapno (Utility Worker I, OCC, RTC, Baguio City)
h. Gilbert L. Evangelista (Utility Worker, Branch 59, RTC, Baguio City)
i. Ruben L. Atijera (Sheriff IV, OCC, RTC, Baguio City)
j. Romeo R. Florendo (Sheriff IV, OCC, RTC, Baguio City)
k. Mary Rose Virginia O. Matic (Court Stenographer, Branch 2, MTCC, Baguio City)
1. Antino M. Wakit (Utility Worker II, Branch I, MTCC, Baguio City)
m. Anita A. Mendoza (Court Stenographer III, Branch 7, RTC, Baguio City)
n. Edna P. Castillo (Court Stenographer III, Branch 7, RTC, Baguio City)
o. Romeo E. Barbachano (Process Server, Branch 7, RTC, Baguio City)
p. Leonila P. Fernandez (Court Stenographer III, Branch 4, RTC, Baguio City)
q. Maria Esperanza N. Jacob (Process Server I, Branch 4, RTC, Baguio City)
r. Melita C. Salinas (Court Interpreter III, Branch 4, RTC, Baguio City)
s. Wilma M. Tamang (Clerk III, Branch 4, RTC, Baguio City);

7. The following court officials are found **LIABLE** for Simple Negligence and are hereby **ADMONISHED,** with a stern warning that a repetition of the same will be dealt with more severely:

a. Judge Roberto R. Mabalot (Branch I, MTCC, Baguio City)
b. Judge Jennifer P. Humiding (Branch 2, MTCC, Baguio City)

c. Judge Mia Joy C. Oallares-Cawed (Branch 4, RTC, Baguio City)
d. Judge Mona Lisa Tiongson-Tabora (Branch 7, RTC, Baguio City)
e. Judge Antonio C. Reyes (Branch 61, RTC, Baguio City)
f. Remedios Balderas-Reyes (Clerk of Court, OCC, RTC, Baguio City)
g. Alejandro Epifanio D. Guerrero (Clerk of Court, Branch 5, RTC, Baguio City)
h. Mylene May Adube-Cabuag (Clerk of Court, Branch 6, RTC, Baguio City)
i. Jessica D. Guansing ([Acting] Clerk of Court, Branch 59, RTC, Baguio City)
j. Roger L. Nafianog (Clerk of Court, Branch 60, RTC, Baguio City);

8. The charges against the following respondents are hereby **DISMISSED** for lack of merit:

a. Ofelia T. Mondiguing (Clerk of Court III, OCC, MTCC, Baguio City)
b. Vilma P. Camit-Wayang (Clerk III, OCC, MTCC, Baguio City)
c. Merlin Anita N. Calica (Cash Clerk III, OCC, RTC, Baguio City)
d. Edwin V. Fangonil (Process Server, OCC, RTC, Baguio City)
e. Namnama L. Lopez (Librarian II, OCC, RTC, Baguio City)
f. Restituto A. Corpuz (Court Stenographer III, Branch 3, RTC, Baguio City)
g. Marlene A. Domaoang (Court Stenographer III, Branch 3, RTC, Baguio City)
h. Florence F. Salango (Legal Researcher, Branch 3, RTC, Baguio City)
i. Elizabeth G. Aucena (Legal Researcher II, Branch 4, RTC, Baguio City)
j. Joy P. Chilem-Aguilba (Court Stenographer III, Branch 4, RTC, Baguio City)

k. Precy T. Goze (Court Stenographer, Branch 5, RTC, Baguio City)

1. Virginia M. Ramirez (Court Stenographer, Branch 5, RTC, Baguio City)

m. Eleonor V. Ninalga (Court Stenographer III, Branch 60, RTC, Baguio City)

n. Angelina M. Santiago (Clerk III, Branch 60, RTC, Baguio City)

o. Eleonor I. Bucaycay (Court Interpreter, Branch 61, RTC, Baguio City)

p. Sonny S. Caragay (Process Server I, OCC, MTCC, Baguio City)

q. Jose E. Orpilla (Sheriff III, OCC, MTCC, Baguio City)

r. Roberto G. Coroña, Jr. (Process Server, Branch 6, RTC, Baguio City)

s. Bobby D. Galano (Sheriff IV, Branch 6, RTC, Baguio City)

t. Albert G. Tolentino (Sheriff IV, Branch 61, RTC, Baguio City)

u. Rolando G. Montes (Clerk II, OCC, RTC, Baguio City)

v. Jeffrey G. Mendoza (Clerk III, OCC, RTC, Baguio City)

w. Venus D. Saguid (Court Stenographer III, OCC, RTC, Baguio City)

x. Armando G. Ydia (Clerk of Court, OCC, MTCC, Baguio City)

y. Gail M. Bacbac-Del Isen (Clerk of Court, Branch 3, RTC, Baguio City);and

9. Finally, the charges against Judge Antonio M. Esteves, Branch 5, RTC, Baguio City; Judge Illuminada P. Cabato, Branch 59, RTC, Baguio City; Joan G. Castillo, former Legal Researcher, Branch 61, RTC, Baguio City; and Ruth C. Lagan, former Court Stenographer III, Branch 60, RTC, Baguio City, are hereby **DISMISSED** for being moot and academic.

SO ORDERED.

Bersamin, Reyes, Jardeleza, and *Caguioa, JJ.,* concur.

THIRD DIVISION

[G.R. No. 168288. January 25, 2017]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **HAROLD TIO GO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; OFFER OF EVIDENCE; THE COURT, IN THE INTEREST OF JUSTICE, ALLOWS IN CERTAIN CASES THE BELATED SUBMISSION ON APPEAL OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES (DENR) OR CENRO CERTIFICATION AS PROOF THAT A LAND IS ALREADY ALIENABLE AND DISPOSABLE LAND OF THE PUBLIC DOMAIN; APPLICATION IN CASE AT BAR.— Indeed, the rule is that the court shall consider no evidence which has not been formally offered. The Court, however, in the interest of justice, allowed in certain cases the belated submission on appeal of a Department of Environment and Natural Resources (DENR) or CENRO Certification as proof that a land is already alienable and disposable land of the public domain. Thus, in *Victoria v. Republic of the Philippines*, the Court admitted the DENR Certification, which was submitted by therein petitioner only on appeal to the CA. x x x Meanwhile, in *Spouses Llanes v. Republic of the Philippines*, the Court accepted the corrected CENRO Certification even though it was submitted by the Spouses Llanes only during the appeal in the CA. x x x Clearly, therefore, the CA took the prudent action in admitting the CENRO Certification, albeit belatedly submitted, as it would be more in keeping with the ends of substantial justice.

2. ID.; ID.; FACTUAL FINDINGS OF THE TRIAL COURT; ISSUES OR GROUNDS NOT RAISED BELOW CANNOT BE RESOLVED ON REVIEW BY THE SUPREME COURT; PRESENT IN CASE AT BAR.— It should be stressed that the factual findings and conclusion of the RTC on the issue of Go's possession and occupation were neither controverted nor refuted by the Office of the Solicitor General on appeal to the

> CA or on review to this Court. The rule is that "issues or grounds not raised below cannot be resolved on review by the Supreme Court, for to allow the parties to raise new issues is antithetical to the sporting idea of fair play, justice and due process." For all intents and purposes, the matter of Go's possession and occupation is already settled and considering that the CA correctly admitted the CENRO Certification, there is, therefore, no more obstacle to the issuance of title in the name of Go for Lot No. 9196 and Lot No. 9197, Pls-823.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Conchito E. Germino for respondent.

D E C I S I O N

REYES, *J.*:

This is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court contesting the Decision[2] dated May 23, 2005 of the Court of Appeals (CA) in CA-G.R. CV No. 76801, which denied the appeal of the Republic of the Philippines (Republic) and affirmed *in toto* the Decision[3] dated February 4, 2002 of the Regional Trial Court (RTC) of Mandaue City, Branch 55, in LRC Case No. N-588, an application for original registration of title.

Antecedent Facts

Respondent Harold Tio Go (Go) filed an application for original registration of title in 1999.[4] His application covered two (2) parcels of land located in Liloan, Cebu, identified as Lot No. 9196, Pls-823 (identical to Lot No. 281-A) with an

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[1] *Rollo*, pp. 7-20.

[2] Penned by Associate Justice Arsenio J. Magpale, with Associate Justices Sesinando E. Villon and Enrico A. Lanzanas concurring; *id.* at 22-28.

[3] Rendered by Judge Ulric R. Canete; records, pp. 124-127.

[4] *Rollo*, pp. 29-31.

area of 404 square meters and Lot No. 9197 (identical to Lot No. 281-B) with an area of 2,061 sq m.

The Republic filed an opposition[5] to the application on the grounds that: (1) Go or his predecessors-in-interest have not been in open, continuous, exclusive and notorious possession of the property since June 12, 1945 or prior thereto; (2) Go failed to adduce evidence showing *bona fide* acquisition of the land applied for; (3) the claim of ownership can no longer be availed of by Go since he failed to file an application within six months from February 16, 1976 as required by Presidential Decree No. 892; and (4) the parcels of land applied for belong to a portion of the public domain.[6] Despite its written opposition, the Republic failed to appear during the initial hearing of the case.[7] After reception of Go's evidence, the RTC granted his application in its Decision[8] dated February 4, 2002, the dispositive portion of which provides:

> WHEREFORE, foregoing premises considered, an order is hereby issued, to wit:
>
> 1. Admitting Exhibits "A up to Y" and all its submarkings formally offered by applicants [sic] as part of the testimonies of the [applicant's] witnesses and for the purpose/s for which they were being offered;
>
> 2. Ordering the issuance of title to the land, **Lot No. 281-A with an area of 404 [sq m], more or less; and Lot No. 281-B, consisting a total area of 2,06.1 [sq m], more or less**, situated at Barrio Tayud, Municipality of Liloan, Province of Cebu, Philippines, covered by approved Subdivision Plan, Csd-07-003219, and approved Technical Descriptions, for and in the name of [GO], Filipino citizen, legal age, married to Mich Y. Go, with residence and postal address at 14 Lakandula St., Cebu City, Philippines.

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[5] *Id.* at 32-35.

[6] *Id.* at 32-33.

[7] Order dated July 27, 2000; records, pp. 68-69.

[8] *Id.* at 124-127.

Upon finality of this decision, let a corresponding decree of registration be issued in favor of applicant, [Go] in accordance with Sec. 39 of PD 1529.

Notify parties accordingly.

SO ORDERED.[9]

The Republic appealed the RTC decision on the ground that the trial court erred in granting Go's application in the absence of proof that the land applied for is within alienable and disposable land of the public domain.[10]

In the assailed decision, the CA denied the Republic's appeal and affirmed the RTC decision, taking into account the Community Environment and Natural Resources Office (CENRO) Certification dated September 15, 2003 issued by CENR Officer Elpidio R. Palaca (Palaca), which was attached to Go's appellee's brief. The certification stated, in part:

> This is to certify that per projection conducted by Forester Anastacio C. Cabalejo, a tract of land, Lot No. 281, PLS 823, containing an area of TWO THOUSAND FOUR HUNDRED SIXTY[-]FIVE (2,465) [sq m], more or less situated at Tayud, Liloan, Cebu as shown and described in the plan at the back hereof, x x x was found to be **within the Alienable and Disposable Land, Land Classification Project 29 Per map 1391 of Liloan, Cebu FAO 4-537 dated July 31, 1940**.[11] (Emphasis ours)

The CA concluded that Go's submission of the certificate "settles the issue on whether or not the subject lots in this case are alienable and disposable in the affirmative."[12]

Now before the Court, the Republic objects to the admission of the CENRO Certification by the CA, arguing that:

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[9] *Id.* at 127.

[10] *Rollo*, p. 26.

[11] *Id.*

[12] *Id.* at 27.

THE [CA] ERRED X X X WHEN IT AFFIRMED THE TRIAL COURT'S GRANT OF THE APPLICATION FOR ORIGINAL REGISTRATION DESPITE THE ABSENCE OF EVIDENCE THAT [GO] HAD COMPLIED WITH THE PERIOD OF POSSESSION AND OCCUPATION REQUIRED BY LAW.[13]

The main contention of the Republic is that the CENRO Certification should not have been admitted by the CA as it was not adduced and marked as evidence during the trial, and consequently not formally offered and admitted by the trial court, in violation of Rule 132, Section 34 of the Rules of Court.[14]

Ruling of the Court

The issue in this petition is whether the CA committed a reversible error in admitting the CENRO Certification. A corollary issue is whether Go sufficiently established the alienability and disposability of the subject properties.

Indeed, the rule is that the court shall consider no evidence which has not been formally offered.[15] The Court, however, in the interest of justice, allowed in certain cases the belated submission on appeal of a Department of Environment and Natural Resources (DENR) or CENRO Certification as proof that a land is already alienable and disposable land of the public domain. Thus, in *Victoria v. Republic of the Philippines*,[16] the Court admitted the DENR Certification, which was submitted by therein petitioner only on appeal to the CA. The Court reversed the CA decision and reinstated the judgment of the Metropolitan Trial Court of Taguig, which granted therein petitioner's application for registration of title to a 1,729-sq-m lot in Bambang, Taguig City. The Court stated:

The rules of procedure being mere tools designed to facilitate the attainment of justice, the Court is empowered to suspend their

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[13] *Id.* at 12.

[14] *Id.* at 16.

[15] RULES OF COURT, Rule 132, Section 34.

[16] 666 Phil. 519 (2011).

application to a particular case when its rigid application tends to frustrate rather than promote the ends of justice. **Denying the application for registration now on the ground of failure to present proof of the status of the land before the trial court and allowing Victoria to re-file her application would merely unnecessarily duplicate the entire process, cause additional expense and add to the number of cases that courts must resolve.** It would be more prudent to recognize the DENR Certification and resolve the matter now.[17] (Citation omitted and emphasis ours)

Meanwhile, in *Spouses Llanes v. Republic of the Philippines*,[18] the Court accepted the corrected CENRO Certification even though it was submitted by the Spouses Llanes only during the appeal in the CA. The Court ruled:

If the Court strictly applies the aforequoted provision of law [Section 34, Rule 132 of the Rules of Court on Offer of Evidence], it would simply pronounce that the [CA] could not have admitted the corrected CENRO Certification because it was not formally offered as evidence before the MCTC during the trial stage. **Nevertheless, since the determination of the true date when the subject property became alienable and disposable is material to the resolution of this case, it behooves this Court, in the interest of substantial justice, fairness, and equity, to consider the corrected CENRO Certification even though it was only presented during the appeal to the [CA]. Since rules of procedure are mere tools designed to facilitate the attainment of justice, it is well recognized that the Court is empowered to suspend its rules or to exempt a particular case from the application of a general rule, when the rigid application thereof tends to frustrate rather than promote the ends of justice.**[19] (Citation omitted and emphasis ours)

Clearly, therefore, the CA took the prudent action in admitting the CENRO Certification, albeit belatedly submitted, as it would be more in keeping with the ends of substantial justice.

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[17] *Id.* at 527.

[18] 592 Phil. 623 (2008).

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

In keeping with *Victoria*,[20] the Court also issued Resolution[21] dated September 18, 2013 requiring Go to submit the following documents: (1) verification from the DENR whether Palaca has authority to issue certifications regarding status of public land as alienable and disposable land, and (2) certified true copy of the administrative order or proclamation declaring the area where the two parcels of land applied for in this case is located as alienable and disposable, if any. In compliance, Go submitted a certification from the DENR Region VII, which stated, among others, that "the Municipality of Lilo-an is under the jurisdiction of CENRO Carmen and that any employee of said office acting as CENR Officer has the authority to issue certifications which would include the status of public land as alienable and disposable land."[22] The certification also stated that "we have no available copy of [Forestry Administrative Order (FAO)] No[.] 4-537 dated July 31, 1940 x x x."[23] Go also submitted a certification from the National Mapping and Resource Information Authority (NAMRIA) certifying that FAO No. 4-537 dated July 31, 1940 is not available in the records of NAMRIA.[24]

More importantly, Go has adequately established his and his predecessors-in-interest's open, continuous, exclusive and notorious possession of the properties subject of the application.

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[20] *Supra* note 16. In *Victoria*, the Court, in its Resolution dated July 28, 2010, required the Office of the Solicitor General to verify from the DENR whether the Senior Forest Management Specialist of its National Capital Region, Office of the Regional Technical Director for Forest Management Services, who issued the Certification, is authorized to issue certifications on the status of public lands as alienable and disposable, and to submit a copy of the administrative order or proclamation that declares as alienable and disposable the area where the property involved in this case is located, if any there be. In this case, however, the OSG declined and sought excuse from complying with the Court's resolution; thus, the Court required Go to submit the pertinent documents.

[21] *Rollo*, pp. 113-114.

[22] *Id.* at 128.

[23] *Id.*

[24] *Id.* at 130.

Lot No. 9196, Pls-823 and Lot No. 9197 were originally known as Lot No. 281 and, as certified by the CENRO, part of alienable and disposable land of Liloan, Cebu as early as July 31, 1940. Lot No. 281 was owned by Rufina Pepito (Rufina), married to Felimon Cagang (Felimon), with whom she had two sons, Ambrosio and Leonardo. The Cagang family occupied the property as early as 1953, based on the testimony of Rufina's nephew, Elpido Pepito (Elpido), who was born in 1943. Rufina, however, declared Lot No. 281 for tax purposes only from 1965 and until 1993.[25] According to Elpido, bananas, *buli* and mango were planted by the Cagang family on the property.[26]

After Rufina's death in 1987, Felimon, Ambrosio and Leonardo assumed ownership and took possession of Lot No. 281. In 1990, Felimon and Ambrosio sold a 404-sq-m (Lot No. 281-A) portion to the Spouses Rosendo and Carmen Pilapil (Spouses Pilapil).[27] Thereafter, Felimon and Leandro sold in 1992 another portion of Lot No. 281 with an area of 620 sq m (Lot No. 281-B-part), also to the Spouses Pilapil.[28] The latter then assumed ownership and possession of Lots Nos. 281-A and 281-B-part and declared the property for tax purposes in 1991 (Lot No. 281-A) and 1993 (Lot No. 281-B-part). The remaining 1,441-sq-m portion of Lot No. 281 (Lot No. 281-B-part) was eventually sold by Leonardo to Go in 1994.[29] Go immediately assumed possession and declared Lot No. 281-B-part for tax purposes in 1994.[30] Finally, in 1998, Go was able to consolidate ownership over the entire Lot No. 281 when the Spouses Pilapil sold Lots Nos. 281-A and 281-B-part to him.[31] Go also assumed possession and declared Lots Nos. 281-A[32]

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[25] Records, pp. 97-100, 105-106.

[26] TSN dated February 26, 2000, p. 8.

[27] Records, p. 95.

[28] *Id.* at 94.

[29] *Id.* at 12.

[30] *Id.*

[31] *Id.* at 10-11.

[32] *Id.* at 17-18.

and 281-B-part[33] for tax purposes in 1998. In 1999, Go filed the application for registration of title. Thus, as found by the RTC:

> In carefully evaluating the evidences [sic] presented by applicants, both oral and documentary, the Court is convinced and so holds, that applicant, [GO], married to Mich Y. Go, is entitled to the reliefs prayed for in his application. His possession of the subject property, x x x, including his predecessors-in-interest is more than thirty (30) years, which is open, public, peaceful, continuous and uninterrupted in the concept of an owner and against the whole world. Thus, applicant, [Go,] is entitled to the issuance of title over the subject land and the same should be registered and confirmed.[34]

It should be stressed that the factual findings and conclusion of the RTC on the issue of Go's possession and occupation were neither controverted nor refuted by the Office of the Solicitor General on appeal to the CA or on review to this Court. The rule is that "issues or grounds not raised below cannot be resolved on review by the Supreme Court, for to allow the parties to raise new issues is antithetical to the sporting idea of fair play, justice and due process."[35] For all intents and purposes, the matter of Go's possession and occupation is already settled and considering that the CA correctly admitted the CENRO Certification, there is, therefore, no more obstacle to the issuance of title in the name of Go for Lot No. 9196 and Lot No. 9197, Pls-823.

WHEREFORE, the petition is **DENIED**. The Decision dated May 23, 2005 of the Court of Appeals in CA-G.R. CV No. 76801 is **AFFIRMED**.

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[33] *Id.* at 15-16.

[34] *Id.* at 127.

[35] *Cuenca v. Talisay Tourist Sports Complex, Inc., et al.*, 611 Phil. 780, 783-784 (2009); see *Ong Lim Sing, Jr. v. FEB Leasing & Finance Corp.*, 551 Phil. 768, 779-780 (2007); *General Credit Corp. v. Alsons Dev't. and Investment Corp.*, 542 Phil. 219, 229 (2007).

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta,[*] *Bersamin*, and *Caguioa*,[**] *JJ.*, concur.

SECOND DIVISION

[G.R. No. 184317. January 25, 2017]

METROPOLITAN BANK AND TRUST COMPANY, *petitioner, vs.* **LIBERTY CORRUGATED BOXES MANUFACTURING CORPORATION,** *respondent.*

SYLLABUS

1. COMMERCIAL LAW; CORPORATIONS; CORPORATE REHABILITATION; PURPOSE; A CORPORATION THAT MAY SEEK CORPORATE REHABILITATION IS CHARACTERIZED NOT BY ITS DEBT BUT BY ITS CAPACITY TO PAY ITS DEBT.— A corporation that may seek corporate rehabilitation is characterized not by its debt but by its capacity to pay its debt. *Philippine Bank of Communications v. Basic Polyprinters and Packaging Corporation* reiterates the purpose of rehabilitation, which is to provide meritorious corporations an opportunity for recovery: "Under the Interim Rules, rehabilitation is the process of restoring 'the debtor to a position of successful operation and solvency, if it is shown that its continuance of operation is economically feasible and its creditors can recover by way of the present value of payments projected in the plan more if the corporation

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[*] Designated Additional Member per Raffle dated January 23, 2017 *vice* Associate Justice Francis H. Jardeleza.

[**] Designated Fifth Member of the Third Division per Special Order No. 2417 dated January 4, 2017.

continues as a going concern that if it is immediately liquidated.' It contemplates a continuance of corporate life and activities in an effort to restore and reinstate the corporation to its former position of successful operation and solvency."

2. ID.; ID.; ID.; THE CONDITION THAT TRIGGERS REHABILITATION PROCEEDINGS IS NOT THE MATURATION OF A CORPORATION'S DEBTS BUT THE INABILITY OF THE DEBTOR TO PAY ITS DEBTS. — As stated by the Court of Appeals in *Philippine Bank of Communications*, rehabilitation is in line with the State's objective to promote a wider and more meaningful equitable distribution of wealth. In line with this objective, the Interim Rules provide for a liberal construction of its provisions x x x. To adopt petitioner's interpretation would undermine the purpose of the Interim Rules. There is no reason why corporations with debts that may have already matured should not be given the opportunity to recover and pay their debtors in an orderly fashion. The opportunity to rehabilitate the affairs of an economic entity, regardless of the status of its debts, redounds to the benefit of its creditors, owners, and to the economy in general. Rehabilitation, rather than collection of debts from a company already near bankruptcy, is a better use of judicial rewards. x x x Thus, the condition that triggers rehabilitation proceedings is not the maturation of a corporation's debts but the inability of the debtor to pay these.

3. ID.; ID.; ID.; RULE 4, SECTION 1 OF THE INTERIM RULES OF PROCEDURE ON CORPORATE REHABILITATION; DOES NOT LIMIT WHO MAY FILE A PETITION FOR REHABILITATION; DEBTOR CORPORATIONS ALREADY IN DEFAULT MAY BE UNDER REHABILITATION.— Where the law does not distinguish, neither should this Court. Because the definition under the Interim Rules is encompassing, there should be no distinction whether a claim has matured or otherwise. x x x Rule 4, Section 1 of the Interim Rules does not specify what kind of debtor may seek rehabilitation. The provision allows creditors holding 25% of the debtor corporation's total liabilities to petition for the corporation's rehabilitation. Further, Rule 4, Section 6 of the Interim Rules provides for a stay order "staying enforcement of all claims, whether for money or otherwise and whether such

enforcement is by court action or otherwise." A stay order, however, only applies to the suspension of the enforcement of claims. Hence, claims, if proper, can still be instituted in other proceedings. There may already be pending claims against a debtor corporation for debts already matured. x x x The term "claim," "which includes "all claims or demands of whatever nature or character," is not limited to claims which have not yet defaulted. This does not mean that those with secured claims against corporations undergoing rehabilitation are deprived of the preference given them by law. x x x While the corporation is undergoing rehabilitation, all claims, regardless of nature, are suspended from enforcement. However, once the corporation has successfully rehabilitated or finally liquidated, the enforcement of these secured claims takes precedence. x x x The definition of "claim" and the nature of stay orders contemplate situations where debtor corporations already in default may be under rehabilitation. Rule 4, Section 1 does not limit who may file a petition for rehabilitation.

4. ID.; ID.; ID.; ID.; PHRASE "ANY DEBTOR WHO FORESEES THE IMPOSSIBILITY OF MEETING ITS DEBTS WHEN THEY RESPECTIVELY FALL DUE" NEED NOT REFER TO A SPECIFIC PERIOD OR POINT IN TIME WHEN THE DEBTS MATURE, AS THE SAME MAY REFER TO THE DEBTOR CORPORATION'S GENERAL REALIZATION THAT IT WILL NOT BE ABLE TO FULFILL ITS OBLIGATIONS — A REALIZATION THAT MAY COME BEFORE DEFAULT.— The plain meaning doctrine cannot apply to Rule 4, Section 1 of the Interim Rules. x x x Where a literal meaning would lead to absurdity, contradiction, or injustice, or otherwise defeat the clear purpose of the lawmakers, the spirit and reason of the statute may be examined to determine the true intention of the provision. In this case, the phrase "any debtor who foresees the impossibility of meeting its debts when they respectively fall due" in Rule 4, Section 1 of the Interim Rules need not refer to a specific period or point in time when the debts mature. It may refer to the debtor corporation's general realization that it will not be able to fulfill its obligations—a realization that may come before default. Construing the phrase "when they respectively fall due" to mean that the debtor must already be in default defeats the clear purpose of the lawmakers. It unjustly limits rehabilitation to corporations with matured obligations.

5. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW; THE FACTUAL FINDINGS OF THE LOWER COURTS ARE ACCORDED GREAT WEIGHT AND RESPECT, THIS IS ESPECIALLY SO IN CORPORATE REHABILITATION PROCEEDINGS, TO WHICH COMMERCIAL COURTS ARE DESIGNATED ON ACCOUNT OF THEIR EXPERTISE AND SPECIALIZED KNOWLEDGE.— This Court is not a trier of facts. The factual findings of the lower courts are accorded great weight and respect. This is especially so in corporate rehabilitation proceedings, to which commercial courts are designated on account of their expertise and specialized knowledge. The Court of Appeals affirmed the Regional Trial Court's findings that the Petition for rehabilitation was sufficient and that the rehabilitation plan was reasonable. Petitioner seeks to overturn these findings. It argues that the Petition was insufficient for its failure to include maturity dates in the attached inventory; that the Regional Trial Court failed to determine whether petitioner's opposition was manifestly unreasonable; and that the rehabilitation plan was not feasible as it lacked materially significant financial commitments. These are questions of fact. The resolution of these issues entails a review of the sufficiency and weight of the evidence presented by the parties, including the inventory attached to the Petition, as well as the other financial documents for the rehabilitation.

6. COMMERCIAL LAW; CORPORATIONS; CORPORATE REHABILITATION; RULE 4, SECTION 1 OF THE INTERIM RULES OF PROCEDURE ON CORPORATE REHABILITATION; RESPONDENT, AS A DEBTOR CORPORATION, MAY FILE FOR REHABILITATION DESPITE HAVING DEFAULTED ON ITS OBLIGATIONS TO PETITIONER; RESPONDENT'S PETITION FOR REHABILITATION WAS FOUND SUFFICIENT AND ITS REHABILITATION PLAN FEASIBLE.— The Court of Appeals had legal and factual bases for approving the Petition for rehabilitation. xxx. The Regional Trial Court Orders gave petitioner every opportunity to make its opposition and stance clear. In issuing the December 21, 2007 Order and approving the rehabilitation plan, the Regional Trial Court found the opposition unreasonable. x x x The Regional Trial Court, as affirmed by the Court of Appeals, deemed the Petition for rehabilitation sufficient. In its June 27, 2007 Order, it found

that all the documents required under Rule 4, Section 2 of the Interim Rules were attached to the Petition. x x x Both the Court of Appeals and the Regional Trial Court found that the Rehabilitation Receiver carefully considered the feasibility of the rehabilitation plan, and that no serious objection and counter proposal were presented by petitioner. x x x. Both the Court of Appeals and the Regional Trial Court found the Rehabilitation Receiver's assurance that the cashflow from respondent's committed sources to be sufficient x x x. Respondent, as a debtor corporation, may file for rehabilitation despite having defaulted on its obligations to petitioner. As its Petition for rehabilitation was sufficient and its rehabilitation plan was feasible, respondent's rehabilitation should proceed.

APPEARANCES OF COUNSEL

Andres Marcelo Padernal Guerrero and Paras for petitioner.
J.B. Cumigad Law Office for respondent.

D E C I S I O N

LEONEN, *J.*:

A corporation with debts that have already matured may still file a petition for rehabilitation under the Interim Rules of Procedure on Corporation Rehabilitation.

This resolves a Petition for Review[1] on certiorari assailing the Court of Appeals' June 13, 2008 Decision[2] and August 20, 2008 Resolution.[3] The Court of Appeals affirmed the Regional

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[1] *Rollo*, pp. 22-52. The Petition was filed under Rule 45 of the Rules of Court.

[2] *Id.* at 54-73. The Decision was penned by Associate Justice Martin S. Villarama, Jr. (later Associate Justice of this Court) and concurred in by Associate Justices Noel G. Tijam and Estela M. Perlas-Bernabe (now Associate Justice of this Court) of the Special Fourth Division, Court of Appeals, Manila.

[3] *Id.* at 75. The Resolution was penned by Associate Justice Martin S. Villarama, Jr. (later Associate Justice of this Court) and concurred in by Associate Justices Noel G. Tijam and Estela M. Perlas-Bernabe (now Associate Justice of this Court) of the Former Special Fourth Division, Court of Appeals, Manila.

Trial Court's December 21, 2007 Order[4] approving Liberty Corrugated Boxes Manufacturing Corp.'s rehabilitation plan.

Respondent Liberty Corrugated Boxes Manufacturing Corp. (Liberty) is a domestic corporation that produces corrugated packaging boxes.[5] It obtained various credit accommodations and loan facilities from petitioner Metropolitan Bank and Trust Company (Metrobank)amounting to ₱19,940,000.00. To secure its loans, Liberty mortgaged to Metrobank 12 lots in Valenzuela City.[6]

Liberty defaulted on the loans.[7]

On June 21, 2007, Liberty filed a Petition[8] for corporate rehabilitation before Branch 74 of the Regional Trial Court of Malabon City. Liberty claimed that it could not meet its obligations to Metrobank because of the Asian Financial Crisis, which resulted in a drastic decline in demand for its goods, and the serious sickness of its Founder and President, Ki Kiao Koc.[9]

Liberty's rehabilitation plan consisted of: (a) a debt moratorium; (b) renewal of marketing efforts; (c) resumption of operations; and (d) entry into condominium development, a new business.[10]

On June 27, 2007, the Regional Trial Court, finding the Petition sufficient in form and substance, issued a Stay Order[11] and set

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[4] *Id.* at 334-336. The Order was issued by Assisting Judge Leonardo L. Leonida of Branch 74, Regional Trial Court, Malabon City.

[5] *Id.* at 469.

[6] *Id.*

[7] *Id.* at 470.

[8] *Id.* at 77-89. The case was docketed as SEC Case No. S8-001-MN.

[9] *Id.* at 78 and 81.

[10] *Id.* at 111-139.

[11] *Id.* at 259-262. The Order was issued by Assisting Judge Leonardo L. Leonida of Branch 74, Regional Trial Court, Malabon City.

an initial hearing for the Petition. On August 6, 2007, Metrobank filed its Comment/Opposition. It argued that Liberty was not qualified for corporate rehabilitation; that Liberty's Petition for rehabilitation and rehabilitation plan were defective; and that rehabilitation was not feasible. It also claimed that Liberty filed the Petition solely to avoid its obligations to the bank.

In its September 20, 2007 Order,[12] the Regional Trial Court gave due course to the Petition and referred the rehabilitation plan to the Rehabilitation Receiver.

Rehabilitation Receiver Rafael Chris F. Teston recommended the approval of the plan, provided that Liberty would initiate construction on the property in Valenzuela within 12 months from approval.[13]

In its December 21, 2007 Order,[14] the Regional Trial Court approved the rehabilitation plan. The trial court found that Liberty was capable of being rehabilitated and that the rehabilitation plan was feasible and viable.[15]

Metrobank appealed to the Court of Appeals. On June 13, 2008, the Court of Appeals issued the Decision[16] denying the Petition and affirming the Regional Trial Court's December 21, 2007 Order.

The Court of Appeals affirmed the Regional Trial Court's finding that debtor corporations could still avail themselves of the remedy of rehabilitation under the Interim Rules of Procedure on Corporate Rehabilitation (Interim Rules) even if they were already in default.[17] It held that even insolvent corporations could still file a petition for rehabilitation.[18]

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[12] *Id.* at 310-313. The Order was issued by Assisting Judge Leonardo L. Leonida of Branch 74, Regional Trial Court, Malabon City.

[13] *Id.* at 314-333.

[14] *Id.* at 334-336.

[15] *Id.* at 336.

[16] *Id.* at 54-73.

[17] *Id.* at 70.

[18] *Id.* at 69.

The Court of Appeals also found that the trial court correctly approved the rehabilitation plan over Metrobank's Opposition upon the recommendation of the Rehabilitation Receiver, who had carefully considered and addressed Metrobank's criticism on the plan's viability.[19]

The Court of Appeals stressed that the purpose of rehabilitation proceedings is to enable the distressed company to gain a new lease on life and to allow the creditors to be paid their claims. It held that the approval of the Regional Trial Court was precisely "'to effect a feasible and viable rehabilitation' of ailing corporations[,]"[20] as required by Presidential Decree No. 902-A.

Metrobank moved for reconsideration, but the Motion was denied[21] on August 20, 2008.

Hence, this Petition was filed.

This Court required respondent Liberty Corrugated Boxes Manufacturing Corp. to file its comment on the Petition within 10 days from notice.[22] On March 23, 2009, respondent filed its Comments to the Petitioner,[23] noted by this Court in its April 20, 2009 Resolution.[24] Petitioner Metropolitan Bank and Trust Company filed its Reply[25] dated May 26, 2009, which this Court noted in its July 20, 2009 Resolution.[26] This Court also gave due course to the Petition and required the parties to submit their respective memoranda within 30 days from notice.

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[19] *Id.* at 70.

[20] *Id.* at 72.

[23] *Id.* at 75.

[22] *Id.* at 409, Resolution dated November 19, 2008.

[23] *Id.* at 429-439. Respondent filed an Urgent Motion for Extension of Time to File Comment dated February 6, 2009, which this Court granted (*Id.* at 424-428).

[24] *Id.* at 442.

[25] *Id.* at 443-459.

[26] *Id.* at 460-461.

The parties filed their Memoranda on September 24, 2009[27] and November 3, 2009.[28]

Petitioner argues that respondent can no longer file a petition for corporate rehabilitation. It claims that Rule 4, Section 1 of the Interim Rules restricts the kind of debtor who can file petitions for corporate rehabilitation.[29] Petitioner insists that the phrase "who foresees the impossibility of meeting its debts when they respectively fall due" must be construed plainly to mean that an element of foresight is required.[30] Because foresight is required, the debts of the corporation should not have matured.[31]

Petitioner also argues that the Regional Trial Court's approval of the rehabilitation plan is contrary to Rule 4, Section 23 of the Interim Rules.[32] Under the provision, the court may approve

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[27] *Id.* at 467-498, petitioner's Memorandum.

[28] *Id.* at 499-516, respondent's Memorandum.

[29] CORP. REHAB. RULE, Rule 4, Sec. 1 provides:

Section 1. *Who May Petition*. — Any debtor who foresees the impossibility of meeting its debts when they respectively fall due, or any creditor or creditors holding at least twenty-five percent (25%) of the debtor's total liabilities, may petition the proper Regional Trial Court to have the debtor placed under rehabilitation.

[30] *Rollo*, p. 476.

[31] *Id.* at 476-477.

[32] CORP. REHAB. RULE, Rule 4, Sec. 23 provides:

Section 23. Approval of the Rehabilitation Plan. — The Court may approve a rehabilitation plan even over the opposition of creditors holding a majority of the total liabilities of the debtor if, in its judgment, the rehabilitation of the debtor is feasible and the opposition of the creditors is manifestly unreasonable.

In determining whether or not the opposition of the creditors is manifestly unreasonable, the court shall consider the following:

a. That the plan would likely provide the objecting class of creditors with compensation greater than that which they would have received if the assets of the debtor were sold by a liquidator within a three–month period;

b. That the shareholders or owners of the debtor lose at least their controlling interest as a result of the plan; and

c. The Rehabilitation Receiver has recommended approval of the plan.

the rehabilitation plan over the opposition of the creditors only when two (2) elements concur: (a) when the court finds that the rehabilitation of the debtor is feasible; and (b) when the opposition of the creditors is "manifestly unreasonable."[33] Petitioner claims that the Regional Trial Court did not declare the manifest unreasonableness of petitioner's opposition.[34]

Petitioner likewise argues that respondent's Petition for rehabilitation and the attached inventory of accounts receivable failed to disclose the maturity dates of the accounts.[35] This failure renders the Petition defective under Rule 4, Section 2(d) of the Interim Rules.[36]

In approving the rehabilitation plan, the court shall issue the necessary orders or processes for its immediate and successful implementation. It may impose such terms, conditions, or restrictions as the effective implementation and monitoring thereof may reasonably require, or for the protection and preservation of the interests of the creditors should the plan fail.

[33] *Rollo*, p. 482.

[34] *Id.* at 482-483.

[35] *Id.* at 488.

[36] CORP. REHAB. RULE, Rule 4, Sec. 2 provides:

Section 2. *Contents of the Petition*. — The petition filed by the debtor must be verified and must set forth with sufficient particularity all the following material facts: (a) the name and business of the debtor; (b) the nature of the business of the debtor; (c) the history of the debtor; (d) the cause of its inability to pay its debts; (e) all the pending actions or proceedings known to the debtor and the courts or tribunals where they are pending; (t) threats or demands to enforce claims or liens against the debtor; and (g) the manner by which the debtor may be rehabilitated and how such rehabilitation may benefit the general body of creditors, employees, and stockholders.

The petition shall be accompanied by the following documents:
. . . . . .

d) An Inventory of Assets which must list with reasonable specificity all the assets of the debtor, stating the nature of each asset, the location and condition thereof, the book value or market value of the asset, and attaching the corresponding certificate of title therefor in case of real property, or the evidence of title or ownership in case of movable property, the encumbrances, liens or claims thereon, if any, and the identities and addresses of the lienholders and claimants. The Inventory shall include a Schedule of Accounts Receivable which must indicate the amount of each, the persons from whom due, the date of maturity, and the degree of collectibility categorizing them as highly collectible to remotely collectible[.]

Petitioner further claims that the rehabilitation plan lacked material financial commitments required under Rule 4, Section 5 of the Interim Rules.[37] The rehabilitation plan did not claim that new money would be invested in the corporation.[38]

On the other hand, respondent insists on its qualification to seek rehabilitation.[39] It argues that petitioner's reading of Rule 4, Section 1 of the Interim Rules is restrictive, merely indicating the minimum conditions for a debtor to be able to file a petition for rehabilitation.[40]

In support of its claim that the remedy of corporate rehabilitation covers defaulting debtors, respondent cites Rule 4, Sections 4[41] and 6[42]

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[37] CORP. REHAB. RULE, Rule 4, Sec. 5 provides:

Sec. 5. *Rehabilitation Plan*. — The rehabilitation plan shall include (a) the desired business targets or goals and the duration and coverage of the rehabilitation; (b) the terms and conditions of such rehabilitation which shall include the manner of its implementation, giving due regard to the interests of secured creditors; (c) the material financial commitments to support the rehabilitation plan; (d) the means for the execution of the rehabilitation plan, which may include conversion of the debts or any portion thereof to equity, restructuring of the debts, *dacion en pago*, or sale of assets or of the controlling interest; (e) a liquidation analysis that estimates the proportion of the claims that the creditors and shareholders would receive if the debtor's properties were liquidated; and (f) such other relevant information to enable a reasonable investor to make an informed decision on the feasibility of the rehabilitation plan.

[38] *Rollo*, p. 492.

[39] *Id.* at 503.

[40] *Id.* at 504.

[41] CORP. REHAB. RULE, Rule 4, Sec. 4 provides:

Section 4. *Creditor-initiated Petitions*. — Where the petition is filed by a creditor or creditors, it is sufficient that the petition is accompanied by a rehabilitation plan and a list of nominees to the position of Rehabilitation Receiver and verified by a sworn statement that the affiant has read the petition and that its contents are true and correct of his personal knowledge or based on authentic records obtained from the debtor.

[42] CORP. REHAB. RULE, Rule 4, Sec. 6 provides:

Sec. 6. *Stay Order*. — If the court finds the petition to be sufficient in form and substance, it shall, not later than five (5) days from the filing of

of the Interim Rules.[43] Under Section 6, a stay order, which may assume that cases have been filed to collect on matured debts, may be granted.

Respondent argues that the Court of Appeals' finding that the rehabilitation plan is feasible is well-grounded and in keeping with Rule 4, Section 23 of the Interim Rules.[44] The Rehabilitation Receiver deemed the rehabilitation plan viable.[45] The Petition also listed the receivables, clearly due for collection, in its annexes.[46]

Respondent further contends that contrary to petitioner's arguments, the rehabilitation plan contains material financial commitments.[47] When the Interim Rules speak of "material financial commitments to support the rehabilitation plan,"[48] it does not mean that the commitment must come from outside sources. The corporation's showing that the rehabilitation plan can find sufficient funding should be sufficient.[49]

The issues for resolution are:

First, whether respondent, as a debtor in default, is qualified to file a petition for rehabilitation under Presidential Decree No. 902-A and Rule 4, Section 1 of the Interim Rules; and

Second, whether respondent's Petition for rehabilitation is sufficient in form and substance and respondent's rehabilitation plan, feasible.

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the petition, issue an Order (a) appointing a Rehabilitation Receiver and fixing his bond; (b) staying enforcement of all claims, whether for money or otherwise and whether such enforcement is by court action or otherwise, against the debtor, its guarantors and sureties[.]

[43] *Rollo*, p. 504.

[44] *Id.* at 508-509.

[45] *Id.* at 509.

[46] *Id.*

[47] *Id.* at 511.

[48] *Id.*

[49] *Id.*

I.A

A corporation that may seek corporate rehabilitation is characterized not by its debt but by its capacity to pay this debt.

Rule 4, Section 1 of the Interim Rules provides:

> RULE 4
> *Debtor-Initiated Rehabilitation*
>
> SECTION 1. *Who May Petition.* — Any debtor who foresees the impossibility of meeting its debts when they respectively fall due, or any creditor or creditors holding at least twenty-five percent (25%) of the debtor's total liabilities, may petition the proper Regional Trial Court to have the debtor placed under rehabilitation.

Petitioner insists that the words of the Interim Rules are clear and must be given their plain and literal meaning. A better interpretation requires scrutiny of the purpose behind the enactment of the Interim Rules and its provisions.

Philippine Bank of Communications v. Basic Polyprinters and Packaging Corporation[50] reiterates the purpose of rehabilitation, which is to provide meritorious corporations an opportunity for recovery:

> Under the Interim Rules, rehabilitation is the process of restoring "the debtor to a position of successful operation and solvency, if it is shown that its continuance of operation is economically feasible and its creditors can recover by way of the present value of payments projected in the plan more if the corporation continues as a going concern that if it is immediately liquidated." It contemplates a continuance of corporate life and activities in an effort to restore and reinstate the corporation to its former position of successful operation and solvency.[51] (Citations omitted)

As stated by the Court of Appeals in *Philippine Bank of Communications,* rehabilitation is in line with the State's

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[50] 745 Phil. 651 (2014) [Per *J.* Bersamin, First Division].

[51] *Id.* at 660.

objective to promote a wider and more meaningful equitable distribution of wealth.[52]

In line with this objective, the Interim Rules provide for a liberal construction of its provisions:

> RULE 2
> *Definition of Terms and Construction*
>
> . . . . . .
>
> SECTION 2. *Construction*. — These Rules shall be liberally construed to carry out the objectives of Sections 5(d), 6(c) and 6(d) of Presidential Decree No. 902-A, as amended, and to assist the parties in obtaining a just, expeditious, and inexpensive determination of cases. Where applicable, the Rules of Court shall apply suppletorily to proceedings under these Rules.

To adopt petitioner's interpretation would undermine the purpose of the Interim Rules. There is no reason why corporations with debts that may have already matured should not be given the opportunity to recover and pay their debtors in an orderly fashion. The opportunity to rehabilitate the affairs of an economic entity, regardless of the status of its debts, redounds to the benefit of its creditors, owners, and to the economy in general. Rehabilitation, rather than collection of debts from a company already near bankruptcy, is a better use of judicial rewards.

A.M. No. 08-8-10-SC[53] further describes the remedy intitiated by a petition for rehabilitation:

> [A] petition for rehabilitation, the procedure for which is provided in the Interim Rules of Procedure on Corporate Recovery, should be considered as a special proceeding. It is one that seeks to establish the status of a party or a particular fact. As provided in section 1, Rule 4 of the Interim Rules on Corporate Recovery, the status or fact sought to be established is the ***inability of the corporate debtor to pay its debts*** when they fall due so that a rehabilitation plan, containing the formula for the successful recovery of the corporation,

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[52] *Id.* at 657.

[53] Re: Transfer of Cases from the Securities and Exchange Commission to the Regional Trial Courts (2001).

may be approved in the end. It does not seek a relief from an injury caused by another party. (Emphasis supplied)

Thus, the condition that triggers rehabilitation proceedings is not the maturation of a corporation's debts but the inability of the debtor to pay these.

I.B.

Where the law does not distinguish, neither should this Court.[54] Because the definition under the Interim Rules is encompassing,[55] there should be no distinction whether a claim has matured or otherwise.

Petitioner's proposed interpretation contradicts provisions of the Interim Rules, which contemplate situations where a debtor corporation may already be in default. As correctly pointed out by respondent, a creditor may possibly petition for the debtor's rehabilitation for default on debts already owed.[56]

Rule 4, Section 1 of the Interim Rules does not specify what kind of debtor may seek rehabilitation. The provision allows creditors holding 25% of the debtor corporation's total liabilities to petition for the corporation's rehabilitation.

Further, Rule 4, Section 6 of the Interim Rules provides for a stay order "staying enforcement of all claims, whether for money or otherwise and whether such enforcement is by court action or otherwise."[57] A stay order, however, only applies to the suspension of the enforcement of claims. Hence, claims, if proper, can still be instituted in other proceedings. There may already be pending claims against a debtor corporation for debts already matured.

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[54] *Abrera v. Barza,* 615 Phil. 595, 622 (2009) [Per *J.* Peralta, Third Division].

[55] *Spouses Sobrejuanite v. ASB Development Corporation*, 508 Phil. 715, 723 (2005) [Per *J.* Ynares-Santiago, First Division].

[56] *Rollo,* pp. 504-505.

[57] CORP. REHAB. RULE, Rule 4, Sec. 6.

In *Spouses Sobrejuanite v. ASB Development*,[58] the purpose of the stay order is to preserve the rights of both the debtor corporation and its creditors:

> The purpose for the suspension of the proceedings is *to prevent a creditor from obtaining an advantage or preference over another* and to protect and preserve the rights of party litigants as well as the interest of the investing public or creditors. Such suspension is intended to give enough breathing space for the management committee or rehabilitation receiver to make the business viable again, without having to divert attention and resources to litigations in various fora.[59] (Emphasis supplied, citations omitted)

The stay order prevents preference or advantage of creditors over others, including the advantage that a creditor with matured money claims may have over one whose claims are not in yet in default.

Rule 2, Section 1 of the Interim Rules defines the term "claim":

> RULE 2
> *Definition of Terms and Construction*
>
> . . . . . .
>
> "Claim" shall include all claims or demands of whatever nature or character against a debtor or its property, whether for money or otherwise.

The term "claim," which includes "all claims or demands of whatever nature or character," is not limited to claims which have not yet defaulted.

This does not mean that those with secured claims against corporations undergoing rehabilitation are deprived of the preference given them by law. *Negros Navigation Co., Inc. v. Court of Appeals*[60] enumerated the guidelines in the treatment of claims against corporations undergoing rehabilitation:

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[58] 508 Phil. 715 (2005) [Per *J.* Ynares-Santiago, First Division].

[59] *Id.* at 721.

[60] 594 Phil. 97 (2008) [Per *J.* Nachura, Third Division].

1. All claims against corporations, partnerships, or associations that are pending before any court, tribunal, or board, without distinction as to whether or not a creditor is secured or unsecured, shall be suspended effective upon the appointment of a management committee, rehabilitation receiver, board, or body in accordance with the provisions of Presidential Decree No. 902-A.

2. Secured creditors retain their preference over unsecured creditors, but enforcement of such preference is equally suspended upon the appointment of a management committee, rehabilitation receiver, board, or body. In the event that the assets of the corporation, partnership, or association are finally liquidated, however, secured and preferred credits under the applicable provisions of the Civil Code will definitely have preference over unsecured ones.[61]

While the corporation is undergoing rehabilitation, all claims, regardless of nature, are suspended from enforcement. However, once the corporation has successfully rehabilitated or finally liquidated, the enforcement of these secured claims takes precedence.

In *Negros Navigation Co.*, Tsuneishi Heavy Industries (Tsuneishi) filed a collection case against Negros Navigation Co, Inc. (Negros Navigation) for repairman's lien, or the unpaid services for the repair of its vessels.[62] The Regional Trial Court of Cebu issued a writ of preliminary attachment against Negros Navigation's properties and held that Tsuneishi's repairman's lien constituted a superior maritime lien.[63] Negros Navigation then filed before the Regional Trial Court of Manila a petition for corporate rehabilitation with prayer for suspension of payments, which the trial court, in issuing a stay order, granted.[64] On appeal, Tsuneishi argued before this Court that its maritime liens were not covered by the stay order.[65]

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[61] *Id.* at 114, citing *Rizal Commercial Banking Corporation v. Intermediate Appellate Court*, 378 Phil. 10 (1999) [Per *J.* Melo, *En Banc*].

[62] *Id.* at 101.

[63] *Id.* at 102.

[64] *Id.*

[65] *Id.* at 108.

This Court held that the admiralty proceeding was appropriately suspended under Rule 4, Section 6 of the Interim Rules, there being no exemptions or distinctions in the law on what kinds of claims are covered by suspension:

> The justification for the suspension of actions or claims, without distinction, pending rehabilitation proceedings is to enable the management committee or rehabilitation receiver to effectively exercise its/his powers free from any judicial or extra-judicial interference that might unduly hinder or prevent the "rescue" of the debtor company. To allow such other actions to continue would only add to the burden of the management committee or rehabilitation receiver, whose time, effort and resources would be wasted in defending claims against the corporation instead of being directed toward its restructuring and rehabilitation.[66] (Citations omitted)

Likewise, in *Abrera v. Hon. Barza*,[67] College Assurance Plan Philippines, Inc. (CAP) sold pre-need educational plans, which guaranteed the payment of tuition and other standard school fees.[68] CAP suffered financial difficulties and failed to meet its obligations under the plans.[69] The CAP planholders then filed an action for specific performance and/or annulment of contract against CAP, its directors, and its officers.[70]

CAP filed a petition for rehabilitation, which the trial court deemed sufficient in form and substance.[71] The trial court also issued a stay order.[72]

Questioning the stay order and the petition for rehabilitation, the CAP planholders argued that CAP was a pre-need corporation and that a trust relationship existed between the corporation and the planholders.[73] They argued that because they did not

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[66] *Id.* at 112.

[67] 615 Phil. 595 (2014) [Per *J.* Peralta, Third Division].

[68] *Id.* at 612.

[69] *Id.*

[70] *Id.*

[71] *Id.* at 613.

[72] *Id.*

[73] *Id.* at 614.

have a debtor-creditor relationship with CAP, CAP could not apply for rehabilitation, and the stay order could not apply to the action for specific performance.[74]

This Court held that CAP, a pre-need corporation already in default of its obligations to the planholders, could file for rehabilitation:

> Under the Interim rules, "**debtor**" shall mean "**any corporation**, partnership, or association, **whether supervised or regulated by the Securities and Exchange Commission or other government agencies**, on whose behalf a petition for rehabilitation has been filed under these Rules."
>
> The Interim Rules does not distinguish whether a pre-need corporation like CAP cannot file a petition for rehabilitation before the RTC. Courts are not authorized to distinguish where the Interim Rules makes no distinction.
>
> Moreover, under the Interim Rules, "**claim**" shall include "**all claims or demands of whatever nature or character against a debtor** or its property, whether for money or otherwise." "Creditor" shall mean "any holder of a claim."
>
> Hence, the claim of petitioners for payment of tuition fees from CAP is included in the definition of "claims" under the Interim Rules.[75] (Emphasis in the original, citations omitted)

In *Express Investments III Private Ltd. and Export Development Canada v. Bayan Telecommunications, Inc.*,[76] Bayan Telecommunications, Inc. (Bayantel) defaulted on its obligations to its creditors and reached a total of ₱35.928 billion in unpaid principal and interest.[77] One of its bank creditors filed a petition for rehabilitation.[78] The trial court gave due course to the petition.[79]

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[74] *Id.*

[75] *Id.* at 621.

[76] 700 Phil. 225 (2012) [Per *J.* Villarama, Jr., First Division].

[77] *Id.* at 236.

[78] *Id.* at 237.

[79] *Id.* at 239-240.

This Court allowed Bayantel to undergo rehabilitation proceedings despite Bayantel's status as a debtor corporation already in default.[80]

The definition of "claim" and the nature of stay orders contemplate situations where debtor corporations already in default may be under rehabilitation. Rule 4, Section 1 does not limit who may file a petition for rehabilitation.

I.C.

The plain meaning doctrine cannot apply to Rule 4, Section 1 of the Interim Rules. In *Social Weather Stations, Inc. and Pulse Asia v. Commission on Elections*:[81]

> First, verba legis or the so-called plain-meaning rule applies only when the law is completely clear, such that there is absolutely no room for interpretation. Its application is premised on a situation where the words of the legislature are clear that its intention, insofar as the facts of a case demand from the point of view of a contemporary interpretative community, is neither vague nor ambiguous. This is a matter of judicial appreciation. It cannot apply merely on a party's contention of supposed clarity and lack of room for interpretation.
>
> . . . . . .
>
> Second, statutory construction cannot lend itself to pedantic rigor that foments absurdity. The dangers of inordinate insistence on literal interpretation are commonsensical and need not be belabored. These dangers are by no means endemic to legal interpretation. Even in everyday conversations, misplaced literal interpretations are fodder for humor. A fixation on technical rules of grammar is no less innocuous. A pompously doctrinaire approach to text can stifle, rather than facilitate, the legislative wisdom that unbridled textualism purports to bolster.
>
> Third, the assumption that there is, in all cases, a universal plain language is erroneous. In reality, universality and uniformity of meaning is a rarity. A contrary belief wrongly assumes that language is static.[82] (Citations omitted)

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[80] *Id.* at 289.

[81] G.R. No. 208062, April 27, 2015 http://sc/judiciary.gov.ph/pdf/web/viewer.html?=/jurisprudence/2015/april2015/208062.pdf> [Per *J.* Leonen, *En Banc*].

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

The context of the words of the statute should be considered to clarify inherent ambiguities. Thus, in *Chavez v. Judicial and Bar Council*:[83]

> Under the maxim *noscitur a sociis*, where a particular word or phrase is ambiguous in itself or is equally susceptible of various meanings, its correct construction may be made clear and specific by considering the company of words in which it is founded or which it is associated. This is because a word or phrase in a statute is always used in association with other words or phrases, and its meaning may, thus, be modified or restricted by the latter. *The particular words, clauses and phrases should not be studied as detached and isolated expressions, but the whole and every part of the statute must be considered in fixing the meaning of any of its parts and in order to produce a harmonious whole.* A statute must be so construed as to harmonize and give effect to all its provisions whenever possible. In short, every meaning to be given to each word or phrase must be ascertained from the context of the body of the statute since a word or phrase in a statute is always used in association with other words or phrases and its meaning may be modified or restricted by the latter.[84] (Emphasis supplied, citations omitted)

Where a literal meaning would lead to absurdity,[85] contradiction, or injustice,[86] or otherwise defeat the clear purpose of the lawmakers,[87] the spirit and reason of the statute may be examined to determine the true intention of the provision.[88]

In this case, the phrase "any debtor who foresees the impossibility of meeting its debts when they respectively fall due" in Rule 4, Section 1 of the Interim Rules need not refer to a specific period or point in time when the debts mature. It

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[83] 691 Phil. 173 (2012) [Per J. Mendoza, *En Banc*].

[84] *Id.* at 200.

[85] *Secretary of Justice, et al. v. Koruga*, 604 Phil. 405, 416 (2009) [Per J. Austria-Martinez, Third Division].

[86] *Id.*

[87] *Ursua v. Court of Appeals*, 326 Phil. 157, 163 (1996) [Per J. Bellosillo, First Division].

[88] *Id.* at 201-202.

may refer to the debtor corporation's general realization that it will not be able to fulfill its obligations— a realization that may come before default.

Construing the phrase "when they respectively fall due" to mean that the debtor must already be in default defeats the clear purpose of the lawmakers. It unjustly limits rehabilitation to corporations with matured obligations.

II

This Court is not a trier of facts.[89] The factual findings of the lower courts are accorded great weight and respect.[90] This is especially so in corporate rehabilitation proceedings, to which commercial courts are designated on account of their expertise and specialized knowledge.[91]

The Court of Appeals affirmed the Regional Trial Court's findings that the Petition for rehabilitation was sufficient and that the rehabilitation plan was reasonable. Petitioner seeks to overturn these findings. It argues that the Petition was insufficient for its failure to include maturity dates in the attached inventory; that the Regional Trial Court failed to determine whether petitioner's opposition was manifestly unreasonable; and that the rehabilitation plan was not feasible as it lacked materially significant financial commitments.[92]

These are questions of fact. The resolution of these issues entails a review of the sufficiency and weight of the evidence presented by the parties, including the inventory attached to the Petition, as well as the other financial documents for the rehabilitation.

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[89] *Pascual v. Burgos*, G.R. No. 171722, January 11, 2016, http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/january2016/171722.pdf> 10 [Per *J.* Leonen, Second Division].

[90] *Id.*

[91] *Bank of the Philippine Islands v. Sarabia Manor Hotel Corporation*, 715 Phil. 420, 435 (2013) [Per *J.* Perlas-Bernabe, Second Division].

[92] *Rollo*, pp. 467-497.

Pascual v. Burgos[93] reiterates that only questions of law should be raised in petitions for certiorari under Rule 45:

> The Rules of Court require that only questions of law should be raised in petitions filed under Rule 45. This court is not a trier of facts. It will not entertain questions of fact as the factual findings of the appellate courts are "final, binding[,] or conclusive on the parties and upon this [c]ourt" when supported by substantial evidence. Factual findings of the appellate courts will not be reviewed nor disturbed on appeal to this court.
>
> However, these rules do admit exceptions. Over time, the exceptions to these rules have expanded. At present, there are 10 recognized exceptions that were first listed in *Medina v. Mayor Asistio, Jr.*:
>
> > (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.
>
> These exceptions similarly apply in petitions for review filed before this court involving civil, labor, tax, or criminal cases.
>
> A question of fact requires this court to review the truthfulness or falsity of the allegations of the parties. This review includes assessment of the "probative value of the evidence presented." There is also a question of fact when the issue presented before this court

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

is the correctness of the lower courts' appreciation of the evidence presented by the parties.[94] (Citations omitted)

Absent any of the exceptions enumerated in *Pascual*, this Court will neither review nor disturb the lower courts' findings of fact on appeal.

Petitioner contends that the Court of Appeals' findings are misapprehensions of the facts of the case, and that these findings are conclusions without citations of their specific factual bases. It claims that the Court of Appeals ignored respondent's failure to attach the maturity dates[95] and merely relied on respondent's self-serving assertions.[96] It also argues that the Court of Appeals failed to refute petitioner's observations on the defects of respondent's rehabilitation plan.[97]

Petitioner fails to convince. The Court of Appeals had legal and factual bases for approving the Petition for rehabilitation.

The Interim Rules does not specify that courts must make a *written* declaration that a creditor's opposition is manifestly unreasonable. The Regional Trial Court Orders gave petitioner every opportunity to make its opposition and stance clear. In issuing the December 21, 2007 Order and approving the rehabilitation plan, the Regional Trial Court found the opposition unreasonable.

Rule 4, Section 5 of the Interim Rules outlines the requisites of a rehabilitation plan:

RULE 4

Debtor-Initiated Rehabilitation

. . . . . .

SECTION 5. *Rehabilitation Plan* — The rehabilitation plan shall include (a) the desired business targets or goals and the duration

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

[95] *Rollo*, p. 487.

[96] *Id.* at 490.

[97] *Id.* at 495.

and coverage of the rehabilitation; (b) the terms and conditions of such rehabilitation which shall include the manner of its implementation, giving due regard to the interests of secured creditors; (c) the material financial commitments to support the rehabilitation plan; (d) the means for the execution of the rehabilitation plan, which may include conversion of the debts or any portion thereof to equity, restructuring of the debts, *dacion en pago*, or sale of assets or of the controlling interest; (e) a liquidation analysis that estimates the proportion of the claims that the creditors and shareholders would receive if the debtor's properties were liquidated; and (f) such other relevant information to enable a reasonable investor to make an informed decision on the feasibility of the rehabilitation plan.

The Regional Trial Court, as affirmed by the Court of Appeals, deemed the Petition for rehabilitation sufficient. In its June 27, 2007 Order, it found that all the documents required under Rule 4, Section 2 of the Interim Rules were attached to the Petition.[98]

The Court of Appeals did not disregard the maturity dates. The Petition annexed a table of accounts receivable showing obligations that had already matured. Respondent likewise admitted in the Petition[99] that it could not comply with its obligations to petitioner.

Petitioner argues that the Regional Trial Court failed to rule on its Opposition and declare it manifestly unreasonable. It claims that this failure renders respondent's Petition for rehabilitation insufficient. This argument lacks credence.

Both the Court of Appeals and the Regional Trial Court found that the Rehabilitation Receiver carefully considered the feasibility of the rehabilitation plan, and that no serious objection and counter proposal were presented by petitioner.[100]

Philippine Bank of Communications illustrates what may be deemed as insufficient financial commitments:

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[98] *Id.* at 259-262.

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

[100] *Id*. at 70.

The commitment to add ₱10,000,000.00 working capital appeared to be doubtful considering that the insurance claim from which said working capital would be sourced had already been written off by Basic Polyprinters's affiliate, Wonder Book Corporation. *A claim that has been written off is considered a bad debt or a worthless asset, and cannot be deemed a material financial commitment for purposes of rehabilitation...*

We also declared in *Wonder Book Corporation v. Philippine Bank of Communications (Wonder Book)* that *the conversion of all deposits for future subscriptions to common stock and the treatment of all payables to officers and stockholders as trade payables was hardly constituting material financial commitments*. Such "conversion" of cash advances to trade payables was, in fact, a mere re-classification of the liability entry and had no effect on the shareholders' deficit....

. . . . . .

We observe, too, that Basic Polyprinters's *proposal to enter into the dacion en pago to create a source of "fresh capital" was not feasible because the object thereof would not be its own property but one belonging to its affiliate*, TOL Realty and Development Corporation, a corporation also undergoing rehabilitation. Moreover, the negotiations (for the return of books and magazines from Basic Polyprinters's trade creditors) did not partake of a voluntary undertaking because no actual financial commitments had been made thereon.

. . . . . .

Due to the rehabilitation plan being an indispensable requirement in the corporate rehabilitation proceedings, Basic Polyprinters was expected to exert a conscious effort in formulating the same, for such plan would spell the future not only for itself but also for its creditors and the public in general. The contents and execution of the rehabilitation plan could not be taken lightly.[101] (Emphasis supplied, citations omitted)

Petitioner's contention hinges on the sufficiency of respondent's material financial commitments, which becomes significant in determining its resolve, earnestness, and good faith.[102]

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[101] *Philippine Bank of Communications v. Basic Polyprinters and Packaging Corporation*, 745 Phil. 651, 663-664 (2014) [Per *J.* Bersamin, First Division].

[102] *Id.* at 665.

Respondent intends to source its funds from internal operations. That the funds are internally generated does not render the funds insufficient. This arrangement is still a material, voluntary, and significant financial commitment, in line with respondent's rehabilitation plan.

Both the Court of Appeals and the Regional Trial Court found the Rehabilitation Receiver's assurance that the cashflow from respondent's committed sources to be sufficient, thus:

> From the foregoing, the undersigned deems the expected sources of cashflow to support the proposed Rehabilitation Plan of the Petitioner as realistic. The funds requirement to jumpstart the Rehabilitation Plan is minimal and easily obtained by the Petitioner's management; while the income to be realized from the development of a condominium project is also feasible. Finally, the present management of the Petitioner appears to be capable of revitalizing and operating the Company and to generate the expected cashflow to support its repayment program.[103]

Based on his assessment, the Rehabilitation Receiver noted that the funds required to finance the first year of the rehabilitation plan would be much less than that the amount stated in the Petition.[104] Respondent put forth in detail its financial commitments.

Respondent, as a debtor corporation, may file for rehabilitation despite having defaulted on its obligations to petitioner. As its Petition for rehabilitation was sufficient and its rehabilitation plan was feasible, respondent's rehabilitation should proceed.

WHEREFORE, the Petition is **DENIED**. The June 13, 2008 Decision and August 20, 2008 Resolution of the Court of Appeals in CA-G.R. SP No. 102147 are **AFFIRMED**.

SO ORDERED.

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

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[103] *Rollo,* p. 72.

[104] *Id.* at 71.

THIRD DIVISION

[G.R. No. 189714. January 25, 2017]

TPG CORPORATION (FORMERLY THE PROFESSIONAL GROUP PLANS, INC.), *petitioner, vs.* **ESPERANZA B. PINAS,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; TERMINATION OF EMPLOYMENT BY EMPLOYER; LOSS OF TRUST AND CONFIDENCE, AS A GROUND; TWO CLASSES OF POSITION OF TRUST, CITED.— Loss of trust and confidence as a ground for dismissal of employees covers two (2) classes of positions of trust. The first class involves managerial employees, or those vested with the power to lay down management policies; and the second class involves cashiers, auditors, property custodians or those who, in the normal and routine exercise of their functions, regularly handle significant amounts of money or property.

2. ID.; ID.; ID.; UNCORROBORATED ASSERTIONS AND ACCUSATIONS BY THE EMPLOYER WILL NOT SUFFICE THE DISMISSAL OF RANK-AND-FILE PERSONNEL FOR LOSS OF TRUST AND CONFIDENCE.— In a plethora of cases, the Court consistently held that dismissal of rank-and-file personnel for loss of trust and confidence, requires proof of involvement in the alleged events in question, and that mere uncorroborated assertions and accusations by the employer will not be sufficient. But as regards a managerial employee, the mere existence of a basis for believing that such employee has breached the trust of his employer would suffice for his dismissal, **albeit the evidence most be substantial and must establish clearly and convincingly the facts on which the loss of confidence rests**. x x x It bears stressing that in termination cases against employees, the burden of proof rests upon the employer to prove that the dismissal of the employee is for just or valid cause.

3. ID.; ID.; ID.; DOCTRINE OF STRAINED RELATIONS; PAYMENT OF SEPARATION PAY IS CONSIDERED AN ACCEPTABLE ALTERNATIVE TO REINSTATEMENT; APPLICATION IN CASE AT BAR.— Under the doctrine of strained relations, the payment of separation pay is considered an acceptable alternative to reinstatement when the latter option is no longer desirable or viable. In several instances, the Court has ruled that reinstatement is no longer viable where, among others, the relations between the employer and the employee have been so severely strained, that it is not in the best interest of the parties, nor is it advisable or practical to order reinstatement, or where the employee decides not to be reinstated. In this case, the resulting circumstances show that reinstatement would be impractical and would hardly promote the best interest of the parties. Actual animosity between TPG and Esperanza existed between them as a result of the filing of the illegal dismissal case. Besides, Esperanza expressly prayed for an award of separation pay from the very start of the proceedings before the LA. By so doing, she forecloses reinstatement as a relief by implication. Following the pronouncement of the Court in *Sagales v. Rustan's Commercial Corporation*, the computation of separation pay in lieu of reinstatement includes the period for which backwages were awarded: x x x In sum, Esperanza is entitled to both backwages and separation pay, in lieu of reinstatement, in the amount of one (1) month salary for every year of service to be computed from the date of her employment contract until the finality of this Resolution, with a fraction of at least six (6) months to be considered as one (1) whole year.

APPEARANCES OF COUNSEL

Kapunan Lotilla Garcia & Castillo for petitioner.
Lyssa G.S. Pagano-Calde for respondent.

R E S O L U T I O N

REYES, *J.*:

This is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court assailing the Decision[2] dated September 15, 2009 of the Court of Appeals (CA) in CA-G.R. SP No. 100609 which dismissed the petition for *certiorari*[3] filed by petitioner TPG Corporation (formerly The Professional Group Plans, Inc.) (TPG) after finding no grave abuse of discretion on the part of the National Labor Relations Commission (NLRC) when it held that respondent Esperanza B. Pinas (Esperanza) was illegally dismissed from service.

Facts of the Case

Esperanza was hired by TPG as Regional Manager for the Cordillera Administrative Region sometime in June 1992. As regional manager, she was responsible in the recruitment, training and development of complete manpower for all the branch operations, delivery of expected requirement on revenue collections and supervision of the branch operations.[4] In January 1995, she was promoted to the position of Territorial Sales Head (TSH) which required her to visit all the branches of TPG within her area of coverage.[5]

Due, however, to her long trips from one area to another, Esperanza was diagnosed in February 1996 to be suffering from scoliosis and spine deformity. As such, she requested for transfer[6] from TSH to Training Officer, which TPG later approved.[7]

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[1] *Rollo*, pp. 3-51.

[2] Penned by Associate Justice Pampio A. Abarintos, with Associate Justices Juan Q. Enriquez, Jr. and Francisco P. Acosta concurring; *id*. at 55-67.

[3] *Id*. at 336-380.

[4] *Id*. at 56.

[5] *Id*. at 110.

[6] *Id.* at 68.

[7] *Id*. at 56.

On January 5, 1997, Ernesto Pinas (Ernesto), husband of Esperanza and Area Manager of TPG's Baguio branch office, held a training session wherein a review on product knowledge where given to 15 old and new district managers.[8] Also, Esperanza conducted a sales clinic and presented a review and analysis of past performances.[9]

To provide meals for the participants, Ernesto ordered budget meals from the NTC Employees Multi-Purpose Cooperative, Inc. (NEMPCI) amounting to ₱750.00.[10]

Sometime in January 1997, however, Emily Balleras (Emily), an employee of Esperanza's personal business, requested TPG's cashier, Freda Lawangen, for reimbursement of training expense in the amount of ₱2,100.00 as supported by official receipt and attendance sheet purportedly for the January 5, 1997 training session. Upon learning, however, of the release of the said amount, Esperanza was surprised and claimed that she was not aware of such claim.[11]

On February 12, 1997, a memorandum was issued by Atty. Joel Rufino A. Nunez, TPG's Assistant Vice President and Legal Counsel, charging Esperanza with gross violation of company policy by tampering official receipt. Accordingly, an investigation hearing and field investigation was conducted which led to the dismissal of Esperanza on May 30, 1991.[12]

Consequently, Esperanza filed a Complaint[13] on July 25, 1997 against TPG for illegal dismissal, overtime pay, premium pay for holiday, rest day and night shift, separation pay, and damages.

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[8] *Id*. at 111.

[9] *Id.* at 161.

[10] *Id*. at 57.

[11] *Id*.

[12] *Id*. at 58.

[13] *Id*. at 94.

Ruling of the Labor Arbiter

In a Decision[14] dated November 9, 1998, the Labor Arbiter (LA) dismissed the complaint after finding that there was sufficient evidence to sever Esperanza's employment with TPG for loss of trust and confidence. The dispositive portion of the LA's decision reads:

> WHEREFORE, premises considered, the above-entitled case is hereby **DISMISSED** for lack of merit.
>
> All other claims are also dismissed.
>
> **SO ORDERED.**[15]

Aggrieved, Esperanza on December 4, 1998 filed an appeal to the NLRC arguing that the LA erred in declaring that her dismissal was valid and in denying her monetary claims against TPG.[16]

Ruling of the NLRC

On May 7, 2003, the NLRC issued a Decision[17] setting aside the LA's Decision dated November 9, 1998 after finding that Esperanza was illegally dismissed by TPG. Records show that the alleged tampering was merely a mistake of switching receipt not attributable to Esperanza.[18] Likewise, the NLRC found that TPG failed to observe due process in terminating Esperanza's employment.[19] The dispositive portion of the NLRC's decision reads:

> **WHEREFORE**, the appealed decision is set aside. Finding [TPG] to be guilty of illegal dismissal, judgment is hereby rendered directing the reinstatement of [Esperanza] to [her] position last held, or equivalent

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[14] Rendered by Labor Arbiter Monroe C. Tabingan; *id.* at 158-167.

[15] *Id.* at 167.

[16] *Id*. at 168-190.

[17] Penned by Commissioner Vicente S.E. Veloso, with Presiding Commissioner Roy V. Señeres concurring; *id.* at 256-267.

[18] *Id*. at 262.

[19] *Id*. at 264-266.

position, and to pay her full backwages from the date her salary was withheld from her up to her actual reinstatement; as well as attorney's fee equivalent to ten (10%) percent of the total award hereof.

Other claims are dismissed for lack of merit.

SO ORDERED.[20]

TPG filed a Motion for Reconsideration,[21] but the same was denied by the NLRC in a Resolution[22] dated July 4, 2007. TPG elevated the matter to the CA *via* a petition for *certiorari.*[23]

Ruling of the CA

On September 15, 2009, the CA issued a Decision[24] denying the petition and affirming the NLRC's finding of illegal dismissal. It opined that there was no cause for Esperanza's dismissal considering that it was not her who requested for the reimbursement of the expenses conducted during the training session held on January 5, 1997 but her personal secretary, Emily, who was not even an employee of TPG.[25]

The dispositive portion of the CA decision reads:

WHEREFORE, IN VIEW OF THE FOREGOING, the petition for certiorari is hereby **DENIED** and accordingly **DISMISSED** and the decision and resolution of the [NLRC] dated May 7, 2003 and July 4, 2007[, respectively,] are **AFFIRMED**.

SO ORDERED.[26]

Issue

Hence, the instant petition for review on *certiorari* based on the lone assignment of error:

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[20] *Id*. at 266-267.

[21] *Id*. at 290-311.

[22] *Id*. at 331-335.

[23] *Id*. at 336-381.

[24] *Id*. at 55-67.

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

[26] *Id*. at 66.

THE HONORABLE [CA'S] DECISION DATED 15 SEPTEMBER 2009 IS CONTRARY TO LAW AND JURISPRUDENCE. THERE IS OVERWHELMING EVIDENCE CLEARLY AND SUBSTANTIALLY PROVING [ESPERANZA'S] INVOLVEMENT IN THE TAMPERING OF O.R. 0256 AND INTRODUCING SPURIOUS DOCUMENTS TO SUPPORT HER CLAIM FOR TRAINING EXPENSES ALLEGEDLY CONDUCTED ON 05 JANUARY 1997. HENCE, [ESPERANZA'S] DISMISSAL BASED ON [TPG'S] LOSS OF TRUST AND CONFIDENCE IS LEGAL AND VALID.[27]

In a Resolution[28] dated December 14, 2011, considering that Esperanza's current address could not be ascertained, the Court dispensed with the filing of her comment on the petition.

Ruling of the Court

To begin with, it bears stressing that the scope of this Court's judicial review under Rule 45 of the Rules of Court is confined only to errors of law. It does not extend to questions of fact.[29] This rule, however, admits of exceptions, such as in the present case, where the finding of facts of the LA is inconsistent with those of the NLRC and the CA.[30]

After a review of the records of the case, however, the Court upholds the findings of the NLRC, as affirmed by the CA, that Esperanza was illegally dismissed from her employment with TPG.

Esperanza does not occupy a position of trust and confidence

Loss of trust and confidence as a ground for dismissal of employees covers two (2) classes of positions of trust. The first class involves managerial employees, or those vested with the

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[27] *Id.* at 29.

[28] *Id.* at 818.

[29] *Skippers United Pacific, Inc. v. NLRC*, 527 Phil. 248, 256 (2006).

[30] *Nasipit Lumber Co. v. National Organization of Workingmen (NOWM) and its 30 members*, 486 Phil. 348, 360 (2004).

power to lay down management policies; and the second class involves cashiers, auditors, property custodians or those who, in the normal and routine exercise of their functions, regularly handle significant amounts of money or property.[31]

Here, as correctly observed by the CA, Esperanza's employment as Training Officer, is not a position of trust and confidence. The relevant decision of the CA in part states:

> The training of recruits to become the company's new sales representatives is not and can not be considered a delicate matter that would require the repose of trust and confidence. [Esperanza's] work is not directly related to management policies of her employer, [TPG]. [Esperanza] does not exercise discretion and independent judgment in training new recruits. In this light, we don't consider [Esperanza] a managerial employee. She is a rank-and-file personnel.[32]

In any case, even assuming, for argument sake, that Esperanza was holding a position of trust and confidence, records show that TPG failed to present substantial evidence as well as to clearly establish the facts of Esperanza's involvement in the alleged tampering of official receipts.

In a plethora of cases, the Court consistently held that dismissal of rank-and-file personnel for loss of trust and confidence, requires proof of involvement in the alleged events in question, and that mere uncorroborated assertions and accusations by the employer will not be sufficient. But as regards a managerial employee, the mere existence of a basis for believing that such employee has breached the trust of his employer would suffice for his dismissal, **albeit the evidence must be substantial and must establish clearly and convincingly the facts on which the loss of confidence rests**.[33]

Esperanza's dismissal was not for a just or valid cause

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[31] *Bristol Myers Squibb (Phils.), Inc. v. Baban*, 594 Phil. 620, 628 (2008).

[32] *Rollo*, p. 62.

[33] *Lima Land, Inc., et al. v. Cuevas*, 635 Phil. 36,48-49 (2010).

It bears stressing that in termination cases against employees, the burden of proof rests upon the employer to prove that the dismissal of the employee is for just or valid cause.[34]

In the present case, records are barren of any evidence to show that Esperanza was in cahoots with Emily in the alleged receipt tampering as charged by TPG.

On the contrary, Emily's letter proved that Esperanza has no participation or involvement in the incident. As sufficiently explained by Emily in her letter,[35] she was the one who effected the switching of Official Receipt (O.R.) No. 256 of El Paso Restaurant bearing the amount of ₱2,100.00 with O.R. No. 150 issued by NEMPCI for the amount of ₱780.00. She claimed that O.R. No. 256 is for the personal account of Ernesto chargeable to spouses Pinas' personal business.[36] Moreover, Emily confirmed that Esperanza was not aware that she switched the two receipts and attendance sheets.[37]

Clearly, TPG relied on mere suspicions and uncorroborated reports in terminating the services of Esperanza. As convincingly found by the NLRC, the perpetrator of the incident was Emily, who openly admitted to her wrongdoing. The relevant portion of the NLRC's decision in part states:

> [Emily] committed the mistake. She admitted the switching or alleged tampering of official receipts. Such admission is a declaration against her interest and we agree with [Esperanza] that a person would not readily admit to the commission of a wrongdoing if it is not true regardless of whether one has moral ascendancy to the others. In fact, [TPG's] cashier Ms. Lawangen affirmatively testified that [Emily] personally presented the questioned documents for reimbursement of the training expenses but was at fault for releasing the amount to [Emily] instead of first notifying [Esperanza] about it and despite

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[34] *Philippine Transmarine Carriers, Inc. v. Carilla*, 552 Phil. 652, 661 (2007).

[35] *Rollo*, p. 77.

[36] *Id*. at 263.

[37] *Id*. at 64.

the standing warning not to release any cash receivables to [Emily] but to release the same only directly to [Esperanza].[38]

Hence, as between TPG's general allegation of receipt tampering *vis-a-vis* the defense presented by Esperanza, as corroborated by several witnesses, the Court is persuaded by the latter. Absent a clear showing of an overt act proving that Esperanza was involved in the alleged incident, TPG's claim of receipt tampering cannot be sustained. Indeed, a cursory examination of the records reveals that TPG was liable for Esperanza's illegal dismissal.

Esperanza is entitled to separation pay in lieu of reinstatement

Additionally, Esperanza is entitled to separation pay in lieu of reinstatement on the ground of strained relationship.

Under the doctrine of strained relations, the payment of separation pay is considered an acceptable alternative to reinstatement when the latter option is no longer desirable or viable.[39]

In several instances, the Court has ruled that reinstatement is no longer viable where, among others, the relations between the employer and the employee have been so severely strained, that it is not in the best interest of the parties, nor is it advisable or practical to order reinstatement, or where the employee decides not to be reinstated. In this case, the resulting circumstances show that reinstatement would be impractical and would hardly promote the best interest of the parties. Actual animosity between TPG and Esperanza existed between them as a result of the filing of the illegal dismissal case. Besides, Esperanza expressly prayed for an award of separation pay from the very start of the proceedings before the LA. By so doing, she forecloses reinstatement as a relief by implication.[40]

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[38] *Id.* at 263.

[39] *Bank of Lubao, Inc. v. Manabat, et al.*, 680 Phil. 792, 801 (2012).

[40] See *DUP Sound Phil., and/or Tan v. CA, et al.*, 676 Phil. 472, 484-485 (2011).

Following the pronouncement of the Court in *Sagales v. Rustan's Commercial Corporation*,[41] the computation of separation pay in lieu of reinstatement includes the period for which backwages were awarded:

> Thus, in lieu of reinstatement, it is but proper to award petitioner separation pay computed at one-month salary for every year of service, a fraction of at least six (6) months considered as one whole year. In the computation of separation pay, the period where backwages are awarded must be included.[42] (Citations omitted)

In sum, Esperanza is entitled to both backwages and separation pay, in lieu of reinstatement, in the amount of one (1) month salary for every year of service to be computed from the date of her employment contract until the finality of this Resolution, with a fraction of at least six (6) months to be considered as one (1) whole year.

WHEREFORE, in consideration of the foregoing disquisitions, the instant petition is **DENIED**. The Decision dated September 15, 2009 of the Court of Appeals in CA-G.R. SP No. 100609 is hereby **AFFIRMED** with **MODIFICATION** to the effect that, instead of reinstatement, TPG Corporation (formerly The Professional Group Plans, Inc.) is directed to pay Esperanza B. Pinas separation pay equivalent to one (1) month salary for every year of service from June 1992 until finality of this Resolution and backwages counted from May 30, 1997 until finality of this Resolution. In addition, legal interest shall be imposed on the monetary awards granted at the rate of six percent (6%) *per annum* from May 30, 1997 (date of termination) until fully paid.

SO ORDERED.

Velasco, Jr. (Chairperson), Bersamin, Jardeleza, and *Caguioa,*[*] *JJ.*, concur.

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[41] 592 Phil. 468 (2008).

[42] *Id.* at 484.

[*] Designated Fifth Member of the Third Division per Special Order No. 2417 dated January 4, 2017.

THIRD DIVISION

[G.R. No. 192159. January 25, 2017]

COMMUNICATION AND INFORMATION SYSTEMS CORPORATION, *petitioner, vs.* **MARK SENSING AUSTRALIA PTY. LTD., MARK SENSING PHILIPPINES, INC. and OFELIA B. CAJIGAL,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; THE TIMELINESS FOR FILING A PETITION FOR *CERTIORARI* IS MANDATORY AND JURISDICTIONAL AND SHOULD NOT BE TRIFLED WITH.— Applying the rule in *San Juan*, MSAPL's challenge to the order dated April 13, 2009 was clearly time-barred. The 60-day reglementary period for challenging the RTC's issuance of the amended writ of attachment should be counted from April 27, 2009, the date when MSAPL received a copy of the April 13, 2009 Order denying MSAPL's motion for reconsideration of the December 22, 2008 Order which granted CISC's motion to amend the writ of preliminary attachment. The CA, however, considered MSAPL's act of filing a motion to determine the sufficiency of the bond as a definitive indication that private respondents have not "abandoned their right to impugn the evidence submitted in the application for the second writ." This is erroneous for two reasons: *first*, MSAPL's motion never impugned the propriety and factual bases of the RTC's issuance of the amended writ of attachment; and *second*, even if it did, the motion would be considered as a second motion for reconsideration, which could not have stayed the reglementary period within which to file a petition for *certiorari* assailing an interlocutory order. We emphasize that the provisions on reglementary periods are strictly applied, indispensable as they are to the prevention of needless delays, and are necessary to the orderly and speedy discharge of judicial business. The timeliness of filing a petition for certiorari is mandatory and jurisdictional, and should not be trifled with. x x x the "60 day period shall be reckoned from the trial court's denial of his

motion for reconsideration, otherwise indefinite delays will ensue."

2. ID.; ID.; ID; A PETITION FOR *CERTIORARI* MAY BE RESORTED TO ONLY WHERE THERE IS NO PLAIN, SPEEDY, AND ADEQUATE REMEDY IN THE ORDINARY COURSE OF LAW; APPLICATION IN CASE AT BAR.— MSAPL, instead of filing a motion for reconsideration of the July 2, 2009 Order, elected to file a motion to compel CISC to pay the required docket fees on August 14, 2009. Evidently, MSAPL already recognized the validity of the July 2, 2009 Order and sought CISC's compliance with the Order. Notably, the motion remained pending before the RTC when MSAPL filed its petition for *certiorari* with the CA. We find that the petition for *certiorari*, insofar as it questions the alleged non-payment of docket fees, was prematurely filed because the RTC has yet to rule on this issue. A petition for *certiorari* may be resorted to only when there is no plain, speedy, and adequate remedy in the ordinary course of law. It is not up to parties to preempt the trial court's action on their motions. Absent any showing of unreasonable delay on the part of the RTC—and there is none here, considering the short period between the filing of the motion and the petition for certiorari, as well as the various incidents pending a quo—MSAPL's recourse to the CA was premature. The more appropriate remedy for MSAPL would have been to move for the RTC to resolve its pending motion instead of precipitately raising this matter in its petition for *certiorari*.

3. ID.; PROVISIONAL REMEDIES; PRELIMINARY ATTACHMENT; THE LAW IN FORCE AT THE TIME OF THE ISSUANCE OF THE ATTACHMENT BOND LIMITS THE AMOUNT OF RISK THAT INSURANCE COMPANIES CAN RETAIN TO A MAXIMUM OF 20% OF ITS NET WORTH, HOWEVER, IN COMPUTING THE RETENTION LIMIT THE RISKS THAT HAVE BEEN CEDED TO AUTHORIZED REINSURERS ARE *IPSO FACTO* DEDUCTED; CASE AT BAR.— Section 215 of the old Insurance Code, the law in force at the time Plaridel issued the attachment bond, limits the amount of risk that insurance companies can retain to a maximum of 20% of its net worth. However, in computing the retention limit, risks that have been ceded to authorized reinsurers are ipso jure deducted. In

mathematical terms, the amount of retained risk is computed by deducting ceded/reinsured risk from insurable risk. If the resulting amount is below 20% of the insurer's net worth, then the retention limit is not breached. In this case, both the RTC and CA determined that, based on Plaridel's financial statement that was attached to its certificate of authority issued by the Insurance Commission, its net worth is ₱289,332,999.00. Plaridel's retention limit is therefore ₱57,866,599.80, which is below the ₱l13,197,309.10 face value of the attachment bond. However, it only retained an insurable risk of ₱17,377,938.19 because the remaining amount of ₱98,819,770.91 was ceded to 16 other insurance companies. Thus, the risk retained by Plaridel is actually ₱40 Million below its maximum retention limit. Therefore, the approval of the attachment bond by the RTC was in order. Contrary to MSAPL's contention that the RTC acted with grave abuse of discretion, we find that the RTC not only correctly applied the law but also acted judiciously when it required Plaridel to submit proof of its reinsurance contracts after MSAPL questioned Plaridel's capacity to underwrite the attachment bond. Apparently, MSAPL failed to appreciate that by dividing the risk through reinsurance, Plaridel's attachment bond actually became more reliable—as it is no longer dependent on the financial stability of one company—and, therefore, more beneficial to MSAPL.

4. MERCANTILE LAW; INSURANCE CODE, AS AMENDED; CONTRACT OF REINSURANCE; THE REINSURER'S CONTRACTUAL RELATIONSHIP IS WITH THE DIRECT INSURER, NOT THE ORIGINAL INSURED, AND THE LATTER HAS NO INTEREST IN AND IS GENERALLY NOT PRIVY TO THE CONTRACT OF REINSURANCE; CASE AT BAR.— A contract of reinsurance is one by which an insurer (the "direct insurer" or "cedant") procures a third person (the "reinsurer") to insure him against loss or liability by reason of such original insurance. It is a separate and distinct arrangement from the original contract of insurance, whose contracted risk is insured in the reinsurance agreement. The reinsurer's contractual relationship is with the direct insurer, not the original insured, and the latter has no interest in and is generally not privy to the contract of reinsurance. Put simply, reinsurance is the "insurance of an insurance." By its nature, reinsurance contracts are issued in favor of the direct insurer because the subject of such contracts is the direct insurer's

risk—in this case, Plaridel's contingent liability to MSAPL—and not the risk assumed under the original policy. The requirement under Section 4, Rule 57 of the Rules of Court that the applicant's bond be executed to the adverse party necessarily pertains only to the attachment bond itself and not to any underlying reinsurance contract. With or without reinsurance, the obligation of the surety to the party against whom the writ of attachment is issued remains the same.

APPEARANCES OF COUNSEL

Jemelo L. Villones for petitioner.
Romeo C. Dela Cruz & Associates for respondents.

D E C I S I O N

JARDELEZA, *J.*:

This is a petition for review on *certiorari*[1] seeking to set aside the Decision[2] dated November 25, 2009 and Resolution[3] dated April 23, 2010 of the Court of Appeals (CA) in CA-G.R. SP No. 110511. The question is whether courts may approve an attachment bond which has been reinsured as to the excess of the issuer's statutory retention limit.

I

Petitioner Communication and Information Systems Corporation (CISC) and respondent Mark Sensing Australia Pty. Ltd. (MSAPL) entered into a Memorandum of Agreement[4] (MOA) dated March 1, 2002 whereby MSAPL appointed CISC

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[1] *Rollo*, pp. 15-56.

[2] *Id*. at 57-86. Special Third Division, penned by Associate Justice Ricardo R. Rosario, with Associate Justices Jose C. Reyes, Jr. and Magdangal M. De Leon concurring.

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

[4] *Id*. at 100-101. Executed by Gordon Harold Poole, as Chief Executive Officer of MSAPL, and Carolina de Jesus for CISC.

as "the exclusive AGENT of [MSAPL] to PCSO during the [lifetime] of the recently concluded Memorandum of Agreement entered into between [MSAPL], PCSO and other parties." The recent agreement referred to in the MOA is the thermal paper and bet slip supply contract (the Supply Contract) between the Philippine Charity Sweepstakes Office (PCSO), MSAPL, and three other suppliers, namely Lamco Paper Products Company, Inc. (Lamco Paper), Consolidated Paper Products, Inc. (Consolidated Paper) and Trojan Computer Forms Manufacturing Corporation (Trojan Computer Forms).[5] As consideration for CISC's services, MSAPL agreed to pay CISC a commission of 24.5% of future gross sales to PCSO, exclusive of duties and taxes, for six years.[6]

After initially complying with its obligation under the MOA, MSAPL stopped remitting commissions to CISC during the second quarter of 2004. MSAPL justified its action by claiming that Carolina de Jesus, President of CISC, violated her authority when she negotiated the Supply Contract with PCSO and three of MSAPL's competitors. According to MSAPL, it lost almost one-half of its business with PCSO because the Supply Contract provided that MSAPL's business with PCSO shall be limited to the latter's Luzon operations, with MSAPL supplying 70% of thermal rolls and 50% of bet slips. MSAPL pointed out that it used to have a Build Operate Transfer (BOT) Agreement with PCSO where it undertook to build a thermal paper and bet slip manufacturing facility to supply all requirements of PCSO. However, PCSO unilaterally cancelled the BOT Agreement and granted supply contracts to Lamco Paper, Consolidated Paper and Trojan Computer Forms, which ultimately resulted in litigation between the parties.[7] The suit

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[5] Memorandum of Agreement dated January 17, 2003 executed by Ma. Livia de Leon, Chairman of PCSO, Gordon H. Poole, Managing Director of MSAPL, Giovanni Tan, President of Trojan Computer Forms, George Santos, Sales Director of Consolidated Paper, and Terry Sy, Vice-President of Lamco Paper, *id.* at 510-518.

[6] *Id*. at 100.

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

was eventually settled when PCSO, MSAPL, and the three other suppliers entered into the Supply Contract, which was submitted and approved by the Regional Trial Court (RTC), Branch 224 of Quezon City, as a compromise agreement.[8] MSAPL felt shortchanged by CISC's efforts and thus decided to withhold payment of commissions.

As a result of MSAPL's refusal to pay, CISC filed a complaint before the RTC in Quezon City for specific performance against MSAPL, Mark Sensing Philippines, Inc. (MSPI), Atty. Ofelia Cajigal, and PCSO.[9] CISC prayed that private respondents be ordered to comply with its obligations under the MOA. It also asked the RTC to issue a writ of preliminary mandatory injunction and/or writ of attachment.[10] The RTC denied CISC's prayer for mandatory injunctive relief but ordered the PCSO to hold the amount being contested until the final determination of the case.[11] It later reversed itself, holding that its jurisdiction is limited to the amount stated in the complaint and therefore had no jurisdiction to order PCSO to withhold payments in excess of such amount.[12] This order of reversal became the subject of a separate petition for *certiorari* filed by CISC before the CA, docketed as CA-G.R. SP No. 96620.[13] The CA later reversed the RTC and ordered that the additional docket fees shall constitute a lien on the judgment.[14]

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[8] Docketed as Civil Case No. Q-99-37467. *Id*. at 519-528.

[9] Docketed as Civil Case No. 05-54756 and raffled to Branch 95. *Id*. at 89-99.

[10] *Id*. at 97-98.

[11] *Id*. at 124-129.

[12] *Id*. at 130-146.

[13] Decision dated February 7, 2007 penned by Associate Justice Apolinario D. Bruselas, Jr., with Associate Justices Bienvenido L. Reyes and Aurora Santiago-Lagman, concurring, *id*. at 178-191.

[14] *Id.*

On September 10, 2007, the RTC granted CISC's application for issuance of a writ of preliminary attachment, stating that "the non-payment of the agreed commission constitutes fraud on the part of the defendant MSAPL in their performance of their obligation to the plaintiff."[15] The RTC found that MSAPL is a foreign corporation based in Australia, and its Philippine subsidiary, MSPI, has no other asset except for its collectibles from PCSO. Thus, the RTC concluded that CISC may be left without any security if ever MSAPL is found liable.[16] But the RTC limited the attachment to ₱4,861,312.00, which is the amount stated in the complaint, instead of the amount sought to be attached by CISC, *i.e.*, ₱113,197,309.10.[17] The RTC explained that it "will have to await the Supreme Court judgment over the issue of whether [it] has jurisdiction on the amounts in the excess of the amount prayed for by the plaintiff in their complaint" since MSAPL appealed the adverse judgment in CA-G.R. SP No. 96620 to us.[18] We later denied MSAPL's petition for review assailing the CA Decision in CA-G.R. SP No. 96620 (subsequently docketed as G.R. No. 179073) in a Resolution dated November 12, 2007.[19] It became final and executory on March 25, 2008.[20]

In view of this development, CISC moved to amend the order of attachment to include unpaid commissions in excess of the amount stated in the complaint. On December 22, 2008, the RTC granted CISC's motion and issued a new writ of preliminary attachment.[21] On **April 13, 2009**, the RTC, acting on the partial motions for reconsideration by both CISC and MSAPL, modified the amount covered by the writ to reflect the correct amount

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[15] *Rollo*, p. 197.

[16] *Id*.

[17] *Rollo*, pp. 23-24; 197-198.

[18] *Id*. at 198.

[19] *Id*. at 192-193.

[20] *Id*. at 204-205.

[21] *Id*. at 221-229.

prayed for by CISC in its previous motion to amend the attachment order conditioned upon the latter's payment of additional docket fees. It also denied MSAPL's opposition to the attachment order for lack of merit.[22] On **July 2, 2009**, the RTC modified its order insofar as it allowed CISC to pay docket fees within a reasonable time.[23]

On **July 8, 2009**, CISC posted a bond in the amount of ₱113,197,309.10 through Plaridel Surety and Insurance Company (Plaridel) in favor of MSAPL, which the RTC approved on the same date.[24] Two days later, MSAPL filed a motion to determine the sufficiency of the bond because of questions regarding the financial capacity of Plaridel.[25] But before the RTC could act on this motion, MSAPL, apparently getting hold of Plaridel's latest financial statements, moved to recall and set aside the approval of the attachment bond on the ground that Plaridel had no capacity to underwrite the bond pursuant to Section 215 of the old Insurance Code[26] because its net worth was only ₱214,820,566.00 and could therefore only underwrite up to ₱42,964,113.20.[27] On **September 4, 2009**, the RTC denied MSAPL's motion, finding that although Plaridel cannot underwrite the bond by itself, the amount covered by the attachment bond "was likewise re-insured to sixteen other insurance companies."[28] However, "for the best interest of both parties," the RTC ordered Plaridel to submit proof that the amount of ₱95,819,770.91 was reinsured. Plaridel submitted its compliance on September 11, 2009, attaching therein the reinsurance contracts.[29]

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[22] *Id*. at 230-232.

[23] *Id*. at 241-244.

[24] *Id*. at 245.

[25] *Id*. at 68.

[26] Presidential Decree No. 612 (1974).

[27] *Rollo*, pp. 265-268.

[28] *Id*. at 68-69.

[29] *Id*. at 69.

On **September 18, 2009**, MSAPL, MSPI and Atty. Ofelia Cajigal[30] filed a petition for *certiorari* before the CA, docketed as CA-G.R. SP No. 110511, assailing the Orders of the RTC dated April 13, 2009, July 2, 2009, July 8, 2009, and September 4, 2009. In its now-assailed Decision dated November 25, 2009, the CA granted the petition.[31] It concluded that the petition for *certiorari* was filed on time because MSAPL did not abandon their right to impugn the evidence submitted in the application for the writ of preliminary attachment, because they filed a motion to determine the sufficiency of the bond. On the merits, it held that the RTC exceeded its authority when it "ordered the issuance of the writ [of preliminary attachment] despite a dearth of evidence to clearly establish [CISC's] entitlement thereto, let alone the latter's failure to comply with all requirements therefor."[32] Noting that the posting of the attachment bond is a jurisdictional requirement, the CA concluded that since Plaridel's capacity for single risk coverage is limited to 20% of its net worth, or ₱57,866,599.80, the RTC "should have set aside the second writ outright for non-compliance with Sections 3 and 4 of Rule 57."[33]

After the CA perfunctorily denied CISC's motion for reconsideration on April 23, 2010,[34] it filed this petition for review on *certiorari.*

II

CISC argues that the CA erred in giving due course to the petition insofar as it challenged the Orders dated April 13, 2009, July 2, 2009, and July 8, 2009 because the reglementary period to challenge these Orders already lapsed by the time private

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[30] For brevity, private respondents MSAPL, MSPI, and Atty. Ofelia Cajigal shall be collectively referred to as "MSAPL" from hereon.

[31] *Id.* at 32-34; 84-85.

[32] *Id.* at 74.

[33] *Id.* at 83.

[34] *Supra* note 3.

respondents filed their petition for *certiorari* below.[35] In response, MSAPL contends that since they continued to assail the additional attachment from the time it was first issued, the 60-day period should be counted from the final denial of their challenge to the additional attachment, which was on September 4, 2009.[36]

MSAPL's theory is similar to that proffered by one of the parties in the case of *San Juan, Jr. v. Cruz*.[37] The petitioner therein filed second and third motions for reconsideration from an interlocutory order by the trial court. When he filed the petition for *certiorari* with the CA, he counted the 60-day reglementary period from the notice of denial of his third motion for reconsideration. He argued that since there is no rule prohibiting the filing of a second or third motion for reconsideration of an interlocutory order, the 60-day period should be counted from the notice of denial of the last motion for reconsideration. In resolving the question of when the reglementary period for filing a petition for *certiorari* shall be counted, we held that the "60-day period shall be reckoned from the trial court's denial of his first motion for reconsideration, otherwise indefinite delays will ensue."[38]

Applying the rule in *San Juan*, MSAPL's challenge to the order dated April 13, 2009 was clearly time-barred. The 60-day reglementary period for challenging the RTC's issuance of the amended writ of attachment should be counted from April 27, 2009,[39] the date when MSAPL received a copy of the April 13, 2009 Order denying MSAPL's motion for reconsideration of the December 22, 2008 Order which granted CISC's motion to amend the writ of preliminary attachment. The CA, however, considered MSAPL's act of filing a motion to determine the sufficiency of the bond as a definitive indication that private

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[35] *Id*. at 36-41.

[36] *Rollo*, pp. 461-463.

[37] G.R. No. 167321, July 31, 2006, 497 SCRA 410.

[38] *Id*. at 424.

[39] *Rollo*, p. 304.

respondents have not "abandoned their right to impugn the evidence submitted in the application for the second writ."[40] This is erroneous for two reasons: *first*, MSAPL's motion never impugned the propriety and factual bases of the RTC's issuance of the amended writ of attachment; and *second*, even if it did, the motion would be considered as a second motion for reconsideration, which could not have stayed the reglementary period within which to file a petition for *certiorari* assailing an interlocutory order. We emphasize that the provisions on reglementary periods are strictly applied, indispensable as they are to the prevention of needless delays, and are necessary to the orderly and speedy discharge of judicial business. The timeliness of filing a petition for *certiorari* is mandatory and jurisdictional, and should not be trifled with.[41]

Meanwhile, the Orders dated July 2, 2009 and July 8, 2009 resolved incidental issues with respect to the issuance of the amended writ of attachment, namely: (1) when the additional docket fees should be paid; and (2) the approval of the attachment bond. As regards the first incidental issue, the RTC allowed CISC to pay the additional docket fees "within a reasonable time but in no case beyond its applicable prescriptive or reglementary period."[42] MSAPL, instead of filing a motion for reconsideration of the July 2, 2009 Order, elected to file a motion to compel CISC to pay the required docket fees on August 14, 2009.[43] Evidently, MSAPL already recognized the validity of the July 2, 2009 Order and sought CISC's compliance with the Order. Notably, the motion remained pending before the RTC when MSAPL filed its petition for *certiorari* with the CA. We find that the petition for *certiorari*, insofar as it questions the alleged non-payment of docket fees, was prematurely filed

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

[41] *Visayan Electric Company Employees Union-ALU-TUCP v. Visayan Electric Company, Inc. (VECO)*, G.R. No. 205575, July 22, 2015, 763 SCRA 566, 577.

[42] *Rollo*, p. 244.

[43] *Id*. at 259-264; 305.

because the RTC has yet to rule on this issue. A petition for *certiorari* may be resorted to only when there is no plain, speedy, and adequate remedy in the ordinary course of law.[44] It is not up to parties to preempt the trial court's action on their motions. Absent any showing of unreasonable delay on the part of the RTC—and there is none here, considering the short period between the filing of the motion and the petition for *certiorari*, as well as the various incidents pending *a quo* — MSAPL's recourse to the CA was premature. The more appropriate remedy for MSAPL would have been to move for the RTC to resolve its pending motion instead of precipitately raising this matter in its petition for *certiorari*.[45]

This leaves the July 8, 2009 Order which approved the attachment bond Plaridel submitted. It was directly challenged by MSAPL when the latter filed a motion to determine the sufficiency of the bond because of questions regarding Plaridel's financial capacity. Before the RTC could act on the motion, however, MSAPL filed an urgent motion to recall and set aside the approval of the attachment bond, dated July 21, 2009,[46] on the ground that the attachment bond underwritten by Plaridel exceeded its retention limit under the Insurance Code. The RTC resolved these two motions jointly in its September 4, 2009 Order, holding that Section 215 allows insurance companies to insure a single risk in excess of retention limits provided that the excess amount is ceded to reinsurers, and consequently affirming its approval of the attachment bond. In turn, the September 4, 2009 Order became the anchor of MSAPL's petition for *certiorari*. Although not captioned as "motions tor reconsideration," the twin motions filed by MSAPL directly challenged the approval of the attachment bond, and the September 4, 2009 Order was the second time the RTC passed upon the issue concerning the sufficiency of the bond. Therefore,

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[44] RULES OF COURT, Rule 65, Sec. 1.

[45] *Santos v. Court of Appeals*, G.R. No. 155374, November 20, 2007, 537 SCRA 665, 671.

[46] *Rollo*, pp. 265-268.

the petition for *certiorari* filed by MSAPL on September 18, 2009, insofar as it assailed both the July 8, 2009 and September 4, 2009 Orders, was timely filed.

III

We now resolve the sole substantive issue before us: whether the RTC committed grave abuse of discretion when it approved the attachment bond whose face amount exceeded the retention limit of the surety.

Section 215 of the old Insurance Code,[47] the law in force at the time Plaridel issued the attachment bond, limits the amount of risk that insurance companies can retain to a maximum of 20% of its net worth. However, in computing the retention limit, risks that have been ceded to authorized reinsurers are *ipso jure* deducted.[48] In mathematical terms, the amount of retained risk is computed by deducting ceded/reinsured risk from insurable risk.[49] If the resulting amount is below 20% of the insurer's net worth, then the retention limit is not breached. In this case, both the RTC and CA determined that, based on Plaridel's financial statement that was attached to its certificate of authority issued by the Insurance Commission, its net worth is

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[47] Superseded in 2013 by Republic Act No. 10607, An Act Strengthening the Insurance Industry, Further Amending Presidential Decree No. 612, Otherwise Known as "The Insurance Code", as Amended by Presidential Decree Nos. 1141, 1280, 1455, 1460, 1814, and 1981, and *Batas Pambansa Blg.* 874, and for Other Purposes (amended code). Section 215 of the old code was substantially reproduced in Section 221 of the amended code.

[48] Sec. 215. No insurance company other than life, whether foreign or domestic, shall retain any risk on any one subject of insurance in an amount exceeding twenty *per centum* of its net worth. For purposes of this section, the term "subject of insurance" shall include all properties or risks insured by the same insurer that customarily are considered by non-life company underwriters to be subject to loss or damage from the same occurrence of any hazard insured against.

Reinsurance ceded as authorized under the succeeding title shall be deducted in determining the risk retained. As to surety risk, deduction shall also be made of the amount assumed by any other company authorized to transact surety business and the value of any security mortgage, pledged, or held subject to the surety's control and for the surety's protection.

[49] Retained Risk = Insurable Risk — Reinsured Risk

₱289,332,999.00.[50] Plaridel's retention limit is therefore ₱57,866,599.80, which is below the ₱113,197,309.10 face value of the attachment bond. However, it only retained an insurable risk of ₱17,377,938.19 because the remaining amount of ₱98,819,770.91 was ceded to 16 other insurance companies.[51] Thus, the risk retained by Plaridel is actually ₱40 Million below its maximum retention limit. Therefore, the approval of the attachment bond by the RTC was in order. Contrary to MSAPL's contention that the RTC acted with grave abuse of discretion, we find that the RTC not only correctly applied the law but also acted judiciously when it required Plaridel to submit proof of its reinsurance contracts after MSAPL questioned Plaridel's capacity to underwrite the attachment bond. Apparently, MSAPL failed to appreciate that by dividing the risk through reinsurance, Plaridel's attachment bond actually became more reliable—as it is no longer dependent on the financial stability of one company — and, therefore, more beneficial to MSAPL.

In cancelling Plaridel's insurance bond, the CA also found that because the reinsurance contracts were issued in favor of Plaridel, and not MSAPL, these failed to comply with the requirement of Section 4, Rule 57 of the Rules of Court requiring the bond to be executed to the adverse party.[52] This led the CA to conclude that "the bond has been improperly and insufficiently posted."[53] We reverse the CA and so hold that the reinsurance contracts were correctly issued in favor of Plaridel. A contract of reinsurance is one by which an insurer (the "direct insurer" or "cedant") procures a third person (the "reinsurer") to insure him against loss or liability by reason of such original

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[50] *Rollo*, pp. 69; 82.

[51] *Id*. at 273-292.

[52] RULES OF COURT, Rule 57, Sec. 4. *Condition of applicant's bond.* — The party applying for the order must thereafter give a bond executed to the adverse party in the amount fixed by the court in its order granting the issuance of the writ, conditioned that the latter will pay all the costs which may be adjudged to the adverse party and all damages which he may sustain by reason of the attachment, if the court shall finally adjudge that the applicant was not entitled thereto.

[53] *Rollo*, p. 84.

insurance.[54] It is a separate and distinct arrangement from the original contract of insurance, whose contracted risk is insured in the reinsurance agreement.[55]The reinsurer's contractual relationship is with the direct insurer, not the original insured, and the latter has no interest in and is generally not privy to the contract of reinsurance.[56] Put simply, reinsurance is the "insurance of an insurance."[57]

By its nature, reinsurance contracts are issued in favor of the direct insurer because the subject of such contracts is the direct insurer's risk—in this case, Plaridel's contingent liability to MSAPL— and not the risk assumed under the original policy.[58] The requirement under Section 4, Rule 57 of the Rules of Court that the applicant's bond be executed to the adverse party necessarily pertains only to the attachment bond itself and not to any underlying reinsurance contract. With or without reinsurance, the obligation of the surety to the party against whom the writ of attachment is issued remains the same.

WHEREFORE, the petition is **GRANTED**. The Decision dated November 25, 2009 and Resolution dated April 23, 2010 of the Court of Appeals in CA-G.R. SP No. 110511 are **SET ASIDE**.

SO ORDERED.

Velasco, Jr. (Chairperson), Mendoza,[*] *Perlas-Bernabe,*[*] and *Caguioa,*[**] *JJ.,* concur.

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[54] Presidential Decree No. 612, Sec. 95. Reproduced verbatim in Republic Act No. 10607, Sec. 97.

[55] *Avon Insurance PLC v. Court of Appeals*, G.R. No. 97642, August 29, 1997, 278 SCRA 312, 322.

[56] Presidential Decree No. 612, Sec. 98. Reproduced verbatim in Republic Act No. 10607, Sec. 100.

[57] De Leon & De Leon, Jr., *The Insurance Code of the Philippines*, 2014 ed., p. 315.

[58] Of course, the reinsurance policy is necessarily based upon the original policy, and the terms and conditions of the reinsurance policy are greatly affected by those of the original policy. *Id*. at 322.

[*] Designated as Additional Members per Raffle dated January 18, 2017.

[**] Designated as Fifth Member of the Third Division per Special Order No. 2417 dated January 4, 2017.

THIRD DIVISION

[G.R. No. 193397. January 25, 2017]

ESTRELLA MEJIA-ESPINOZA and NORMA MEJIA DELLOSA, *petitioners, vs.* **NENA A. CARIÑO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ANNULMENT OF JUDGMENTS OR FINAL ORDERS AND RESOLUTIONS; THREE REQUIREMENTS THAT MUST BE SATISFIED BEFORE A PETITION FOR ANNULMENT OF JUDGMENT OR FINAL ORDER CAN PROSPER, CITED AND EXPLAINED.— A petition for annulment of judgment or final order under Rule 47 is an extraordinary remedy that may be availed of only under certain exceptional circumstances. Under the Rules, there are three requirements that must be satisfied before a Rule 47 petition can prosper. *First*, the remedy is available only when the petitioner can no longer resort to the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies through no fault of the petitioner. This means that a Rule 47 petition is a remedy of last resort—it is not an alternative to the ordinary remedies under Rules 37, 38, 40, 41, 42, 43, and 45. *Second*, an action for annulment of judgment may be based only on two grounds: extrinsic fraud and lack of jurisdiction. *Third*, the action must be filed within the temporal window allowed by the Rules. If based on extrinsic fraud, it must be filed within four years from the discovery of the extrinsic fraud; if based on lack of jurisdiction, must be brought before it is barred by laches or estoppel. There is also a formal requisite that the petition be verified, and must allege with particularity the facts and the law relied upon for annulment, as well as those supporting the petitioner's good and substantial cause of action or defense, as the case may be.

2. ID.; ID.; ID.; A PETITION FOR ANNULMENT OF JUDGMENT OR FINAL ORDER DOES NOT APPLY TO AN ACTION TO ANNUL THE LEVY AND SALE AT PUBLIC AUCTION NEITHER TO AN ACTION TO

ANNUL A WRIT OF EXECUTION BECAUSE A WRIT OF EXECUTION IS NOT A FINAL ORDER OR RESOLUTION; CASE AT BAR.— A final order or resolution is one which is issued by a court which disposes of the subject matter in its entirety or terminates a particular proceeding or action, leaving nothing else to be done but to enforce by execution what has been determined by the court. Rule 47 does not apply to an action to annul the levy and sale at public auction. Neither does it apply to an action to annul a writ of execution because a writ of execution is not a final order or resolution, but is issued to carry out the mandate of the court in the enforcement of a final order or of a judgment. It is a judicial process to enforce a final order or judgment against the losing party. The proper remedy for Nena was to file a motion to nullify the writ of execution and notices of levy and sale before the MTC, instead of instituting a new complaint before the RTC. This is because the execution of a decision is merely incidental to the jurisdiction already acquired by a trial court.

3. ID.; ID.; JUDGMENTS; ONCE A JUDGMENT BECOMES FINAL, THE PREVAILING PARTY IS ENTITLED AS A MATTER OF RIGHT TO A WRIT OF EXECUTION AND ITS ISSUANCE IS THE TRIAL COURT'S MINISTERIAL DUTY.— "[W]hen a judgment has been satisfied, it passes beyond review, satisfaction being the last act and the end of the proceedings, and payment or satisfaction of the obligation thereby established produces permanent and irrevocable discharge; hence, a judgment debtor who acquiesces to and voluntarily complies with the judgment is estopped from taking an appeal therefrom." x x x We have repeatedly held that once a judgment becomes final, the prevailing party is entitled as a matter of right to a writ of execution and its issuance is the trial court's ministerial duty. When a prevailing party files a motion for execution of a final and executory judgment, it is not mandatory for such party to serve a copy of the motion to the adverse party and to set it for hearing. The absence of such advance notice to the judgment debtor does not constitute an infringement of due process. Ergo, it follows that the opportunity to move for reconsideration of an order granting execution is likewise not indispensable to due process. x x x Public policy dictates that once a judgment becomes final, executory, and unappealable, the prevailing party should

not be denied the fruits of his victory by some subterfuge devised by the losing party. Unjustified delay in the enforcement of a judgment sets at naught the role of courts in disposing justiciable controversies with finality.

4. ID.; EVIDENCE; FACTUAL FINDINGS OF THE TRIAL COURT; THE COURT MUST BASE THEIR FACTUAL FINDINGS ON SUCH RELEVANT EVIDENCE FORMALLY OFFERED DURING TRIAL; EXCEPTIONS, CITED.— The general rule is that courts must base their factual findings on such relevant evidence formally offered during trial. Recognized exceptions to this are matters which courts can take judicial notice of, judicial admissions, and presumptions created by law or by the Rules.

APPEARANCES OF COUNSEL

Geraldine N. Francisco for petitioners.
Cesar Carino for respondent.

D E C I S I O N

JARDELEZA, *J.*:

Rule 47 of the Rules of Court allows an aggrieved party to file an action for annulment of judgment or final orders under extraordinary circumstances. The question before us in this petition for review on *certiorari*, which seeks to set aside the Decision[1] dated November 26, 2009 and Resolution[2] dated August 3, 2010 of the Court of Appeals in CA-G.R. CV No. 89905, is whether the same remedy may be used to annul court processes pursuant to a final and executory judgment whose validity is not being questioned. We hold that it cannot.

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[1] Court of Appeals Fourth Division. Penned by Associate Justice Vicente S.E. Veloso, with Associate Justices Andres B. Reyes, Jr. and Marlene Gonzales-Sison, concurring, *rollo*, pp. 35-51.

[2] *Id.* at 54.

I

Petitioner Estrella Mejia-Espinoza (Espinoza) was the plaintiff in an action for ejectment against respondent Nena A. Cariño (Nena) before the Municipal Trial Court of Mangaldan, Pangasinan (MTC). The case was docketed as Civil Case No. 1420. The case was consolidated with another ejectment case, docketed as Civil Case No. 1419, involving Espinoza and one Alberto Cariño (Alberto) covering a different property.[3] On August 25, 1998, the MTC rendered a joint decision in favor of Espinoza. It ordered Nena and Alberto to vacate the respective properties and to pay rents from time of default, litigation expenses, and attorney's fees.[4] Nena and Alberto separately appealed the joint decision to the Regional Trial Cout of Dagupan City, Branch 43 (RTC Branch 43), which reversed the decision only with respect to Civil Case No. 1420 and dismissed the case against Nena for lack of cause of action.[5] On Espinoza's petition for review, the Court of Appeals Special Seventeenth Division[6] (CA 17th Division) reversed the decision of the RTC Branch 43 and affirmed the MTC decision.[7] Nena sought to elevate the case to us on *certiorari*, but we denied it as a result of Nena's failure to file her petition for review within the extended period. An entry of judgment was issued on December 3, 2003.[8]

Espinoza filed a motion for issuance of a writ of execution before the MTC, which Nena opposed.[9] The MTC granted the motion on October 14, 2004[10] and subsequently issued a writ

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[3] *Id.* at 36-37; 60.

[4] *Id.*

[5] *Rollo*, pp. 60-61.

[6] Composed of Associate Justice Bienvenido L. Reyes as Acting Chairperson, Associate Justice Perlita J. Tria-Tirona, and Associate Justice Edgardo F. Sundiam, both as Acting Members.

[7] Docketed as CA-G.R. SP No. 63525. *Id.* at 58-69.

[8] *Id.* at 37.

[9] *Id.* at 72-75.

[10] *Id.* at 38.

of execution on March 10, 2005.[11] Sheriff Vinez A. Hortaleza (Sheriff Hortaleza) served the writ upon Nena on March 16, 2005.[12] When Sheriff Hortaleza proceeded to the property subject of the ejectment suit, he found out that Nena had voluntarily vacated the place and turned over the padlock to one Gertrudes Taberna, Nena's caretaker. Thus, Sheriff Hortaleza was able to peacefully turn over the property to co-petitioner Norma Mejia Dellosa (Dellosa), Espinoza's attorney-in-fact.[13] Sheriff Hortaleza then levied a separate commercial lot owned by Nena to cover the monetary awards for rent, litigation expenses, and attorney's fees, and correspondingly issued a Notice of Sale on Execution of Real Property[14] scheduled on September 26, 2005.

On September 19, 2005, Nena filed a complaint captioned as "Annulment of Court's Processes with prayer for the issuance of a Temporary Restraining Order, Preliminary Injunction and/or Prohibition, and Damages" before the RTC of Dagupan City, which was raffled to Branch 41 (RTC Branch 41).[15] Nena argued that she was deprived of the opportunity to ask for reconsideration of the order granting Espinoza's motion for issuance of writ of execution because she was not furnished a copy of the order. She claimed that Espinoza, through Dellosa, illegally caused the demolition, without a special court order, of a one-story building which Nena allegedly constructed on the land subject of the ejectment suit. Furthermore, she questioned the levy on her commercial lot for being premature, as well as the computation of the judgment debt.[16]

In her Answer,[17] Espinoza emphasized that the writ of execution was properly served and received by Nena on March

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[11] *Id.* at 70.

[12] *Id.* at 71.

[13] *Id.*

[14] RTC record, p. 9.

[15] Docketed as Civil Case No. 2005-0317-D. *Id.* at 1-8.

[16] *Id.* at 3-5.

[17] *Id.* at 55-65.

16, 2005, and that Nena had already removed all her personal belongings from the premises weeks before the service of the writ. With respect to the demolition of the one-story building, Espinoza claimed that it was the previous owners of the land, the Penullars, who built the structure. On the levy of the commercial lot, Espinoza asserted that it was proper due to Nena's continued defiance of a final and executory judgment.[18]

In its Decision,[19] the RTC Branch 41 dismissed the complaint for lack of cause of action. It opined that the issue on the alleged irregularity of the issuance of the writ of execution was rendered moot by its implementation. It noted that Nena had already voluntarily relinquished her possession of the property—including the building—before the demolition. The RTC Branch 41 also found that the levy on Nena's commercial lot was proper because Sheriff Hortaleza found no personal properties belonging to Nena. With regard to the computation of the amount, the RTC ruled that the sheriff was guided by the decision in the ejectment suit. Finally, the RTC Branch 41 held that Nena availed of the wrong remedy; instead of a petition for annulment under Rule 47, Nena should have filed a petition for relief from judgment under Rule 38.

On appeal, the Court of Appeals Fourth Division (CA 4th Division) reversed the RTC.[20] It held that Nena correctly filed the petition for annulment with the RTC of Dagupan City in accordance with Section 10 of Rule 47. It brushed aside the RTC Branch 41's ruling that Nena availed of the wrong remedy because according to the CA 4th Division, regardless of the caption of the pleading, Nena had a cause of action accruing from the violations of her rights. The CA 4th Division opined that because Nena did not receive a copy of the order granting Espinoza's motion for issuance of writ of execution, it "did not become final and executory insofar as [Nena] is concerned."[21]

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[18] *Id.* at 58-60.

[19] CA *rollo*, pp. 8-13.

[20] *Supra* note 1.

[21] *Rollo*, p. 47.

The CA 4th Division concluded that the writ of execution was "premature and without legal basis"[22] and, therefore, void.[23] Next, the CA 4th Division ruled that the levy on Nena's commercial property was void because the dispositive portion of the CA 17th Division Decision in the ejectment suit did not mention any monetary award. Lastly, the CA 4th Division held that Nena was entitled to damages because the one-story building was demolished without the benefit of a writ of demolition as required by Section 10(d)[24] of Rule 39.[25] The CA 4th Division then remanded the case to the RTC for the determination of the amount of damages that Nena is entitled to.[26]

After the CA 4th Division denied Espinoza's motion for reconsideration, Espinoza filed this petition for review on *certiorari*.[27] She asserts that the issuance of a writ of execution based on a final and executory decision is a ministerial duty of the MTC, and that Nena was nonetheless given her day in court when she filed her opposition to the motion for execution. She also faults the CA 4th Division for failing to properly appreciate the dispositive portion of the CA 17th Division Decision in the ejectment suit. In that case, the CA 17th Division affirmed the MTC Decision, which in turn ordered Nena to vacate the premises and to pay rentals, litigation costs, and attorney's fees.[28] Espinoza likewise disputes the necessity for a writ of demolition because

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[22] *Id.*

[23] *Rollo*, pp. 46-47.

[24] Sec. 10(d). *Removal of improvements on property subject of execution.* — When the property subject of the execution contains improvements constructed or planted by the judgment obligor or his agent, the officer shall not destroy, demolish or remove said improvements except upon special order of the court, issued upon motion of the judgment obligee after due hearing and after the former has failed to remove the same within a reasonable time fixed by the court.

[25] *Rollo*, pp. 48-50.

[26] *Id.* at 51.

[27] *Id.* at 15-34.

[28] *Id.* at 23-26.

Section 10(d) of Rule 39 only applies to "improvements constructed or planted by the judgment obligor or his agent." Espinoza maintains that since it was the Penullars who constructed the building, the provision is inapplicable. In any case, Espinoza contends that Nena's claim that she built the building was unsubstantiated.[29] Finally, Espinoza argues that Nena is estopped from questioning the validity of the writ of execution because she already voluntarily surrendered possession of the property.[30] In her Comment,[31] Nena reiterates the reasoning of the CA 4th Division that the court processes were void.

II

A petition for annulment of judgment or final order under Rule 47 is an extraordinary remedy that may be availed of only under certain exceptional circumstances. Under the Rules, there are three requirements that must be satisfied before a Rule 47 petition can prosper. *First*, the remedy is available only when the petitioner can no longer resort to the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies through no fault of the petitioner.[32] This means that a Rule 47 petition is a remedy of last resort—it is not an alternative to the ordinary remedies under Rules 37, 38, 40, 41, 42, 43, and 45. *Second*, an action for annulment of judgment may be based only on two grounds: extrinsic fraud and lack of jurisdiction.[33] *Third*, the action must be filed within the temporal window allowed by the Rules. If based on extrinsic fraud, it must be filed within four years from the discovery of the extrinsic fraud; if based on lack of jurisdiction, must be brought before it is barred by laches or estoppel.[34] There is also a formal requisite

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[29] *Id.* at 27-29.

[30] *Id.* at 29-30.

[31] *Id.* at 103-109.

[32] RULES OF COURT, Rule 47, Sec. 1.

[33] RULES OF COURT, Rule 47, Sec. 2.

[34] RULES OF COURT, Rule 47, Sec. 3.

that the petition be verified, and must allege with particularity the facts and the law relied upon for annulment, as well as those supporting the petitioner's good and substantial cause of action or defense, as the case may be.[35]

The averments of Nena's complaint *a quo*, however, do not make out an action for annulment of judgment or final order. It was therefore inaccurate for both the CA 4th Division and the RTC Branch 41 to characterize it as a Rule 47 petition. While the non—compliance with the requisites laid down in Rule 47 is glaring—there is neither any averment in the complaint showing *prima facie* compliance with the aforementioned requisites nor even a reference to Rule 47—the first thing the lower courts should have considered is the subject of the complaint. Nena is challenging the MTC's order granting the issuance of the writ of execution, the writ of execution itself, as well as the sheriffs notice of levy and notice of sale on her real property. Clearly, these are not the judgments or final orders contemplated by Rule 47. A final order or resolution is one which is issued by a court which disposes of the subject matter in its entirety or terminates a particular proceeding or action, leaving nothing else to be done but to enforce by execution what has been determined by the court.[36] Rule 47 does not apply to an action to annul the levy and sale at public auction. Neither does it apply to an action to annul a writ of execution because a writ of execution is not a final order or resolution, but is issued to carry out the mandate of the court in the enforcement of a final order or of a judgment. It is a judicial process to enforce a final order or judgment against the losing party.[37]

The proper remedy for Nena was to file a motion to nullify the writ of execution and notices of levy and sale before the MTC, instead of instituting a new complaint before the RTC.[38]

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[35] RULES OF COURT, Rule 47, Sec. 4.

[36] *Bañares II v. Balising*, G.R. No. 132624, March 13, 2000, 328 SCRA 36, 44.

[37] *Guiang v. Co*, G.R. No. 146996, July 30, 2004, 435 SCRA 556, 562.

[38] *Id.*

This is because the execution of a decision is merely incidental to the jurisdiction already acquired by a trial court. As we explained in *Deltaventures Resources, Inc. v. Cabato*:[39]

> Jurisdiction once acquired is not lost upon the instance of the parties but continues until the case is terminated. **Whatever irregularities attended the issuance and execution of the alias writ of execution should be referred to the same administrative tribunal which rendered the decision.** This is because any court which issued a writ of execution has the inherent power, for the advancement of justice, to correct errors of its ministerial officers and to control its own processes.[40] (Emphasis supplied; citations omitted.)

Ostensibly, Nena's complaint before the RTC may be viewed as one for prohibition and damages insofar as it also prayed for the issuance of a permanent injunction and award of damages. While a petition for prohibition may be an available remedy to assail the actions of a sheriff who performs purely ministerial functions, in excess or without jurisdiction,[41] the filing of the aforementioned motion with the MTC is still a precondition to such action. This is because the motion is the "plain, speedy, and adequate remedy in the ordinary course of law."[42]

Therefore, while the RTC Branch 41 is partially correct in dismissing the complaint for being the wrong remedy, it incorrectly identified a petition for relief under Rule 38 as the proper recourse. The correct remedy is a motion to nullify court processes filed with the MTC.

III

Even assuming that Nena availed of the appropriate remedy, her complaint is still without merit.

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[39] G.R. No. 118216, March 9, 2000, 327 SCRA 521.

[40] *Id.* at 530.

[41] RULES OF COURT, Rule 65, Sec. 2.

[42] *Id.*

A

Nena sought to annul the writ of execution because she did not receive a copy of the MTC order granting the issuance of the writ of execution. Yet, she received a copy of the writ without any protest and voluntarily vacated the premises and turned over possession to Espinoza's representative. These actions evince Nena's recognition of, and acquiescence to, the writ of execution; she is therefore estopped from questioning its validity. After all, she is fully aware of the finality of the decision in the ejectment case and that execution of the decision is its logical consequence. "[W]hen a judgment has been satisfied, it passes beyond review, satisfaction being the last act and the end of the proceedings, and payment or satisfaction of the obligation thereby established produces permanent and irrevocable discharge; hence, a judgment debtor who acquiesces to and voluntarily complies with the judgment is estopped from taking an appeal therefrom."[43]Furthermore, as a result of Nena's voluntary compliance with the writ, any issue arising from the issuance or enforcement of such writ is rendered moot. Injunction is no longer available to question the transfer of possession to Espinoza, as the act sought to be enjoined is already *fait accompli*.[44]

Nena's contention that her failure to receive a copy of the order deprived her of the opportunity to file a motion for reconsideration is without legal basis, because she is not entitled to file a motion for reconsideration in the first place. We have repeatedly held that once a judgment becomes final, the prevailing party is entitled as a matter of right to a writ of execution and its issuance is the trial court's ministerial duty.[45] When a

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[43] *Jacinto v. Gumaru, Jr.*, G.R. No. 191906, June 2, 2014, 724 SCRA 343, citing *C.F. Sharp Crew Management, Inc. v. Espanol, Jr.*, G.R. No. 155903, September 14, 2007, 533 SCRA 424, 431.

[44] *Aznar Brothers Realty Company v. Court of Appeals*, G.R. No. 128102, March 7, 2000, 327 SCRA 359, 372.

[45] *Vargas v. Cajucom*, G.R. No. 171095, June 22, 2015, 759 SCRA 378; *Palileo v. Planters Development Bank*, G.R. No. 193650, October 8, 2014,

prevailing party files a motion for execution of a final and executory judgment, it is not mandatory for such party to serve a copy of the motion to the adverse party and to set it for hearing. The absence of such advance notice to the judgment debtor does not constitute an infringement of due process.[46] Ergo, it follows that the opportunity to move for reconsideration of an order granting execution is likewise not indispensable to due process. This renders of little significance Nena's lack of opportunity to file a motion for reconsideration. In fact, such motion for reconsideration may be considered as a mere dilatory pleading, as it would serve no other purpose than to frustrate the execution of a final judgment. In any case, the MTC actually gave Nena more than enough opportunity to contest Espinoza's application for execution when it allowed her to file her opposition to the motion for execution and heard the parties' arguments on the matter.

We are convinced that Nena's complaint for annulment of court processes, filed six months after she voluntarily complied with the writ of execution, was a mere afterthought designed to evade the execution of a decision that has long attained finality. Public policy dictates that once a judgment becomes final, executory, and unappealable, the prevailing party should not be denied the fruits of his victory by some subterfuge devised by the losing party. Unjustified delay in the enforcement of a judgment sets at naught the role of courts in disposing justiciable controversies with finality.[47]

B

The CA 4th Division ordered the remand of the case to determine the amount of damages Nena is entitled to as a result of the demolition of the one-story building without a special

738 SCRA 1; and *Mindanao Terminal and Brokerage Service, Inc. v. Court of Appeals*, G.R. No. 163286, August 22, 2012, 678 SCRA 622.

[46] *Anama v. Court of Appeals*, G.R. No. 187021, January 25, 2012, 664 SCRA 293, 303.

[47] *Philippine Trust Company v. Roxas*, G.R. No. 171897, October 14, 2015, 772 SCRA 323, 332.

writ of demolition. It relied on Section 10(d) of Rule 39 which prohibits a sheriff from destroying, demolishing or removing any improvements constructed or planted by the judgment obligor without a special order of the court. We agree with the view of the CA 4th Division that the special writ for the purpose of demolition is required even if there is already a writ of execution, and that a demolition performed without a special writ may serve as basis for an independent civil action for damages.[48] However, the CA 4th Division overlooked one crucial fact in this case: Nena admitted that she has previously filed a complaint for damages in relation to the alleged illegal demolition. In her Memorandum filed before the RTC Branch 41, she categorically stated that "the illegal demolition of her building was already the subject of an earlier complaint for damages that she asked her counsel to prepare."[49] Thus, her complaint, insofar as it sought the award of damages based on the demolition, is dismissible on the ground of *litis pendentia*.

Moreover, as correctly pointed out by Espinoza, the CA 4th Division merely assumed that Nena was the builder of the one-story building. Apart from the bare allegations in her pleadings and her own testimony, the records are bereft of any evidentiary basis to support her claim. There are two elementary rules in litigation that the CA 4th Division failed to apply. *First*, the party who alleges must prove his case.[50] Since Nena is seeking reimbursement for the building she allegedly constructed, it was incumbent upon her to prove by preponderance of evidence that the building was constructed at her own expense, more so since Espinoza disputes Nena's ownership of the improvement. However, Nena failed to present any tax declaration, receipt for construction materials, or testimonies of the workers who physically built the structure which would tend to substantiate

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[48] *Asilo, Jr. v. People*, G.R. Nos. 159017-18, March 9, 2011, 645 SCRA 41, 61.

[49] RTC record, p. 199.

[50] *Martin v. Court of Appeals*, G.R. No. 82248, January 30, 1992, 205 SCRA 591.

her claim that the building was constructed at her expense. *Second*, questions of fact must be resolved according to the evidence presented.[51] The general rule is that courts must base their factual findings on such relevant evidence formally offered during trial. Recognized exceptions to this are matters which courts can take judicial notice of,[52] judicial admissions,[53] and presumptions created by law or by the Rules.[54] Here, we find nothing under Philippine law that creates a presumption that improvements on a land were made by the lessee (in this case, Nena). On the contrary, Article 446 of the Civil Code provides that "all works x x x are presumed made by the owner and at his expense, unless the contrary is proved." Therefore, in the absence of such contrary evidence, the CA 4th Division cannot expediently assume that the building was constructed by Nena.

C

Finally, one of the grounds relied upon by the CA 4th Division in annulling the writ of execution was because it purportedly failed to conform to the judgment which is to be executed. It pointed to the absence of any mention of monetary award in the dispositive portion of the CA 17th Division's Decision in the ejectment suit that became final and executory. We cannot sustain this unreasonably narrow reading of the *fallo*.

To recall, the MTC rendered a joint decision against Nena and Alberto in the consolidated ejectment cases. The MTC ordered both to vacate the respective premises and to pay the corresponding rentals, litigation costs, and attorney's fees. The *fallo* reads:

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[51] RULES OF COURT, Rule 132, Sec. 34. *Offer of evidence*. — The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified. See also *Poe-Llamanzares v. Commission on Elections*, G.R. Nos. 221697-700, March 8, 2016, Jardeleza, *J.*, concurring.

[52] RULES OF COURT, Rule 129, Secs. 1-3.

[53] RULES OF COURT, Rule 129, Sec. 4

[54] *Martin v. Court of Appeals, supra*.

WHEREFORE, judgment is hereby rendered in:

1. Civil Case No. 1419 ordering defendant ALBERTO CARIÑO to vacate the premises in question; to pay plaintiff ESTRELLA ESPINOZA Four Hundred Fifty (₱450.00) Pesos a month, as reasonable rental of said premises from the time of default until defendant vacates the same; One Thousand (₱1,000.00) Pesos as litigation expenses; Five Thousand (₱5,000.00) Pesos as attorney's fees in addition to costs of suit; and

2. Civil Case No. 1420 ordering defendant NENA CARIÑO to vacate the premises in question; to pay plaintiff ESTRELLA ESPINOZA Four Hundred Fifty (₱450.00) Pesos a month, as reasonable rental of said premises from the time of default until defendant vacates the same; One Thousand (₱1,000.00) Pesos as litigation expenses; Five Thousand (₱5,000.00) Pesos as attorney's fees in addition to costs of suit.[55]

Nena and Alberto filed separate appeals with the RTC, which also consolidated the cases. In its Joint Decision, the RTC Branch 43 reversed the MTC ruling in Civil Case No. 1420 and decreed that "the case against Nena Cari[ñ]o is hereby dismissed for lack of cause of action." However, it upheld the ruling against Alberto, and ordered that he be ejected from the premises and increased the amount payable as rentals, litigation expenses, and attorney's fees.[56]

Espinoza then elevated the case to the CA 17th Division only with respect to the dismissal of the case against Nena Alberto did not appeal the decision against him. Eventually, the CA 17th Division reversed the RTC Branch 43 and affirmed the MTC Decision. The *fallo* of the CA 17th Division Decision states:

WHEREFORE, the petition for review is hereby GRANTED and the Joint Decision dated January 2, 2001 of the court *a quo* is hereby REVERSED and SET ASIDE, only insofar as it decreed the dismissal of the ejectment case against respondent Nena Cari[ñ]o. Accordingly, the Joint Decision dated 25 August 1998 of the Municipal Trial Court

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[55] RTC record, pp. 72-73.

[56] *Id.* at 80.

of Mangaldan, Pangasinan is hereby AFFIRMED insofar as it decreed the ejectment of Nena Cari[ñ]o.[57]

After attaining finality, the CA 17th Division Decision became the basis of the writ of execution issued by the MTC. In turn, the writ was the basis of Sheriff Hortaleza's notice of levy and notice of sale. In her complaint *a quo*, Nena never questioned her liability for rentals, attorney's fees, and litigation expenses in accordance with the MTC Decision. She only questioned the allegedly erroneous computation of the judgment debt. The CA 4th Division, however, held that "[n]owhere in the dispositive portion of the Court of Appeals' Decision was it mentioned that an award is granted nor the amount specified."[58] This is blatant error on the part of the CA 4th Division. The CA 17th Division Decision, in no uncertain terms, **affirmed** the decision of the MTC. Hence, the awards for rentals, litigation expenses, and attorney's fees stand. When an appellate court affirms a trial court's decision without any modification, the execution must necessarily conform to the terms and conditions of the trial court's *fallo*.[59]

It appears that the CA 4th Division interpreted the statement that "[the MTC decision] is hereby AFFIRMED **insofar as it decreed the ejectment of Nena Cari[ñ]o**" to mean that only the order to vacate is affirmed. This, however, is clearly not the intent of the phrase. It must be noted that both the MTC and RTC Branch 43 Decisions were joint decisions. Thus, to clarify that its decision will not have any effect on the judgment against Alberto—who did not appeal—the CA 17th Division deemed it appropriate to tailor the dispositive portion as specifically applicable to Nena only. If the CA 17th Division intended to do away with the monetary awards, then it would have explicitly stated its **modifications** in the dispositive portion.

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[57] *Rollo*, pp. 68-69.

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

[59] See *Florentino v. Rivera*, G.R. No. 167968, January 23, 2006, 479 SCRA 522.

Furthermore, there is nothing in the body of the CA 17th Division's Decision that would tend to support the deletion of the awards for rentals, litigation expenses, and attorney's fees.

WHEREFORE, the petition is **GRANTED**. The Decision dated November 26, 2009 and Resolution dated August 3, 2010 of the Court of Appeals in CA-G.R. CV No. 89905 are **REVERSED** and **SET ASIDE**. The Decision dated April 10, 2007 of Branch 41 of the Regional Trial Court of Dagupan City in Civil Case No. 2005-0317-D is **AFFIRMED**.

SO ORDERED.

Velaso, Jr. (Chairperson), Bersamin, Leonen,[*] and *Caguioa,*[**] *JJ.,* concur.

SECOND DIVISION

[G.R. No. 194190. January 25, 2017]

REPUBLIC OF THE PHILIPPINES, represented by the DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS (DPWH), *petitioner, vs.* **SPOUSES FRANCISCO R. LLAMAS and CARMELITA C. LLAMAS,** *respondents.*

SYLLABUS

1. CIVIL LAW; PROPERTY; PRESIDENTIAL DECREE NO. 957, AS AMENDED BY PRESIDENTIAL DECREE NO. 1216 (SUBDIVISION AND CONDOMINIUM BUYER'S PROTECTIVE DECREE); SECTION 31'S COMPULSION

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[*] Designated as Additonal Member per Raffle dated January 18, 2017.

[**] Designated as Fifth Member of the Third Division per Special Order No. 2417 dated January 4, 2017.

TO DONATE (AND CONCOMITANT COMPULSION TO ACCEPT) CANNOT BE SUSTAINED AS VALID, NOT ONLY BECAUSE IT RUNS AFOUL OF BASIC LEGAL CONCEPTS BUT IT ALSO FAILS TO WITHSTAND THE MORE ELEMENTARY TEST OF LOGIC AND COMMON SENSE; EXPLAINED.— The first paragraph of Section 31 of Presidential Decree No. 957 spells out the minimum area requirement for roads and other open spaces in subdivision projects. Its second paragraph spells out taxonomic or classification parameters for areas reserved for parks, playgrounds, and for recreational use. It also requires the planting of trees. The last paragraph of Section 31 *requires*—note the use of the word "shall"—subdivision developers to donate to the city or municipality with territorial jurisdiction over the subdivision project all such roads, alleys, sidewalks, and open spaces. It also imposes upon cities and municipalities the concomitant *obligation* or compulsion to accept such donations: x x x The last paragraph of Section 31 is oxymoronic. One cannot speak of a donation and compulsion in the same breath. A donation is, by definition, "an act of liberality." x x x To be considered a donation, an act of conveyance must necessarily proceed freely from the donor's own, unrestrained volition. A donation cannot be forced: it cannot arise from compulsion, be borne by a requirement, or otherwise be impelled by a mandate imposed upon the donor by forces that are external to him or her. Article 726 of the Civil Code reflects this commonsensical wisdom when it specifically states that conveyances made in view of a "demandable debt" cannot be considered true or valid donations. In jurisprudence, *animus donandi* (that is, the intent to do an act of liberality) is an indispensable element of a valid donation, along with the reduction of the donor's patrimony and the corresponding increase in the donee's patrimony. Section 31's compulsion to donate (and concomitant compulsion to accept) cannot be sustained as valid. Not only does it run afoul of basic legal concepts; it also fails to withstand the more elementary test of logic and common sense. As opposed to this, the position that not only is more reasonable and logical, but also maintains harmony between our laws, is that which maintains the subdivision owner's or developer's freedom to donate or not to donate. This is the position of the 1998 *White Plains* Decision. Moreover, as this 1998 Decision has emphasized, to force this donation—and to preclude any compensation—is to suffer an illegal taking.

2. ID.; ID.; ID.; THERE IS NO SUCH THING AS AUTOMATIC CESSION TO GOVERNMENT OF SUBDIVISION ROAD LOTS, AN ACTUAL TRANSFER MUST FIRST BE EFFECTED BY THE SUBDIVISION OWNER THROUGH DONATION OR BY EXPROPRIATION UPON PAYMENT OF JUST COMPENSATION; CASE AT BAR.— The Court of Appeals correctly stated that a "positive act" must first be made by the "owner-developer before the city or municipality can acquire dominion over the subdivision roads." As there is no such thing as an automatic cession to government of subdivision road lots, an actual transfer must first be effected by the subdivision owner: "subdivision streets belonged to the owner until donated to the government or until expropriated upon payment of just compensation." Stated otherwise, "the local government should first acquire them by donation, purchase, or expropriation, if they are to be utilized as a public road." x x x Respondents have not made any positive act enabling the City Government of Parañaque to acquire dominion over the disputed road lots. Therefore, they retain their private character (albeit all parties acknowledge them to be subject to an easement of right of way). Accordingly, just compensation must be paid to respondents as the government takes the road lots in the course of a road widening project.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.

D E C I S I O N

LEONEN, *J.*:

This resolves a Petition for Review on Certiorari[1] praying that the assailed October 14, 2010 Decision[2] of the Fifth Division of the Court of Appeals in CA-G.R. SP No. 104178 be reversed

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[1] *Rollo,* pp. 35-132. The Petition was filed under Rule 45 of the Rules of Court.

[2] *Id.* at 134-146. The Decision was penned by Associate Justice Amy C. Lazaro-Javier and concurred in by Associate Justices Rebecca De Guia-Salvador and Sesinando E. Villon of the Fifth Division, Court of Appeals, Manila.

and set aside, and that in lieu of it, the Orders dated October 8, 2007[3] and May 19, 2008[4] of Branch 257 of the Regional Trial Court of Parañaque City be reinstated.

The Regional Trial Court's October 8, 2007 Order required the Department of Public Works and Highways to pay respondents Francisco and Carmelita Llamas (the Llamas Spouses) ₱12,000.00 per square meter as compensation for the expropriated 41-square-meter portion of a lot that they owned.[5] The same Order denied the Llamas Spouses' prayer that they be similarly compensated for two (2) expropriated road lots.[6] The Regional Trial Court's May 19, 2008 Order denied the Llamas Spouses' Motion for Reconsideration.[7]

In its assailed Decision, the Court of Appeals set aside the Regional Trial Court's October 8, 2007 and May 19, 2008 Orders and required the Department of Public Works and Highways to similarly compensate the Llamas Spouses for the two (2) road lots at ₱12,000.00 per square meter.[8]

On April 23, 1990, the Department of Public Works and Highways initiated an action for expropriation for the widening of Dr. A. Santos Ave. (also known as Sucat Road) in what was then the Municipality of Parañaque, Metro Manila.[9] This action was brought against 26 defendants, none of whom are respondents in this case.[10]

On November 2, 1993, the Commissioners appointed by the Regional Trial Court in the expropriation case submitted a

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[3] *Id.* at 478-485. The Order was signed by Judge Rolando G. How.

[4] *Id.* at 531-532. The Order was signed by Judge Rolando G. How.

[5] *Id.* at 485.

[6] *Id.*

[7] *Id.* at 532.

[8] *Id.* at 145-146.

[9] *Id.* at 38-39. The expropriation case was docketed as Civil Case No. 90-1069.

[10] *Id.*

resolution recommending that just compensation for the expropriated areas be set to ₱12,000.00 per square meter.[11]

On January 27, 1994, the Llamas Spouses filed before the Regional Trial Court a "Most Urgent and Respectful Motion for Leave to be Allowed Intervention as Defendants-Intervenors-Oppositors."[12] They claimed that they were excluded from the expropriation case despite having properties affected by the road widening project. After a hearing on this Motion, the Regional Trial Court allowed the Llamas Spouses to file their Answer-in-Intervention.[13]

The Llamas Spouses filed their Answer-in-Intervention on March 21, 1994.[14] In it, they claimed that a total area of 298 square meters was taken from them during the road widening project:

(1) 102 square meters from a parcel of land identified as Lot 4, Block 3, covered by Transfer Certificate of Title (TCT) No. 217167;

(2) 84 square meters from a parcel of land identified as Lot 1, covered by TCT No. 179165; and

(3 112 square meters from a parcel of land identified as Lot 2, also covered by TCT No. 179165.[15]

On August 2, 1994, the Llamas Spouses filed a "Most Urgent Motion for the Issuance of [a]n Order Directing the Immediate Payment of 40% of Zonal Value of Expropriated Land and Improvements."[16]

On December 9, 1994, the Department of Public Works and Highways filed its Comment/Opposition to the Llamas Spouses'

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[11] *Id.* at 40.

[12] *Id.*

[13] *Id.* at 41.

[14] *Id.* at 42.

[15] *Id.* at 42.

[16] *Id.* at 43.

August 2, 1994 Motion.[17] It noted that, from its verification with the project engineer, only 41 square meters in the parcel of land covered by TCT No. 179165 was affected by the road widening project. Thus, it emphasized that the Llamas Spouses were entitled to just compensation only to the extent of those 41 square meters. It added that the Llamas Spouses failed to adduce evidence of any improvements on the affected area. It interposed no objection to the ₱12,000.00 per square meter as valuation of just compensation.[18]

On May 29, 1996, the Regional Trial Court issued the Order[19] directing the payment of the value of the lots of the defendants in the expropriation case. The lots subject of the Llamas Spouses' intervention were not included in this Order.[20]

After years of not obtaining a favorable ruling, the Llamas Spouses filed a "Motion for Issuance of an Order to Pay and/or Writ of Execution dated May 14, 2002."[21] In this Motion, the Llamas Spouses faulted the Department of Public Works and Highways for what was supposedly its deliberate failure to comply with the Regional Trial Court's previous Orders and even with its own undertaking to facilitate the payment of just compensation to the Llamas Spouses.[22] In response, the Department of Public Works and Highways filed a Comment dated October 25, 2002.[23]

On November 28, 2002, the Department of Public Works and Highways and the Llamas Spouses filed a Joint Manifestation and Motion seeking to suspend the Llamas Spouses' pending Motions.[24] This Joint Motion stated that the Department of Public

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[17] *Id.* at 44.

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

[19] *Id.* at 573-575.

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

[21] *Id.* at 55-56.

[22] *Id.*

[23] *Id.* at 56.

[24] *Id.* at 78.

Works and Highways and the Llamas Spouses had an understanding that the resolution of the latter's claims required the submission of: (1) certified true copies of the TCTs covering the lots; and (2) certified true copies of the tax declarations, tax clearances, and tax receipts over the lots.[25] It added that the Llamas Spouses had undertaken to submit these documents as soon as possible.[26]

In an August 8, 2005 hearing, the Department of Public Works and Highways manifested that the non-payment of the Llamas Spouses' claims was due to their continued failure to comply with their undertaking.[27] On the same date, the Llamas Spouses filed a Manifestation seeking the payment of their claims.[28]

The Department of Public Works and Highways then filed a Comment/Opposition asserting that, from its inquiries with the City Assessor's Office and the Parañaque City Registry of Deeds, the documents the Llamas Spouses submitted "did not originate from the concerned offices."[29]

On October 8, 2007, the Regional Trial Court issued the Order[30] directing the payment to the Llamas Spouses of just compensation at ₱12,000.00 per square meter for 41 square meters for the lot covered by TCT No. 217267. It denied payment for areas covered by TCT No. 179165 and noted that these were subdivision road lots, which the Llamas Spouses "no longer owned"[31] and which "belong[ed] to the community for whom they were made."[32] In the Order dated May 19, 2008, the Regional

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[25] *Id.* at 77.

[26] *Id.*

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

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

[29] *Id.* at 80.

[30] *Id.* at 478-485.

[31] *Id.* at 483.

[32] *Id.*

Trial Court denied the Llamas Spouses' Motion for Reconsideration.[33]

The Llamas Spouses then filed before the Court of Appeals a Petition for Certiorari.

In its assailed October 14, 2010 Decision,[34] the Court of Appeals reversed and set aside the assailed Orders of the Regional Trial Court and ordered the Department of Public Works and Highways to pay the Llamas Spouses ₱12,000.00 per square meter as just compensation for a total of 237 square meters across three (3) lots, inclusive of the portions excluded by the Regional Trial Court.[35] The Court of Appeals added that the amount due to the Llamas Spouses was subject to 12% interest per annum from the time of the taking.[36]

The Court of Appeals reasoned that the disputed area (covered by TCT No. 179165) did not lose its private character, the easement of right of way over it notwithstanding.[37] Further, it anchored its ruling on interest liability on Rule 67, Section 10 of the 1997 Rules of Civil Procedure.[38]

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[33] *Id.* at 531-532.

[34] *Id.* at 134-146.

[35] *Id.* at 145-146.

[36] *Id.* at 146.

[37] *Id.* at 140.

[38] RULES OF COURT, Rule 67, Sec. 10 provides:

Section 10. Rights of Plaintiff After Judgment and Payment.—Upon payment by the plaintiff to the defendant of the compensation fixed by the judgment, with legal interest thereon from the taking of the possession of the property, or after tender to him of the amount so fixed and payment of the costs, the plaintiff shall have the right to enter upon the property expropriated and to appropriate it for the public use or purpose defined in the judgment, or to retain it should he have taken immediate possession thereof under the provisions of Section 2 hereof. If the defendant and his counsel absent themselves from the court, or decline to receive the amount tendered, the same shall be ordered to be deposited in court and such deposit shall have the same effect as actual payment thereof to the defendant or the person ultimately adjudged entitled thereto.

For resolution is the issue of whether just compensation must be paid to respondents Francisco and Carmelita Llamas for the subdivision road lots covered by TCT No. 179165.

I

The Department of Public Works and Highways insists that the road lots are not compensable since they have "already been withdrawn from the commerce of man."[39] It relies chiefly on this Court's 1991 Decision in *White Plains Association, Inc. v. Legaspi*,[40] which pertained to "the widening of the Katipunan Road in the White Plains Subdivision in Quezon City."[41] More specifically, it capitalizes on the following statement in the 1991 *White Plains* Decision that shows a compulsion for subdivision owners to set aside open spaces for public use, such as roads, and for which they need not be compensated by government:

> Subdivision owners are mandated to set aside such open spaces before their proposed subdivision plans may be approved by the government authorities, and that such open spaces shall be devoted exclusively for the use of the general public and the subdivision owner need not be compensated for the same. A subdivision owner must comply with such requirement before the subdivision plan is approved and the authority to sell is issued.[42]

Under this compulsion, the dispositive portion of the 1991 *White Plains* Decision proceeds to state:

> **WHEREFORE,** the petition is GRANTED. The questioned orders of respondent judge dated July 10, 1990 and September 26, 1990 are hereby reversed and set aside. *Respondent QCDFC is hereby directed to execute a deed of donation of the remaining undeveloped portion of Road Lot 1 consisting of about 18 meters wide in favor of the Quezon City government, otherwise, the Register of Deeds of*

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[39] *Rollo*, p. 94.

[40] 271 Phil. 806 (1991) [Per *J.* Gancayco, First Division].

[41] *Id.* at 807.

[42] *Id.* at 817.

Quezon City is hereby directed to cancel the registration of said Road Lot 1 in the name of respondent QCDFC under TCT No. 112637 and to issue a new title covering said property in the name of the Quezon City government. Costs against respondent QCDFC.

SO ORDERED.[43] (Emphasis supplied)

The Department of Public Works and Highways is in grave error.

Petitioner's reliance on the 1991 *White Plains* Decision is misplaced. The same 1991 Decision was not the end of litigation relating to the widening of Katipunan Road. The owner and developer of White Plains Subdivision, Quezon City Development and Financing Corporation (QCDFC), went on to file motions for reconsideration. The second of these motions was granted in this Court's July 27, 1994 Resolution.[44] This Resolution expressly discarded the compulsion underscored by the Department of Public Works and Highways, and the dispositive portion of the 1991 *White Plains* Decision was modified accordingly. As this Court recounted in its 1998 Decision in *White Plains Homeowners Association, Inc. v. Court of Appeals:*[45]

> [T]he dictum in G.R. No. 95522, White Plains Association, Inc. *vs.* Legaspi[,] that the developer can be compelled to execute a deed of donation of the undeveloped strip of Road Lot 1 and, in the event QCDFC refuses to donate the land, that the Register of Deeds of Quezon City may be ordered to cancel its old title and issue a new one in the name of the city was questioned by the respondent QCDFC as contrary to law. We agree with QCDFC that ***the final judgment in G.R. No. 95522 is not what appears in the published on February 7, 1991 decision in White Plains Association, Inc. vs. Legaspi.*** [Rather, it] is the following resolution issued three (3) years later, on July 27, 1991 [sic], which states, *inter alia:*
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> ". . . (T)he Court is constrained to grant the Instant Motion for Reconsideration but only insofar as the motion seeks to

[43] *Id.* at 818-819.

[44] *White Plains Association, Inc. v. Legaspi,* 358 Phil. 184, 190 (1998) [Per *J.* Martinez, Second Division].

[45] 358 Phil. 184 (1998) [Per *J.* Martinez, Second Division].

> delete from the dispositive portion of the decision of 07 February 1991 the order of this Court requiring the execution of the deed of donation in question and directing the Register of Deeds of Quezon City, in the event that such deed is not executed, to cancel the title of QCDFC and to issue a new one in the name of the Quezon City government. It may well be that the public respondents would not be aversed [sic] to such modification of the Court's decision since they shall in effect have everything to gain and nothing to lose.
>
> WHEREFORE the second motion for reconsideration is hereby partly granted by MODIFYING the dispositive portion of this Court's decision of 07 February 1991 and to now read as follows:
>
> > 'WHEREFORE the petition is GRANTED. The questioned orders of respondent judge dated July 10, 1990 and September 25 1990 are hereby reversed and set aside... Costs against respondent QCDFC.
> >
> > SO ORDERED.'"[46] (Emphasis supplied)

The 1998 *White Plains* Decision unequivocally repudiated the 1991 *White Plains* Decision's allusion to a compulsion on subdivision developers to cede subdivision road lots to government, so much that it characterized such compulsion as an "illegal taking."[47] It did away with any preference for government's capacity to compel cession and, instead, emphasized the primacy of subdivision owners' and developers' freedom in retaining or disposing of spaces developed as roads.

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

[47] *Id.* at 201. N.b., From *Republic v. Ortigas,* G.R. No. 171496, March 3, 2014 < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/march2014/171496.pdf > 9 [Per J. Leonen, Third Division]:

> There is taking when the following elements are present:
> 1. The government must enter the private property;
> 2. The entrance into the private property must be indefinite or permanent;
> 3. There is color of legal authority in the entry into the property;
> 4. The property is devoted to public use or purpose;
> 5. The use of property for public use removed from the owner all beneficial enjoyment of the property.

In making its characterization of an "illegal taking," this Court quoted with approval the statement of the Court of Appeals:

> Only after a subdivision owner has developed a road may it be donated to the local government, if it so desires. On the other hand, a subdivision owner may even opt to retain ownership of private subdivision roads, as in fact is the usual practice of exclusive residential subdivisions for example those in Makati City.[48]

II

In insisting on a compulsion on subdivision owners and developers to cede open spaces to government, the Department of Public Works and Highways references Presidential Decree No. 957, as amended by Presidential Decree No. 1216, otherwise known as the Subdivision and Condominium Buyer's Protective Decree.

The first paragraph of Section 31 of Presidential Decree No. 957 spells out the minimum area requirement for roads and other open spaces in subdivision projects. Its second paragraph spells out taxonomic or classification parameters for areas reserved for parks, playgrounds, and for recreational use. It also requires the planting of trees. The last paragraph of Section 31 *requires*—note the use of the word "shall"—subdivision developers to donate to the city or municipality with territorial jurisdiction over the subdivision project all such roads, alleys, sidewalks, and open spaces. It also imposes upon cities and municipalities the concomitant *obligation* or compulsion to accept such donations:

> SEC. 31. Roads, Alleys, Sidewalks and Open Spaces. — The owner as developer of a subdivision shall provide adequate roads, alleys and sidewalks. For subdivision projects one (1) hectare or more, the owner or developer shall reserve thirty percent (30%) of the gross area for open space. Such open space shall have the following standards allocated exclusively for parks, playgrounds and recreational use:
>
> a. 9% of gross area for high density or social housing (66 to 100 family lot per gross hectare).
>
> b. 7% of gross area for medium-density or economic housing (21 to 65 family lot per gross hectare).

[48] *Id.* at 202-203.

c. 3.5% of gross area low-density or open market housing (20 family lots and below per gross hectare).

These areas reserved for parks, playgrounds and recreational use shall be non-alienable public lands, and non-buildable. The plans of the subdivision project shall include tree planting on such parts of the subdivision as may be designated by the Authority.

Upon their completion as certified to by the Authority, the roads, alleys, sidewalks and playgrounds *shall be donated* by the owner or developer to the city or municipality and *it shall be mandatory for the local governments to accept;* provided, however, that the parks and playgrounds may be donated to the Homeowners Association of the project with the consent of the city or municipality concerned. No portion of the parks and playgrounds donated thereafter shall be converted to any other purpose or purposes. (Emphasis supplied)

The last paragraph of Section 31 is oxymoronic. One cannot speak of a donation and compulsion in the same breath.

A donation is, by definition, "an act of liberality." Article 725 of the Civil Code provides:

Article 725. Donation is an act of liberality whereby a person disposes gratuitously of a thing or right in favor of another, who accepts it.

To be considered a donation, an act of conveyance must necessarily proceed freely from the donor's own, unrestrained volition. A donation cannot be forced: it cannot arise from compulsion, be borne by a requirement, or otherwise be impelled by a mandate imposed upon the donor by forces that are external to him or her. Article 726 of the Civil Code reflects this commonsensical wisdom when it specifically states that conveyances made in view of a "demandable debt" cannot be considered true or valid donations.[49]

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[49] CIVIL CODE, Art. 726 provides:

Article 726. When a person gives to another a thing or right on account of the latter's merits or of the services rendered by him to the donor, provided they do not constitute a demandable debt, or when the gift imposes upon the donee a burden which is less than the value of the thing given, there is also a donation.

In jurisprudence, *animus donandi* (that is, the intent to do an act of liberality) is an indispensable element of a valid donation, along with the reduction of the donor's patrimony and the corresponding increase in the donee's patrimony.[50]

Section 31's compulsion to donate (and concomitant compulsion to accept) cannot be sustained as valid. Not only does it run afoul of basic legal concepts; it also fails to withstand the more elementary test of logic and common sense. As opposed to this, the position that not only is more reasonable and logical, but also maintains harmony between our laws, is that which maintains the subdivision owner's or developer's freedom to donate or not to donate. This is the position of the 1998 *White Plains* Decision. Moreover, as this 1998 Decision has emphasized, to force this donation—and to preclude any compensation—is to suffer an illegal taking.

III

The Court of Appeals correctly stated that a "positive act"[51] must first be made by the "owner-developer before the city or municipality can acquire dominion over the subdivision roads."[52] As there is no such thing as an automatic cession to government of subdivision road lots, an actual transfer must first be effected by the subdivision owner: "subdivision streets belonged to the owner until donated to the government or until expropriated upon payment of just compensation."[53] Stated otherwise, "the local government should first acquire them by donation, purchase, or expropriation, if they are to be utilized as a public road."[54]

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[50] *Tayoto v. Heirs of Kusop,* 263 Phil. 269, 280 (1990) [Per *C.J.* Fernan, Third Division].

[51] *Rollo,* p. 141.

[52] *Id.*

[53] *Albon v. Fernando,* 526 Phil. 630, 637 (2006) [Per *J.* Corona, Second Division].

[54] *Abellana, Sr. v. Court of Appeals,* 284 Phil. 449, 453 (1992) [Per *J.* Grino-Aquino, First Division]. See also *Woodridge School, Inc. v. ARB Construction Co., Inc.*, 545 Phil. 83, 88 (2007) [Per *J.* Corona, First Division].

This Court's 2014 Decision in *Republic v. Ortigas*[55] succinctly captures all that we have previously stated:

> Delineated roads and streets, whether part of a subdivision or segregated for public use, remain private and will remain as such until conveyed to the government by donation or through expropriation proceedings. An owner may not be forced to donate his or her property even if it has been delineated as road lots because that would partake of an illegal taking. He or she may even choose to retain said properties.[56]

The Department of Public Works and Highways makes no claim here that the road lots covered by TCT No. 179165 have actually been donated to the government or that their transfer has otherwise been consummated by respondents. It only theorizes that they have been automatically transferred. Neither has expropriation ever been fully effected. Precisely, we are resolving this expropriation controversy only now.

Respondents have not made any positive act enabling the City Government of Parañaque to acquire dominion over the disputed road lots. Therefore, they retain their private character (albeit all parties acknowledge them to be subject to an easement of right of way). Accordingly, just compensation must be paid to respondents as the government takes the road lots in the course of a road widening project.

WHEREFORE, the Petition for Review on Certiorari is **DENIED.** The assailed October 14, 2010 Decision of the Fifth Division of the Court of Appeals in CA-G.R. SP No. 104178 is **AFFIRMED.**

SO ORDERED.

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

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[55] G.R. No. 171496, March 3, 2014 < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/march2014/171496.pdf > [Per *J.* Leonen, Third Division].

[56] *Id.* at 10, citing *White Plains v. Court of Appeals,* 358 Phil. 184, 207 (1998) [Per *J.* Martinez, Second Division].

FIRST DIVISION

[G.R. No. 199977. January 25, 2017]

SCANMAR MARITIME SERVICES, INC., CROWN SHIPMANAGEMENT INC., and VICTORIO Q. ESTA, *petitioners, vs.* **WILFREDO T. DE LEON,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION-STANDARD EMPLOYMENT CONTRACT (POEA-SEC); DISABILITY BENEFITS; REQUIREMENTS FOR COMPENSABILITY, CITED.— To be entitled to disability benefits, this Court refers to the provisions of the POEA Contract, as it sets forth the minimum rights of a seafarer and the concomitant obligations of an employer. Under Section 20 (B) thereof, these are the requirements for compensability: (1) the seafarer must have submitted to a mandatory post-employment medical examination within three working days upon return; (2) the injury must have existed during the term of the seafarer's employment contract; and (3) the injury must be work-related.

2. ID.; ID.; ID.; THE THREE-DAY RULE ON SUBMISSION OF POST-EMPLOYMENT MEDICAL EXAMINATION MUST BE OBSERVED BY THOSE CLAIMING DISABILITY BENEFITS, INCLUDING SEAFARERS WHO DISEMBARKED UPON THE COMPLETION OF CONTRACT.— It is not disputed that De Leon failed to submit to a post-employment medical examination by a company-designated physician within three working days from disembarkation. The LA, the NLRC, and the CA excused him from complying with this requirement, reasoning that he had not been medically repatriated. This excuse does not hold water. In the past, we have consistently held that the three-day rule must be observed by all those claiming disability benefits, including seafarers who disembarked upon the completion of contract. In *InterOrient Maritime Enterprises, Inc. v. Creer III* the seafarer's repatriation was not due to any medical reasons but because his employment contract had already expired. On

that occasion, the Court applied the doctrine in *Wallem Maritime Services, Inc. v. Tanawan*, and held that: The rationale for the rule [on mandatory post-employment medical examination within three days from repatriation by a company-designated physician] is that reporting the illness or injury within three days from repatriation fairly makes it easier for a physician to determine the cause of the illness or injury. Ascertaining the real cause of the illness or injury beyond the period may prove difficult. Hence, given that respondent had inexplicably breached this requirement, the CA should have barred his claim for disability benefits.

3. ID.; ID.; ID.; CLAIMANT OF DISABILITY BENEFITS MUST FIRST DISCHARGE THE BURDEN OF PROVING, WITH SUBSTANTIAL EVIDENCE, THAT THEIR AILMENT WAS ACQUIRED DURING THE TERM OF THEIR CONTRACT.— Claimants for disability benefits must first discharge the burden of proving, with substantial evidence, that their ailment was acquired during the term of their contract. They must show that they experienced health problems while at sea, the circumstances under which they developed the illness, as well as the symptoms associated with it.

APPEARANCES OF COUNSEL

Del Rosario & Del Rosario Law Offices for petitioners.
Jose M. Arollado, Jr. for respondent.

D E C I S I O N

SERENO, *C.J.*:

We resolve the Petition for Review on Certiorari[1] filed by petitioners Scanmar Maritime Services, Inc., Crown Shipmanagement Inc., and Victorio Q. Esta, assailing the Decision and the Resolution of the Court of Appeals (CA).[2]

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[1] *Rollo*, pp. 29-81; filed on 24 February 2012.

[2] *Id.* at 83-92, 128-129; the Decision dated 9 August 2011 and Resolution dated 5 January 2012 in CA-G.R. SP No. 112675 were penned by Associate

The CA affirmed the rulings of the National Labor Relations Commission (NLRC)[3] and the Labor Arbiter (LA)[4] finding respondent entitled to disability benefits and attorney's fees.

The antecedent facts are as follows:

Respondent Wilfredo T. de Leon worked for petitioner Scanmar Maritime Services, Inc. (Scanmar) as a seafarer aboard the vessels of its principal, Crown Shipmanagement, Inc. He was repatriated on 13 September 2005 after completing his nine-month Philippine Overseas Employment Administration-Standard Employment Contract (POEA Contract).[5] For 22 years in the service, there was no account of any ailment he had contracted.

Prior to his next deployment, De Leon reported to Scanmar's office on 17 November 2005 for a pre-employment medical examination. Noticing that respondent dragged his right leg, the company physician referred him to a neurologist for consultation, management, and clearance. In the meantime, the status of respondent in his Medical Examination Certificate[6] was marked "pending."

Thereafter, Scanmar no longer heard from De Leon. Two years later, in December 2007, it received a letter from him asking for disability benefits amounting to USD60,000. It did not reply to the letter, prompting him to file a Complaint with the LA for disability benefits and attorney's fees.

Justice Bienvenido L. Reyes, with Associate Justices Estela M. Perlas-Bernabe (now members of this Court) and Elihu A. Ybañez concurring.

[3] CA *rollo*, pp. 264-274, 311-312; the Decision dated 23 October 2009 and Resolution dated 26 November 2009 in NLRC LAC NO. (OFW-M) 05-000268-09 were penned by Commissioner Nieves E. Vivar-de Castro, with Commissioners Benedicto R. Palacol and Isabel G. Panganiban-Ortiguerra concurring.

[4] *Id.* at 209-216; the Decision dated 14 April 2009 in NLRC-NCR OFW (M)-01-00597-08 was penned by Labor Arbiter Geobel A. Bartolabac.

[5] *Rollo*, p. 130.

[6] CA *rollo*, pp. 109-110.

Before the LA, respondent alleged that on his last duty as a Third Mate on board *M/V Thuleland*, he began feeling that something was wrong with his body, and that he experienced lower abdominal pain and saw blood in his stool. He also claimed that after he disembarked in the Philippines on 13 September 2005, he underwent a series of medical check-ups with his private doctors, which revealed that he was suffering from L5-S1 radiculopathy.

As proof of his ailment, respondent submitted before the LA (1) an Electrodiagnostic Laboratory Report dated 5 October 2005 from Dr. Ofelia Reyes stating the impression that there was an electrophysiologic evidence of chronic right L5-S1 radiculopathies in acute exacerbation;[7] (2) a Medical Certification dated 21 November 2005 from Dr. Angel Luna of Seamen's Hospital signifying that respondent was unfit for work, and that the latter's illness was work-related;[8] (3) a Magnetic Resonance Imaging of the Lumbosacral Spine dated 7 December 2005, signed by Dr. Melodia B. Geslani of De Los Santos Medical Center, stating the impression that respondent had a mild central canal stenosis at L5-S1 secondary to a small posterocentral disc protrusion;[9] and (4) a Medical Certification dated 6 October 2006 from Dr. Ricardo Guevara of the Plaridel Country Hospital indicating that respondent was unfit for sea service.[10]

In response, petitioners raised three main contentions. First, they belied the claim of respondent that he experienced an illness aboard *M/V Thuleland*, given the absence of any such entry in the vessel's logbook. Second, petitioners highlighted the fact that when he disembarked, De Leon did not complain of any illness, request medical assistance, or submit himself to a post-employment medical examination within three days from his disembarkation, as required by his POEA Contract. Third, petitioners asserted that he had failed to address his "pending"

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[7] *Id.* at 52-54.

[8] *Id.* at 69.

[9] *Id.* at 56.

[10] *Id.* at 68.

status and to follow the company physician's advice for him to consult a neurologist.

The LA ruled in favor of De Leon, awarding him USD 60,000 disability benefits and attorney's fees. The former held that, absent any recorded incident after the disembarkation, the causative circumstances leading to the permanent disability of respondent must have transpired during the 22 years of the latter's employment. The LA declared that the three-day post-employment medical examination requirement did not apply, as respondent had not been medically repatriated. The LA also awarded attorney's fees to respondent.

Petitioners appealed to the NLRC, which affirmed the ruling of the LA *in toto*. Thereafter, they lodged an original action for certiorari before the CA, claiming that the NLRC had committed grave abuse of discretion by awarding disability benefits to respondent absent the following: (1) proof that the illness was suffered during the term of his employment; (2) compliance with the three-day post-employment medical examination requirement. Petitioners also questioned the award of attorney's fees.

The CA dismissed the action for certiorari. With respect to the first issue, it echoed the uniform analyses of the LA and the NLRC that the causative circumstances leading to De Leon's permanent disability must have transpired during the 22 years of his employment. The CA declared that seafarers may recover money claims even if their ailment appeared only after their repatriation.

In explaining respondent's injury, the CA referred to *MedicineNet.com* and explained that:[11]

> Medical websites do tend to suggest that the risk factors for the private respondent's illness, radiculopathy, are activities that place an excessive or repetitive load on the spine. Patients involved in heavy labor are more prone to develop radiculopathy than those with a more sedentary lifestyle. This partakes of a nerve irritation caused

[11] *Rollo*, pp. 21-22.

by damage to the discs between the vertebrae. Damage to the discs occurs because of degeneration ("wear and tear") of the outer ring of the disc, traumatic injury, or both.

It should be noted that the private respondent worked his way from the bottom up, and only acquired Third Mate status in the last five of the twenty two years that he has been working with the company. In any event, it cannot be gainsaid that he was consistently engaged in stressful physical labor all throughout the duration of his employment with petitioner Scanmar.

Anent the second issue, the CA agreed with the LA and the NLRC that the three-day post-employment medical examination requirement did not apply to respondent as he had not been medically repatriated. As for the award of attorney's fees, the CA sustained its award in his favor. Petitioners moved for reconsideration, but to no avail.

Before this Court, petitioners contend that the ailment of De Leon was not proven to be a work-related injury contracted at sea. They maintain that, in any case, he is not entitled to permanent and total disability benefits, since he failed to report for a post-medical examination within three days from the time he disembarked, a requirement explicitly stated in the POEA Contract. Petitioners also assail the imposition of attorney's fees, allegedly granted to respondent without basis.

In his Comment,[12] respondent did not explain why he failed to report for post-medical examination within three days from his disembarkation. He nonetheless insists that his various medical certificates prove that his radiculopathy is a work-related injury. Respondent asserts his entitlement to attorney's fees, claiming that petitioners acted in bad faith when they did not immediately treat his injury.

RULING OF THE COURT

To be entitled to disability benefits, this Court refers to the provisions of the POEA Contract, as it sets forth the minimum rights of a seafarer and the concomitant obligations of an

[12] *Id.* at 145-158.

employer.[13] Under Section 20 (B) thereof, these are the requirements for compensability: (1) the seafarer must have submitted to a mandatory post-employment medical examination within three working days upon return; (2) the injury must have existed during the term of the seafarer's employment contract; and (3) the injury must be work-related.

De Leon reneged on his obligation to submit to a post-employment medical examination within three days from disembarkation.

It is not disputed that De Leon failed to submit to a post-employment medical examination by a company-designated physician within three working days from disembarkation. The LA, the NLRC, and the CA excused him from complying with this requirement, reasoning that he had not been medically repatriated.

This excuse does not hold water. In the past, we have consistently held that the three-day rule must be observed by all those claiming disability benefits, including seafarers who disembarked upon the completion of contract.[14] In *InterOrient Maritime Enterprises, Inc. v. Creer III*[15] the seafarer's repatriation was not due to any medical reasons but because his employment contract had already expired. On that occasion, the Court applied the doctrine in *Wallem Maritime Services, Inc. v. Tanawan*,[16] and held that:

> The rationale for the rule [on mandatory post-employment medical examination within three days from repatriation by a company-designated physician] is that reporting the illness or injury within three days from repatriation fairly makes it easier for a physician to

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[13] *Cootauco v. MMS Phil. Maritime Services, Inc.*, 629 Phil. 506 (2010).

[14] *Ceriola v. Naess Shipping Philippines, Inc.*, G.R. No. 193101, 20 April 2015; *Jebsens Maritime, Inc. v. Undag*, 678 Phil. 938 (2011); *Cootauco v. MMS Phil. Maritime Services, Inc.*, 629 Phil. 506 (2010).

[15] G.R. No. 181921, 17 September 2014, 735 SCRA 267.

[16] G.R. No. 160444, 29 August 2012, 679 SCRA 255, 268-269.

determine the cause of the illness or injury. Ascertaining the real cause of the illness or injury beyond the period may prove difficult. To ignore the rule might set a precedent with negative repercussions, like opening floodgate to a limitless number of seafarers claiming disability benefits, or causing unfairness to the employer who would have difficulty determining the cause of a claimant's illness because of the passage of time. The employer would then have no protection against unrelated disability claims.

Hence, given that respondent had inexplicably breached this requirement, the CA should have barred his claim for disability benefits.

De Leon did not prove that he had suffered his injury during the term of his contract.

In the recital of their rulings, none of the tribunals *a quo* discussed any particular sickness that De Leon suffered while at sea, which was a factual question that should have been for the labor tribunals to resolve.[17] As they have failed to do so, this Court must sift through and reexamine the credibility and probative value of the evidence on record so as to ultimately decide whether or not it would be just to award disability benefits to the seafarer.[18]

Claimants for disability benefits must first discharge the burden of proving, with substantial evidence, that their ailment was acquired during the term of their contract.[19] They must show that they experienced health problems while at sea, the circumstances under which they developed the illness,[20] as well as the symptoms associated with it.[21]

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[17] *Andrada v. Agemar Manning Agency, Inc.*, 698 Phil. 170 (2012).

[18] *Id.*

[19] *Supra* note 15.

[20] *Tagle v. Anglo-Eastern Crew Management, Phils., Inc.*, G.R. No. 209302, 9 July 2014, 729 SCRA 677.

[21] *Dohle-Philman Manning Agency, Inc. v. Heirs of Gazzingan*, G.R. No. 199568, 17 June 2015.

In this case, respondent adduced insufficient proof that he experienced his injury or its symptoms during the term of his contract.

In his Position Paper before the LA, De Leon allegedly felt something wrong with his body, experienced lower abdominal pain, and saw blood in his stool. To support his claim, he attached several laboratory reports, as well as the medical certifications of Drs. Reyes, Luna, Geslani, and Guevara, indicating that he had been injured and was unfit for sea service.

These pieces of documentary evidence, however, bear dates well past the disembarkation of respondent. Hence, none of the attachments he has adduced prove the symptoms of the radiculopathy he allegedly experienced during the term of his contract.

Furthermore, this Court observes that the narration of De Leon that he felt that something was wrong with his body is too general to be worthy of adjudicative attention. In addition, his claims lack material corroboration.

In contrast, petitioners submitted a Checklist/Interview Sheet for Disembarked Crew[22] indicating that De Leon had no medical check-up in foreign ports; did not report any illness or injury to the master of the vessel or the ship doctor; and did not request a post-medical examination after disembarkation. Also, based on the records, there is no documentation that De Leon had bouts of sickness, injury, or illness associated with radiculopathy in his 22 years at sea. Hence, based on the evidence, it cannot be reasonably concluded that respondent contracted radiculopathy during the term of his contract.

De Leon failed to show that his injury was work-related.

There must be a reasonable causal connection between the ailment of seafarers and the

[22] CA *rollo*, p. 106.

work for which they have been contracted.

The second hurdle for seafarers claiming disability benefits is to prove the positive proposition[23] that there is a reasonable causal connection between their ailment and the work for which they have been contracted.[24] Logically, the labor courts must determine their actual work, the nature of their ailment, and other factors that may lead to the conclusion that they contracted a work-related injury.[25]

To illustrate, in *NYK-Fil Ship Management Inc. v. Talavera*,[26] the labor tribunals first determined the nature of the seafarer's employment based on the established facts of the case:[27]

> Complainant Talavera as Fitter performed repair and maintenance works, like hydraulic line return and other supply lines of the vessel; he did all the welding works and assist[ed] the First and Second Engineer during overhauling works of generators, engines and others [sic] engineering works as directed by lifting, carrying, pushing, pulling and moving heavy equipment and materials and constantly performed overtime works because the ship was old and always repair jobs are almost anywhere inside the vessel. He found himself with very few hours rest period. (Corrections in the original)

Then, the tribunals relied upon the medical certificates on record to characterize the particular radiculopathy of the seafarer:[28]

> Through degeneration, wear and tear or trauma, the annulus fibrosus containing the soft disc material (nucleus pulposus) may tear. This

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[23] *Ceriola v. Naess Shipping Philippines, Inc.*, G.R. No. 193101, 20 April 2015.

[24] *Repizo v. Senator Crewing (Manila), Inc.*, G.R. No. 214334, 17 November 2014.

[25] *Teekay Shipping Phils., Inc. v. Jarin*, G.R. No. 195598, 25 June 2014, 727 SCRA 242.

[26] 591 Phil. 786 (2008).

[27] *Id.* at 802.

[28] *Id.* at 797.

results in protrusion of the disc or even extrusion of disc material into the spinal canal or neural foramen. In addition, the nerve fibers of the affected root are also compressed and this situation leads to radiculopathy in the appropriate muscles. When the nerve roots become compressed, the herniated disc becomes significant. The most common complaint in patients with a herniated disc is that of severe low back pain developing immediately or within a few hours after an injury.

Only after making such assessments did those tribunals find a reasonable connection between the injuries and the seafarer's job. This Court affirmed in that case that repetitive bending and lifting caused the torsional stress on the claimant's back, which led him to develop his L5-S1 radiculopathy.

Applying the same analytical method to the case at bar, this Court observes that all the tribunals below relied on the mere fact of the 22-year employment of De Leon as the causative factor that triggered his radiculopathy. They did not even specify his duties as a seafarer throughout his employment.

At most, respondent merely alleged that in his last stint as a Third Mate, he was a watchstander. His job entailed that he was responsible to the captain for keeping the ship, its crew, and its cargo safe for eight hours a day. Still, he did not particularize the laborious conditions of his work that would cause his injury.

The CA mentioned that De Leon was consistently engaged in stressful physical labor throughout his 22 years of employment. But it did not define these purported stressful physical activities, nor did it point to any piece of evidence detailing his work.

Not only did claimant fail to portray his actual work; he also failed to describe the nature, extent, and treatment of his radiculopathy. Drs. Reyes, Luna, Geslani, and Guevara, who issued medical opinions on his condition, stated that their patient was unfit for sea service without discussing what caused his injury. Dr. Geslani had an impression that respondent had a mild central canal stenosis, which should have been further explained to depict the gravity and permanence of respondent's injury. Dr. Luna prescribed medicines and physical therapy

for two weeks, but no subsequent reports as regards this treatment plan followed her initial certification.

Given the inadequacy of proof pertaining to the radiculopathy of De Leon, the LA and the NLRC provided no discussion on its character. To augment the void, the CA had to refer to a medical website for an explanation. Nonetheless, the records still lack the portrayal of how De Leon contracted the injury, its symptoms, and its aggravating factors. The curability of the injury, in order to determine whether it results in a permanent or temporary disability, was not at all discussed in the proceedings below.

In effect, De Leon failed to show before the labor tribunals his functions as a seafarer, as well as the nature of his ailment. Absent these premises, none of the courts can rightfully deduce any reasonable causal connection between his ailment and the work for which he was contracted.

> *The proximity of the development of the injury to the time of disembarkation does not automatically prove work causation.*

For the LA, the NLRC, and the CA, since there was no reported incident befalling De Leon from the time he disembarked on 13 September 2005 to the time that he underwent medical examination on 21 November 2005, whatever causative circumstances led to his permanent disability must have transpired during his 22 years of employment.

In support of this conclusion, the CA cited *Nisda v. Sea Serve Maritime Agency*[29] and *Seagull Shipmanagement and Transport, Inc. v. NLRC*,[30] in which this Court granted disability benefits to seafarers who developed their ailments within a short period from disembarkation.

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[29] *Nisda v. Sea Serve Maritime Agency*, 611 Phil. 291 (2009).

[30] *Seagull Shipmanagement & Transport, Inc. v. National Labor Relations Commission*, 388 Phil. 906 (2000).

In *Nisda*, We found that the seafarer had been hired for 15 years as a Tug Boat Master, who commanded the steering of large vessels into and out of berths during 48-hour work weeks with a maximum of 105 hours of overtime. The records in that case reveal that he had "a medical complaint of pain in his parascapular region of 6 months duration already way unto his consummated employment service of his contract of employment [sic]."[31] This Court concluded that the duties of the seafarer caused his serious cardio-vascular disease, which could not have developed overnight.

In *Seagull Shipmanagement*, the seafarer worked as a radioman. After 10 months of serving his one-year contract, he suffered from bouts of coughing and shortness of breath on board the vessel of his employers. The latter admitted that his work exposed him to different climates and unpredictable weather, which could trigger a heart failure. Based on this admission, and considering the duties of the seafarer, We awarded benefits to his heirs for the payment of his open-heart surgery.

Noticeably, *Nisda* and *Seagull* did not use the proximity of the development of the injury to the time of disembarkation as the basis for compensability. This Court in those cases made an effort to find out the recognized elements in resolving seafarers' claims: the description of the work, the nature of the injury or illness contracted, and the connection between the two.

Here, the courts *a quo* merely speculated that because respondent worked for 22 years, it then follows that his injury was caused by his engagement as a seafarer. This blanket speculation alone will not rise to the level of substantial evidence.[32] Whilst the degree of determining whether the illness is work-related requires only probability,[33] the conclusions of

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[31] *Supra* note 29, at 314.

[32] *Lorenzo v. Government Service Insurance System*, 718 Phil. 596 (2013); *Miro v. Vda. de Erederos*, 721 Phil. 772 (2013).

[33] *Gabunas, Sr. v. Scanmar Maritime Services, Inc.*, 653 Phil. 457 (2010).

the courts must be still be based on real, and not just apparent, evidence.[34] Especially egregious is the error of the CA when it augmented the speculative conclusions of the LA and the NLRC, by referring to a medical website that has not even been vetted to introduce into the CA Decision a modicum presence of the causality requirement for compensable injuries. The tribunals should have gone beyond their inferences. They should have determined the duties of De Leon as a seafarer and the nature of his injury, so that they could validly draw a conclusion that he labored under conditions that would cause his purported permanent and total disability.

Since De Leon failed to prove all the requirements for compensability, this Court deletes the grant of USD 60,000 for permanent and total disability benefits. The award of attorney's fees is likewise withdrawn, since the circumstances do not show that petitioners acted without justification or with gross and evident bad faith in refusing to satisfy respondent's claim for disability pay.[35]

IN VIEW THEREOF, the Petition for Review filed by petitioners on 24 February 2012 is **GRANTED**. Consequently, the Court of Appeals Decision dated 9 August 2011 and Resolution dated 5 January 2012 in CA- G.R. SP No. 112675 are **REVERSED**.

SO ORDERED.

Leonardo-de Castro, del Castillo, Jardeleza,[*] and *Caguioa, JJ.,* concur.

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[34] *Masangcay v. Trans-Global Maritime Agency, Inc.*, 590 Phil. 611 (2008).

[35] *Moreno v. San Sebastian College-Recoletos*, 573 Phil. 533 (2008).

[*] Designated member per raffle dated 16 January 2017 in lieu of Associate Justice Estela M. Perlas-Bernabe who concurred in the Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 112675.

SECOND DIVISION

[G.R. No. 205045. January 25, 2017]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **SAN MIGUEL CORPORATION,** *respondent.*

[G.R. No. 205723. January 25, 2017]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **SAN MIGUEL CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PRODUCTION OR INSPECTION OF DOCUMENTS OR THINGS; THE ALLOWANCE OF A MOTION FOR THE PRODUCTION OF DOCUMENTS RESTS ON THE SOUND DISCRETION OF THE COURT WHERE THE CASE IS PENDING, WITH DUE REGARD TO THE RIGHTS OF THE PARTIES AND THE DEMANDS OF EQUITY AND JUSTICE.— The scope of discovery must be liberally construed, as a general rule, to serve its purpose of providing the parties with essential information to reach an amicable settlement or to expedite trial. "Courts, as arbiters and guardians of truth and justice, must not countenance any technical ploy to the detriment of an expeditious settlement of the case or to a fair, full and complete determination on its merits." Rule 27, Section 1 of the Rules of Court does not provide when the motion may be used. Hence, the allowance of a motion for production of document rests on the sound discretion of the court where the case is pending, with due regard to the rights of the parties and the demands of equity and justice. In *Eagleridge Development Corporation v. Cameron Granville 3 Asset Management, Inc.,* we held that a motion for production of documents may be availed of even beyond the pre-trial stage, upon showing of good cause as required under Rule 27. We allowed the production of documents because the petitioner was able to show "good cause" and relevance of the documents sought to be produced, and the trial court had not yet rendered its judgment. In this case,

petitioner filed its Motion for Production of Documents after the Court of Tax Appeals Division had rendered its judgment. x x x Petitioner's laxity is inexcusable and is a fatal omission. Under these circumstances, there was indeed no further need for the production of documents and objects desired by petitioner. These pieces of evidence could have served no useful purpose. On the contrary, the production of those documents after judgment defeats the purpose of modes of discovery in expediting case preparation and shortening trials.

2. TAXATION; REPUBLIC ACT NO. 8424, AS AMENDED (TAX REFORM ACT OF 1997); EXCISE TAX; NEW BEER PRODUCT IS TAXED DEPENDING ON ITS CLASSIFICATION, WHETHER IT IS A VARIANT OF AN EXISTING BRAND OR A NEW BRAND; EXPLAINED.— These consolidated cases involve the Tax Code provision defining *new brand* as opposed to *variant of brand*, as these two are treated differently for excise tax on fermented liquor. Effective January 1, 1998, Republic Act No. 8424, otherwise known as the Tax Reform Act of 1997, reproduced as Section 143 the provisions of Section 140 of the old Tax Code, as amended by Republic Act No. 8240, governing excise taxes on fermented liquor. Section 143 distinguishes a *new brand* from a *variant of brand*: x x x Excise taxes are imposed on the production, sale, or consumption of specific goods. Generally, excise taxes on domestic products are paid by the manufacturer or producer before removal of those products from the place of production. The excise tax based on weight, volume capacity, or any other physical unit of measurement is referred to as "specific tax." If based on selling price or other specified value, it is referred to as "*ad valorem*" tax. The excise tax on beer is a specific tax based on volume, or on a per liter basis. Before its amendment, Section 143 provided for three (3) layers of tax rates, depending on the net retail price per liter. How a new beer product is taxed depends on its classification, i.e. whether it is a *variant* of an existing brand or a *new brand*. Variants of a brand that were introduced in the market after January 1, 1997 are taxed under the highest tax classification of any variant of the brand. On the other hand, new brands are initially classified and taxed according to their suggested net retail price, until a survey is conducted by the Bureau of Internal Revenue to determine their current net retail price in accordance with the specified procedure.

3. ID.; ID.; ID.; ANY RECLASSIFICATION OF FERMENTED LIQUOR PRODUCTS SHOULD BE BY ACT OF CONGRESS; CASE AT BAR.— Any reclassification of fermented liquor products should be by act of Congress. Section 143 of the Tax Code, as amended by Rep. Act No. 9334, provides for this classification freeze referred to by the parties: Provided, however, That brands of fermented liquors introduced in the domestic market between January 1, 1997 and December 31, 2003 shall remain in the classification under which the Bureau of Internal Revenue has determined them to belong as of December 31, 2003. Such ***classification of new brands and brands introduced between January 1, 1997 and December 31, 2003 shall not be revised except by an act of Congress.*** **x x x** This Court discussed the legislative intent behind the classification freeze, that is, to deter the potential for abuse if the power to reclassify is delegated and much discretion is given to the Department of Finance and Bureau of Internal Revenue: x x x In any event, petitioner's letters and Notices of Discrepancy, which effectively changed San Mig Light's brand's classification from "*new brand* to *variant* of existing brand," necessarily changes San Mig Light's tax bracket. Based on the legislative intent behind the classification freeze provision, petitioner has no power to do this. A reclassification of a fermented liquor brand introduced between January 1, 1997 and December 31, 2003, such as "San Mig Light," must be by act of Congress. There was none in this case.

4. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; A CHANGE OF THEORY ON APPEAL IS GENERALLY DISALLOWED.— A change of theory on appeal is generally disallowed in this jurisdiction for being unfair to the adverse party.

5. MERCANTILE LAW; INTELLECTUAL PROPERTY LAW; TRADEMARK; THE USE OF AN IDENTICAL OR COLORABLE IMITATION OF A REGISTERED TRADEMARK BY A PERSON FOR THE SAME GOODS OR SERVICES OR CLOSELY RELATED GOODS OR SERVICES OF ANOTHER PARTY CONSTITUTES INFRINGEMENT.— In intellectual property law, a registered trademark owner has the right to prevent others from the use of the same mark (brand) for identical goods or services. The

use of an identical or colorable imitation of a registered trademark by a person for the same goods or services or closely related goods or services of another party constitutes infringement. It is a form of unfair competition because there is an attempt to get a free ride on the reputation and selling power of another manufacturer by passing of one's goods as identical or produced by the same manufacturer as those carrying the other mark (brand).

6. TAXATION; NATIONAL INTERNAL REVENUE CODE (TAX CODE); VARIANT, AS DEFINED UNDER THE TAX CODE; THE PURPOSE BEHIND THE DEFINITION IS TO PROPERLY TAX BRANDS PRESUMED TO BE RIDING ON THE POPULARITY OF PREVIOUSLY REGISTRED BRANDS BY BEING MARKETED UNDER AN ALMOST IDENTICAL NAME WITH A PREFIX, SUFFIX, OR A VARIANT.— The *variant* contemplated under the tax Code has a technical meaning. A *variant* is determined by the brand (name) of the beer product, whether it was formed by prefixing or suffixing a modifier to the root name of the alleged parent brand, or whether it carries the same logo or design. The purpose behind the definition was to properly tax brands that were presumed to be riding on the popularity of previously registered brands by being marketed under an almost identical name with a prefix, suffix, or a variant. It seeks to address price differentials employed by a manufacturer on similar products differentiated only in brand or design. Specifically, the provision was meant to obviate any tax avoidance by manufacturing firms from the sale of lower priced variants of its existing beer brands, thus, falling in the lower tax bracket with lower excise tax rates. To favor government, a *variant* of a brand is taxed according to the highest rate of tax for that particular brand.

7. ID.; ID.; THE TAX CODE AS AMENDED BY REPUBLIC ACT NO. 9334, PROVIDES FOR THE BUREAU OF INTERNAL REVENUE'S ROLE IN VALIDATING AND REVALIDATING THE SUGGESTED RETAIL PRICE OF A NEW BRAND OF FERMENTED LIQUOR FOR PURPOSES OF DETERMINING ITS TAX BRACKET.— Section 143 of the Tax Code, as amended by Rep. Act No. 9334, provides for the Bureau of Internal Revenue's role in validating and revalidating the suggested net retail price of a

new brand of fermented liquor for purposes of determining its tax bracket: x x x While estoppel generally does not apply against government, especially when the case involves the collection of taxes, an exception can be made when the application of the rule will cause injustice against an innocent party. Respondent had already acquired a vested right on the tax classification of its San Mig Light as a *new brand*. To allow petitioner to change its position will result in deficiency assessments in substantial amounts against respondent to the latter's prejudice. The authority of the Bureau of Internal Revenue to overrule, correct, or reverse the mistakes or errors of its agents is conceded. However, this authority must be exercised reasonably, i.e., only when the action or ruling is patently erroneous or patently contrary to law. For the presumption lies in the regularity of performance of official duty, and reasonable care has been exercised by the revenue officer or agent in evaluating the facts before him or her prior to rendering his or her decision or ruling—in this case, prior to the approval of the registration of San Mig Light as a *new brand* for excise tax purposes. A contrary view will create disorder and confusion in the operations of the Bureau of Internal Revenue and open the administrative agency to inconsistencies in the administration and enforcement of tax laws.

8. ID.; ID.; UNDER THE TAX CODE, A TAXPAYER MAY SEEK RECOVERY OF ERRONEOUSLY PAID TAXES WITHIN TWO YEARS FROM THE DATE OF PAYMENT; CASE AT BAR.— The Tax Code includes remedies for erroneous collection and overpayment of taxes. Under Sections 229 and 204 (C) of the Tax Code, a taxpayer may seek recovery of erroneously paid taxes within two (2) years from date of payment: x x x This Court accords the highest respect to the factual findings of the Court of Tax Appeals. We recognize its developed expertise on the subject as it is the court dedicated solely to considering tax issues, unless there is a showing of abuse in the exercise of authority. We find no reason to overturn the factual findings of the Court of Tax Appeals on the amounts allowed for refund.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Estelito P. Mendoza and *Lorenzo G. Timbol* for respondent.

D E C I S I O N

LEONEN, *J.*:

These consolidated cases consider whether "San Mig Light" is a *new brand* or a *variant* of one of San Miguel Corporation's existing beer brands, and whether the Bureau of Internal Revenue may issue notices of discrepancy that effectively changes "San Mig Light" 's classification from *new brand* to *variant*. The issues involve an application of Section 143 of the 1997 National Internal Revenue Code (Tax Code), as amended, on the definition of a *variant*, which is subject to a higher excise tax rate than a *new brand*. This case also applies the requirement in Rep. Act No. 9334 that reclassification of certain fermented liquor products introduced between January 1, 1997 and December 31, 2003 can only be done by an act of Congress.

The Petition[1] docketed as G.R. No. 205045 assails the Court of Tax Appeals *En Banc*'s September 20, 2012 Decision[2] affirming the Third Division's grant of San Miguel Corporation's refund claim in CTA Case No. 7708, and the December 11, 2012 Resolution[3] denying reconsideration. The Commissioner of Internal Revenue prays for the reversal and setting aside of the assailed Decision and Resolution, as well as the issuance

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[1] *Rollo* (G.R. No. 205045), pp. 64-84. The Petition for Review on *Certiorari* was filed under Rule 45 of the Rules of Civil Procedure.

[2] *Id.* at 9-25. The Decision was penned by Presiding Justice Ernesto D. Acosta; concurred in by Associate Justices Juanito C. Castaneda, Jr. (concurred with the Separate Concurring Opinion of Associate Justice Olga Palanca-Enriquez in CTA Case No. 7708), Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, and Olga Palanca-Enriquez (maintained her Separate Concurring Opinion in CTA Case No. 7708); and dissented by Associate Justices Esperanza R. Fabon-Victorino (concurred with the Dissenting Opinion of Associate Justice Cielito N. Mindaro-Grulla), Cielito N. Mindaro-Grulla, and Amelia R. Cotangco-Manalastas (maintained her Dissenting Opinion in CTA Case No. 7708 and concurred with the Dissenting Opinion of Associate Justice Mindaro-Grulla).

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

of a new one denying San Miguel Corporation's claim for tax refund or credit.[4]

On the other hand, the Petition[5] docketed as GR. No. 205723 and consolidated with G.R. No. 205045 assails the Court of Tax Appeals *En Banc*'s October 24, 2012 Decision[6] dismissing the Commissioner of Internal Revenue's appeal, and the February 4, 2013 Resolution[7] denying reconsideration. The Commissioner of Internal Revenue prays for the reversal and setting aside of the assailed Decision and Resolution, the issuance of a new one remanding the case to the Court of Tax Appeals for the production of evidence in San Miguel Corporation's possession, or, in the alternative, the dismissal of the Petitions in CTA Case Nos. 7052, 7053, and 7405.[8]

On October 19, 1999, Virgilio S. De Guzman (De Guzman), San Miguel Corporation's Former Assistant Vice President for Finance, wrote the Bureau of Internal Revenue Excise Tax Services Assistant Commissioner Leonardo B. Albar (Assistant Commissioner Albar) to request the registration of and authority to manufacture "San Mig Light," to be taxed at ₱12.15 per liter.[9] The letter dated October 27, 1999 granted this request.[10]

On November 3, 1999, De Guzman advised Assistant Commissioner Albar that "San Mig Light" would be sold at a

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[4] *Id.* at 80. See also p. 131, Supplemental Petition.

[5] *Rollo* (G.R. No. 205723), pp. 44-127-A. The Petition for Review on *Certiorari* was filed under Rule 45 of the Rules of Civil Procedure.

[6] *Id.* at 12-39. The Decision was penned by Associate Justice Juanito C. Castaneda, Jr. and concurred in by Presiding Justice Ernesto D. Acosta and Associate Justices Lovell R. Bautista, Caesar A. Casanova, Olga Palanca-Enriquez, and Cielito N. Mindaro-Grulla of the Court of Tax Appeals *En Banc*, Quezon City. Associate Justices Erlinda P. Uy, Esperanza R. Fabon-Victorino, and Amelia R. Cotangco-Manalastas were on leave.

[7] *Id.* at 152-155.

[8] *Id.* at 118.

[9] *Id.* at 517.

[10] *Id.* at 518.

suggested net retail price of ₱21.15 per liter or ₱6.98 per bottle, less value-added tax and specific tax. "San Mig Light" would also be classified under "Medium Priced Brand" to be taxed at ₱9.15 per liter.[11]

On January 28, 2002, Alfredo R. Villacorte (Villacorte), San Miguel Corporation's Vice President and Manager of the Group Tax Services, wrote the Bureau of Internal Revenue Chief of the Large Taxpayers Assistance Division II (LTAD II) to request information on the tax rate and classification of "San Mig Light" and another beer product named "Gold Eagle King."[12]

On February 7, 2002, LTAD II Acting Chief Conrado P. Item replied to Villacorte's letter.[13] He confirmed that based on the submitted documents, San Miguel Corporation was allowed to register, manufacture, and sell "San Mig Light" as a new brand, had been paying its excise tax for a considerable length of time, and that the tax classification and rate of "San Mig Light" as a new brand were in order.[14]

However, on May 28, 2002, Edwin R. Abella (Assistant Commissioner Abella), Bureau of Internal Revenue Large Taxpayers Service Assistant Commissioner, issued a Notice of Discrepancy against San Miguel Corporation. The Notice stated that "San Mig Light" was a *variant* of its existing beer products and must, therefore, be subjected to the higher excise tax rate for *variants*.[15] Specifically, for the year 1999, "San Mig Light" should be taxed at the rate of ₱19.91 per liter instead of ₱9.15 per liter; and for the year 2000, the 12% increase should be based on the rate of ₱19.91 per liter under Section 143(C)(2) of the Tax Code.[16] Hence, the Notice demanded payments of

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[11] *Id.* at 519.

[12] *Rollo* (G.R. No. 205045), pp. 10-11.

[13] *Id.* at 11.

[14] *Id.*

[15] *Id.*; *rollo* (G.R. No. 205723), p. 14.

[16] *Rollo* (G.R. No. 205723), p. 14.

deficiency excise tax in the amount of ₱824,750,204.97, exclusive of increments for years 1999 to April 2002.[17]

The Finance Manager of San Miguel Corporation's Beer Division wrote a letter-reply dated July 9, 2002 requesting the withdrawal of the Notice of Discrepancy.[18] San Miguel Corporation stated, among other things, that "San Mig Light" was not a *variant* of any of its existing beer brands because of "the distinctive shape, color scheme[,] and general appearance"; and the "different alcohol content and innovative low calorie formulation."[19] It also emphasized that the Escudo logo was not a beer brand logo but a corporate logo.[20]

On October 14, 2002, Assistant Commissioner Abella wrote a letter-rejoinder reiterating its finding that "San Mig Light Pale Pilsen" was truly a *variant* of "San Miguel Pale Pilsen."[21] The letter-rejoinder cited certain statements in San Miguel Corporation's publication, "Kaunlaran," and the corporation's Annual Report as support for its finding.[22]

On November 20, 2002, Villacorte replied by requesting that "San Mig Light be reconfirmed as a new brand . . . the deficiency assessment be set aside and the demand for payment be withdrawn."[23]

Subsequently, three (3) conferences were held on the "San Mig Light" tax classification issue. At the conference held on December 16, 2003, Commissioner Guillermo Parayno, Jr. (Commissioner Parayno) informed San Miguel Corporation that five (5) members of the Bureau of Internal Revenue Management

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[17] *Id.* at 532. In Annex B of the Notice of Discrepancy (p. 535), the amount is ₱824,750,204.73

[18] *Rollo* (G.R. No. 205045), p. 11.

[19] *Rollo* (G.R. No. 205723), p. 538.

[20] *Id.*

[21] *Rollo* (G.R. No. 205045), p. 11.

[22] *Id.*

[23] *Id.*

Committee voted that "San Mig Light" was a *variant* of "Pale Pilsen in can," while two (2) members voted that it was a *variant* of "Premium," a high-priced beer product of San Miguel Corporation.[24]

On January 6, 2004, Commissioner Parayno wrote San Miguel Corporation and validated the findings that "San Mig Light" was a *variant* of "San Miguel Pale Pilsen in can," subject to the same excise tax rate of the latter—that is, ₱13.61 per liter—and that an assessment for deficiency excise tax against San Miguel Corporation was forthcoming.[25]

On January 28, 2004, a Preliminary Assessment Notice (PAN) was issued against San Miguel Corporation for deficiency excise tax in the amount of ₱852,039,418.15, inclusive of increments, purportedly for the removals of "San Mig Pale Pilsen Light," from 1999 to January 7, 2004.[26]

On February 4, 2004, a Notice of Discrepancy was issued against San Miguel Corporation on an alleged deficiency excise tax in the amount of ₱28,876,108.84, from January 8, 2004 to January 29, 2004.[27]

Accordingly, on March 24, 2004, Bureau of Internal Revenue Deputy Commissioner Estelita C. Aguirre (Deputy Commissioner Aguirre) issued a PAN against San Miguel Corporation for ₱29,967,465.37 representing deficiency excise tax, inclusive of increments, from January 8, 2004 to January 29, 2004.[28]

On April 12, 2004 and May 26, 2004, Deputy Commissioner Aguirre issued two (2) Formal Letters of Demand[29] to San Miguel Corporation with the accompanying Final Assessment Notice (FAN) Nos. LTS TF 004-06-02 and LTS TF 129-05-04,

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[24] *Rollo* (GR. No. 205723), p. 760.

[25] *Id.* at 553-558.

[26] *Rollo* (G.R. No. 205045), p. 11; *rollo* (G.R. No. 205723), p. 15.

[27] *Id.* at 11-12; *rollo* (G.R. No. 205723), p. 15.

[28] *Id.* at 12; *rollo* (G.R. No. 205723), p. 15.

[29] *Id*. *rollo* (G.R. No. 205723), p. 15.

respectively, directing San Miguel Corporation to pay deficiency excise taxes in the amounts of:

(a) ₱876,098,898.83, inclusive of interest until April 30, 2004, for the period of November to December 1999 at ₱12.52 per liter, and January 2000 to January 7, 2004 at ₱13.61 per liter;[30] and

(b) ₱30,763,133.68, inclusive of interest until June 30, 2004, for the period January 8, 2004 to January 29, 2004.[31]

San Miguel filed a Protest/Request for Reconsideration against each FAN.[32]

On August 17, 2004 and August 20, 2004, Former Large Taxpayers Service Officer-in-Charge Deputy Commissioner Kim S. Jacinto-Henares informed San Miguel Corporation of the denial of the Protest/Request for Reconsiderations against the two (2) FANs "for lack of legal and factual basis."[33]

G.R. No. 205723

On September 17, 2004 and September 22, 2004, San Miguel Corporation filed before the Court of Tax Appeals Petitions for Review, docketed as CTA Case Nos. 7052 and 7053, assailing the denials of its Protest/Request for Reconsiderations of the deficiency excise tax assessments.[34]

To prevent the issuance of additional excise tax assessments on San Mig Light products and the disruption of its operations, San Miguel Corporation paid excise taxes at the rate of ₱13.61 beginning February 1, 2004.[35]

On December 28, 2005, San Miguel Corporation filed with the Bureau of Internal Revenue its first refund claim. The claim

[30] *Id.*; *rollo* (G.R. No. 205723), p. 15.

[31] *Id.*; *rollo* (G.R. No. 205723), p. 15.

[32] *Id.*; *rollo* (G.R. No. 205723), p. 15.

[33] *Id.*; *rollo* (G.R. No. 205723), p. 15.

[34] *Rollo* (G.R. No. 205723), p. 15.

[35] *Id.* at 16.

sought the refund of ₱782,238,161.47 for erroneous excise taxes collected on San Mig Light products from February 2, 2004 to November 30, 2005.[36]

Due to inaction on its claim, on January 31, 2006, San Miguel Corporation filed before the Court Tax Appeals a Petition for Review docketed as CTA Case No. 7405.[37] The Court of Tax Appeals, upon motion, later consolidated CTA Case No. 7405 with CTA Case Nos. 7052 and 7053.[38]

The Court of Tax Appeals First Division, in its Decision[39] dated October 18, 2011, granted the Petitions in CTA Case Nos. 7052 and 7053 and partially granted the Petition in CTA Case No. 7405.[40] The Decision's dispositive portion reads:

> **WHEREFORE**, in view of the foregoing considerations, the consolidated Petitions for Review in CTA Case Nos. 7052 and 7053 are hereby **GRANTED**. The (1) [sic] letters dated August 17, 2004 and August 20, 2004 of respondents, denying petitioner's Protest/ Request for Reconsideration dated May 12, 2004 and July 7, 2004, respectively, and (2) Assessment Notice Nos. LTS TF 004-06-02 and LTS TF 129-05-04 issued by respondent against petitioner for the periods of November 1999 to January 7, 2004 and January 8, 2004 to January 29, 2004, are hereby **CANCELLED and SET ASIDE**.
>
> Moreover, the Petition for Review in CTA Case No. 7405 is hereby **PARTIALLY GRANTED**. Respondent CIR is hereby ORDERED to REFUND petitioner, or to ISSUE A TAX CREDIT CERTIFICATE in its favor in, the amount of SEVEN HUNDRED EIGHTY ONE MILLION FIVE HUNDRED FOURTEEN THOUSAND SEVEN HUNDRED SEVENTY TWO PESOS AND FIFTY SIX CENTAVOUS [sic] (₱781,514,772.56), as determined below:

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[36] *Id.*

[37] *Id.*

[38] *Id.*

[39] *Id.* at 971-1010. The Decision was penned by Associate Justice Erlinda P. Uy and concurred in by Presiding Justice Ernesto D. Acosta and Associate Justice Esperanza R. Fabon-Victorino of the First Division, Court of Tax Appeals, Quezon City.

[40] *Id.* at 17-18.

Claims for Over-Payment of Excise Taxes per Petition		₱782,238,161.47
Less: Deductions from claims:		
1. Excise taxes due on SML removals per ODI which were not paid per Returns Polo Plant	₱420,252.62	
2. Excise taxes due per Excise Tax Returns were Lesser than [the] amounts per ODI Polo Plant	121,975.00	
3. SML Removals per shipping Memorandum were Greater than ODIs		
San Fernando Plant	181,080.11	
Bacolod Plant	81.18	
		723,388.91
Recomputed Excise Taxes for Refund/Issuance of Tax Credit Certificate		**₱781,514,772.56**

SO ORDERED.[41] (Emphasis in the original)

The Commissioner filed a Motion for Reconsideration with Motion for Production of Documents praying that San Miguel Corporation be compelled to produce the following: (a) "Kaunlaran" publication for the months of October 1999 and January 2000; (b) 1999 Annual Report to stockholders; and (c) copies of the video footage of two (2) San Mig Light commercials as seen in its website.[42] The Commissioner claimed

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[41] *Id.* at 1008-1009.

[42] *Id.* at 1041.

"that the admission of said documents would lead to a better illumination of the outcome of the case."[43]

The Court of Appeals First Division denied the Motions in its Resolution[44] dated February 6, 2012:

> **WHEREFORE**, premises considered, respondent's [CIR's] **MOTION FOR RECONSIDERATION WITH MOTION FOR PRODUCTION OF DOCUMENTS (Re: Decision promulgated 18 October 2011)** and SUPPLEMENTAL **MOTION FOR PRODUCTION OF DOCUMENTS** are hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**[45] (Emphasis in the original)

The Court of Tax Appeals *En Banc*, in its Decision[46] dated October 24, 2012, dismissed the Petition and affirmed the Division.[47] It also denied reconsideration through the Resolution[48] dated February 4, 2013.

Hence, the Commissioner on Internal Revenue filed the Petition for Review on Certiorari[49] docketed as G.R. No. 205723.

G.R. No. 205045

On August 30, 2007, San Miguel Corporation filed its second refund claim with the Bureau of Internal Revenue in the amount of ₱926,389,172.02.[50] Due to inaction on its claim, San Miguel Corporation filed before the Court of Tax Appeals a Petition

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[43] *Id.*

[44] *Id.* at 1039-1043. The Resolution was penned by Associate Justice Erlinda P. Uy and concurred in by Presiding Justice Ernesto D. Acosta and Associate Justice Esperanza R. Fabon-Victorino of the First Division, Court of Tax Appeals, Quezon City.

[45] *Id.* at 1043.

[46] *Id.* at 12-34.

[47] *Id.* at 33.

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

[49] *Id.* at 44-127-A.

[50] *Rollo* (G.R. No. 205045), p. 13.

for Review, docketed as CTA Case No. 7708, on November 27, 2007.[51]

The Court of Tax Appeals Third Division, in its Decision dated January 7, 2011, partially granted the Petition.[52] It also denied reconsideration.[53] The Decision's dispositive portion reads:

> **WHEREFORE**, the Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND or ISSUE A TAX CREDIT CERTIFICATE** in favor [of] petitioner in the amount of ₱926,169,056.74, representing erroneously, or excessively and/or illegally collected, and overpaid excise taxes on "San Mig Light" during the period from December 1, 2005 up to July 31, 2007.
>
> **SO ORDERED.**[54] (Emphasis in the original)

On September 20, 2012, the Court of Tax Appeals *En Banc*[55] affirmed the Division and thereafter also denied reconsideration. The Decision's dispositive portion reads:

> **WHEREFORE**, the present Petition for Review is hereby **DENIED** for lack of merit. The assailed decision and resolution of the Third Division of this Court promulgated on January 7, 2011 and March 23, 2011, respectively, in CTA Case No. 7708 entitled "SAN MIGUEL CORPORATION vs. COMMISSIONER OF INTERNAL REVENUE[‟], are hereby **AFFIRMED**.
>
> Accordingly, petitioner is **ORDERED TO REFUND or ISSUE A TAX CREDIT CERTIFICATE** in favor of respondent in the amount of ₱926,169,056.74, representing erroneously, excessively and/or illegally collected and overpaid excise taxes on "San Mig Light" during the period December 1, 2005 to July 31, 2007.
>
> **SO ORDERED.**[56] (Emphasis in the original)

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[51] *Id.* at 13 and 152.

[52] *Id.* at 14.

[53] *Id.* at 15.

[54] *Id.* at 10.

[55] *Id.* at 9-25.

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

Hence, the Commissioner on Internal Revenue filed the Petition for Review on Certiorari[57] docketed as G.R. No. 205045. The two (2) cases were consolidated.

Respondent San Miguel Corporation filed its Comment[58] on the Petitions, to which petitioner filed its Reply.[59] The parties then filed their respective memoranda.[60]

The issues for resolution are:

First, whether a motion for production of documents and objects may be availed of after the court has rendered judgment;

Second, whether petitioner complied with all requisites of a motion for production of documents and objects under Rule 27, such as a showing of good cause;

Third, whether "San Mig Light" is a new brand and not a *variant* of "San Miguel Pale Pilsen";

Fourth, whether the "classification freeze" in Rep. Act No. 9334 refers to the freezing of classification of brands, and not to the freezing of net retail prices of brands;

Fifth, whether the deficiency excise tax assessments issued by the Bureau of Internal Revenue against respondent dated April 12, 2004 and May 26, 2004 are valid; and

Lastly, whether respondent is entitled to a refund of excess payment of excise taxes on "San Mig Light" in the amount of ₱781,514,772.56 for the period from February 1, 2004 up to November 30, 2005, and in the amount of ₱926,169,056.74 for the period from December 1, 2005 up to July 31, 2007.

I

Petitioner questions the denial of its Motion for Production of Documents and Objects. It argues that this motion may be

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[57] *Id.* at 64-84.

[58] *Rollo* (G.R. No. 205723), pp. 1116-1201; *rollo* (G.R. No. 205045), pp. 150-227.

[59] *Id.* at 1217-1226; *rollo* (G.R. No. 205045), pp. 234-235.

[60] *Id.* at 1264-1374; *rollo* (G.R. No. 205045), pp. 1391-1472.

filed after pre-trial or during the pendency of the action since Rule 27, Section 1 of the Revised Rules of Civil Procedure does not explicitly provide that it must be availed of before trial or pre-trial.[61] Petitioner contends that all requisites for filing the motion were satisfied.[62] Assuming the Motion was belatedly filed, it should have been granted in the higher interest of justice.[63]

Respondent counters that the Motions, which were filed only after the Court of Tax Appeals Division rendered judgment, were belatedly filed since this mode of discovery must be availed of before trial.[64] Rule 27, Section 1 used the phrase, "in which an action is pending"; thus, this defines which court has authority to resolve the motion and does not define when the motion must be made.[65] Respondent contends that this remedy must be availed of before trial in order to facilitate and expedite case preparations.[66] Respondent adds that petitioner also failed to comply with the requisites for the motion. Specifically, the Motion did not adequately describe the contents of the documents to be produced to show their materiality and relevance to the case.[67]

Respondent further submits that the documents and objects are immaterial and irrelevant to the issues. The documents petitioner sought to have respondent produce are referred to as having to do with the taste, alcohol content, and calories of "San Mig Light," when the Tax Code definition of *variant* has nothing to do with these matters.[68] Respondent submits that in filing the Motions after judgment, petitioner was effectively

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[61] *Rollo* (G.R. No. 205723), pp. 1464-1467.

[62] *Id.* at 1467-1470.

[63] *Rollo* (G.R. No. 205045), pp. 79-80.

[64] *Id.* at 415-416.

[65] *Id.* at 416.

[66] *Id.* at 417.

[67] *Id.* at 418 and 425.

[68] *Id.* at 419 and 424-426.

seeking new trial, which it may only avail itself of with "newly discovered" evidence.[69]

Rule 27, Section 1 of the Revised Rules of Civil Procedure provides:

> SECTION 1. *Motion for production or inspection; order.* — Upon motion of any party ***showing good cause*** therefore, ***the court in which an action is pending*** may (a) order any party to produce and permit the inspection and copying or photographing, by or on behalf of the moving party, of any designated documents, papers, books, accounts, letters, photographs, objects or tangible things, not privileged, which constitute or contain evidence ***material to any matter involved in the action*** and which are in his possession, custody or control; or (b) order any party to permit entry upon designated land or other property in his possession or control for the purpose of inspecting, measuring, surveying, or photographing the property or any designated relevant object or operation thereon. The order shall specify the time, place and manner of making the inspection and taking copies and photographs, and may prescribe such terms and conditions as are just. (Emphasis supplied)

Rule 18, Section 6 of the Rules of Court on Pre-Trial requires that the pre-trial briefs shall include "[a] manifestation of their having availed or intention to avail themselves of discovery procedures."

On July 13, 2004, this Court approved A.M. No. 03-1-09-SC, otherwise known as the Rule on Guidelines to be Observed by Trial Court Judges and Clerks of Court in the Conduct of Pre-Trial and Use of Deposition — Discovery Measures. Among other things, these rules direct trial courts to require parties to submit, at least three (3) days before pre-trial, pre-trial briefs containing "[a] manifestation of the parties of their having availed or their intention to avail themselves of discovery procedures or referral to commissioners."[70]

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[69] *Id.* at 420 and 423.

[70] *Hyatt Industrial Manufacturing Corp. v. Ley Construction and Development Corp.*, 519 Phil. 272, 286-287 (2006) [Per *J.* Austria-Martinez, First Division], *citing* A.M. No. 03-1-09-SC, pars. I.A. 1.2; 2(e).

Republic v. Sandiganbayan[71] explained the purpose and policy behind modes of discovery:

> The truth is that "evidentiary matters" may be inquired into and learned by the parties before the trial. Indeed, ***it is the purpose and policy of the law that the parties — before the trial if not indeed even before the pre-trial — should discover or inform themselves of all the facts relevant to the action***, not only those known to them individually, but also those known to their adversaries; in other words, the *desideratum* is that civil trials should not be carried on in the dark; and the Rules of Court make this ideal possible through the deposition-discovery mechanism set forth in Rules 24 to 29. The experience in other jurisdictions has been that ample discovery before trial, under proper regulation, accomplished one of the most necessary ends of modern procedure: ***it not only eliminates unessential issues from trials thereby shortening them considerably, but also requires parties to play the game with the cards on the table so that the possibility of fair settlement before trial is measurably increased...***
>
> As just intimated, the deposition-discovery procedure was designed to remedy the conceded inadequacy and cumbersomeness of the pre-trial functions of notice-giving, issue-formulation and fact revelation theretofore performed primarily by the pleadings.
>
> The various modes or instruments of discovery are meant to serve (1) as a device, along with the pre-trial hearing under Rule 20, to narrow and clarify the basic issues between the parties, and (2) as a device for ascertaining the facts relative to those issues. The evident purpose is, to repeat, to enable the parties, consistent with recognized privileges, ***to obtain the fullest possible knowledge of the issues and facts before civil trials and thus prevent that said trials are carried on in the dark.***[72] (Emphasis supplied, citations omitted)

Specifically, this Court discussed the importance of a motion for production of documents under Rule 27 of the Rules of Court in expediting time-consuming trials:

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[71] 281 Phil. 234 (1991) [Per *J*. Narvasa, *En Banc*].

[72] *Republic v. Sandiganbayan*, 281 Phil. 234, 253-254 (1991) [Per *J*. Narvasa, *En Banc*]. *See* also *Security Bank Corporation v. Court of Appeals*, 380 Phil. 299, 308-309 (2000) [Per *J*. Panganiban, Third Division].

This remedial measure is intended to assist in the administration of justice by ***facilitating and expediting the preparation of cases for trial and guarding against undesirable surprise and delay***; and it is designed to simplify procedure and obtain admissions of facts and evidence, thereby ***shortening costly and time-consuming trials***. It is based on ancient principles of equity. More specifically, the purpose of the statute is to enable a party-litigant to discover material information which, by reason of an opponent's control, would otherwise be unavailable for judicial scrutiny, and to provide a convenient and summary method of obtaining material and competent documentary evidence in the custody or under the control of an adversary. It is a further extension of the concept of pretrial.[73] (Emphasis supplied)

Consistent with litigation's quest for truth, parties should welcome every opportunity in attaining this objective, such as acting in good faith to reveal material documents.[74]

The scope of discovery must be liberally construed, as a general rule, to serve its purpose of providing the parties with essential information to reach an amicable settlement or to expedite trial.[75] "Courts, as arbiters and guardians of truth and justice, must not countenance any technical ploy to the detriment of an expeditious settlement of the case or to a fair, full and complete determination on its merits."[76]

Rule 27, Section 1 of the Rules of Court does not provide when the motion may be used. Hence, the allowance of a motion for production of document rests on the sound discretion of

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[73] *Solidbank v. Gateway Electronics Corporation*, 576 Phil. 250, 260 (2008) [Per *J.* Nachura, Third Division], *citing* 27 C.J.S. Discovery 71 (2008).

[74] *Security Bank Corporation v. Court of Appeals*, 380 Phil. 299, 310 (2000) [Per *J.* Panganiban, Third Division].

[75] *Eagleridge Development Corporation v. Cameron Granville*, 708 Phil. 693, 704 (2013) [Per *J.* Leonen, Third Division], citing *Fortune Corporation v. Court of Appeals,* 299 Phil. 356, 374 (1994) [Per *J.* Regalado, Second Division]; *Republic v. Sandiganbayan*, 281 Phil. 234, 254-255 (1991) [Per *J.* Narvasa, *En Banc*].

[76] *Id.* at 708.

the court where the case is pending, with due regard to the rights of the parties and the demands of equity and justice.[77]

In *Eagleridge Development Corporation v. Cameron Granville 3 Asset Management, Inc.*,[78] we held that a motion for production of documents may be availed of even beyond the pre-trial stage, upon showing of good cause as required under Rule 27.[79] We allowed the production of documents because the petitioner was able to show "good cause" and relevance of the documents sought to be produced, and the trial court had not yet rendered its judgment.

In this case, petitioner filed its Motion for Production of Documents after the Court of Tax Appeals Division had rendered its judgment. According to the Court of Tax Appeals Division, the documents sought to be produced were already discussed in the Commissioner's Memorandum dated October 21, 2010 and were already considered by the tax court when it rendered its Decision.[80] If petitioner believed that the evidence in the custody and control of respondent "would provide a better illumination of the outcome of the case," it should have sought their production at the earliest opportunity as it had been already aware of their existence.[81] Petitioner's laxity is inexcusable and is a fatal omission.

Under these circumstances, there was indeed no further need for the production of documents and objects desired by petitioner. These pieces of evidence could have served no useful purpose. On the contrary, the production of those documents after judgment defeats the purpose of modes of discovery in expediting case preparation and shortening trials.

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[77] See *Santos v. Phil. National Bank*, 431 Phil. 368 (2002) [Per *J*. Mendoza, Second Division].

[78] G.R. No. 204700, November 24, 2014 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/november2014/204700.pdf > [Per *J*. Leonen, Special Third Division].

[79] *Id.* at 5.

[80] *Rollo* (G.R. No. 205723), pp. 1039-1043.

[81] *Id.* at 1042.

We find no reversible error on the part of the Court of Tax Appeals *En Banc* in affirming the Division's denial of petitioner's Motion for Production of Documents.

II

These consolidated cases involve the Tax Code provision defining *new brand* as opposed to *variant of brand*, as these two are treated differently for excise tax on fermented liquor.

Effective January 1, 1998, Republic Act No. 8424, otherwise known as the Tax Reform Act of 1997, reproduced as Section 143 the provisions of Section 140 of the old Tax Code, as amended by Republic Act No. 8240, governing excise taxes on fermented liquor. Section 143 distinguishes a *new brand* from a *variant of brand*:

> Sec. 143. Fermented Liquor. - There shall be levied, assessed and collected an excise tax on beer, lager beer, ale, porter and other fermented liquors except tuba, basi, tapuy and similar domestic fermented liquors in accordance with the following schedule:
>
> (a) If the net retail price (excluding the excise tax and value-added tax) per liter of volume capacity is less than Fourteen pesos and fifty centavos (₱14.50), the tax shall be Six pesos and fifteen centavos (₱6.15) per liter;
>
> (b) If the net retail price (excluding the excise tax and the value-added tax) per liter of volume capacity is Fourteen pesos and fifty centavos (₱14.50) up to Twenty-two pesos (₱22.00), the tax shall be Nine pesos and fifteen centavos (₱9.15) per liter;
>
> (c) If the net retail price (excluding the excise tax and the value-added tax) per liter of volume capacity is more than Twenty-two pesos (₱22.00), the tax shall be Twelve pesos and fifteen centavos (₱12.15) per liter.
>
> ***Variants of existing brands which are introduced in the domestic market after the effectivity of Republic Act No. 8240 shall be taxed under the highest classification of any variant of that brand.***
>
> Fermented liquor which are brewed and sold at micro-breweries or small establishments such as pubs and restaurants shall be subject to the rate in paragraph (c) hereof.

The excise tax from any brand of fermented liquor within the next three (3) years from the effectivity of Republic Act No. 8240 shall not be lower than the tax which was due from each brand on October 1, 1996.

The rates of excise tax on fermented liquor under paragraphs (a), (b) and (c) hereof shall be increased by twelve percent (12%) on January 1, 2000.

New brands shall be classified according to their current net retail price.

For the above purpose, 'net retail price' shall mean the price at which the fermented liquor is sold on retail in twenty (20) major supermarkets in Metro Manila (for brands of fermented liquor marketed nationally), excluding the amount intended to cover the applicable excise tax and the value-added tax. For brands which are marketed only outside Metro Manila, the 'net retail price' shall mean the price at which the fermented liquor is sold in five (5) major supermarkets in the region excluding the amount intended to cover the applicable excise tax and the value-added tax.

The classification of each brand of fermented liquor based on its average net retail price as of October 1, 1996, as set forth in Annex 'C,' shall remain in force until revised by Congress.

A 'variant of brand' shall refer to a brand on which a modifier is prefixed and/or suffixed to the root name of the brand and/or a different brand which carries the same logo or design of the existing brand.

Every brewer or importer of fermented liquor shall, within thirty (30) days from the effectivity of R.A. No. 8240, and within the first five (5) days of every month thereafter, submit to the Commissioner a sworn statement of the volume of sales for each particular brand of fermented liquor sold at his establishment for the three-month period immediately preceding.

Any brewer or importer who, in violation of this Section, knowingly misdeclares or misrepresents in his or its sworn statement herein required any pertinent data or information shall be penalized by a summary cancellation or withdrawal of his or its permit to engage in business as brewer or importer of fermented liquor.

Any corporation, association or partnership liable for any of the acts or omissions in violation of this Section shall be fined treble the

amount of deficiency taxes, surcharges and interest which may be assessed pursuant to this Section.

Any person liable for any of the acts or omissions prohibited under this Section shall be criminally liable and penalized under Section 254 of this Code. Any person who willfully aids or abets in the commission of any such act or omission shall be criminally liable in the same manner as the principal.

If the offender is not a citizen of the Philippines, he shall be deported immediately after serving the sentence, without further proceedings for deportation. (Emphasis supplied)

On January 1, 2005, Republic Act No. 9334[82] took effect, amending Section 143 of the Tax Code to read:

Sec. 143. *Fermented Liquors*. — There shall be levied, assessed and collected an excise tax on beer, lager beer, ale, porter and other fermented liquors except *tuba, basi, tapuy* and similar fermented liquors in accordance with the following schedule:

(a) If the net retail price (excluding the excise tax and the value-added tax) per liter of volume capacity is less than Fourteen pesos and fifty centavos (₱14.50), the tax shall be Eight pesos and twenty-seven centavos (₱8.27) per liter;

(b) If the net retail price (excluding the excise tax and the value-added tax) per liter of volume capacity is Fourteen pesos and fifty centavos (₱14.50) up to Twenty-two pesos (₱22.00), the tax shall be Twelve pesos and thirty centavos (₱12.30) per liter;

(c) If the net retail price (excluding the excise tax and the value-added tax) per liter of volume capacity is more than Twenty-two pesos (₱22.00), the tax shall be Sixteen pesos and thirty-three centavos (₱16.33) per liter.

Variants of existing brands and variants of new brands which are introduced in the domestic market after the effectivity of this Act shall be taxed under the proper classification thereof based on their suggested net retail price: *Provided, however*, That such classification shall not, in any case, be lower than the highest classification of any variant of that brand.

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[82] An Act Increasing the Excise Tax Rates Imposed on Alcohol and Tobacco Products, Amending for the Purpose Sections 131, 141, 142, 143, 144,145 and 288 of the National Internal Revenue Code of 1997, as Amended (2005).

A 'variant of a brand' shall refer to a brand on which a modifier is prefixed and/or suffixed to the root name of the brand.

Fermented liquors which are brewed and sold at micro-breweries or small establishments such as pubs and restaurants shall be subject to the rate in paragraph (c) hereof.

New brands, as defined in the immediately following paragraph, shall initially be classified according to their suggested net retail price.

'New brand' shall mean a brand registered after the date of effectivity of R.A. No. 8240.

'Suggested net retail price' shall mean the net retail price at which new brands, as defined above, of locally manufactured or imported fermented liquor are intended by the manufacturer or importer to be sold on retail in major supermarkets or retail outlets in Metro Manila for those marketed nationwide, and in other regions, for those with regional markets. At the end of three (3) months from the product launch, the Bureau of Internal Revenue shall validate the suggested net retail price of the new brand against the net retail price as defined herein and determine the correct tax bracket to which a particular new brand of fermented liquor, as defined above, shall be classified. After the end of eighteen (18) months from such validation, the Bureau of Internal Revenue shall revalidate the initially validated net retail price against the net retail price as of the time of revalidation in order to finally determine the correct tax bracket which a particular new brand of fermented liquors shall be classified: **Provided, however,** ***That brands of fermented liquors introduced in the domestic market between January 1, 1997 and December 31, 2003 shall remain in the classification under which the Bureau of Internal Revenue has determined them to belong as of December 31, 2003. Such classification of new brands and brands introduced between January 1, 1997 and December 31, 2003 shall not be revised except by an act of Congress.***

'Net retail price', as determined by the Bureau of Internal Revenue through a price survey to be conducted by the Bureau of Internal Revenue itself, or the National Statistics Office when deputized for the purpose by the Bureau of Internal Revenue, shall mean the price at which the fermented liquor is sold on retail in at least twenty (20) major supermarkets in Metro Manila (for brands of fermented liquor marketed nationally), excluding the amount intended to cover the applicable excise tax and the value-added tax. For brands which are

marketed outside Metro Manila, the 'net retail price' shall mean the price at which the fermented liquor is sold in at least five (5) major supermarkets in the region excluding the amount intended to cover the applicable excise tax and the value-added tax.

The classification of each brand of fermented liquor based on its average net retail price as of October 1, 1996, as set forth in Annex 'C', including the classification of brands for the same products which, although not set forth in said Annex 'C', were registered and were being commercially produced and marketed on or after October 1, 1996, and which continue to be commercially produced and marketed after the effectivity of this Act, shall remain in force until revised by Congress.

The rates of tax imposed under this Section shall be increased by eight percent (8%) every two years starting on January 1, 2007 until January 1, 2011.

Any downward reclassification of present categories, for tax purposes, of existing brands of fermented liquor duly registered at the time of the effectivity of this Act which will reduce the tax imposed herein, or the payment thereof, shall be prohibited.

Every brewer or importer of fermented liquor shall, within thirty (30) days from the effectivity of this Act, and within the first five (5) days of every month thereafter, submit to the Commissioner a sworn statement of the volume of sales for each particular brand of fermented liquor sold at his establishment for the three-month period immediately preceding.

Any brewer or importer who, in violation of this Section, knowingly misdeclares or misrepresents in his or its sworn statement herein required any pertinent data or information shall be penalized by a summary cancellation or withdrawal of his or its permit to engage in business as brewer or importer of fermented liquor.

Any corporation, association or partnership liable for any of the acts or omissions in violation of this Section shall be fined treble the amount of deficiency taxes, surcharges and interest which may be assessed pursuant to this Section.

Any person liable for any of the acts or omissions prohibited under this Section shall be criminally liable and penalized under Section 254 of this Code. Any person who willfully aids or abets in the

commission of any such act or omission shall be criminally liable in the same manner as the principal.

If the offender is not a citizen of the Philippines, he shall be deported immediately after serving the sentence, without further proceedings for deportation. (Emphasis supplied)

On December 19, 2012, Rep. Act No. 10351, otherwise known as the Sin Tax Law,[83] was promulgated to further amend certain provisions on excise taxes on alcohol and tobacco products. Among the amendments to Section 143 were:

(1) Increase in the excise tax rates and transition from three (3)-tiered to two (2)-tiered tax rates starting January 1, 2014 until December 31, 2016; and to a single tax rate beginning January 1, 2017, irrespective of the price levels at which the products were sold in the market;

(2) All fermented liquors existing in the market at the time of the effectivity of the Act shall be classified according to the net retail prices and the tax rates provided, based on the latest price survey of the fermented liquors conducted by the Bureau of Internal Revenue. However, any downward reclassification is prohibited;

(3) Fermented liquors introduced in the domestic market after the effectivity of the Act shall be initially tax-classified according to their suggested net retail prices until such time that their correct tax bracket is finally determined under a specified period; and

(4) The proper tax classification of fermented liquors, whether registered before or after the effectivity of the Act, shall be determined every two (2) years from the date of effectivity of the Act.

Excise taxes are imposed on the production, sale, or consumption of specific goods. Generally, excise taxes on

[83] An Act Restructuring the Excise Tax on Alcohol and Tobacco Products by Amending Sections 141, 142, 143, 144, 145, 8, 131 and 288 of Republic Act No. 8424, Otherwise Known as the National Internal Revenue Code of 1997, as Amended by Republic Act No. 9334, and for Other Purposes.

domestic products are paid by the manufacturer or producer before removal of those products from the place of production.[84] The excise tax based on weight, volume capacity, or any other physical unit of measurement is referred to as "specific tax." If based on selling price or other specified value, it is referred to as "*ad valorem*" tax.[85]

The excise tax on beer is a specific tax based on volume, or on a per liter basis. Before its amendment, Section 143 provided for three (3) layers of tax rates, depending on the net retail price per liter. How a new beer product is taxed depends on its classification, i.e. whether it is a *variant* of an existing brand or a *new brand*. Variants of a brand that were introduced in the market after January 1, 1997 are taxed under the highest tax classification of any variant of the brand. On the other hand, new brands are initially classified and taxed according to their suggested net retail price, until a survey is conducted by the Bureau of Internal Revenue to determine their current net retail price in accordance with the specified procedure.

III

Petitioner argues that "San Mig Light," launched in November 1999, is not a *new brand* but merely a low-calorie *variant* of "San Miguel Pale Pilsen."[86] Thus, the application of the higher excise tax rate for variant products is appropriate and respondent should not be entitled to a refund or issuance of a tax credit certificate.[87]

Respondent counters that "San Mig Light" is a *new brand*; the classification of "San Mig Light" as a new and medium-priced brand may not be revised except by an act of Congress;[88] and the Court of Tax Appeals did not err in granting its claim for refund or issuance of tax credit certificate.

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[84] TAX CODE, Sec. 130(a)(2).

[85] TAX CODE, Sec. 129.

[86] *Rollo* (G.R. No. 205045), p. 299; *rollo* (G.R. No. 205723), p. 1423.

[87] *Id.* at 313; *rollo* (G.R. No. 205723), pp. 1463-1464.

[88] *Id.* at 341 and 343-350.

The refund claim in CTA Case No. 7405, subject of the Petition docketed as G.R. No. 205723, covers the period from February 2, 2004 to November 30, 2005, while the refund claim in CTA Case No. 7708, subject of the Petition docketed as G.R. No. 205045, covers the period from December 1, 2005 up to July 31, 2007.

We find for respondent.

Parenthetically, the Bureau of Internal Revenue's actions reflect its admission and confirmation that "San Mig Light" is a new brand.

When respondent's October 19, 1999 letter requested the registration and authority to manufacture "San Mig Light," to be taxed at ₱12.15 per liter,[89] the Bureau of Internal Revenue granted the request.[90]

The response dated February 7, 2002 of the LTAD II Acting Chief confirmed that respondent was allowed to register, manufacture, and sell "San Mig Light" as a new brand.[91]

The Joint Stipulation of Facts, Documents and Issues in CTA Cases Nos. 7052 and 7053 dated July 29, 2005,[92] signed by both parties, includes paragraph 1.08, which reads:

1.08. ***From the time of its registration as a new brand in October 1999*** and its production in November 1999, "San Mig Light" products have been withdrawn and sold, and taxes have been paid on such removals, on the basis of its registration and tax rate as a new brand. (*CTA No. 7052: Petition, par. 5.06; Answer, par. 2[e]; CTA No. 7053: Petition, par. 5.06; Answer, par. 2[e]*).[93] (Emphasis supplied)

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[89] *Rollo* (G.R. No. 205723), p. 893.

[90] *Id.* at 894.

[91] *Id.* at 26; *rollo* (G.R. No. 205045), p. 11.

[92] *Rollo* (G.R. No. 205723), pp. 411-516. Attached as Annex K of the Petition.

[93] *Id.* at 494.

The May 28, 2002 Notice of Discrepancy was effectively nullified by the subsequent issuance of Revenue Memorandum Order No. 6-2003, which included "San Mig Light" as a new brand.

The Bureau of Internal Revenue issued Revenue Memorandum Order No. 6-2003 dated March 11, 2003 with the subject, Prescribing the Guidelines and Procedures in the Establishment of Current Net Retail Prices of New Brands of Cigarettes and Alcohol Products Pursuant to Revenue Regulations No. 9-2003. Annex "A-3" is the Master List of Registered Brands of Locally Manufactured Alcohol Products as of February 28, 2003, and the list includes "San Mig Light,"[94] classified as "NB" or "new brand registered on or after January 1, 1997":[95]

BRAND NAME	CLASS	SPECIFICATION	PACKAGE	INTENDED MARKET		REMARKS	
				Domestic Sale	Export	Status	Date of Last Production
B. FERMENTED LIQUOR							
1. SAN MIGUEL CORPORATION							
. . . .							
"San Mig Light"	NB	330ml flint bottle	24 bots	x	x	Active[96]	

IV

Any reclassification of fermented liquor products should be by act of Congress. Section 143 of the Tax Code, as amended by Rep. Act No. 9334, provides for this classification freeze referred to by the parties:

Provided, however, That brands of fermented liquors introduced in the domestic market between January 1, 1997 and December 31,

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[94] *Id.* at 960.

[95] *Rollo* (G.R. No. 205045), p. 21.

[96] *Rollo* (G.R. No. 205723), pp. 959-960.

2003 shall remain in the classification under which the Bureau of Internal Revenue has determined them to belong as of December 31, 2003. Such ***classification of new brands and brands introduced between January 1, 1997 and December 31, 2003 shall not be revised except by an act of Congress.***

. . . . . .

The classification of each brand of fermented liquor based on its average net retail price as of October 1, 1996, as set forth in Annex 'C', including the classification of brands for the same products which, although not set forth in said Annex 'C', were registered and were being commercially produced and marketed on or after October 1, 1996, and which continue to be commercially produced and marketed after the effectivity of this Act, shall remain in force until revised by Congress.[97] (Emphasis supplied)

In her Dissenting Opinion, Court of Tax Appeals Associate Justice Cielito N. Mindaro-Grulla discussed that *British American Tobacco v. Camacho*[98] explained the purpose and application of the classification freeze.[99] Her Dissenting Opinion concludes that the classification freeze does not apply when a brand is a *variant* erroneously determined as a new brand.[100]

British American Tobacco involves Section 145 of the Tax Code governing excise taxes for cigars and cigarettes.

This Court in *British American Tobacco* discussed that Rep. Act No. 9334 includes, among other things, the legislative freeze on cigarette brands introduced between January 2, 1997 and December 31, 2003, in that these cigarette brands will remain in the classification determined by the Bureau of Internal Revenue as of December 31, 2003 until revised by Congress.[101] In other

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[97] Rep. Act No. 9334 (2005), Sec. 3.

[98] 584 Phil. 489 (2008) [Per *J.* Ynares-Santiago, *En Banc*].

[99] *Rollo* (G.R. No. 205045), pp. 118-120.

[100] *Id.* at 120.

[101] *British American Tobacco v. Camacho*, 584 Phil. 489, 504-505 (2008) [Per *J.* Ynares-Santiago, *En Banc*].

words, after a cigarette brand is classified under the low-priced, medium-priced, high-priced, or premium-priced tax bracket based on its current net retail price, its classification is frozen unless Congress reclassifies it.[102]

The petitioner in *British American Tobacco* questioned this legislative freeze under Section 145 for creating a "grossly discriminatory classification scheme between old and new brands."[103] This Court ruled that the classification freeze provision does not violate the constitutional provisions on equal protection.[104]

This Court discussed the legislative intent behind the classification freeze, that is, to deter the potential for abuse if the power to reclassify is delegated and much discretion is given to the Department of Finance and Bureau of Internal Revenue:

> To our mind, the *classification freeze provision* was in the main the result of Congress' earnest efforts to improve the efficiency and effectivity of the tax administration over sin products while trying to balance the same with other state interests. In particular, the questioned provision addressed Congress' administrative concerns regarding delegating too much authority to the DOF and BIR as this will open the tax system to potential areas of abuse and corruption. Congress may have reasonably conceived that a tax system which would give the least amount of discretion to the tax implementers would address the problems of tax avoidance and tax evasion.[105]

British American Tobacco discussed the legislative history of the classification freeze, but it did not explicitly rule that the classification freeze only refers to retail price tax brackets.

In any event, petitioner's letters and Notices of Discrepancy, which effectively changed San Mig Light's brand's classification from "*new brand* to *variant* of existing brand," necessarily changes San Mig Light's tax bracket. Based on the legislative

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[102] *Id.* at 517-518.

[103] *Id.* at 515.

[104] *Id.* at 545.

[105] *Id.* at 543.

intent behind the classification freeze provision, petitioner has no power to do this.

A reclassification of a fermented liquor brand introduced between January 1, 1997 and December 31, 2003, such as "San Mig Light," must be by act of Congress. There was none in this case.

V

Before Rep. Act No. 9334 was passed, the Tax Code under Republic Act No. 8240 defined a "variant of a brand" as follows:

> A variant of a brand shall refer to a brand on which a modifier is prefixed and/or suffixed to the root name of the brand and/or a different brand which carries the same logo or design of the existing brand.[106]

This definition includes two (2) types of "variants." The first involves the use of a modifier that is prefixed and/or suffixed to a brand root name, and the second involves the use of the same logo or design of an existing brand.

Rep. Act No. 9334 took effect on January 1, 2005 and deleted the second type of "variant" from the definition:

> A 'variant of a brand' shall refer to a brand on which a modifier is prefixed and/or suffixed to the root name of the brand.[107]

Revenue Regulations No. 3-2006, with the subject: "*Prescribing the Implementing Guidelines of the Revised Tax Rates on Alcohol and Tobacco Products Pursuant to the Provisions of Republic Act No. 9334, and Clarifying Certain Provisions of Existing Revenue Regulations Relative Thereto*" reiterated the deletion of the second type of "variant":

> SEC. 2. DEFINITION OF TERMS. — For purposes of these Regulations, the following words and phrases shall have the meaning indicated below:
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> . . . . . .

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[106] Rep. Act No. 8240 (1997), Sec. 3.

[107] Rep. Act No. 9334 (2005), Sec. 3.

(d) **VARIANT OF A BRAND** — shall refer to ***a brand of alcohol*** or *tobacco* ***products on which a modifier is prefixed and/or suffixed to the root name of the brand.*** (Emphasis supplied)

For this purpose, the term "root name" shall refer to a letter, word, number, symbol, or character; or a combination of letters, words, numbers, symbols, and/or characters that may or may not form a word; or shall consist of a word or group of words, which may or may not describe the other word or words: *Provided*, That the root name has been originally registered as such with the Bureau of Internal Revenue (BIR).

Examples of root name: "L & M", " ßÙ", "10", "Pall Mall", "Blue Ice", "Red Horse", etc.

The term "modifier" shall refer to a word, a number or a combination of words and/or numbers that specifically describe the root name to distinguish one variant from another whether or not the use of such modifier is a common industry practice. The root name, although accompanied by a modifier at the time of the original brand registration, shall be the basis in determining the tax classification of subsequent variants of such brands.

Examples of modifiers:...

For beer: "Light", "Dry", "Ice", "Lager", "Hard", "Premium", etc.

Any variation in the color and/or design of the label (such as logo, font, picturegram, and the like), manner and/or form of packaging or size of container of the brand originally registered with the BIR shall not, by itself, be deemed an introduction of a new brand or a variant of a brand: *Provided*, That all instances of such variation shall require a prior written permit from the BIR.

In case such BIR-registered brand has more than one (1) tax classification as a result of the shift in the manner of taxation from *ad valorem* tax to specific tax under R.A. No. 8240, the highest tax classification shall be applied to such brand bearing a new label, package, or volume content per package, subject to the provisions of the immediately preceding paragraph.

ILLUSTRATION:

No. 1. —

. . . .

In case a letter(s), number(s), symbols(s) or word(s) is/are deleted from or replaced by another letter(s), number(s), symbol(s) or word(s) in the root name of a previously BIR-registered brand, such that the introduction of the said brand bearing such change(s) shall ride on the popularity of the said previously registered brand, the same shall be classified as a variant of such previously registered brand: *Provided*, That where the introduction of such brand by another manufacturer or importer will give rise to any legal action with respect to infringement of patent or unfair competition, such brand shall be considered a variant of such previously registered brand.

ILLUSTRATION:

No. 2. —

ROOT NAME	MODIFIER IS PREFIXED	MODIFIER IS SUFFIXED	MODIFIED ROOT NAME
L & M	Kings L & M	L & M Lights	M & L
10	Perfect 10	10 Menthols	Ten
Blue Ice	Wild Blue Ice	Blue Ice Supreme	Blue Iced
Red Horse	Flying Red Horse	Red Horse Premium	Reddish Horse
Pall Mall	Long Pall Mall	Pall Mall Filter	Pal Mall

Petitioner submits that the complete name of "San Mig Light" is "San Mig Light Pale Pilsen," and Section 143 of the Tax Code, in relation to its Annexes C-1 and C-2, show that the parent brands of San Mig Light are RPT[108] in cans or San Miguel Beer Pale Pilsen in can 330 ml, Pale Pilsen, and Super Dry.[109] It contends that the root name of the existing brand is "Pale Pilsen," and RPT had the highest tax classification at the time "San Mig Light" was introduced.[110] "San Miguel Beer Pale Pilsen" and "San Mig Light" have almost identical labels, and only these two labels bear the same "Pale Pilsen."[111]

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[108] "Ring Pull Tab." See *rollo* (G.R. No. 205723), p. 1440.

[109] *Rollo* (G.R. No. 205723), p. 1428.

[110] *Id.* at 1429.

[111] *Id.* at 1429 and 1433-1434.

Respondent counters that petitioner changed its theory of the case on appeal, and this should not be allowed.[112] It argues that petitioner categorically invoked the second part of the definition of *variant* in Section 143, and this part of the definition has been deleted by Rep. Act No. 9334.[113] Moreover, petitioner made no categorical assertion on the first part of the definition, but only a vague statement that "the root name of the existing brand is 'Pale Pilsen.'"[114] Respondent adds that petitioner "has not specified which type of 'San Mig Light', in bottle or in can, is a variant of 'RPT' in can (San Miguel Beer Pale Pilsen)."[115]

Petitioner, on the other hand, maintains that even during the trial stage, its theory has always been that "San Mig Light" falls under both first and second parts of Section 143, before its amendment by Rep. Act No. 9334.[116]

A change of theory on appeal is generally disallowed in this jurisdiction for being unfair to the adverse party.[117]

Even then, the Court of Tax Appeals *En Banc*, in both assailed Decisions, quoted with approval the First Division's finding that "San Mig Light" does not fall under both first and second parts of the definition of *variant*:

> The fact that "San Mig Light" is a "new brand" and not merely a variant of an existing brand is bolstered by the fact that Annexes "C-1" and "C-2" of RA No. 8240, which enumerated the fermented

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[112] *Rollo* (G.R. No. 205045), p. 353.

[113] *Id.* at 352-354.

[114] *Id.* at 354.

[115] *Id.* at 356.

[116] *Rollo* (G.R. No. 205723), pp. 1453 and 1457-1458.

[117] *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation*, 535 Phil. 481, 489-490 (2006) [Per *J.* Chico-Nazario, First Division], *citing Ramos v. Poblete*, 73 Phil. 241, 246 (1941) [Per *J.* Ozaeta, *En Banc*]; *Carantes v. Court of Appeals*, 167 Phil. 232, 240 (1977) [Per *J.* Castro, First Division]; *Mon v. Court of Appeals*, 471 Phil. 65, 73-74 (2004) [Per *J.* Carpio, First Division].

liquors registered with the BIR do not include the brand name "San Mig Light". Instead, what were listed, as existing brands of petitioner, as of the effectivity of RA No. 8240, were as follows: "Pale Pilsen 320 ml.", "Super Dry 355 ml." and "Premium Can 330 ml." Even in Section 4 of RR No. 2-97, which provides for the classification and manner of taxation of existing brands, new brands and variants of existing brands, the list of existing brands of fermented liquors of petitioner does not include the brand "San Mig Light", but merely "RPT in cans 330 ml", "Premium Bottles 355 ml.", "Premium Bottles 355 ml." and "Premium Bottle Can 330 ml." for high priced brands; and "Super Dry 355 ml.", "Pale Pilsen 320 ml.", and "Grande" for medium-priced brands.[118]

Thus, it is clear that when the product "San Mig Light" was introduced in 1999, it was considered as an entirely new product and a new brand of petitioner's fermented liquor, ***there being no root name of "San Miguel" or "San Mig" in its existing brand names. The existing registered and classified brand name of petitioner at that time was "Pale Pilsen." Therefore, the word "Light" cannot be considered as a mere suffix to the word "San Miguel," but it is part and parcel of an entirely new brand name, "San Mig Light."*** Evidently, as correctly pointed out by petitioner, "San Mig Light" is not merely a variant of an existing brand, but an entirely *new brand*:

Anent the second type of "variant of brand," i.e., when a different brand carries the same logo or design of an existing brand, ***records show that there are marked differences in the designs of the existing brand "Pale Pilsen " and the new brand "San Mig Light"***:

a) as to "Pale Pilsen" and "San Mig Light" in bottles:

1. the size, shape and color of the respective bottles are different. Each brand has a distinct design in its packaging. "Pale Pilsen" is in a steiny bottle, while "San Mig Light" is packed in a tall and slim transparent bottle;

2. the design and color of the inscription on the bottles are different from each other. "Pale Pilsen" has its label encrypted or embossed on the bottle itself, while "San Mig Light" has a silver and blue label of distinctive design that is printed on paper pasted on the bottle; and

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[118] *Rollo* (G.R. No. 205723), p. 24.

3. the color of the letters in the "Pale Pilsen" brand is white against the color of the bottle, while that of the words "San Mig" is white against a blue background and the word "Light" is blue against a silver background.

b) As to "Pale Pilsen" and "San Mig Light" in cans:

1. the words "Pale Pilsen" are in ordinary font printed horizontally in black on the can against a diagonally striped light yellow gold background, while the words "San Mig" are in Gothic font printed diagonally on the can against a blue background and the word "Light" in ordinary font printed diagonally against a diagonally striped silver background; and

2. the general color scheme of "Pale Pilsen" is light yellow gold, while that of "San Mig Light" is silver.

Though the "escudo" logo appears on both "Pale Pilsen" bottle and "San Mig Light" bottle and can, the same cannot be considered as an indication that "San Mig Light" is merely a variant of the brand "Pale Pilsen", since the said "escudo" insignia is the corporate logo of petitioner. It merely identifies the products, as having been manufactured by petitioner, but does not form part of its brand. In fact, it appears not only in petitioner's beer products, but even in its non-beer products.[119]

VI

A *variant* under the Tax Code has a technical meaning. It is determined by the brand (name) or logo of the beer product.

To be sure, all beers are composed of four (4) raw materials: barley, hops, yeast, and water.[120] Barley grain has always been used and associated with brewing beer, while hops act as the bittering substance.[121] Yeast plays a role in alcoholic

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

[120] *See* Tor-Magnus Enari, *One Hundred Years of Brewing Research*, 101 JOURNAL OF THE INSTITUTE OF BREWING (1995) <http://onlinelibrary.wiley.com/doi/10.1002/j.2050-0416.1995.tb00887.x/epdf > 3 (visited January 15, 2017).

[121] *See* Tor-Magnus Enari, *One Hundred Years of Brewing Research*, 101 JOURNAL OF THE INSTITUTE OF BREWING (1995) <http://

fermentation, with bottom-fermenting yeasts resulting in light lager and top-fermenting ones producing the heavy and rich ale.[122] With only four (4) ingredients combined and processed in varying quantities, all beer are essentially related variants of these mixtures.

A manufacturer of beer may produce different versions of its products, distinguished by features such as flavor, quality, or calorie content, to suit the tastes and needs of specific segments of the domestic market. It can also leverage on the popularity of its existing brand and sell a lower priced version to make it affordable for the low-income consumers. These strategies are employed to gain a higher overall level of share or profit from the market.

In intellectual property law, a registered trademark owner has the right to prevent others from the use of the same mark (brand) for identical goods or services. The use of an identical or colorable imitation of a registered trademark by a person for the same goods or services or closely related goods or services of another party constitutes infringement. It is a form of unfair competition[123] because there is an attempt to get a free ride on the reputation and selling power of another manufacturer by passing of one's goods as identical or produced by the same manufacturer as those carrying the other mark (brand).[124]

The *variant* contemplated under the tax Code has a technical meaning. A *variant* is determined by the brand (name) of the

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onlinelibrary.wiley.com/doi/10.1002/j.2050-0416.1995.tb00887.x/epdf > 6-8 (visited January 15, 2017).

[122] See Tor-Magnus Enari, *One Hundred Years of Brewing Research*, 101 JOURNAL OF THE INSTITUTE OF BREWING (1995) 4 <http://onlinelibrary.wiley.com/doi/10.1002/j.2050-0416.1995.tb00887.x/epdf> (visited January 15, 2017).

[123] *Co Tiong Sa v. Director of Patents,* 95 Phil. 1, 5 (1954) [Per *J.* Labrador, *En Banc*].

[124] *Philippine Nut Industry, Inc. v. Standard Brands, Inc.*, 160 Phil. 581, 591-592 (1975) [Per *J.* Muñoz Palma, First Division]. See also *Philips Export B.V. v. Court of Appeals*, 283 Phil. 371, 379-380 (1992) [Per *J.* Melencio-Herrera, Second Division].

beer product, whether it was formed by prefixing or suffixing a modifier to the root name of the alleged parent brand, or whether it carries the same logo or design. The purpose behind the definition was to properly tax brands that were presumed to be riding on the popularity of previously registered brands by being marketed under an almost identical name with a prefix, suffix, or a variant.[125] It seeks to address price differentials employed

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[125] See *rollo* (G.R. No. 205045), pp. 30-31, where the Dissenting Opinion of Justice Mindaro-Grulla in the Court of Tax Appeals *En Banc*'s Decision dated September 20, 2012 quoted a portion of the Senate Interpellations on the reason behind taxing a variant of a brand with the highest classification:

Senator Santiago:

Mr. President, allow me to begin with the elementary observation that when we institute tax reforms, we should consider certain factors including ease of administering the tax, simplicity of the tax system, the capability of the tax machinery to implement the tax laws and the avoidance of the tax leaks that encourage tax evasion.

... [I] still need to raise certain questions even only for clarification of those who will later be tasked with the implementation of this law.

... I am talking about variants of existing brands. I would like to lay the basis for my question. I find it confusing that the taxation of variants is defined in this manner. The definition of a variant "is made to depend on the prefix or the suffix. It is based on the name although referring to the same product.

The bill provides that the tax shall be based on the highest value. Tax wise, it would be unfair for manufacturer who would wish to introduce cheaper and more affordable versions of their products. It defeats the purpose of coming out with lower-priced products. For example, let us assume that a beer product is well-known in the market. In order to make it available to more consumers, the manufacturer, let us assume, comes out with the cheaper version of the original ***and attaches the name of the original to this new product in order to assure consumers that the new one is backed by the same quality guarantee as the original one.*** It seems to be absurd for the new product to be taxed as much as the original product in this light.

My question then is: Should the variant not be that, which is nearest in value and not which is highest in value?

Senator Enrile

Mr. President, to answer the question briefly, I would like to state here that from a purely business viewpoint, probably I will concede that there is some merit to the argument just stated by the distinguished Senator from Iloilo. But on the other hand, from a purely fiscal taxation position, to discard

by a manufacturer on similar products differentiated only in brand or design. Specifically, the provision was meant to obviate any tax avoidance by manufacturing firms from the sale of lower priced variants of its existing beer brands, thus, falling in the lower tax bracket with lower excise tax rates. To favor government, a *variant* of a brand is taxed according to the highest rate of tax for that particular brand.

"San Mig Light" and "Pale Pilsen" do not share a root word. Neither is there an existing brand in the list (Annexes C-1 and C-2 of the Tax Code) called "San Mig" to conclude that "Light" is a suffix rendering "San Mig Light" as its "variant."[126] As discussed in the Court of Tax Appeals Decision, "San Mig Light" should be considered as one brand name.[127]

Respondent's statements describing San Mig Light as a low-calorie variant is not conclusive of its classification as a *variant* for excise tax purposes. Burdens are not to be imposed nor presumed to be imposed beyond the plain and express terms of the law.[128] "The general rule of requiring adherence to the letter in construing statutes applies with peculiar strictness to tax laws and the provisions of a taxing act are not to be extended by implication."[129]

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the provision that we have suggested would open a very wide door for tax avoidance, if not tax evasion because a beer is beer. It is just a question of brands.

What is the composition of beer? Water and some fermenting elements — malt and some other fermenting elements. ***But if we not put this, those brands that are already well-known in the market could be marketed under almost an identical name with a prefix, suffix or a variant and put in a lower category in order to enjoy a lower tax level, in which case, the government will be losing.*** That is the purpose of this measure. (Emphasis supplied)

[126] *Rollo* (G.R. No. 205723), p. 25.

[127] *Id.*

[128] *Commissioner of Internal Revenue v. Court of Appeals,* 363 Phil. 130, 139 (1999) [Per *J.* Purisima, Third Division].

[129] *Commissioner of Internal Revenue v. Fortune Tobacco Corp*., 581 Phil. 146, 168 (2008) [Per *J.* Tinga, Second Division].

Furthermore, respondent's payment of the higher taxes starting January 30, 2004 after deficiency assessments were made cannot be considered as an admission that its San Mig Light is a variant. Section 130(A)(2) of the Tax Code requires payment of excise tax "before removal of domestic products from place of production."[130] These payments were made in protest as respondent subsequently filed refund claims.

VII

Petitioner argues that although the Bureau of Internal Revenue erroneously allowed San Miguel Corporation to manufacture and sell "San Mig Light" in 1999 as a "new brand" with the lower excise tax rate for "new brands," government is not estopped from correcting previous errors by its agents. [131]

Petitioner submits that the Notice of Discrepancy was to remedy the "misrepresentation"[132] of "San Mig Light" as new brand. It submits that respondent's self-assessment of excise taxes as a new brand was without approval:

> San Mig Light was never registered with BIR as a new brand but always as a variant. Thus, petitioner's payment of excise taxes on San Mig Light as a new brand is based on its own classification of San Mig Light as a new brand without approval of the BIR. Under existing procedures in the payment of excise taxes, taxpayers are required to pay their taxes based on self-assessment system with the government relying heavily on the honesty of taxpayers. Such being the case, any payments made, even those allegedly made as a condition

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[130] TAX CODE, Sec. 130 (a)(2) provides:

Section 130. Filing of Return and Payment of Excise Tax on Domestic Products.

(A) Persons Liable to File a Return on Removal and Payment of Tax.—
. . . .

(2) Time for Filing of Return and Payment of the Tax. — Unless otherwise specifically allowed, the return shall be filed and the excise tax paid by the manufacturer or producer before removal of domestic products from place of production[.]

[131] *Rollo* (G.R. No. 205045), p. 305.

[132] *Rollo* (G.R. No. 205723), pp. 1462-1463.

for the withdrawal of the product from the place of production, cannot be considered as a confirmation by the BIR of the correctness of such payment.[133]

Section 143 of the Tax Code, as amended by Rep. Act No. 9334, provides for the Bureau of Internal Revenue's role in validating and revalidating the suggested net retail price of a new brand of fermented liquor for purposes of determining its tax bracket:

'Suggested net retail price' shall mean the net retail price at which new brands, as defined above, of locally manufactured or imported fermented liquor are intended by the manufacturer or importer to be sold on retail in major supermarkets or retail outlets in Metro Manila for those marketed nationwide, and in other regions, for those with regional markets. ***At the end of three (3) months from the product launch, the Bureau of Internal Revenue shall validate the suggested net retail price of the new brand against the net retail price as defined herein and determine the correct tax bracket to which a particular new brand of fermented liquor, as defined above, shall be classified. After the end of eighteen (18) months from such validation, the Bureau of Internal Revenue shall revalidate the initially validated net retail price against the net retail price as of the time of revalidation in order to finally determine the correct tax bracket which a particular new brand of fermented liquors shall be classified:*** *Provided, however,* That brands of fermented liquors introduced in the domestic market between January 1, 1997 and December 31, 2003 shall remain in the classification under which the Bureau of Internal Revenue has determined them to belong as of December 31, 2003. Such classification of new brands and brands introduced between January 1, 1997 and December 31, 2003 shall not be revised except by an act of Congress.

When respondent launched "San Mig Light" in 1999, it wrote the Bureau of Internal Revenue on October 19, 1999 requesting registration and authority to manufacture "San Mig Light" to be taxed as ₱12.15.

The Bureau of Internal Revenue granted this request in its October 27, 1999 letter. Contrary to petitioner's contention,

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[133] *Id.* at 1459.

the registration granted was not merely for intellectual property protection[134] but "for internal revenue purposes only":

> Your request dated October 19, 1999, for the registration of San Miguel Corporation commercial label for beer bearing the trade mark "San Mig Light" Pale Pilsen, for domestic sale or export, 24 bottles in a case, each flint bottle with contents of 330 ml., is hereby granted.
>
> . . . . . .
>
> Please follow strictly the requirements of internal revenue laws, rules and regulations relative to the marks to be placed on each case, cartons or box used as secondary containers. ***It is understood that the said brand be brewed and bottled in the breweries at Polo, Valenzuela (A-2-21).***
>
> ***You are hereby informed that the registration of commercial labels in this Office is for internal revenue purposes only*** and does not give you protection against any person or entity whose rights may be prejudiced by infringement or unfair competition resulting from your use of the above indicated trademark.[135] (Emphasis supplied)

Because the Bureau of Internal Revenue granted respondent's request in its October 27, 1999 letter and confirmed this grant in its subsequent letters, respondent cannot be faulted for relying on these actions by the Bureau of Internal Revenue.

While estoppel generally does not apply against government, especially when the case involves the collection of taxes, an exception can be made when the application of the rule will cause injustice against an innocent party.[136]

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[134] *Rollo* (G.R. No. 205723), p. 1461.

[135] *Id.* at 894.

[136] *Commissioner of Internal Revenue v. Petron Corporation*, 685 Phil. 118, 147 (2012) [Per J. Sereno, Second Division], citing *Secretary of Finance v. Oro*, 610 Phil. 419, 437-438 (2009) [Per J. Brion, Second Division] and *Pilipinas Shell v. Commissioner of Internal Revenue*, 565 Phil. 613, 652 (2007) [Per J. Velasco, Jr., Second Division]; *Commissioner of Internal Revenue v. Benguet Corporation*, 501 Phil. 343, 357-358 (2005) [Per J. Tinga, Second Division].

Respondent had already acquired a vested right on the tax classification of its San Mig Light as a *new brand*. To allow petitioner to change its position will result in deficiency assessments in substantial amounts against respondent to the latter's prejudice.

The authority of the Bureau of Internal Revenue to overrule, correct, or reverse the mistakes or errors of its agents is conceded. However, this authority must be exercised reasonably,[137] i.e., only when the action or ruling is patently erroneous[138] or patently contrary to law.[139] For the presumption lies in the regularity of performance of official duty,[140] and reasonable care has been exercised by the revenue officer or agent in evaluating the facts before him or her prior to rendering his or her decision or ruling—in this case, prior to the approval of the registration of San Mig Light as a *new brand* for excise tax purposes. A contrary view will create disorder and confusion in the operations of the Bureau of Internal Revenue and open the administrative agency to inconsistencies in the administration and enforcement of tax laws.

In *Commissioner v. Algue*:[141]

> It is said that taxes are what we pay for civilized society. Without taxes, the government would be paralyzed for lack of the motive power to activate and operate it. Hence, despite the natural reluctance to surrender part of one's hard-earned income to the taxing authorities, every person who is able to must contribute his share in the running of the government. The government for its part, is expected to respond in the form of tangible and intangible benefits intended to improve

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[137] *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.,* 738 Phil. 335, 353 (2014) [Per *J*. Peralta, Third Division].

[138] *Cf. ABS-CBN Broadcasting Corp. v. Court of Tax Appeals*, 195 Phil. 33, 43-44 (1981) [Per *J*. Melencio-Herrera, First Division].

[139] *Philippine Bank of Communications v. Commissioner of Internal Revenue*, 361 Phil. 916, 929 (1999) [Per *J*. Quisumbing, Second Division].

[140] RULES OF COURT, Rule 131, Sec. 3(m).

[141] 241 Phil. 829 (1988) [Per *J*. Cruz, First Division].

the lives of the people and enhance their moral and material values. This symbiotic relationship is the rationale of taxation and should dispel the erroneous notion that it is an arbitrary method of exaction by those in the seat of power.

But even as we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure. If it is not, then the taxpayer has a right to complain and the courts will then come to his succor. For all the awesome power of the tax collector, he may still be stopped in his tracks if the taxpayer can demonstrate, as it has here, that the law has not been observed.[142]

VIII

The Tax Code includes remedies for erroneous collection and overpayment of taxes. Under Sections 229 and 204(C) of the Tax Code, a taxpayer may seek recovery of erroneously paid taxes within two (2) years from date of payment:

SEC. 229. *Recovery of tax Erroneously or Illegally Collected.* — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty—regardless of any supervening case that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

. . . . . .

SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes*. — The Commissioner may —

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[142] *Id.* at 836.

. . . . . .

(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: *Provided, however*, That a return filed showing an overpayment shall be considered as a written claim for credit or refund.

A Tax Credit Certificate validly issued under the provisions of this Code may be applied against any internal revenue tax, excluding withholding taxes, for which the taxpayer is directly liable. Any request for conversion into refund of unutilized tax credits may be allowed, subject to the provisions of Section 230 of this Code: *Provided*, That the original copy of the Tax Credit Certificate showing a creditable balance is surrendered to the appropriate revenue officer for verification and cancellation: *Provided, further*, That in no case shall a tax refund be given resulting from availment of incentives granted pursuant to special laws for which no actual payment was made.

The Commissioner shall submit to the Chairmen of the Committee on Ways and Means of both the Senate and House of Representatives, every six (6) months, a report on the exercise of his powers under this Section, stating therein the following facts and information, among others: names and addresses of taxpayers whose cases have been the subject of abatement or compromise; amount involved; amount compromised or abated; and reasons for the exercise of power: *Provided*, That the said report shall be presented to the Oversight Committee in Congress that shall be constituted to determine that said powers are reasonably exercised and that the Government is not unduly deprived of revenues.

In G.R. No. 205045, the Court of Tax Appeals *En Banc* ruled that "San Mig Light" is a new brand and not a variant of an existing brand. Accordingly, it ordered the refund of erroneously collected excise taxes on "San Mig Light" products in the amount of ₱926,169,056.74 for the period of December 1, 2005 to July 31, 2007.[143]

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[143] *Rollo* (G.R. No. 205045), pp. 24-25.

In G.R. No. 205723, the Court of Tax Appeals *En Banc* found proper the refund of erroneously collected excise taxes on "San Mig Light" products in the amount of ₱781,514,772.56 for the period of February 2, 2004 to November 30, 2005.[144] It referred to, and agreed with, the findings of the Court-commissioned Independent Certified Public Accountant Normita L. Villaruz on reaching this amount.[145] The Court of Tax Appeals also found, from the records, that respondent timely filed its administrative claim for refund on December 28, 2005, and its judicial claim on January 31, 2006.[146]

This Court accords the highest respect to the factual findings of the Court of Tax Appeals. We recognize its developed expertise on the subject as it is the court dedicated solely to considering tax issues, unless there is a showing of abuse in the exercise of authority.[147] We find no reason to overturn the factual findings of the Court of Tax Appeals on the amounts allowed for refund.

WHEREFORE, the Petitions are **DENIED**. The assailed Decisions and Resolutions of the Court of Tax Appeals *En Banc* in CTA Case Nos. 7052, 7053, 7405, and 7708 are **AFFIRMED**.

SO ORDERED.

Carpio (Chairperson), Velasco, Jr.,[*] *Peralta*, and *Mendoza, JJ.*, concur.

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[144] *Rollo* (G.R. No. 205723), pp. 28-31.

[145] *Id.* at 29-31.

[146] *Id.* at 28.

[147] *Commissioner of Internal Revenue v. Mirant (Phils.) Operations, Corp.*, 667 Phil. 208, 222 (2011) [Per J. Mendoza, Second Division], citing *Toshiba Information Equipment (Phils.), Inc. v. Commissioner of Internal Revenu*e, 628 Phil. 430, 468 (2010) [Per J. Leonardo-De Castro, First Division], in turn citing *Commissioner of Internal Revenue v. Cebu Toyo Corporation*, 491 Phil. 625, 640 (2005) [Per J. Quisumbing, First Division].

[*] Designated as Fifth Member of the Second Division per Special Order No. 2416-D dated January 4, 2017.

SECOND DIVISION

[G.R. No. 206038. January 25, 2017]

MARY E. LIM, represented by her attorney-in-fact, REYNALDO V. LIM, *petitioner, vs.* **MOLDEX LAND, INC., 1322 ROXAS BOULEVARD CONDOMINIUM CORPORATION, and JEFFREY JAMINOLA, EDGARDO MACALINTAL, JOJI MILANES, and CLOTHILDA ANNE ROMAN, in their capacity as purported members of the board of directors of 1322 Golden Empire Corporation,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; A PETITION FOR REVIEW ON *CERTIORARI* IS AN APPEAL FROM THE RULING OF A LOWER TRIBUNAL ON PURE QUESTIONS OF LAW, AND ONLY IN EXCEPTIONAL CIRCUMSTANCES THAT THE COURT ADMIT AND REVIEW QUESTIONS OF FACT.—** It has been consistently held that only pure questions of law can be entertained in a petition for review under Rule 45 of the Rules of Court. In *Century Iron Works, Inc. v. Banas*, the Court held: A petition for review on *certiorari* under Rule 45 is an appeal from a ruling of a lower tribunal on pure questions of law. It is only in exceptional circumstances that we admit and review questions of fact.

2. **ID.; ID.; ID.; PURSUANT TO A.M. NO. 04-9-07-SC, ALL DECISIONS AND FINAL ORDERS IN CASES FALLING UNDER THE INTERIM RULES OF CORPORATE REHABILITATION AND INTERIM RULES OF PROCEDURE GOVERNING INTRA-CORPORATE CONTROVERSIES SHALL BE APPEALABLE TO THE COURT OF APPEALS.—** Pursuant to A.M. No. 04-9-07-SC, all decisions and final orders in cases falling under the Interim Rules of Corporate Rehabilitation and the Interim Rules of Procedure Governing Intra-Corporate Controversies shall be appealable to the CA through a petition for review under Rule 43 of the

Rules of Court. Such petition shall be taken within fifteen (15) days from notice of the decision or final order of the RTC. In turn, Rule 43 governs the procedure for appeals from judgments or final orders of quasi-judicial agencies to the CA, whether it involves questions of fact, of law, or mixed questions of fact and law. Nevertheless, a party may directly file a petition for review on *certiorari* before the Court to question the judgment of a lower court, especially when the issue raised is purely of law and is one of novelty.

3. MERCANTILE LAW; CORPORATION CODE; MEMBERSHIP IN A NON-STOCK CORPORATION AND ALL RIGHTS ARISING THEREFROM ARE PERSONAL AND NON-TRANSFERABLE, UNLESS THE ARTICLES OF INCORPORATION OR THE BY-LAWS OTHERWISE PROVIDES; CASE AT BAR.— Section 90 of the Corporation Code states that membership in a non-stock corporation and all rights arising therefrom are personal and non-transferable, unless the articles of incorporation or the by-laws otherwise provide. x x x Nothing in the records showed that the alleged transfer made by Lim was registered with the Register of Deeds of the City of Manila or was reported to the corporation. Logically, until and unless the registration is effected, Lim remains to be the registered owner of the condominium unit and thus, continues to be a member of Condocor. Moreover, even assuming that there was a transfer by virtue of the Deed of Assignment, the Confirmatory Special Power of Attorney executed later by Lim, wherein she reiterated her membership in Condocor and constituted Reynaldo V. Lim as her true and lawful Attorney-in-Fact, strengthened the fact that she still owns the condominium unit and that there has been no transfer of ownership over the said property to her nephew, but only a mere assignment of rights to the latter. As held by the Court in *Casabuena v. CA*, at most, an assignee can only acquire rights duplicating those which his assignor is entitled by law to exercise. Had it been otherwise, Reynaldo V. Lim himself would have questioned and objected to the granting of the special power of attorney, and would have insisted that he was really the owner of the condominium unit.

4. ID.; ID.; STOCKHOLDERS' OR MEMBERS' MEETING; REQUIREMENTS; ANY ACT OR TRANSACTION MADE DURING A MEETING WITHOUT QUORUM IS RENDERED

OF NO FORCE AND EFFECT, THUS, NOT BINDING ON THE CORPORATION OR PARTIES CONCERNED.— In corporate parlance, the term "meeting" applies to every duly convened assembly either of stockholders, members, directors, trustees, or managers for any legal purpose, or the transaction of business of a common interest. Under Philippine corporate laws, meetings may either be regular or special. A stockholders' or members' meeting must comply with the following requisites to be valid: 1. The meeting must be held on the date fixed in the By-Laws or in accordance with law; 2. Prior written notice of such meeting must be sent to all stockholders/members of record; 3. It must be called by the proper party; 4. It must be held at the proper place; and 5. Quorum and voting requirements must be met. Of these five (5) requirements, the existence of a quorum is crucial. Any act or transaction made during a meeting without quorum is rendered of no force and effect, thus, not binding on the corporation or parties concerned.

5. ID.; ID.; ID.; QUORUM; FOR STOCK CORPORATIONS, THE QUORUM IS BASED ON THE NUMBER OF OUTSTANDING VOTING STOCKS WHILE FOR NON-STOCK CORPORATIONS, ONLY THOSE WHO ARE ACTUAL, LIVING MEMBERS WITH VOTING RIGHTS SHALL BE COUNTED IN DETERMINING THE EXISTENCE OF QUORUM.— Thus, for stock corporations, the quorum is based on the *number of outstanding voting stocks* while for non-stock corporations, only those who are *actual, living members with voting rights* shall be counted in determining the existence of a quorum. To be clear, the basis in determining the presence of quorum in non-stock corporations is the numerical equivalent of all members who are entitled to vote, unless some other basis is provided by the By-Laws of the corporation. The qualification "with voting rights" simply recognizes the power of a non-stock corporation to limit or deny the right to vote of any of its members. To include these members without voting rights in the total number of members for purposes of quorum would be superfluous for although they may attend a particular meeting, they cannot cast their vote on any matter discussed therein.

6. ID.; REPUBLIC ACT NO. 4726 (CONDOMINIUM ACT); CONDOMINIUM CORPORATION; THE CONDOMINIUM CORPORATION SHALL CONSTITUTE THE

MANAGEMENT BODY OF THE CONDOMINIUM PROJECT.— Matters involving a condominium are governed by Republic Act No. 4726 (*Condominium Act*). Said law sanctions the creation of a condominium corporation which is especially formed for the purpose of holding title to the common areas, including the land, or the appurtenant interests in such areas, in which the holders of separate interest shall automatically be members or shareholders, to the exclusion of others, in proportion to the appurtenant interest of their respective units in the common areas. In relation thereto, Section 10 of the same law clearly provides that the condominium corporation shall constitute the management body of the project. Membership in a condominium corporation is limited only to the unit owners of the condominium project. This is provided in Section 10 of the Condominium Act x x x Although the Condominium Act provides for the minimum requirement for membership in a condominium corporation, a corporation's articles of incorporation or by-laws may provide for other terms of membership, so long as they are not inconsistent with the provisions of the law, the enabling or master deed, or the declaration of restrictions of the condominium project.

7. ID.; ID.; ID.; LAW AND JURISPRUDENCE DICTATE THAT OWNERSHIP OF A UNIT ENTITLES ONE TO BECOME A MEMBER OF A CONDOMINIUM CORPORATION; CASE AT BAR.— There is no provision in P.D. No. 957 which states that an owner-developer of a condominium project cannot be a member of a condominium corporation. Section 30 of P.D. No. 957 determines the purposes of a homeowners association — to promote and protect the mutual interest of the buyers and residents, and to assist in their community development. A condominium corporation, however, is not just a management body of the condominium project. It also holds title to the common areas, including the land, or the appurtenant interests in such areas. Hence, it is especially governed by the Condominium Act. Clearly, a homeowners association is different from a condominium corporation. P.D. No. 957 does not regulate condominium corporations and, thus, cannot be applied in this case. *Sunset View* merely delineated the difference between a "purchaser" and an "owner," whereby the former could be considered an owner only upon full payment of the purchase price. The case merely clarified that not every purchaser of a

condominium unit could be a shareholder of the condominium corporation. x x x In *Sunset View*, the Court elucidated on what constitutes "separate interest," in relation to membership, as mentioned in the Condominium Act, x x x Thus, law and jurisprudence dictate that **ownership of a unit** entitles one to become a member of a condominium corporation. The Condominium Act does not provide a specific mode of acquiring ownership. Thus, whether one becomes an owner of a condominium unit by virtue of sale or donation is of no moment. It is erroneous to argue that the ownership must result from a sale transaction between the owner-developer and the purchaser. Such interpretation would mean that persons who inherited a unit, or have been donated one, and properly transferred title in their names cannot become members of a condominium corporation.

8. ID.; CORPORATION CODE; PROXIES; A CORPORATION CAN ACT ONLY THROUGH NATURAL PERSONS DULY AUTHORIZED FOR THE PURPOSE OR BY A SPECIFIC ACT OF ITS BOARD OF DIRECTORS; CASE AT BAR.— A corporation can act only through natural persons duly authorized for the purpose or by a specific act of its board of directors. Thus, in order for Moldex to exercise its membership rights and privileges, it necessarily has to appoint its representatives. Section 58 of the Corporation Code mandates: Section 58. Proxies. — Stockholders and **members may vote in person or by proxy in all meetings of** stockholders or **members.** x x x Relative to the above provision is Section 1, Article II of Condocor's By-Laws, which grants registered owners the right to designate any person or entity to represent them in Condocor, subject to the submission of a written notification to the Secretary of such designation. Further, the owner's representative is entitled to enjoy and avail himself of all the rights and privileges, and perform all the duties and responsibilities of a member of the corporation. The law and Condocor's By-Laws evidently allow proxies in members' meeting. While Moldex may rightfully designate proxies or representatives, the latter, however, cannot be elected as directors or trustees of Condocor. *First,* the Corporation Code clearly provides that a director or trustee must be a member of record of the corporation. *Further,* the power of the proxy is merely to vote. If said proxy is not a member in his own right, he cannot be elected as a director or proxy.

APPEARANCES OF COUNSEL

Bodegon Estorninos Guerzon Borjie & Gojos for petitioner.
Quial Ginez Beltran & Yu for respondents.

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 March 4, 2013 Decision[1] of the Regional Trial Court of Manila, Branch 24, *(RTC)* in Civil Case No. 12-128478, which dismissed the complaint against the respondents for 1] annulment of the July 21, 2012 general membership meeting of 1322 Roxas Boulevard Condominium Corporation *(Condocor)*; 2] annulment of election of Jeffrey Jaminola *(Jaminola)*, Edgardo Macalintal *(Macalintal)*, Joji Milanes *(Milanes)*, and Clothilda Anne Roman *(Roman)* (collectively referred to as "individual respondents") as members of the Board of Directors; and 3] accounting.

The primordial issue presented before the RTC, acting as a special commercial court, was the validity, legality and effectivity of the July 21, 2012 Annual General Membership Meeting and Organizational Meeting of Condocor's Board of Directors.[2]

Initially, the Court, in its Resolution[3] dated April 1, 2013, denied the petition for having availed of the wrong mode of appeal because Lim raised mixed questions of fact and law, which should have been filed before the Court of Appeals *(CA)*.[4] Upon motion for reconsideration, however, the Court granted it. Thereafter, the respondents filed their Comment[5] and Lim filed a Reply[6] thereto.

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[1] Penned by Judge Lyliha L. Abella-Aquino, *rollo*, pp. 32-35.

[2] *Id*. at 32.

[3] *Id*. at 84.

[4] *Id*.

[5] *Id*. at 112-156.

[6] *Id*. at 283-299.

The Antecedents

Lim is a registered unit owner of 1322 Golden Empire Tower *(Golden Empire Tower)*, a condominium project of Moldex Land, Inc. *(Moldex)*, a real estate company engaged in the construction and development of high-end condominium projects and in the marketing and sale of the units thereof to the general public. Condocor, a non-stock, non-profit corporation, is the registered condominium corporation for the Golden Empire Tower. Lim, as a unit owner of Golden Empire Tower, is a member of Condocor.

Lim claimed that the individual respondents are *non-unit buyers*, but all are members of the Board of Directors of Condocor, having been elected during its organizational meeting in 2008. They were again elected during the July 21, 2012 general membership meeting.[7]

Moldex became a member of Condocor on the basis of its ownership of the 220 unsold units in the Golden Empire Tower. The individual respondents acted as its representatives.

On July 21, 2012, Condocor held its annual general membership meeting. Its Corporate secretary certified, and Jaminola, as Chairman, declared the existence of a quorum even though only 29 of the 108[8] unit buyers were present. The declaration of quorum was based on the presence of the majority of the voting rights, including those pertaining to the 220 unsold units held by Moldex through its representatives. Lim, through her attorney-in-fact, objected to the validity of the meeting. The objection was denied. Thus, Lim and all the other unit owners present, except for one, walked out and left the meeting.

Despite the walkout, the individual respondents and the other unit owner proceeded with the annual general membership meeting and elected the new members of the Board of Directors for 2012-2013. All four (4) individual respondents were voted as members of the board, together with three (3) others whose

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[7] *Id*. at 7.

[8] *Id.* at 55-58.

election was conditioned on their subsequent confirmation.[9] Thereafter, the newly elected members of the board conducted an organizational meeting and proceeded with the election of its officers. The individual respondents were elected as follows:

1.	**Atty. Jeffrey Jaminola**	**- Chairman of the Board and President**
2.	**Ms. Joji Milanes**	**- Vice-President**
3.	**Ms. Clothilda Ann Roman**	**- Treasurer**
4.	**Mr. Edgardo Macalintal**	**- Corporate Secretary**
5.	Atty. Ma. Rosario Bernardo	- Asst. Corporate Secretary
6.	Atty. Mary Rose Pascual	- Asst. Corporate Secretary
7.	Atty. Jasmin Cuizon	- Asst. Corporate Secretary[10]

Consequently, Lim filed an election protest before the RTC. Said court, however, dismissed the complaint holding that there was a quorum during the July 21, 2012 annual membership meeting; that Moldex is a member of Condocor, being the registered owner of the unsold/unused condominium units, parking lots and storage areas; and that the individual respondents, as Moldex's representatives, were entitled to exercise all membership rights, including the right to vote and to be voted.[11] In so ruling, the trial court explained that the presence or absence of a quorum in the subject meeting was determined on the basis of the voting rights of all the units owned by the members in good standing.[12] The total voting rights of unit owners in good standing was 73,376 and, as certified by the corporate secretary, 83.33% of the voting rights in good standing were present in the said meeting, inclusive of the 58,504 voting rights of Moldex.[13]

Not in conformity, Lim filed the subject petition raising the following

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[9] *Id.* at 119.

[10] *Id.*

[11] *Id.* at 35.

[12] *Id.* at 33.

[13] *Id.* at 34.

ISSUES

A. THE LOWER COURT GRAVELY ERRED IN RULING THAT IN DETERMINING THE PRESENCE OR ABSENCE OF QUORUM AT GENERAL OR ANNUAL MEMBERSHIP MEETINGS OF RESPONDENT CONDOCOR, EVEN NON-UNIT BUYERS SHOULD BE INCLUDED DESPITE THE EXPRESS PROVISION OF ITS BY-LAWS, THE LAW AND SETTLED JURISPRUDENCE;

B. THE LOWER COURT ERRED IN RULING THAT RESPONDENT MOLDEX IS A MEMBER OF RESPONDENT CONDOCOR AND THAT IT MAY APPOINT INDIVIDUAL RESPONDENTS TO REPRESENT IT THEREIN;

C. EVEN ASSUMING THAT RESPONDENT MOLDEX MAY BE A MEMBER OF RESPONDENT CONDOCOR, THERE IS STILL NO BASIS FOR IT TO BE ELECTED TO THE BOARD OF DIRECTORS OF RESPONDENT CONDOCOR BECAUSE IT IS A JURIDICAL PERSON;

D. ASSUMING FURTHER THAT DESPITE BEING A JURIDICAL PERSON, IT MAY BE ELECTED TO THE BOARD OF DIRECTORS OF RESPONDENT CONDOCOR, THERE IS NO LEGAL BASIS FOR THE LOWER COURT TO HOLD THAT RESPONDENT MOLDEX HAS AUTOMATICALLY RESERVED FOUR SEATS THEREIN; AND,

E. THE LOWER COURT GRAVELY ERRED IN RULING TO RECOGNIZE RESPONDENT MOLDEX AS OWNER-DEVELOPER HAVING FOUR RESERVED SEATS IN RESPONDENT CONDOCOR BOARD, AS SUCH RULING EFFECTIVELY ALLOWED THE VERY EVIL THAT PD 957 SOUGHT TO PREVENT FROM DOMINATING THE CONTROL AND MANAGEMENT OF RESPONDENT CONDOCOR TO THE GRAVE AND IRREPARABLE DAMAGE AND INJURY OF PETITIONER AND THE OTHER UNIT BUYERS, WHO ARE THE BONA FIDE MEMBERS OF RESPONDENT CONDOCOR.

In sum, the primordial issues to be resolved are: 1) whether the July 21, 2012 membership meeting was valid; 2) whether Moldex can be deemed a member of Condocor; and 3) whether a non-unit owner can be elected as a member of the Board of Directors of Condocor.

Procedural Issues

The issues raised being purely legal, the Court may properly entertain the subject petition.

The subject case was initially denied because it appeared that Lim raised mixed questions of fact and law which should have been filed before the CA. After judicious perusal of Lim's arguments, however, the Court ascertained that a reconsideration of its April 1, 2013 Resolution[14] was in order.

It has been consistently held that only pure questions of law can be entertained in a petition for review under Rule 45 of the Rules of Court. In *Century Iron Works, Inc. v. Banas*,[15] the Court held:

> A petition for review on *certiorari* under Rule 45 is an appeal from a ruling of a lower tribunal on pure questions of law. It is only in exceptional circumstances that we admit and review questions of fact.
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> A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the question must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact.
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> Thus, **the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine**

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[14] *Id.* at 84.

[15] 711 Phil. 576 (2013).

the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise it is a question of fact.[16] [Emphasis supplied]

Respondents argued that the initial denial of the petition was correct because Lim availed of the wrong mode of appeal. As the assailed judgment involved an intra-corporate dispute cognizable by the RTC, the appeal should have been filed before the CA, and not before this Court.

Doubtless, this case involves intra-corporate controversies and, thus, jurisdiction lies with the RTC, acting as a special commercial court. Section 5.2 of Republic Act No. 8799 *(R.A. No. 8799)*[17] effectively transferred to the appropriate RTCs jurisdiction over all cases enumerated under Section 5 of Presidential Decree No. 902-A *(P.D. No. 902-A)*, to wit:

a) Devices or schemes employed by or any acts, of the board of directors, business associates, its officers or partnership, amounting to fraud and misrepresentation which may be detrimental to the interest of the public and/or of the stockholder, partners, members of associations or organizations registered with the Commission;

b) **Controversies arising out of intra-corporate** or partnership **relations, between and among** stockholders, **members**, or associates; **between any or all of them and the corporation**, partnership or association **of which they are** stockholders, members or associates, respectively; and between such corporation, partnership or association and the state insofar as it concerns their individual franchise or right to exist as such entity; and

c) **Controversies in the election or appointments of directors, trustees, officers or managers of such corporations, partnerships or associations**. [Emphases supplied]

Pursuant to A.M. No. 04-9-07-SC, all decisions and final orders in cases falling under the Interim Rules of Corporate

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[16] *Id*. at 585-586.

[17] The Securities Regulation Code.

Rehabilitation and the Interim Rules of Procedure Governing Intra-Corporate Controversies shall be appealable to the CA through a petition for review under Rule 43 of the Rules of Court. Such petition shall be taken within fifteen (15) days from notice of the decision or final order of the RTC. [18]

In turn, Rule 43 governs the procedure for appeals from judgments or final orders of quasi-judicial agencies to the CA, whether it involves questions of fact, of law, or mixed questions of fact and law. Nevertheless, a party may directly file a petition for review on *certiorari* before the Court to question the judgment of a lower court, especially when the issue raised is purely of law and is one of novelty.

Substantive Issues

Lim is still a member of Condocor

Respondents argued that Lim had no cause of action to file the subject action because she was no longer the owner of a condominium unit by virtue of a Deed of Assignment[19] she executed in favor of Reynaldo Valera Lim and Dianna Mendoza Lim, her nephew and niece.

Section 90 of the Corporation Code states that membership in a non-stock corporation and all rights arising therefrom are personal and non- transferable, unless the articles of incorporation or the by-laws otherwise provide. A perusal of Condocor's By-Laws as regards membership and transfer of rights or ownership over the unit reveal that:

> Membership in the CORPORATION is a mere appurtenance of the ownership of any unit in the CONDOMINIUM and may not therefore be sold, transferred or otherwise encumbered separately from the said unit. **Any member who sells or transfer his/her/its unit/s in the CONDOMINIUM shall automatically cease to be a**

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[18] A.M. No. 04-9-07-SC, Mode of Appeal in Cases Formerly Cognizable by the Securities and Exchange Commission, September 14, 2004.

[19] *Rollo*, p. 274.

member of the CORPORATION, the membership being automatically assumed by the buyer or transferee upon registration of the sale or transfer and ownership of the latter over the unit with the Register of Deeds for the City of Manila.[20] [Emphasis supplied.]

Likewise, the Master Deed of Condocor provides:

Section 11 : MORTGAGES, LIENS, LEASES, TRANSFERS OF RIGHTS AND SALE OF UNITS : All transactions involving the transfer of the ownership or occupancy of any UNIT, such as sale, transfer of rights or leases, as well as encumbrances involving said UNIT, such as mortgages, liens and the like, **shall be reported to the CORPORATION within five (5) days after the effectivity of said transactions**.[21]

Nothing in the records showed that the alleged transfer made by Lim was registered with the Register of Deeds of the City of Manila or was reported to the corporation. Logically, until and unless the registration is effected, Lim remains to be the registered owner of the condominium unit and thus, continues to be a member of Condocor.

Moreover, even assuming that there was a transfer by virtue of the Deed of Assignment, the Confirmatory Special Power of Attorney[22] executed later by Lim, wherein she reiterated her membership in Condocor and constituted Reynaldo V. Lim as her true and lawful Attorney-in-Fact, strengthened the fact that she still owns the condominium unit and that there has been no transfer of ownership over the said property to her nephew, but only a mere assignment of rights to the latter. As held by the Court in *Casabuena v. CA*,[23] at most, an assignee can only acquire rights duplicating those which his assignor is entitled by law to exercise.[24] Had it been otherwise, Reynaldo V. Lim

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[20] *Id*. at 225.

[21] *Id*. at 176.

[22] *Id*. at 43.

[23] 350 Phil. 237 (1998).

[24] *Id*. at 244.

himself would have questioned and objected to the granting of the special power of attorney, and would have insisted that he was really the owner of the condominium unit.

In non-stock corporations, quorum is determined by the majority of its actual members

In corporate parlance, the term "meeting" applies to every duly convened assembly either of stockholders, members, directors, trustees, or managers for any legal purpose, or the transaction of business of a common interest.[25] Under Philippine corporate laws, meetings may either be regular or special. A stockholders' or members' meeting must comply with the following requisites to be valid:

1. The meeting must be held on the date fixed in the By-Laws or in accordance with law;[26]
2. Prior written notice of such meeting must be sent to all stockholders/members of record;[27]
3. It must be called by the proper party;[28]
4. It must be held at the proper place;[29] and
5. Quorum and voting requirements must be met.[30]

Of these five (5) requirements, the existence of a quorum is crucial. Any act or transaction made during a meeting without quorum is rendered of no force and effect, thus, not binding on the corporation or parties concerned.

In relation thereto, Section 52 of the Corporation Code of the Philippines *(Corporation Code)* provides:

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[25] Ladia, Ruben C., *The Corporation Code of the Philippines (Annotated),* Revised Edition (2007), p. 316.

[26] Section 50, Corporation Code.

[27] Sections 50 and 51, Corporation Code.

[28] Sections 50 and 54, Corporation Code.

[29] Section 51, Corporation Code.

[30] Section 52, Corporation Code.

Section 52. *Quorum in meetings*. -—Unless otherwise provided for in this Code or in the by-laws, a quorum shall consist of the stockholders representing a majority of the outstanding capital stock or a majority of the members in the case of non-stock corporations.

Thus, for stock corporations, the quorum is based on the *number of outstanding voting stocks* while for non-stock corporations, only those who are *actual, living members with voting rights* shall be counted in determining the existence of a quorum.[31]

To be clear, the basis in determining the presence of quorum in non-stock corporations is the numerical equivalent of all members who are entitled to vote, unless some other basis is provided by the By-Laws of the corporation. The qualification "with voting rights" simply recognizes the power of a non-stock corporation to limit or deny the right to vote of any of its members.[32] To include these members without voting rights in the total number of members for purposes of quorum would be superfluous for although they may attend a particular meeting, they cannot cast their vote on any matter discussed therein.

Similarly, Section 6 of Condocor's By-Laws reads: "The attendance of a simple majority of the members who are in good standing shall constitute a quorum...x x x." The phrase, "members in good standing," is a mere qualification as to which members will be counted for purposes of quorum. As can be gleaned from Condocor's By-Laws, there are two (2) kinds of members: 1) members in good standing; and 2) delinquent members. Section 6 merely stresses that delinquent members are not to be taken into consideration in determining quorum. In relation thereto, Section 7[33] of the By-Laws, referring to

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[31] *Tan v. Sycip*, 530 Phil. 609, 623 (2006).

[32] Section 89, Corporation Code of the Philippines.

[33] Section 7: Voting Rights —Every member shall be entitled to one (1) vote for every square meter and any fraction thereof in excess of one-half (½) square meter of the unit that he/she/it owns; provided, however that only members in good standing shall be entitled to exercise their right to vote. A member in good standing is one who does not have any outstanding

voting rights, also qualified that only those members in good standing are entitled to vote. Delinquent members are stripped off their right to vote. Clearly, contrary to the ruling of the RTC, Sections 6 and 7 of Condocor's By-Laws do not provide that majority of the total voting rights, without qualification, will constitute a quorum.

It must be emphasized that insofar as Condocor is concerned, quorum is different from voting rights. Applying the law and Condocor's By-Laws, if there are 100 members in a non-stock corporation, 60 of which are members in good standing, then the presence of 50% plus 1 of those members in good standing will constitute a quorum. Thus, 31 members in good standing will suffice in order to consider a meeting valid as regards the presence of quorum. The 31 members will naturally have to exercise their voting rights. It is in this instance when the number of voting rights each member is entitled to becomes significant. If 29 out of the 31 members are entitled to 1 vote each, another member (known as A) is entitled to 20 votes and the remaining member (known as B) is entitled to 15 votes, then the total number of voting rights of all 31 members is 64. Thus, majority of the 64 total voting rights, which is 33 (50% plus 1), is necessary to pass a valid act. Assuming that only A and B concurred in approving a specific undertaking, then their 35 combined votes are more than sufficient to authorize such act.

The By-Laws of Condocor has no rule different from that provided in the Corporation Code with respect the determination of the existence of a quorum. The quorum during the July 21, 2012 meeting should have been majority of Condocor's members in good standing. Accordingly, there was no quorum during the July 21,2012 meeting considering that only 29 of the 108 unit buyers were present.

As there was no quorum, any resolution passed during the July 21, 2012 annual membership meeting was null and void and, therefore, not binding upon the corporation or its members. The meeting being null and void, the resolution and disposition

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obligation to the CORPORATION and who is not currently subject to sanctions or penalties by the CORPORATION.

of other legal issues emanating from the null and void July 21, 2012 membership meeting has been rendered unnecessary.

To serve as a guide for the bench and the bar, however, the Court opts to discuss and resolve the same.

Moldex is a member of Condocor

Matters involving a condominium are governed by Republic Act No. 4726 (*Condominium Act*). Said law sanctions the creation of a condominium corporation which is especially formed for the purpose of holding title to the common areas, including the land, or the appurtenant interests in such areas, in which the holders of separate interest shall automatically be members or shareholders, to the exclusion of others, in proportion to the appurtenant interest of their respective units in the common areas.[34] In relation thereto, Section 10 of the same law clearly provides that the condominium corporation shall constitute the management body of the project.

Membership in a condominium corporation is limited only to the unit owners of the condominium project. This is provided in Section 10 of the Condominium Act which reads:

> Membership in a condominium corporation, regardless of whether it is a stock or non-stock corporation, shall not be transferable separately from the condominium unit of which it is an appurtenance. **When a member** or stockholder **ceases to own a unit in the project** in which the condominium corporation owns or holds the common areas, **he shall automatically cease to be a member** or stockholder **of the condominium corporation**.[35] [Emphases supplied]

Although the Condominium Act provides for the minimum requirement for membership in a condominium corporation, a corporation's articles of incorporation or by-laws may provide for other terms of membership, so long as they are not inconsistent with the provisions of the law, the enabling or master deed, or the declaration of restrictions of the condominium project.

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[34] Sec. 2, RA 4726; *Medical Plaza Makati Condominium Corporation v. Cullen*, 720 Phil. 732, 749 (2013).

[35] Sec. 10, The Condominium Act (RA 4726).

In this case, Lim argued that Moldex cannot be a member of Condocor. She insisted that a condominium corporation is an association of homeowners for the purpose of managing the condominium project, among others. Thus, it must be composed of actual unit buyers or residents of the condominium project.[36] Lim further averred that the ownership contemplated by law must result from a sale transaction between the owner-developer and the purchaser. She advanced the view that the ownership of Moldex was only in the nature of an owner-developer and only for the sole purpose of selling the units.[37] In justifying her arguments, Lim cited Section 30 of Presidential Decreee No. 957, known as The Subdivision and Condominium Buyers' Protective Decree (*P.D. No. 957*), to wit:

> Section 30. *Organization of Homeowners Association*. The owner or developer of a subdivision project or condominium project shall initiate the organization of a homeowners association **among the buyers and residents of the projects** for the purpose of promoting and protecting their mutual interest and assist in their community development. [Emphasis in the original.]

Furthermore, in distinguishing between a unit buyer and an owner- developer of a project, Lim cited Section 25 of P.D. No. 957, which provides:

> Section 25. *Issuance of Title*. The owner or developer shall deliver the title of the lot or unit to the buyer upon full payment of the lot or unit. xxx

Likewise, Lim relied on *Sunset View Condominium Corp. v. Hon. Campos, Jr.*,[38] where the Court wrote:

> The share of stock appurtenant to the unit will be **transferred accordingly to the purchaser of the unit only upon full payment of the purchase price at which time he will also become the owner of the unit**. Consequently, even under the contract, it is only the

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[36] *Rollo*, p. 292.

[37] *Id*. at 293.

[38] 191 Phil. 606, 614 (1981).

owner of a unit who is a shareholder of the Condominium Corporation. **Inasmuch as owners is conveyed only upon full payment of the purchase price, it necessarily follows that a purchaser of a unit who has not paid the full purchase price thereof is not the owner of the unit and consequently is not a shareholder of the Condominium Corporation**. [Emphasis in the original]

On these grounds, Lim asserted that only unit buyers are entitled to become members of Condocor.[39]

The Court finds itself unable to agree.

Lim's reliance of P.D. No. 957 is misplaced. There is no provision in P.D. No. 957 which states that an owner-developer of a condominium project cannot be a member of a condominium corporation. Section 30 of P.D. No. 957 determines the purposes of a homeowners association — to promote and protect the mutual interest of the buyers and residents, and to assist in their community development. A condominium corporation, however, is not just a management body of the condominium project. It also holds title to the common areas, including the land, or the appurtenant interests in such areas. Hence, it is especially governed by the Condominium Act. Clearly, a homeowners association is different from a condominium corporation. P.D. No. 957 does not regulate condominium corporations and, thus, cannot be applied in this case.

Sunset View merely delineated the difference between a "purchaser" and an "owner," whereby the former could be considered an owner only upon full payment of the purchase price. The case merely clarified that not every purchaser of a condominium unit could be a shareholder of the condominium corporation.

Respondents, for their part, countered that a *registered owner* of a unit in a condominium project or the holders of duly issued condominium certificate of title *(CCT)*,[40] automatically becomes a member of the condominium corporation,[41] relying on Sections

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[39] *Rollo*, p. 292.

[40] *Rollo*, p. 137.

[41] *Id*. at 134.

2 and 10 of the Condominium Act, the Master Deed and Declaration of Restrictions, as well as the By-Laws of Condocor. For said reason, respondents averred that as Moldex is the owner of 220 unsold units and the parking slots and storage areas attached thereto, it automatically became a member of Condocor upon the latter's creation.[42]

On this point, respondents are correct.

Section 2 of the Condominium Act states:

> Sec. 2. A condominium is an interest in real property consisting of separate interest in a unit in a residential, industrial or commercial building and an undivided interest in common, directly or indirectly, in the land on which it is located and in other common areas of the building. A condominium may include, in addition, a separate interest in other portions of such real property. **Title to the common areas, including the land, or the appurtenant interests in such areas, may be held by a corporation specially formed for the purpose (hereinafter known as the "condominium corporation") in which the *holders of separate interest shall automatically be members or shareholders*, to the exclusion of others, in proportion to the appurtenant interest of their respective units in the common areas**. [Emphasis supplied]

In Sunset View,[43] the Court elucidated on what constitutes "separate interest," in relation to membership, as mentioned in the Condominium Act, to wit:

> **By necessary implication, the "separate interest" in a condominium, which entitles the holder to become automatically a shareholder in the condominium corporation, as provided in Section 2 of the Condominium Act, can be no other than *ownership of a unit*.** This is so because nobody can be a shareholder unless he is the owner of a unit and when he ceases to be the owner, he also ceases automatically to be a shareholder.[44] [Emphasis supplied.]

Thus, law and jurisprudence dictate that **ownership of a unit** entitles one to become a member of a condominium corporation.

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[42] *Id*. at 140.

[43] 191 Phil. 606, 615 (1981).

[44] *Id*. at 615.

The Condominium Act does not provide a specific mode of acquiring ownership. Thus, whether one becomes an owner of a condominium unit by virtue of sale or donation is of no moment.

It is erroneous to argue that the ownership must result from a sale transaction between the owner-developer and the purchaser. Such interpretation would mean that persons who inherited a unit, or have been donated one, and properly transferred title in their names cannot become members of a condominium corporation.

The next issue is — may Moldex appoint duly authorized representatives who will exercise its membership rights, specifically the right to be voted as corporate directors/officers?

Moldex may appoint a duly authorized representative

A corporation can act only through natural persons duly authorized for the purpose or by a specific act of its board of directors.[45] Thus, in order for Moldex to exercise its membership rights and privileges, it necessarily has to appoint its representatives.

Section 58 of the Corporation Code mandates:

> Section 58. *Proxies*. — Stockholders and **members may vote in person or by proxy in all meetings of** stockholders or **members**. Proxies shall in writing, signed by the stockholder or member and filed before the scheduled meeting with the corporate secretary. Unless otherwise provided in the proxy, it shall be valid only for the meeting for which it is intended. No proxy shall be valid and effective for a period longer than five (5) years at any one time. [Emphasis supplied]

Relative to the above provision is Section 1, Article II of Condocor's By-Laws,[46] which grants registered owners the right to designate any person or entity to represent them in Condocor, subject to the submission of a written notification to the Secretary of such designation. Further, the owner's representative is entitled to enjoy and avail himself of all the

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[45] *Spouses Lim v. Court of Appeals,* 702 Phil. 634, 641 (2013).

[46] *Rollo*, pp. 224-232.

rights and privileges, and perform all the duties and responsibilities of a member of the corporation. The law and Condocor's By-Laws evidently allow proxies in members' meeting.

Prescinding therefrom, Moldex had the right to send duly authorized representatives to represent it during the questioned general membership meeting. Records showed that, pursuant to a Board Resolution, as certified[47] by Sandy T. Uy, corporate secretary of Moldex, the individual respondents were instituted as Moldex's representatives. This was attested to by Mary Rose V. Pascual, Assistant Corporate Secretary of Condocor, in a sworn statement[48] she executed on August 31, 2012.

Next question is — can the individual respondents be elected as directors of Condocor?

Individual respondents who are non-members cannot be elected as directors and officers of the condominium corporation

The governance and management of corporate affairs in a corporation lies with its board of directors in case of stock corporations, or board of trustees in case of non-stock corporations. As the board exercises all corporate powers and authority expressly vested upon it by law and by the corporations' by-laws, there are minimum requirements set in order to be a director or trustee, one of which is ownership of a share in one's name or membership in a non-stock corporation. Section 23 of the Corporation Code provides:

> Section 23. *The Board of Directors or Trustees*. — Unless otherwise provided in this Code, the corporate powers of all corporations formed under this Code shall be exercised, all business conducted and all property of such corporations controlled and held by the board of directors or trustees to be elected from among the holders of stocks, or **where there is no stock, from among the members of the corporation**, who shall hold office for one (1) year until their successors are elected and qualified.

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[47] Secretary's Certificate, *id*. at 253-254.

[48] *Id*. at 235-237.

Every director must own at least one (1) share of the capital stock of the corporation of which he is a director, which share shall stand in his name on the books of the corporation. Any director who ceases to be the owner of at least one (1) share of the capital stock of the corporation of which he is a director shall thereby cease to be a director. **Trustees of non-stock corporations must be members thereof**. A majority of the directors or trustees of all corporations organized under this Code must be residents of the Philippines. [Emphases supplied]

This rule was reiterated in Section 92 of the Corporation Code, which states:

Section 92. *Election and term of trustees*.— x x x No person shall be elected as trustee unless he is a member of the corporation. x x x

While Moldex may rightfully designate proxies or representatives, the latter, however, cannot be elected as directors or trustees of Condocor. *First*, the Corporation Code clearly provides that a director or trustee must be a member of record of the corporation. *Further*, the power of the proxy is merely to vote. If said proxy is not a member in his own right, he cannot be elected as a director or proxy.

Respondents cannot rely on the Securities and Exchange Commission *(SEC)* Opinions they cited to justify the individual respondents' election as directors. In *Heirs of Gamboa v. Teves*,[49] the Court *En Banc* held that opinions issued by SEC legal officers do not have the force and effect of SEC rules and regulations because only the SEC *en banc* can adopt rules and regulations.

Following Section 25 of the Corporation Code, the election of individual respondents, as corporate officers, was likewise invalid.

Section 25 of the Corporation Code mandates that the President shall be a director. As previously discussed, Jaminola could not be elected as a director. Consequently, Jaminola's election as President was null and void.

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[49] 696 Phil. 276, 316 (2012).

The same provision allows the election of such other officers as may be provided for in the by-laws. Condocor's By-Laws, however, require that the Vice-President shall be *elected* by the Board from among its member-directors in good standing, and the Secretary may be *appointed* by the Board under the same circumstance. Like Jaminola, Milanes and Macalintal were not directors and, thus, could not be elected and appointed as Vice-President and Secretary, respectively.

Insofar as Roman's election as Treasurer is concerned, the same would have been valid, as a corporate treasurer may or may not be a director of the corporation's board. The general membership meeting of Condocor, however, was null and void. As a consequence, Roman's election had no legal force and effect.

In fine, the July 21, 2012 annual general membership meeting of Condocor being null and void, all acts and resolutions emanating therefrom are likewise null and void.

WHEREFORE, the petition is **GRANTED**. The March 4, 2013 Decision of the Regional Trial Court, Branch 24, Manila, in Civil Case No. 12-128478 is hereby **REVERSED** and **SET ASIDE.** The Court declares that:

a) The July 21, 2012 Annual General Membership Meeting of Condocor is null and void;

b) The election of members of the Board of Directors in the annual general membership meeting is likewise null and void; and

c) The succeeding Organizational Meeting of Condocor's Board of Directors as well as the election of its corporate officers are of no force and effect.

Costs against respondents.

SO ORDERED.

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

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

SECOND DIVISION

[G.R. No. 207838. January 25, 2017]

LEO T. MAULA, *petitioner, vs.* **XIMEX DELIVERY EXPRESS, INC.,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; AS A RULE, *CERTIORARI* DOES NOT LIE TO REVIEW ERRORS OF JUDGMENT OF A QUASI-JUDICIAL TRIBUNAL; EXCEPTIONS, CITED.—** The general rule is that *certiorari* does not lie to review errors of judgment of a quasi-judicial tribunal since the judicial review does not go as far as to examine and assess the evidence of the parties and to weigh their probative value. However, the CA may grant the petition when the factual findings complained of are not supported by the evidence on record; when it is necessary to prevent a substantial wrong or to do substantial justice; when the findings of the NLRC contradict those of the Labor Arbiter; and when necessary to arrive at a just decision of the case.

2. **LABOR AND SOCIAL LEGISLATION; LABOR CODE; TERMINATION OF EMPLOYMENT BY EMPLOYERS; THE SECURITY OF TENURE OF WORKERS IS NOT ONLY STATUTORILY PROTECTED, IT IS ALSO A CONSTITUTIONALLY GUARANTEED RIGHT.—** While an employer is given a wide latitude of discretion in managing its own affairs, in the promulgation of policies, rules and regulations on work-related activities of its employees, and in the imposition of disciplinary measures on them, the exercise of disciplining and imposing appropriate penalties on erring employees must be practiced in good faith and for the advancement of the employer's interest and not for the purpose of defeating or circumventing the rights of employees under special laws or under valid agreements. The reason being that—Security of tenure of workers is not only statutorily protected, it is also a constitutionally guaranteed right. Thus, any deprivation of this right must be attended by due process of law.

3. ID.; ID.; ID.; THE BURDEN OF PROOF RESTS UPON THE EMPLOYER TO SHOW THAT THE DISCIPLINARY ACTION WAS MADE FOR LAWFUL CAUSE OR THAT THE TERMINATION OF EMPLOYMENT WAS VALID.— Dismissal from employment have two facets: *first,* the legality of the act of dismissal, which constitutes substantive due process; and, *second*, the legality of the manner of dismissal, which constitutes procedural due process. The burden of proof rests upon the employer to show that the disciplinary action was made for lawful cause or that the termination of employment was valid. In administrative and quasi-judicial proceedings, the quantum of evidence required is substantial evidence or "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Thus, unsubstantiated suspicions, accusations, and conclusions of the employer do not provide legal justification for dismissing the employee. When in doubt, the case should be resolved in favor of labor pursuant to the social justice policy of our labor laws and the 1987 Constitution.

4. ID.; ID.; ID.; REQUIREMENTS FOR MISCONDUCT OR IMPROPER BEHAVIOR TO BE A JUST CAUSE FOR DISMISSAL, CITED.— Misconduct is improper or wrong conduct; it is the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment. The misconduct, to be serious within the meaning of the Labor Code, must be of such a grave and aggravated character and not merely trivial or unimportant. Thus, for misconduct or improper behavior to be a just cause for dismissal, (a) it must be serious; (b) it must relate to the performance of the employee's duties; and (c) it must show that the employee has become unfit to continue working for the employer.

5. ID.; ID.; ID.; THE PRINCIPLE OF TOTALITY OF INFRACTIONS CANNOT BE INVOKED WHEN THE ALLEGED PREVIOUS ACTS OF MISCONDUCT WERE NOT ESTABLISHED IN ACCORDANCE WITH THE REQUIREMENTS OF PROCEDURAL DUE PROCESS.— Even if a just cause exists, the employer still has the discretion whether to dismiss the employee, impose a lighter penalty, or condone the offense committed. In making such decision, the employee's past offenses may be taken into consideration.

Respondent cannot invoke the principle of totality of infractions considering that petitioner's alleged previous acts of misconduct were not established in accordance with the requirements of procedural due process. x x x Not every case of insubordination or willful disobedience by an employee reasonably deserves the penalty of dismissal because the penalty to be imposed on an erring employee must be commensurate with the gravity of his or her offense. Petitioner's termination from employment is also inappropriate considering that he had been with respondent company for seven (7) years and he had no previous derogatory record. It is settled that notwithstanding the existence of a just cause, dismissal should not be imposed, as it is too severe a penalty, if the employee had been employed for a considerable length of time in the service of his or her employer, and such employment is untainted by any kind of dishonesty and irregularity. x x x An employer is duty-bound to exert earnest efforts to arrive at a settlement of its differences with the employee. While a full adversarial hearing or conference is not required, there must be a fair and reasonable opportunity for the employee to explain the controversy at hand.

6. **ID.; ID.; ID.; PREVENTIVE SUSPENSION; PREVENTIVE SUSPENSION MAY BE LEGALLY IMPOSED AGAINST AN EMPLOYEE WHOSE ALLEGED VIOLATION IS THE SUBJECT OF AN INVESTIGATION; PURPOSE, EXPLAINED.—** Preventive suspension may be legally imposed against an employee whose alleged violation is the subject of an investigation. The purpose of suspension is to prevent harm or injury to the company as well as to fellow employees. The pertinent rules dealing with preventive suspension are found in Sections 8 and 9 of Rule XXIII, Book V of the Omnibus Rules Implementing the Labor Code x x x. As succinctly stated above, preventive suspension is justified where the employee's continued employment poses a serious and imminent threat to the life or property of the employer or of the employee's co-workers. Without this kind of threat, preventive suspension is not proper. Here, it cannot be said that petitioner posed a danger on the lives of the officers or employees of respondent or their properties. Being one of the Operation Staff, which was a rank and file position, he could not and would not be able to sabotage the operations of respondent. The difficulty of finding a logical and reasonable connection between his assigned tasks and the

necessity of his preventive suspension is apparent from the fact that even respondent was not able to present concrete evidence to support its general allegation.

APPEARANCES OF COUNSEL

Valmores & Valmores Law Offices for petitioner.
Donna Jane Mercader- Alagar for respondent.

D E C I S I O N

PERALTA, *J.*:

This petition for review on *certiorari* under Rule 45 of the Rules of Civil Procedure seeks to reverse the November 20, 2012 Decision[1] and June 21, 2013 Resolution[2] of the Court of Appeals (*CA*) in CA G.R. SP No. 121176, which set aside the December 15, 2010 Resolution[3] and July 20, 2011 Decision[4] of the National Labor Relations Commission (*NLRC*) that affirmed the February 18, 2010 Decision[5] of the Labor Arbiter (*LA*) finding the illegal dismissal of petitioner.

On May 12, 2009, petitioner Leo T. Maula filed a complaint against respondent Ximex Delivery Express, Inc. and its officers (Jerome Ibañez, Lilibeth Gorospe, and Amador Cabrera) for illegal dismissal, underpayment of salary/wages, non-payment/ underpayment of overtime pay, underpayment of holiday premium, underpayment of 13th month pay, non-payment of ECOLA, non-payment/underpayment of night shift differential, illegal deduction, illegal suspension, regularization, harassment, underremittance of SSS premiums, deduction of tax without

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[1] Penned by Associate Justice Zenaida T. Galapate-Laguilles, with Associate Justices Mariflor P. Punzalan Castillo and Amy C. Lazaro-Javier, concurring; *rollo,* pp. 208-219.

[2] *Rollo,* pp. 233-234.

[3] *Id.* at 157-161.

[4] *Id.* at 172-174.

[5] *Id.* at 121-127.

tax identification number, moral and exemplary damages, and attorney's fees.[6]

The factual antecedents, according to petitioner, are as follows:

> Petitioner was hired by the respondent as *Operation Staff* on March 23, 2002. As *Operation Staff*, he performed a variety of duties such as but not limited to documentation, checker, dispatcher or airfreight coordinator. He [was] on call anytime of the day or night. He was rendering night duty which [started] at 6:00p.m. More often it went beyond the normal eight-hour schedule such that he normally rendered duty until 6:00 or 7:00 the following morning. This [was] without payment of the corresponding night shift differential and overtime pay. His salary from March 2002 to December 2004 was PhP3,600.00 per month; from January 2005 to July 25, 2006 at PhP6,200.00 per month; from July 26, 2006 to March 15, 2008 at PhP7,500.00 per month; from March 16, 2008 to February 15, 2009 at PhP9,412.00 per month; and, from February 16, 2009 to March 31, 2009 at PhP9,932.00 per month. x x x.
>
> Petitioner's employment was uneventful until came February 18, 2009 when the [respondent's] HRD required him and some other employees to sign a form sub-titled "Personal Data for New Hires." When he inquired about it he was told it was nothing but merely for the twenty-peso increase which the company owner allegedly wanted to see. He could not help but entertain doubts on the scheme as they were hurriedly made to sign the same. It also [appeared] from the form that the designated salary/wage [was] daily instead of on a monthly basis. x x x.
>
> On February 21, 2009, a Saturday evening, they were surprised to receive an invitation from the manager for a dinner and drinking spree in a restaurant-bar. It indeed came as a surprise as he never had that kind of experience with the manager in his seven (7) years working for the company.
>
> On February 25, 2009, he, together with some other concerned employees[,] requested for a meeting with their manager together with the manager of the HRD. They questioned the document and aired their side voicing their apprehensions against the designation "For New Hires" since they were long time regular employees earning monthly salary/wages and not daily wage earners. The respondent

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

company's manager[,] Amador Cabrera[,] retorted: "Ay wala yan walang kwenta yan." When he disclosed that he consulted a lawyer, respondent Cabrera insisted it was nothing and accordingly, no lawyer could say that it really matters. Cabrera even dared the petitioner to present the lawyer. The meeting was concluded. When he was about to exit from the conference room he was addressed with the parting words: "'Baka gusto mo, mag-labor ka!" He did not react.

On March 4, 2009, petitioner filed a complaint before the National Conciliation and Mediation Board. During the hearing held on March 25, 2009, it was stipulated/agreed upon that:

(1) Company's counsel admits that petitioner is a regular employee;

(2) There shall be no retaliatory action between petitioner and the company arising from this complaint;

(3) Issues anent BIR and SSS shall be brought to the proper forum.

x x x x x x x x x

Not long thereafter, or on March 25, 2009, in the evening, a supposed problem cropped up. A misroute of cargo was reported and the company [cast] the whole blame on the petitioner. It was alleged that he erroneously wrote the label on the box — the name and destination, and allegedly [was] the one who checked the cargo. The imputation is quite absurd because it was the client who actually wrote the name and destination, whereas, it was not the petitioner but his co-employee who checked the cargo. The following day, he received a memorandum charging him with "negligence in performing duties."

On April 2, 2009 at 4:00 p.m., he received another memorandum of "reassignment" wherein he was directed to report effective April 2, 2009 to Richard Omalza and Ferdinand Marzan in another department of the company. But then, at around 4:30 p.m. of the same day, he was instructed by the HR manager to proceed to his former office for him to train his replacement. He went inside the warehouse and at around 6:00 p.m. he began teaching his replacement. At 8:00 p.m.[,] his replacement went outside. He waited for sometime and came to know later when he verified outside that the person already went straight home. When he went back inside, his supervisor insisted [to] him to continue with his former work, but due to the "reassignment paper" he had some reservations. Sensing he might again be framed up and maliciously accused of such as what happened on March 25, 2009, he thus refused. Around 10:30 p.m., he went home. x x x.

The following day, an attempt to serve another memorandum was made on him. This time he was made to explain by the HR Manager why he did not perform his former work and not report to his reassignment. It only [validated] his apprehension of a set-up. For how could he be at two places at [the same] time (his former work is situated in Sucat, Parañaque, whereas, his new assignment is in FTI, Taguig City). It bears emphasizing that the directive for him to continue discharging his former duties was merely verbal. At this point, petitioner lost his composure. Exasperated, he refused to receive the memorandum and thus retorted "Seguro na- abnormal na ang utak mo" as it dawned on him that they were out looking for every means possible to pin him down.

Nonetheless, he reported to his reassignment in FTI Taguig on April 3, 2009. There he was served with the memorandum suspending him from work for thirty (30) days effective April 4, 2009 for alleged "Serious misconduct and willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work." His apprehension was thus confirmed. x x x.

On April 8, 2009, he filed a case anew with the NCMB x x x Hearings were scheduled at the NCMB on April 20, 27, and May 5, 2009 but the respondents never appeared. On May 4, 2009, he reported to the office only to be refused entry. Instead, a dismissal letter was handed to him. x x x.

On May 5, 2009, at the NCMB, the mediator decided that the case be brought to the National Labor Relations Commission for arbitration. Thus, he withdrew his complaint. On May 12, 2009[,] he was able to re-file his complaint with the Arbitration Branch of the NLRC. Efforts were exerted by the Labor Arbiter to encourage the parties to amicably settle but without success.[7]

Respondent countered that: it is a duly registered domestic corporation engaged in the business of cargo forwarding and truck-hauling; petitioner and several other employees misinterpreted the use of its old form "For New Hires," that they were relegated to the status of new employees when in fact they have been employed for quite some time already; after

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[7] *Id.* at 10-13. Petitioner substantially stated the same version of facts in his Position Paper before the Labor Arbiter, Comment before the NLRC, and Comment before the CA (*Rollo*, pp. 74-77, 150-153, 194-198).

the conciliation conference before the NCMB, it relied on his promise that he would not disturb the peace in the company premises, which proved to be wishful thinking; as to the misdelivered cargo of Globe Telecoms, initial investigation disclosed that he was tasked to check the correct information in the package to ensure prompt delivery, hence, a Memorandum dated March 27, 2009 was issued to him to explain his side; thereafter, it was learned from his co-employees that he abandoned his work a few hours after logging in, which was a serious disobedience to the HR Head's order for him to teach the new employees assigned to his group; also, he refused to accept a company order with respect to his transfer of assignment to another client, Fullerlife; for the series of willful disobedience, a Memorandum dated April 3, 2009 was personally served to him by Gorospe, but he repeatedly refused to receive the memorandum and howled at her, "*Seguro na abnormal ang utak mo!*"; his arrogant actuations, which were directed against a female superior who never made any provocation and in front of many employees, were contemptuous, gravely improper, and breeds disrespect, even ignominy, against the company and its officers; on April 3, 2009, another memorandum was issued to give him the opportunity to explain his side and to inform him of his preventive suspension for thirty (30) days pending investigation; and the management, after evaluating the gravity of the charges and the number of infractions, decided to dismiss him from employment through a notice of dismissal dated April 27, 2009, which was sent via registered mail.

The LA ruled for petitioner, opining that:

> [Petitioner] had cause for alarm and exasperation it appearing that, after he joined a complaint in the NCMB, in a brief period from [March 27, 2009] to [April 3, 2009], [he] was served with a memo on alleged mishandling which turned out to be baseless, he was reassigned with no clear explanation and was being charged for disobedience of which was not eventually acted upon. There is no indication that the altercation between [him] and the HR Manager was of such aggravated character as to constitute serious misconduct.
>
> This Office finds, on the other hand, that the respondents appeared bent on terminating the services of complainant following his taking

the respondents to task for the new form and in the eventual dispute before the NCMB.

As to the relief, [petitioner], as an illegally dismissed employee[,] is entitled to the twin relief of reinstatement with backwages. However, considering the attendant circumstances, it would not be to the best interest of the [petitioner] to be reinstated as he would be working under an unjustified suspicion from his employer. Thus, this office finds the award of full backwages from the time of dismissal on [April 27, 2009] up to [the] date of this decision and separation pay of one month pay per year of service in order.

Thus, the backwages due to the [petitioner] is computed at P9,932.00 x 10 months x 1.08 or ₱107,265.00. His separation pay is also set at ₱9,932.00 x 8 years or ₱79,456.00. Other claims are dismissed for lack of factual and legal basis.

Individual respondents Jerome Ibanez, Lilibeth Gorospe and Amador Cabrera are held liable for being the responsible officers of the respondent company.

WHEREFORE, in view of the foregoing, decision is hereby rendered declaring the dismissal of the [petitioner] to be illegal and ordering respondents XIMEX DELIVERY EXPRESS, INC., JEROME IBANEZ, LILIBETH GOROSPE and AMADOR CABRERA to pay [petitioner] the amount of ₱186,721.00, as computed above, as backwages and separation pay. All other claims are dismissed.

SO ORDERED.[8]

On appeal, the NLRC affirmed *in toto* the LA's decision. It added:

While We concur that each employee should deal with his co-employees with due respect, the attending circumstances[,] however[,] should be taken into consideration why said utterance was made in order to arrive at a fair and equitable decision in this case.

In a span of one week[,] [petitioner] received three (3) [memoranda] requiring him to explain three (3) different offenses. The utterance was more of an outburst of [his] emotion, having been subjected to three [memoranda] in successive days, the last of which placed him

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[8] *Id.* at 126-127.

under suspension for 30 days. Clearly[,] said utterance [cannot] be considered grave and aggravated in character to warrant the dismissal of herein [petitioner]. x x x.[9]

Respondent and its accountable officers moved for reconsideration.[10] In partially granting the motion, the NLRC ruled that while the memoranda charging petitioner of negligence, misconduct, and disobedience were unfounded and that he could not be blamed for his emotional flare-up due to what he considered as successive retaliatory actions, there was no malice or bad faith on the part of Ibañez, Gorospe, and Cabrera to justify their solidary liability with respondent.[11] Petitioner did not move to reconsider the modified judgment.

Still aggrieved, respondent elevated the case to the CA, which reversed and set aside the December 15, 2010 Resolution and the July 20, 2011 Decision of the NLRC. The appellate court held:

> x x x [A]fter a careful scrutiny of the facts on record, we find that [petitioner's] behavior constitute serious misconduct which was of grave and aggravated character. When he threw the *Memorandum* served on him by HR Supervisor Gorospe in front of her and when he later on shouted at her, "*Siguro na abnormal ang utak mo!*", he was not only being disrespectful, he also manifested a willful defiance of authority and insubordination. Much more, he did it in the presence of his co-employees which if not corrected would create a precedent to [respondent's] detriment. [Petitioner's] actuations were willfully done as shown by the foul language he used against his superior, with apparent wrongful intent and not mere error in judgment, making him unfit to continue working for [respondent]. [Petitioner] attempted to blame [respondent] for his behaviour allegedly because he was provoked by the successive memoranda it issued to him in a span of two (2) days. This, however, is a lame excuse and did not in any way justify the inflammatory language he used against Gorospe and the throwing of the *Memorandum* at the HR Supervisor, in the presence of his co-employees at that. Condoning his behaviour is not what

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[9] *Id.* at 160.

[10] *Id.* at 162-171.

[11] *Id.* at 173.

the law contemplates when it mandated a liberal treatment in favor of the working man. An employer cannot be compelled to continue employing an employee guilty of acts inimical to the employer's interest, justifying loss of confidence in him. A company has the right to dismiss its erring employees as a measure of self-protection against acts inimical to its interest. x x x.

x x x x x x x x x

Further, in a long line of cases, it was ruled that accusatory and inflammatory language used by an employee to the employer or superior can be a ground for dismissal or termination. Likewise, it did not escape Our attention that [petitioner] had been intentionally defying the orders of his immediate superiors when he refused to train his replacement prior to his transfer at Fullerlife in Taguig City despite being told to do so. This defiance was also manifested when he left his work station without his superior's permission. Undoubtedly, [petitioner's] behavior makes him unfit to continue his employment with [respondent] who was rendered helpless by his acts of insubordination.

On the other hand, [respondent] complied with the due process requirements in effecting [petitioner's] dismissal. It furnished the latter two (2) written notices, *first*, in *Memorandum* dated April 3, 2009 apprising him of the charge of serious misconduct for which his dismissal was sought and *second*, in *Notice of Dismissal* dated April 27, 2009 which informed him of [respondent's] decision to dismiss him.[12]

The petition is meritorious.

Standard of Review

In a Rule 45 petition of the CA decision rendered under Rule 65, We are guided by the following rules:

[I]n a Rule 45 review (of the CA decision rendered under Rule 65), the question of law that confronts the Court is the legal correctness of the CA decision — *i.e.*, whether the CA correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, and not on the basis of whether the NLRC decision on the merits of the case was correct. ...

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[12] *Id.* at 215-217.

Specifically, in reviewing a CA labor ruling under Rule 45 of the Rules of Court, the Court's review is limited to:

(1) Ascertaining the correctness of the CA's decision in finding the presence or absence of a grave abuse of discretion. This is done by examining, on the basis of the parties' presentations, whether the CA correctly determined that at the NLRC level, all the adduced pieces of evidence were considered; no evidence which should not have been considered was considered; and the evidence presented supports the NLRC findings; and

(2) Deciding any other jurisdictional error that attended the CA's interpretation or application of the law.[13]

The general rule is that *certiorari* does not lie to review errors of judgment of a quasi-judicial tribunal since the judicial review does not go as far as to examine and assess the evidence of the parties and to weigh their probative value.[14] However, the CA may grant the petition when the factual findings complained of are not supported by the evidence on record; when it is necessary to prevent a substantial wrong or to do substantial justice; when the findings of the NLRC contradict those of the Labor Arbiter; and when necessary to arrive at a just decision of the case.[15]

As will be shown later, none of the recognized exceptions is present in this case; hence, the CA erred when it made its own factual determination of the matters involved and, on that basis, reversed the NLRC ruling that affirmed the findings of the labor arbiter. While this Court, in a Rule 45 petition, is not a trier of facts and does not analyze and weigh again the evidence presented before the tribunals below, the conflicting findings of the administrative bodies exercising quasi-judicial functions

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[13] *Stanley Fine Furniture v. Gallano*, G.R. No. 190486, November 26, 2014, 743 SCRA 306, 319. (Citation omitted)

[14] *Continental Micronesia, Inc. v. Basso*, G.R. Nos. 178382-83, September 23, 2015.

[15] *Continental Micronesia, Inc. v. Basso*, G.R. Nos. 178382-83, September 23, 2015.

and the CA compels Us to make Our own independent findings of facts.[16]

Termination of Employment

While an employer is given a wide latitude of discretion in managing its own affairs, in the promulgation of policies, rules and regulations on work-related activities of its employees, and in the imposition of disciplinary measures on them, the exercise of disciplining and imposing appropriate penalties on erring employees must be practiced in good faith and for the advancement of the employer's interest and not for the purpose of defeating or circumventing the rights of employees under special laws or under valid agreements.[17] The reason being that—

> Security of tenure of workers is not only statutorily protected, it is also a constitutionally guaranteed right. Thus, any deprivation of this right must be attended by due process of law. This means that any disciplinary action which affects employment must pass due process scrutiny in both its substantive and procedural aspects.
>
> The constitutional protection for workers elevates their work to the status of a vested right. It is a vested right protected not only against state action but against the arbitrary acts of the employers as well. This court in *Philippine Movie Pictures Workers' Association v. Premier Productions, Inc*. categorically stated that "[t]he right of a person to his labor is deemed to be property within the meaning of constitutional guarantees." Moreover, it is of that species of vested constitutional right that also affects an employee's liberty and quality of life. Work not only contributes to defining the individual, it also assists in determining one's purpose. Work provides for the material basis of human dignity.[18]

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[16] See *Santos v. Integrated Pharmaceutical, Inc*., G.R. No. 204620, July 11, 2016; *Convoy Marketing Corp. v. Albia*, G.R. No. 194969, October 7, 2015; and *United Tourist Promotions (UTP), et al. v. Kemplin*, G.R. No. 205453, February 5, 2014, 726 Phil. 337, 349.

[17] *Convoy Marketing Corp. v. Albia*, G.R. No. 194969, October 7, 2015.

[18] *Montinola v. Philippine Airlines*, G.R. No. 198656, September 8, 2014, 734 SCRA 439, 453-454.

Dismissal from employment have two facets: *first,* the legality of the act of dismissal, which constitutes substantive due process; and, *second*, the legality of the manner of dismissal, which constitutes procedural due process.[19] The burden of proof rests upon the employer to show that the disciplinary action was made for lawful cause or that the termination of employment was valid.[20] In administrative and quasi-judicial proceedings, the quantum of evidence required is substantial evidence or "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."[21] Thus, unsubstantiated suspicions, accusations, and conclusions of the employer do not provide legal justification for dismissing the employee.[22] When in doubt, the case should be resolved in favor of labor pursuant to the social justice policy of our labor laws and the 1987 Constitution.[23]

Act of Dismissal

Respondent manifestly failed to prove that petitioner's alleged act constitutes serious misconduct.

Misconduct is improper or wrong conduct; it is the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment.[24] The misconduct, to be serious within the meaning of the Labor Code,

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[19] See *NDC Tagum Foundation, Inc. v. Sumakote*, G.R. No. 190644, June 13, 2016 and *Agullano v. Christian Publishing, et al*., 588 Phil. 43, 49 (2008).

[20] See *Montinola v. Philippine Airlines*, G.R. No. 198656, September 8, 2014, 734 SCRA 439, 456 and *Abel v. Philex Mining Corp*., 612 Phil. 203, 213 (2009).

[21] See *Montinola v. Philippine Airlines*, G.R. No. 198656, September 8, 2014, 734 SCRA 439, 456 and *Abel v. Philex Mining Corp*., 612 Phil. 203, 214 (2009).

[22] *Abel v. Philex Mining Corp*., 612 Phil. 203, 213 (2009).

[23] *Id.* at 213-214.

[24] *Nissan Motors Phils., Inc. v. Angelo*, 673 Phil. 150, 158-159 (2011).

must be of such a grave and aggravated character and not merely trivial or unimportant.[25] Thus, for misconduct or improper behavior to be a just cause for dismissal, (a) it must be serious; (b) it must relate to the performance of the employee's duties; and (c) it must show that the employee has become unfit to continue working for the employer.[26]

While this Court held in past decisions that accusatory and inflammatory language used by an employee to the employer or superior can be a ground for dismissal or termination,[27] the circumstances peculiar to this case find the previous rulings inapplicable. The admittedly insulting and unbecoming language uttered by petitioner to the HR Manager on April 3, 2009 should be viewed with reasonable leniency in light of the fact that it was committed under an emotionally charged state. We agree with the labor arbiter and the NLRC that the on-the-spur-of-the-moment outburst of petitioner, he having reached his breaking point, was due to what he perceived as successive retaliatory and orchestrated actions of respondent. Indeed, there was only lapse in judgment rather than a premeditated defiance of authority.

Further, petitioner's purported "thug-like" demeanor is not serious in nature. Despite the "grave embarassment" supposedly caused on Gorospe, she did not even take any separate action independent of the company. Likewise, respondent did not elaborate exactly how and to what extent that its "nature of business" and "industrial peace" were damaged by petitioner's misconduct. It was not shown in detail that he has become unfit to continue working for the company and that the continuance of his services is patently inimical to respondent's interest.

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[25] *Id.* at 59.

[26] *Nissan Motors Phils., Inc. v. Angelo*, 673 Phil. 150, 159 (2011); *Fujitsu Computer Products Corp. of the Phils. v. Court of Appeals*, 494 Phil. 697, 726 (2005); and *Phil. Aeolus Automotive United Corp. v. NLRC*, 387 Phil. 250, 261 (2000).

[27] *Nissan Motors Phils., Inc. v. Angelo*, 673 Phil. 150, 160 (2011), citing *St. Mary's College v. National Labor Relations Commission*, 260 Phil. 63, 67 (1990); *Garcia v. Manila Times*, G.R. No. 99390, July 5, 1991, 224 SCRA 399, 403; *Asian Design and Manufacturing Corp. v. Department of Labor and Employment*, 226 Phil. 20, 23 (1986).

Even if a just cause exists, the employer still has the discretion whether to dismiss the employee, impose a lighter penalty, or condone the offense committed.[28] In making such decision, the employee's past offenses may be taken into consideration.[29]

x x x In *Merin v. National Labor Relations Commission*, this Court expounded on the principle of totality of infractions as follows:

> The totality of infractions or the number of violations committed during the period of employment shall be considered in determining the penalty to be imposed upon an erring employee. The offenses committed by petitioner should not be taken singly and separately. Fitness for continued employment cannot be compartmentalized into tight little cubicles of aspects of character, conduct and ability separate and independent of each other. While it may be true that petitioner was penalized for his previous infractions, this does not and should not mean that his employment record would be wiped clean of his infractions. After all, the record of an employee is a relevant consideration in determining the penalty that should be meted out since an employee's past misconduct and present behavior must be taken together in determining the proper imposable penalty[.] Despite the sanctions imposed upon petitioner, he continued to commit misconduct and exhibit undesirable behavior on board. Indeed, the employer cannot be compelled to retain a misbehaving employee, or one who is guilty of acts inimical to its interests.[30]

In this case, respondent contends that aside from petitioner's disrespectful remark against Gorospe, he also committed several prior intentional misconduct, to wit: erroneous packaging of a cargo of respondent's client, abandoning work after logging in, failing to teach the rudiments of his job to the new employees

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[28] See *Santos v. Integrated Pharmaceutical, Inc.*, G.R. No. 204620, July 11, 2016.

[29] See *Santos v. Integrated Pharmaceutical, Inc.*, G.R. No. 204620, July 11, 2016.

[30] *Realda v. New Age Graphics, et al.*, 686 Phil. 1110, 1120 (2012). (Citations omitted)

assigned to his group despite orders from his superior, and refusing to accept the management's order on the transfer of assignment. After evaluating the gravity of the charges and the number of infractions, respondent decided to dismiss petitioner from his employment.

We do not agree. Respondent cannot invoke the principle of totality of infractions considering that petitioner's alleged previous acts of misconduct were not established in accordance with the requirements of procedural due process. In fact, respondent conceded that he "was not even censured for any infraction in the past." It admitted that "[the] March 25, 2009 incident that [petitioner] was referring to could not be construed as laying the predicate for his dismissal, because [he] was not penalized for the misrouting incident when he had adequately and satisfactorily explained his side. Neither was he penalized for the other [memoranda] previously or subsequently issued to him."[31]

This Court finds the penalty of dismissal too harsh. Not every case of insubordination or willful disobedience by an employee reasonably deserves the penalty of dismissal because the penalty to be imposed on an erring employee must be commensurate with the gravity of his or her offense.[32] Petitioner's termination from employment is also inappropriate considering that he had been with respondent company for seven (7) years and he had no previous derogatory record. It is settled that notwithstanding the existence of a just cause, dismissal should not be imposed, as it is too severe a penalty, if the employee had been employed for a considerable length of time in the service of his or her employer, and such employment is untainted by any kind of dishonesty and irregularity.[33]

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[31] See Reply of respondent before the Labor Arbiter, *rollo*, p. 104.

[32] *Montallana v. La Consolacion College Manila*, G.R. No. 208890, December 8, 2014, 744 SCRA 163, 175.

[33] See *Samson v. National Labor Relations Commission*, 386 Phil. 669, 686 (2000).

Manner of dismissal

The procedural due process requirement was not complied with. *King of Kings Transport, Inc. v. Mamac*,[34] provided for the following rules in terminating the services of employees:

(1) The **first written notice** to be served on the employees should contain the specific causes or grounds for termination against them, and a directive that the employees are given the opportunity to submit their written explanation within a reasonable period. "Reasonable opportunity" under the Omnibus Rules means every kind of assistance that management must accord to the employees to enable them to prepare adequately for their defense. This should be construed as a period of at least five (5) calendar days from receipt of the notice to give the employees an opportunity to study the accusation against them, consult a union official or lawyer, gather data and evidence, and decide on the defenses they will raise against the complaint. Moreover, in order to enable the employees to intelligently prepare their explanation and defenses, the notice should contain a detailed narration of the facts and circumstances that will serve as basis for the charge against the employees. A general description of the charge will not suffice. Lastly, the notice should specifically mention which company rules, if any, are violated and/or which among the grounds under Art. 282 is being charged against the employees.

(2) After serving the first notice, the employers should schedule and conduct a **hearing** or **conference** wherein the employees will be given the opportunity to: (1) explain and clarify their defenses to the charge against them; (2) present evidence in support of their defenses; and (3) rebut the evidence presented against them by the management. During the hearing or conference, the employees are given the chance to defend themselves personally, with the assistance of a representative or counsel of their choice. Moreover, this conference or hearing could be used by the parties as an opportunity to come to an amicable settlement.

(3) After determining that termination of employment is justified, the employers shall serve the employees a **written notice of termination** indicating that: (1) all circumstances involving the charge

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[34] *King of Kings Transport, Inc. v. Mamac*, 553 Phil. 108 (2007).

against the employees have been considered; and (2) grounds have been established to justify the severance of their employment.[35]

Later, *Perez, et al. v. Phil. Telegraph and Telephone Co., et al.*,[36] clarified that an actual or formal hearing is not an absolute requirement. The Court *en banc* held:

> Article 277(b) of the Labor Code provides that, in cases of termination for a just cause, an employee must be given "ample opportunity to be heard and to defend himself." Thus, the opportunity to be heard afforded by law to the employee is qualified by the word "ample" which ordinarily means "considerably more than adequate or sufficient." In this regard, the phrase "ample opportunity to be heard" can be reasonably interpreted as extensive enough to cover actual hearing or conference. To this extent, Section 2(d), Rule I of the Implementing Rules of Book VI of the Labor Code is in conformity with Article 277(b).
>
> Nonetheless, Section 2(d), Rule I of the Implementing Rules of Book VI of the Labor Code should not be taken to mean that holding an actual hearing or conference is a condition *sine qua non* for compliance with the due process requirement in termination of employment. The test for the fair procedure guaranteed under Article 277(b) cannot be whether there has been a formal pretermination confrontation between the employer and the employee. The "ample opportunity to be heard" standard is neither synonymous nor similar to a formal hearing. To confine the employee's right to be heard to a solitary form narrows down that right. It deprives him of other equally effective forms of adducing evidence in his defense. Certainly, such an exclusivist and absolutist interpretation is overly restrictive. *The "very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation."*
>
> The standard for the hearing requirement, ample opportunity, is couched in general language revealing the legislative intent to give some degree of flexibility or adaptability to meet the peculiarities of a given situation. To confine it to a single rigid proceeding such as a formal hearing will defeat its spirit.

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

[36] 602 Phil. 522 (2009).

Significantly, Section 2(d), Rule I of the Implementing Rules of Book VI of the Labor Code itself provides that the so-called standards of due process outlined therein shall be observed "*substantially*," not strictly. This is a recognition that *while a formal hearing or conference is ideal, it is not an absolute, mandatory or exclusive avenue of due process*.

An employee's right to be heard in termination cases under Article 277(b) as implemented by Section 2(d), Rule I of the Implementing Rules of Book VI of the Labor Code should be interpreted in broad strokes. It is satisfied not only by a formal face to face confrontation but by any meaningful opportunity to controvert the charges against him and to submit evidence in support thereof.

A hearing means that a party should be given a chance to adduce his evidence to support his side of the case and that the evidence should be taken into account in the adjudication of the controversy. *"To be heard" does not mean verbal argumentation alone inasmuch as one may be heard just as effectively through written explanations, submissions or pleadings*. Therefore, while the phrase "ample opportunity to be heard" may in fact include an actual hearing, it is not limited to a formal hearing only. In other words, the existence of an actual, formal "trial-type" hearing, although preferred, is not absolutely necessary to satisfy the employee's right to be heard.

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[T]he employer may provide an employee with ample opportunity to be heard and defend himself with the assistance of a representative or counsel in ways other than a formal hearing. The employee can be fully afforded a chance to respond to the charges against him, adduce his evidence or rebut the evidence against him through a wide array of methods, verbal or written.

After receiving the first notice apprising him of the charges against him, the employee may submit a written explanation (which may be in the form of a letter, memorandum, affidavit or position paper) and offer evidence in support thereof, like relevant company records (such as his 201 file and daily time records) and the sworn statements of his witnesses. For this purpose, he may prepare his explanation personally or with the assistance of a representative or counsel. He may also ask the employer to provide him copy of records material to his defense. His written explanation may also include a request that a formal hearing or conference be held. In such a case, the conduct

of a formal hearing or conference becomes mandatory, just as it is where there exist substantial evidentiary disputes or where company rules or practice requires an actual hearing as part of employment pretermination procedure. To this extent, we refine the decisions we have rendered so far on this point of law.

This interpretation of Section 2(d), Rule I of the Implementing Rules of Book VI of the Labor Code reasonably implements the "ample opportunity to be heard" standard under Article 277(b) of the Labor Code without unduly restricting the language of the law or excessively burdening the employer. This not only respects the power vested in the Secretary of Labor and Employment to promulgate rules and regulations that will lay down the guidelines for the implementation of Article 277(b). More importantly, this is faithful to the mandate of Article 4 of the Labor Code that "[a]ll doubts in the implementation and interpretation of the provisions of [the Labor Code], including its implementing rules and regulations shall be resolved in favor of labor."

In sum, the following are the guiding principles in connection with the hearing requirement in dismissal cases:

(a) "ample opportunity to be heard" means any meaningful opportunity (verbal or written) given to the employee to answer the charges against him and submit evidence in support of his defense, whether in a hearing, conference or some other fair, just and reasonable way.

(b) a formal hearing or conference becomes mandatory only when requested by the employee in writing or substantial evidentiary disputes exist or a company rule or practice requires it, or when similar circumstances justify it.

(c) the "ample opportunity to be heard" standard in the Labor Code prevails over the "hearing or conference" requirement in the implementing rules and regulations.[37]

In this case, the Memorandum dated April 3, 2009 provided:

Ito ay patungkol sa pangyayari kanina, mga bandang alas kuwatro ng hapon, na kung saan ang mga ipinakita at ini-asal mo sa akin bilang iyong HR Supervisor na pagbato/paghagis na may kasamang

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[37] *Perez, et al. v. Phil. Telegraph and Telephone Co., et al.*, 602 Phil. 522, 537-542 (2009).

pagdadabog ang memo na ibinigay para sa iyo na nagsasaad na ikaw ay pinag- papaliwanag lamang sa mga alegasyon laban sa iyo na dinulog sa aming tanggapan. Ikaw ay binigyan ng pagkakataon na ibigay ang iyong paliwanag ngunit ang iyong ginawa ay, ikaw ay nagdabog at inihagis ang memo sa harapan mismo ng iyong HR Supervisor sa kadahilanang hindi mo lamang matanggap ang mga alegasyong inirereklamo tungkol sayo. Ang paninigaw mo at pagsasabi na **"Abnormal pala utak mo eh"** sa HR Supervisor mo na mas nakatataas sa iyo sa harap ng maraming empleyado ay nagpapakita lang na ikaw ay lumabag sa patakaran ng kumpanya na **"Serious Misconduct and willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work."**

Dahil dito, ang pamunuan ay nagdesisyon na ikaw ay suspendihin ng tatlumpung araw (30) habang isinasagawa ang imbestigasyon at ito ay magsisimula pagkatanggap mo ng liham na ito.

Para sa iyong kaalaman at pagsunod.[38]

On the other hand, the dismissal letter dated April 27, 2009, which was also signed by Gorospe, stated:

Ito ay patungkol sa pangyayari na kung saan, ipinakita mo ang hindi kagandahang asal at kagaspangan ng iyong pag-uugali at hindi pagbibigay ng respeto sa mas nakatataas sa iyo. Na kung saan ay iyong ibinato/inihagis ang memo para sa iyo na nagsasaad na ikaw ay pinag-papaliwanag at binibigyan ng pagkakataon na marinig ang iyong panig laban sa mga alegasyon na iyong kinakaharap. Ang paninigaw mo at pagsasabi na **"Abnormal pala utak mo eh"** sa akin na HR Supervisor mo na mas nakatataas sa iyo sa harap ng maraming empleyado ay nagpapakita lamang na ikaw ay lumabag sa patakaran ng kumpanya, ang **"Serious Misconduct by the employee of the lawful orders of his employer or representative in connection with his work."** Nais naming sabihin na hindi pinahihintulutan ng pamunuan ang ganitong mga pangyayari.

Dahil dito, ang pamunuan ay nagdesisyon na ikaw ay tanggalin sa kumpanyang ito na magsisimula pagkatanggap mo ng sulat [na] ito.

Paki sa ayos ang iyong mga trabahong maiiwan.[39]

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[38] *Rollo*, p. 69.

[39] *Id.* at 70.

Evidently, Memorandum dated April 3, 2009 does not contain the following: a detailed narration of facts and circumstances for petitioner to intelligently prepare his explanation and defenses, the specific company rule violated and the corresponding penalty therefor, and a directive giving him at least five (5) calendar days to submit a written explanation. No ample opportunity to be heard was also accorded to petitioner. Instead of devising a just way to get the side of petitioner through testimonial and/or documentary evidence, respondent took advantage of his "refusal" to file a written explanation. This should not be so. An employer is duty-bound to exert earnest efforts to arrive at a settlement of its differences with the employee. While a full adversarial hearing or conference is not required, there must be a fair and reasonable opportunity for the employee to explain the controversy at hand.[40] Finally, the termination letter issued by respondent miserably failed to satisfy the requisite contents of a valid notice of termination. Instead of discussing the facts and circumstances to support the violation of the alleged company rule that imposed a penalty of dismissal, the letter merely repeats the self-serving accusations stated in Memorandum dated April 3, 2009.

Preventive Suspension

Similar to a case,[41] no hearing or conference was called with respect to petitioner's alleged misconduct. Instead, he was immediately placed under preventive suspension for thirty (30) days and was dismissed while he was still serving his suspension. According to respondent, it is proper to suspend him pending investigation because his continued employment poses serious and imminent threat to the life of the company officials and also endanger the operation of the business of respondent, which

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[40] *NDC Tagum Foundation, Inc. v. Sumakote,* G.R. No. 190644, June 13, 2016.

[41] See *NDC Tagum Foundation, Inc. v. Sumakote*, G.R. No. 190644, June 13, 2016.

is a common carrier duty-bound to observe extra ordinary diligence.[42]

Preventive suspension may be legally imposed against an employee whose alleged violation is the subject of an investigation. The purpose of suspension is to prevent harm or injury to the company as well as to fellow employees.[43] The pertinent rules dealing with preventive suspension are found in Sections 8 and 9 of Rule XXIII, Book V of the Omnibus Rules Implementing the Labor Code, which read:

SEC. 8. ***Preventive suspension.*** — The employer may place the worker concerned under preventive suspension if his continued employment poses a serious and imminent threat to the life or property of the employer or of his co-workers.

SEC. 9. ***Period of suspension.*** — No preventive suspension shall last longer than thirty (30) days. The employer shall thereafter reinstate the worker in his former or in a substantially equivalent position or the employer may extend the period of suspension provided that during the period of extension, he pays the wages and other benefits due to the worker. In such case, the worker shall not be bound to reimburse the amount paid to him during the extension if the employer decides, after completion of the hearing, to dismiss the worker.

As succinctly stated above, preventive suspension is justified where the employee's continued employment poses a serious and imminent threat to the life or property of the employer or of the employee's co-workers. Without this kind of threat, preventive suspension is not proper.[44] Here, it cannot be said that petitioner posed a danger on the lives of the officers or employees of respondent or their properties. Being one of the Operation Staff, which was a rank and file position, he could

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[42] *Rollo*, p. 91.

[43] *Mandapat v. Add Force Personnel Services, Inc., et al.,* 638 Phil. 150, 157 (2010).

[44] *Artificio v. National Labor Relations Commission,* 639 Phil. 449, 458 (2010).

not and would not be able to sabotage the operations of respondent. The difficulty of finding a logical and reasonable connection between his assigned tasks and the necessity of his preventive suspension is apparent from the fact that even respondent was not able to present concrete evidence to support its general allegation.

WHEREFORE, premises considered, the petition is **GRANTED**. The November 20, 2012 Decision and June 21, 2013 Resolution of the Court of Appeals in CA G.R. SP No. 121176, which set aside the December 15, 2010 Resolution and July 20, 2011 Decision of the National Labor Relations Commission that affirmed the February 18, 2010 Decision of the Labor Arbiter finding the illegal dismissal of petitioner, are hereby **REVERSED AND SET ASIDE**. The Labor Arbiter is **DIRECTED** to recompute the proper amount of backwages and separation pay due to petitioner in accordance with this decision.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 212375. January 25, 2017]

KABISIG REAL WEALTH DEV., INC. and FERDINAND C. TIO, *petitioners, vs.* **YOUNG BUILDERS CORPORATION,** *respondent.*

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[*] Designated Additional Member per Special Order No. 2416, dated January 4, 2017.

SYLLABUS

1. CIVIL LAW; CONTRACTS; ESSENTIAL ELEMENTS; A CONTRACT IS GENERALLY BINDING IN WHATEVER FORM PROVIDED THAT THE REQUISITES FOR VALIDITY ARE PRESENT.— [F]or a contract to be valid, it must have the following essential elements: (1) consent of the contracting parties; (2) object certain, which is the subject matter of the contract; and (3) cause of the obligation which is established. Consent must exist, otherwise, the contract is non-existent. Consent is manifested by the meeting of the offer and the acceptance of the thing and the cause, which are to constitute the contract. By law, a contract of sale, is perfected at the moment there is a meeting of the minds upon the thing that is the object of the contract and upon the price. Indeed, it is a consensual contract which is perfected by mere consent. x x x Kabisig's claim as to the absence of a written contract between it and Young Builders simply does not hold water. It is settled that once perfected, a contract is generally binding in whatever form, whether written or oral, it may have been entered into, provided the aforementioned essential requisites for its validity are present. x x x There is nothing in the law that requires a written contract for the agreement in question to be valid and enforceable.

2. ID.; DAMAGES; ACTUAL DAMAGES, CONCEPT OF; REQUIRED EVIDENCE TO RECOVER ACTUAL OR COMPENSATORY DAMAGES, EXPLAINED; RESPONDENT FAILED TO PRESENT COMPETENT PROOF IN CASE AT BAR.— Under Article 2199 of the Civil Code, actual or compensatory damages are those awarded in satisfaction of, or in recompense for, loss or injury sustained. They proceed from a sense of natural justice and are designed to repair the wrong that has been done, to compensate for the injury inflicted. They either refer to the loss of what a person already possesses (*daño emergente*), or the failure to receive as a benefit that which would have pertained to him (*lucro cesante*), as in this case. For an injured party to recover actual damages, however, he is required to prove the actual amount of loss with reasonable degree of certainty premised upon competent proof and on the best evidence available. The burden of proof is on the party who would be defeated if no evidence would be presented on either side. He must establish his case by a preponderance of evidence, which means that the evidence adduced by one side is superior to that of the other. In other words, damages cannot

be presumed and courts, in making an award, must point out specific facts that could afford a basis for measuring compensatory damages. A court cannot merely rely on speculations, conjectures, or guesswork as to the fact and amount of damages as well as hearsay or uncorroborated testimony whose truth is suspect. A party is entitled to adequate compensation only for such pecuniary loss actually suffered and duly proved. Indeed, to recover actual damages, the amount of loss must not only be capable of proof but must actually be proven with a reasonable degree of certainty, premised upon competent proof or best evidence obtainable of its actual amount. Here, the evidence reveals that Young Builders failed to submit any competent proof of the specific amount of actual damages being claimed.

3. ID.; ID.; TEMPERATE OR MODERATE DAMAGES; MAY BE AWARDED IN THE ABSENCE OF SUFFICIENT PROOF OF ACTUAL DAMAGES; PRINCIPLE OF *QUANTUM MERUIT* APPLIED TO DETERMINE THE REASONABLE COMPENSATION DUE TO RESPONDENT.— In the absence of competent proof on the amount of actual damages, the courts allow the party to receive temperate damages. Temperate or moderate damages, which are more than nominal but less than compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty. To determine the compensation due and to avoid unjust enrichment from resulting out of a fulfilled contract, the principle of *quantum meruit* may be used. Under this principle, a contractor is allowed to recover the reasonable value of the services rendered despite the lack of a written contract. The measure of recovery under the principle should relate to the reasonable value of the services performed. The principle prevents undue enrichment based on the equitable postulate that it is unjust for a person to retain any benefit without paying for it. Being predicated on equity, said principle should only be applied if no express contract was entered into, and no specific statutory provision was applicable. The principle of *quantum meruit* justifies the payment of the reasonable value of the services rendered and should apply in the absence of an express agreement on the fees. It is notable that the issue revolves around the parties' inability to agree on the fees that Young Builders should receive. Considering the absence of an agreement, and in view of the

completion of the renovation, the Court has to apply the principle of *quantum meruit* in determining how much is due to Young Builders. Under the established circumstances, the total amount of ₱2,400,000.00 which the CA awarded is deemed to be a reasonable compensation under the principle of *quantum meruit* since the renovation of Kabisig's building had already been completed in 2001.

4. ID.; ID.; INTEREST; INTEREST RATE OF 12% AND 6%, IMPOSED.— When the obligation is breached, and it consists in the payment of a sum of money, as in this case, the interest due should be that which may have been stipulated in writing. In the absence of stipulation, the rate of interest shall be 12%, later reduced to 6%, *per annum* to be computed from default, *i.e.*, from judicial or extrajudicial demand, subject to the provisions of Article 1169 of the Civil Code. Here, the records would show that Young Builders made the demand on September 11, 2001. Also, the rate of legal interest for a judgment awarding a sum of money shall be 6% *per annum* from the time such judgment becomes final and executory until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.

APPEARANCES OF COUNSEL

Calderon Davide Trinidad Tolentino & Castillo for petitioners.
Zosa & Quijano Law Offices for respondent.

D E C I S I O N

PERALTA, *J.*:

This is a Petition for Review which petitioners Kabisig Real Wealth Dev., Inc. and Ferdinand C. Tio filed assailing the Court of Appeals *(CA)* Decision[1] dated June 28, 2013 and Resolution[2] dated March 28, 2014 in CA-G.R. CV No. 02945, affirming the Decision of the Regional Trial Court *(RTC)* of Cebu City, Branch 12, dated July 31, 2008 in Civil Case No. CEB-27950.

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[1] Penned by Associate Justice Gabriel T. Ingles, with Associate Justices Pampio A. Abarintos, and Marilyn B. Lagura-Yap, concurring; *rollo,* pp. 29-47.

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

The following are the pertinent antecedents of the case, as shown by the records:

Sometime in April 2001, Kabisig Real Wealth Dev., Inc. *(Kabisig),* through Ferdinand Tio *(Tio),* contracted the services of Young Builders Corporation *(Young Builders)* to supply labor, tools, equipment, and materials for the renovation of its building in Cebu City. Young Builders then finished the work in September 2001 and billed Kabisig for ₱4,123,320.95. However, despite numerous demands, Kabisig failed to pay. It contended that no written contract was ever entered into between the parties and it was never informed of the estimated cost of the renovation. Thus, Young Builders filed an action for Collection of Sum of Money against Kabisig.

On July 31, 2008, the RTC of Cebu City rendered a Decision finding for Young Builders, thus:

> WHEREFORE, judgment is hereby rendered ordering the defendants to pay plaintiff ₱4,123,320.95 representing the value of services rendered and materials used in the renovation of the building of defendant Kabisig Real Wealth Dev., Inc. into a restaurant of defendant Ferdinand Tio, by way of actual damages, plus 12% *per annum* from September 11, 2001 until it is fully paid. Costs against defendants.
>
> SO ORDERED.[3]

Therefore, Kabisig elevated the case to the CA. On June 28, 2013, the appellate court affirmed the RTC Decision, with modification, *viz.*:

> **WHEREFORE,** foregoing premises considered, the Decision dated July 31, 2008 rendered by the Regional Trial Court of Cebu City, Branch 12 in Civil Case No. CEB-27950 is hereby **AFFIRMED** with **MODIFICATION**, deleting the award for actual damages. As modified, the defendants Kabisig Real Wealth Dev., Inc. and Ferdinand Tio are ordered to jointly pay the plaintiff Young Builders Corporation **Two Million Four Hundred Thousand (₱2,400,000.00) Pesos** as **TEMPERATE DAMAGES** for the value of services, rendered and

[3] *Id.* at 29.

materials used in the renovation of defendants-appellants building. In addition, the total amount adjudged shall earn interest at the rate of 12% *per annum* from September 11, 2001, until it is fully paid. Costs against defendants.

SO ORDERED.[4]

Subsequently, Young Builders and Kabisig moved for reconsideration, but both were denied by the CA.[5]

Hence, Kabisig filed the instant petition.

The sole issue is whether or not Kabisig is liable to Young Builders for the damages claimed:

Under the Civil Code, a contract is a meeting of minds, with respect to the other, to give something or to render some service. Article 1318 reads:

> Art. 1318. There is no contract unless the following requisites concur:
>
> (1) Consent of the contracting parties;
> (2) Object certain which is the subject matter of the contract; and
> (3) Cause of the obligation which is established.

Accordingly, for a contract to be valid, it must have the following essential elements: (1) consent of the contracting parties; (2) object certain, which is the subject matter of the contract; and (3) cause of the obligation which is established. Consent must exist, otherwise, the contract is non-existent. Consent is manifested by the meeting of the offer and the acceptance of the thing and the cause, which are to constitute the contract. By law, a contract of sale, is perfected at the moment there is a meeting of the minds upon the thing that is the object of the contract and upon the price. Indeed, it is a consensual contract which is perfected by mere consent.[6]

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[4] *Id.* at 47. (Emphasis in the original).

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

[6] *Heirs of Intac v. CA*, G.R. No. 173211, October 11, 2012, 684 SCRA 88, 98.

Through the testimonies of both Young Builders' and Kabisig's witnesses, Tio commissioned the company of his friend, Nelson Yu, to supply labor, tools, equipment, and materials for the renovation of Kabisig's building into a restaurant. While Tio argues that the renovation was actually for the benefit of his partners, Fernando Congmon, Gold En Burst Foods Co., and Sunburst Fried Chicken, Inc., and therefore, they should be the ones who must shoulder the cost of the renovation, said persons were never impleaded in the instant case. Moreover, all the documents pertaining to the project, such as official receipts of payment for the building permit application, are under the names of Kabisig and Tio.

Further, Kabisig's claim as to the absence of a written contract between it and Young Builders simply does not hold water. It is settled that once perfected, a contract is generally binding in whatever form, whether written or oral, it may have been entered into, provided the aforementioned essential requisites for its validity are present.[7] Article 1356 of the Civil Code provides:

> Art. 1356. Contracts shall be obligatory in whatever form they may have been entered into, provided all the essential requisites for their validity are present.
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> x x x x x x x x x

There is nothing in the law that requires a written contract for the agreement in question to be valid and enforceable. Also, the Court notes that neither Kabisig nor Tio had objected to the renovation work, until it was already time to settle the bill.

Likewise, the appellate court aptly reduced the amount of damages awarded by the RTC. Under Article 2199 of the Civil Code, actual or compensatory damages are those awarded in satisfaction of, or in recompense for, loss or injury sustained. They proceed from a sense of natural justice and are designed to repair the wrong that has been done, to compensate for the injury inflicted. They either refer to the loss of what a person

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[7] *Delos Reyes v. CA*, G.R. No. 129103, September 3, 1999, 313 SCRA 632, 643.

already possesses *(daño emergente),* or the failure to receive as a benefit that which would have pertained to him *(lucro cesante),*[8] as in this case.

For an injured party to recover actual damages, however, he is required to prove the actual amount of loss with reasonable degree of certainty premised upon competent proof and on the best evidence available. The burden of proof is on the party who would be defeated if no evidence would be presented on either side. He must establish his case by a preponderance of evidence, which means that the evidence adduced by one side is superior to that of the other. In other words, damages cannot be presumed and courts, in making an award, must point out specific facts that could afford a basis for measuring compensatory damages. A court cannot merely rely on speculations, conjectures, or guesswork as to the fact and amount of damages as well as hearsay or uncorroborated testimony whose truth is suspect. A party is entitled to adequate compensation only for such pecuniary loss actually suffered and duly proved. Indeed, to recover actual damages, the amount of loss must not only be capable of proof but must actually be proven with a reasonable degree of certainty, premised upon competent proof or best evidence obtainable of its actual amount.[9] Here, the evidence reveals that Young Builders failed to submit any competent proof of the specific amount of actual damages being claimed. The documents submitted by Young Builders either do not bear the name of Kabisig or Tio, their conformity, or signature, or do not indicate in any way that the amount reflected on its face actually refers to the renovation project.

Notwithstanding the absence of sufficient proof, Young Builders still deserves to be recompensed for actually completing the work. In the absence of competent proof on the amount of actual damages, the courts allow the party to receive temperate damages. Temperate or moderate damages, which are more than

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[8] *PNOC Shipping and Transport Corporation v. CA,* G.R. No. 107518, October 8, 1998, 297 SCRA 402, 417.

[9] *Id.*

nominal but less than compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty.[10]

To determine the compensation due and to avoid unjust enrichment from resulting out of a fulfilled contract, the principle of *quantum meruit* may be used. Under this principle, a contractor is allowed to recover the reasonable value of the services rendered despite the lack of a written contract. The measure of recovery under the principle should relate to the reasonable value of the services performed. The principle prevents undue enrichment based on the equitable postulate that it is unjust for a person to retain any benefit without paying for it. Being predicated on equity, said principle should only be applied if no express contract was entered into, and no specific statutory provision was applicable.[11]

The principle of *quantum meruit* justifies the payment of the reasonable value of the services rendered and should apply in the absence of an express agreement on the fees. It is notable that the issue revolves around the parties' inability to agree on the fees that Young Builders should receive. Considering the absence of an agreement, and in view of the completion of the renovation, the Court has to apply the principle of *quantum meruit* in determining how much is due to Young Builders. Under the established circumstances, the total amount of ₱2,400,000.00 which the CA awarded is deemed to be a reasonable compensation under the principle of *quantum meruit* since the renovation of Kabisig's building had already been completed in 2001.[12]

Finally, the rate of interest should be modified. When the obligation is breached, and it consists in the payment of a sum

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[10] *Republic v. Mupas*, G.R. No. 181892, September 8, 2015.

[11] *International Hotel Corporation v. Joaquin*, G.R. No. 158361, April 10, 2013.

[12] *Id.*

of money, as in this case, the interest due should be that which may have been stipulated in writing. In the absence of stipulation, the rate of interest shall be 12%, later reduced to 6%,[13] *per annum* to be computed from default, *i.e.*, from judicial or extrajudicial demand, subject to the provisions of Article 1169[14] of the Civil Code. Here, the records would show that Young Builders made the demand on September 11, 2001. Also, the rate of legal interest for a judgment awarding a sum of money shall be 6% *per annum* from the time such judgment becomes final and executory until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.[15]

WHEREFORE, PREMISES CONSIDERED, the Court **DISMISSES** the petition for lack of merit and **AFFIRMS** the Decision of the Court of Appeals dated June 28, 2013, and its Resolution dated March 28, 2014, in CA-G.R. CV No. 02945, with **MODIFICATION** as to the interest which must be twelve

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[13] Effective starting on July 1, 2013, pursuant to Bangko Sentral ng Pilipinas Circular No. 799, Series of 2013; *Nacar v. Gallery Frames*, G.R. No. 189871, August 13, 2013, 703 SCRA 439, 457-458.

[14] Art. 1169. Those obliged to deliver or to do something incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of their obligation.

However, the demand by the creditor shall not be necessary in order that delay may exist:

(1) When the obligation or the law expressly so declare; or

(2) When from the nature and the circumstances of the obligation it appears that the designation of the time when the thing is to be delivered or the service is to be rendered was a controlling motive for the establishment of the contract; or

(3) When demand would be useless, as when the obligor has rendered it beyond his power to perform.

In reciprocal obligations, neither party incurs in delay if the other does not comply or is not ready to comply in a proper manner with what is incumbent upon him. From the moment one of the parties fulfills his obligation, delay by the other begins.

[15] *Nacar, supra* note 13.

percent (12%) *per annum* of the amount awarded from the time of demand on September 11, 2001 to June 30, 2013, and six percent (6%) *per annum* from July 1, 2013 until its full satisfaction.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 212818. January 25, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **GREGORIO QUITA *alias* "GREG",** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; WHEN THE FACTUAL FINDINGS OF THE TRIAL COURT UNITE WITH THAT OF THE COURT OF APPEALS, THIS COURT IS NOT AT LIBERTY TO DISTURB SUCH FACTUAL FINDINGS.— Gregorio's appeal before this Court is predicated essentially upon the self-same lone assignment of error set forth in his Brief with the CA. Since the factual findings by the CA are binding upon this Court, especially when the CA's findings unite with the RTC's factual findings, as in this case, this Court is not at liberty to reject or disturb the factual findings of both lower courts. Indeed, this Court is satisfied that the factual findings of both lower courts are in accord with the evidence on record.

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[*] Designated Additional Member per Special Order No. 2416, dated January 4, 2017.

2. CRIMINAL LAW; REVISED PENAL CODE; MURDER; CIVIL LIABILITY.— [W]ith reference to the civil liability, the same must be modified to conform strictly to the teachings of recent jurisprudence. Thus, the award of ₱15,000.00 as actual damages is deleted and in lieu thereof, temperate damages in the amount of ₱50,000.00 is awarded; the awards of moral damages and exemplary damages are increased to ₱75,000.00 each; and the award of ₱75,000.00 as civil indemnity is maintained. Finally, all damages shall earn interest at the rate of 6% *per annum* from the 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.

R E S O L U T I O N

DEL CASTILLO, *J.*:

This is an appeal from the January 10, 2014 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 04782, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing, the appeal is hereby DENIED for lack of merit. The Decision dated December 1, 2010 rendered by the Regional Trial Court of Parañaque City, Branch 195, in Criminal Case No. 06-0294 is hereby MODIFIED, increasing the amount of civil indemnity ex delicto to ₱75,000.00, moral damages to ₱50,000.00 and exemplary damages to ₱30,000.00.

SO ORDERED.[2]

Factual Antecedents

The two accused in this case, Gregorio Quita, alias Greg (Gregorio), and Fleno Quita, alias Eddie Boy (Fleno), were

[1] CA *rollo*, pp. 92-103; penned by Associate Justice Ramon A. Cruz and concurred in by Associate Justices Hakim S. Abdulwahid and Romeo F. Barza.

[2] *Id.* at 101.

indicted for Murder before the Regional Trial Court (RTC) of Parañaque City, in an Information which alleged:

> That on or about the 17th day of November[,] 2002, in the City of Parañaque, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with bladed weapon, conspiring and confederating together and both of them mutually helping and aiding one another, and with treachery and abuse of superior strength, did then and there willfully, unlawfully and feloniously attack, assault and stab one ROBERTO SOLAYAO, thereby inflicting upon the latter mortal wounds which directly caused his death.
>
> CONTRARY TO LAW.[3]

As these accused were not promptly apprehended when the foregoing Information was filed, this case was ordered archived by the RTC. But on January 8, 2007, Gregorio was arrested, hence the case was revived on the said date.

On January 17, 2007, Gregorio, assisted by counsel, was arraigned and entered a negative plea to the charge against him.[4] Pre-trial was held,[5] after which trial on the merits followed.

Version of the Prosecution

The case for the prosecution is built upon the testimonies of Paquito Solayao (Paquito) and Dr. Edgardo Vida (Dr. Vida).

Paquito testified that the deceased victim in this case, Roberto Solayao (Roberto), was his eldest son. He claimed that he had known Gregorio and Fleno for about a year prior to the killing of Roberto, because these two were the ones who delivered water in their locality; that on November 17, 2002 at around 8:30 in the evening he was at home at Greenland Street, Better Living Subdivision, Parañaque City having just arrived from work, when his daughter told him that Roberto was having a drinking session nearby; that while on his way to fetch Roberto,

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[3] Records, p. 1.

[4] *Id.* at 55.

[5] *Id.* at 76.

he saw three persons fighting; that when he went near the trio he saw Gregorio holding Roberto's hand at the back while Roberto was being stabbed by Fleno; that when he shouted, his son's assailants took to their heels; and that he ran after them, but when the two reached a dark alley he no longer pursued them. He then went back to where Roberto was lying, and with the help of his neighbors, brought the stricken Roberto to the hospital. But when they arrived at the hospital the doctor told him that Roberto was already dead. He spent about ₱40,000.00 for Roberto's funeral and burial expenses, but only the expenses amounting to ₱25,000.00 were covered by receipts. Paquito claimed that Roberto's death was very painful to him.

Dr. Vida, former NBI[6] Medico-Legal Officer, testified that he was the one who conducted an autopsy on Roberto's cadaver. His findings were embodied in the Autopsy Report,[7] wherein he affirmed that the victim sustained six contused abrasions, three incised wounds, and six stab wounds. According to this witness, the most fatal wound, labeled Wound No. 1, was the one inflicted at the deceased's right shoulder (or deltoid area) which penetrated the large vessels of the axillary artery. Without this Wound No. 1, the victim might have survived as the other wounds were only superficial. Dr. Vida opined that the wounds inflicted on the deceased could have been inflicted by one and the same weapon, possibly a double-bladed instrument.

Version of the Defense

The defense presented Gregorio and his wife Analyn Quita (Analyn).

Gregorio made a total denial of the charge against him. He denied that he had ever known the victim or met him even once. He claimed that prior to the incident in question he was residing at No. 10 SMI Compound, Sucat, Kupang, Muntinlupa City; that he used to work as a truck driver for Leslie Corporation but that on the date of the incident, November 17, 2002, he

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[6] National Bureau of Investigation.

[7] Exhibit "D", records, p. 240.

was no longer employed with Leslie, and was looking for a job; that it was only in December 2002 that he was able to find a job as a driver for a trucking company, the name of which he could no longer remember; that he worked for this trucking company until 2004; that his job was to deliver cup noodles in Metro Manila and in the provinces; that he was assisted in this job by a "*pahinante*" named Danilo; that on the date of the incident, he left their house at 10:30 in the morning and together with his brother, Fleno, went to Better Living Subdivision in Parañaque City where their "*kababayans*" Gerry Virtudazo (Gerry) and Jose Virtudazo (Jose) were working as water delive1y boys; and, that when they got to that subdivision, Gerry and Jose invited them to a birthday celebration. He heard that the birthday celebrant was the child of the owner of the house where the celebration was taking place. But he was not introduced, either to the birthday celebrant, or to the owner of the house. After they had eaten and had partaken of liquor, they sang songs inside the house of the birthday celebrant. While they were singing, four men, not one of whom he knew, arrived. One of these four, he later heard, was named "Berto". After these four had finished eating, they went outside the house. At this point, the owner of the house told his group that this "Berto" was angry with them. To avoid trouble, he and his companions decided to leave the place of celebration at around 4 p.m. Not far away from the celebrant's house, however, he and his companions saw "Berto's" group waiting for them along the road. A fight erupted, and someone gave him a blow at the right side of his face. Fortunately, the residents of the place were able to pacify the protagonists. He and his companions then left the place on board a tricycle. He reached his house at Sucat, Kupang, Muntinlupa City between 6:30 to 7 p.m. and told his wife about the incident that happened that day; his wife advised him not to go to that place anymore. In 2004 he transferred his family to Paliparan 3, Dasmariñas City in Cavite, where his parents had a piece of land. Here, he found work as a tricycle driver. Sometime in the early part of January 2007, while driving his tricycle, someone told him to go to Parañaque City because a warrant for his arrest was waiting for him there. He went with

that person to Parañaque City because he knew he did not commit any crime. But when he got there, he was at once brought to the Special Investigation Division at the Parañaque Coastal Area, where he was told to sign a blank piece of paper, which, according to the person who brought him there, meant that he had killed somebody from the Better Living Subdivision in Parañaque City. After signing the blank piece of paper he was detained in jail and was told that if he believed he was innocent of the accusation against him, he should prove his innocence in court. He said that he was never brought to the prosecutor's office in Parañaque City. He insisted that there was never a time that he left Kupang, Muntinlupa City from November 17, 2002 up to the time he transferred to Dasmariñas City in Cavite in 2004. He claimed that at the time of the incident, the other accused, his brother Fleno, was residing at Bicutan in Taguig City, and that Fleno left Bicutan only in 2003.

Analyn corroborated her husband's testimony in its entirety.

Ruling of the Regional Trial Court[8]

The RTC sustained the factuality of the treacherous killing of Roberto, labeling it as murder, *viz.*:

> The fact of death of the victim was duly established by his death certificate (exhibit "C"). Accused Gregorio was one of those who killed the victim. The killing was qualified by treachery. Obviously, the killing was neither parricide nor infanticide.
>
> This Court finds Paquito Solayao's eyewitness account of the incident worthy of belief. His positive, straightforward, categorical[,] and unequivocal testimony that accused Gregorio held both hands of the victim at the back while being stabbed by his co-accused Fleno who is his brother, deserves full credence. It is worthy of note that Paquito was not shown to have been impelled by ill motive to testify falsely against both accused and indict them for a crime as serious as murder. All that was shown was his ardent desire to give justice to his murdered son. When there is no showing of any improper motive on the part of the prosecution witnesses to testify falsely against the accused, the logical conclusion is that no such improper motive exists and that their positive and categorical testimonies and

[8] Branch 195, Parañaque City, penned by Aida Estrella Macapagal.

declarations on the witness stand under the solemnity of an oath are worthy of full faith and credence (Buenaventura vs. People, 493 SCRA 223; People vs. Cabbab, Jr., 527 SCRA 589). In the instant case, absent any evidence of improper motive on Paquito's part to testify as principal witness, his testimony deserves credit (Nerpito vs. People, 528 SCRA 93).

Paquito's testimony that both hands of the victim were held at the back by accused Gregorio while being stabbed by accused Fleno shows the presence of treachery because under such situation the victim was deprived of any real chance to fight back and defend himself. In the cases of People vs. Pascual, 512 SCRA and People vs. Concepcion, 514 SCRA 660[,] the Supreme Court held that treachery is present when the offender commits any crime against persons employing means, methods, or form in the execution thereof which tend directly and especially to insure its execution without risk to the offender arising from any defense which the offended party might make. In the instant case, holding the hands of the victim while being stabbed was the means employed by the accused to insure that the former could not fight back and defend himself.

The defense of denial interposed by accused Gregorio, on the other hand, cannot prevail over Paquito's positive, direct[,] and categorical declarations made in a straightforward manner while in the witness stand that he held both hands of the victim while being stabbed by his brother, accused Fleno. It must be noted that aside from his self[-]serving testimony that on the date in question, he just stayed home after coming from Better Living, Parañaque City where he attended a birthday party and that when they left the house of the birthday celebrant, the group of Berto waited for them on the road and that when they passed in front of them he was allegedly punched by one of Berto's companions, no other clear and convincing evidence was presented to substantiate the same. His "kababayans", Jose and Gerry Vertudaso, were not even presented to establish at least the fact that he indeed was with them from 10:30 in the morning up to 4:00 in the afternoon of November 17, 2002. Neither was his testimony that he was employed as a truck driver with Leslie Corporation prior to the date in question nor that he was employed as delivery boy (driver) of a certain company from December 2002 up to 2004 was duly established. His alleged pahinante, Danilo, was not presented to corroborate such testimony. Even the tricycle driver, who[,] according to his wife Analyn, was the one who informed her that he was arrested while driving his tricycle in Dasmariñas, Cavite, was not presented to corroborate this testimony.

The Supreme Court, in a long line of cases, ruled that evidence[,] to be believed[,] must not only proceed from the mouth of a credible witness but x x x must [also] be credible in itself[,] such as the common experience and observation of mankind can approve as probable under the circumstances. Unfortunately, the evidence presented by the accused did not pass this test.[9]

Upon these facts, the RTC disposed as follows:

WHEREFORE, this Court finds accused Gregorio Quita, GUILTY BEYOND REASONABLE DOUBT of the crime of murder and hereby sentences him to suffer the penalty of reclusion perpetua which carries with it the accessory penalties of civil interdiction for life and that of perpetual absolute disqualification which he shall suffer even though pardoned unless the same shall have been expressly remitted therein.

Accused Gregorio Quita is likewise ordered to pay the heirs of the victim the amounts of Fifteen Thousand Pesos (₱15,000.00) as actual damages; Fifty Thousand Pesos (₱50,000.00) as civil indemnity ex delicto; Forty Thousand Pesos (₱40,000.00) as moral damages; and Twenty Thousand Pesos (₱20,000.00) as exemplary damages.

The City Jail Warden of Parañaque City is hereby ordered to transfer said accused to the National Penitentiary in Muntinlupa City, immediately upon receipt of this Decision.

As regards accused Fleno Quita, this case shall remain in archive. The alias warrant of arrest issued against him stays.

SO ORDERED.[10]

Ruling of the Court of Appeals

From this judgment, Gregorio interposed an appeal to the CA anchored on a single assignment of error to wit:

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH HIS GUILT BEYOND REASONABLE DOUBT.[11]

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[9] Records, pp. 335-336.

[10] *Id.* at 336-337.

[11] CA *rollo*, p. 47.

But the CA predictably sustained the RTC's factual underpinnings of the case, thus:

> Paquito Solayao, the victim's father who was an eyewitness to the incident, positively identified Accused-Appellant Gregorio Quita to be the person who held the hands of the victim while the other accused Fleno Quita stabbed the victim. He knew the two accused because they were water delivery boys in the water station three streets away from their place. He saw the accused in the water delivery station one month before and also one week before the incident happened [on] November 17, 2002. The faces of the accused had become familiar to the witness that it is believable for him to recognize them when he saw them ganging up on his son that fateful night. The incident happened in the middle of the street in front of a lamp post so that the witness, who was but five (5) meters away, clearly saw Gregorio Quita holding both the hands of his son, who was struggling, at the back while Fleno Quita stabbed his son.
>
> The positive identification of an accused where categorical and consistent, without any showing of ill motive on the part of the eyewitness testifying, should prevail over the alibi and denial of appellant whose testimony was not substantiated by clear and convincing evidence.
>
> Accused appellant failed to show any ill motive on the part of the eyewitness to falsely accuse him of the crime. He tried to discredit the eyewitness's testimony because he was the victim's father but the same would not hold.
>
> By and large, relationship by itself does not give rise to a presumption of bias or ulterior motive, nor does it *ipso facto* diminish the credibility or tarnish the testimony of a witness. On the contrary, a witness' relationship to a victim of a crime would even make his or her testimony more credible as it would be unnatural for a relative who is interested in vindicating the crime to accuse somebody other than the culprit. The natural interest of witnesses, who are relatives of the victim, in securing the conviction of the guilty would actually deter them from implicating persons other than the true culprits.
>
> Furthermore, Paquito Solayao's eyewitness account of the incident was steadfast and unequivocal, *viz.*:
>
> x x x x x x x x x

Pros. Robles
Q Now, what happened Mr. Witness when you left your house and immediately proceeded to fetch your son Roberto?

Witness
A When I went out of my house and I was in the middle of the street of Annex 40, I saw three (3) persons having a fight ma'am.

Q When you saw these three persons having a fight, Mr. Witness, how far were you from them?
A More or less ten (10) meters, ma'am.

Q What did you do, Mr. Witness, upon seeing that there are three persons along Annex 40 who are having a tight?
A I walked faster to know who they were.

Q What happened next after that, Mr. Witness?
A I saw Gregorio Quita holding the hand of my son while being stabbed by the other accused Fleno Quita alias Eddie Boy.

Q And at the time, Mr. Witness, that you saw the incident, how far were you from them?
A More or less five (5) meters, ma'am.

x x x x x x x x x

Q Are you sure, Mr. Witness, at that time that it was the two accused who stabbed and held the hand of your son?
A Yes, ma'am.

Q And what made you so sure of that, Mr. Witness?
A Because in that area the two accused deliver water in Annex 22 and in Annex 40.

x x x x x x x x x

His positive, straightforward[,] and unequivocal manner of recounting what he witnessed on the date of the incident led the trial court to find his testimony to be worthy of belief. The rule is that findings of the trial court on the credibility of witnesses deserve great weight, given the clear advantage of a trial judge in the appreciation of testimonial evidence. The trial court is in the best position to assess the credibility of witnesses because of [its] unique opportunity to observe the witnesses first hand and to note their demeanor, conduct and attitude under grueling

examination. These are significant factors in evaluating the sincerity of witnesses in the process of unearthing the truth. Thus, except for compelling reasons, We are doctrinally bound by the trial court's assessment of the credibility of witnesses.

The testimony of the witness that the assailant was in front of the victim when he was stabbed was corroborated by the testimony of the medico-legal officer who conducted the autopsy on the victim that since the wounds were located anteriorly, it is possible for the assailant to inflict the fatal wound in front of the victim, although he did not discount the fact that the assailant could be at the back of the victim holding [his] body x x x.

And, because of the positive identification of the accused-appellant, his alibi deserved scant consideration. For alibi to prosper, it is not enough for the accused to prove that he was somewhere else when the crime was committed. He must likewise prove that he could not have been physically present at the scene of the crime or its immediate vicinity at the time of its commission.

Accused-appellant recounted that on the date of the incident, he attended a birthday party in Annex 22 Better Living, Parañaque City, which is where the victim also had a drinking spree. While he claimed that he arrived home in Sucat, Muntinlupa at around 6:30 to 7:00 in the evening, it does not discount the possibility that he was at the scene of the crime in Better Living, Parañaque City at around 8:30 in the evening of the same day, especially so when he narrated in his testimony an account of an altercation with a group led by a certain "Berto" which happened in the street near Annex 22 where the birthday party was held.

With respect to the alleged delay in indicting accused-appellant, Paquito Solayao explained that he filed a complaint in 2002 against the siblings Gregorio Quita and Fleno Quita but when he learned that the accused escaped, he did not pursue the case anymore. When he learned later on that the suspects were already in Manila, he decided to pursue the case again by giving a statement on January 23, 2006.

The Information charged accused-appellant, in conspiracy with Fleno Quita, with the crime of Murder, qualified by treachery and abuse of superior strength.

The elements of murder that the prosecution must establish are (1) that a person was killed; (2) that the accused killed him; (3) that

the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the Revised Penal Code (RPC); and (4) that the killing is not parricide or infanticide.

The fact of death was duly established by the death certificate of the victim Roberto Solayao as well as the autopsy report prepared by Dr. Edgardo Vida indicating that the fatal stab wound inflicted on the victim's right shoulder caused his death.

There is treachery when 'the offender commits any of the crimes against persons, employing means, methods, or forms in the execution, which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make.' These means or methods are made in the form of a swift, deliberate and unexpected attack, without any warning and affording the victim, which is usually unarmed and unsuspecting, no chance at all to resist or escape the impending attack.

Holding the hands of the victim to his back while he was being stabbed rendered him defenseless against the perpetrators thereby insuring the execution of the crime without risk to the offenders of any defense that the victim might make.

The Information likewise alleged conspiracy between Gregorio Quita and Fleno Quita in committing the crime. There is conspiracy when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Actions indicating close personal association and shared sentiment among the accused can prove its presence. Proof that the perpetrators met beforehand and decided to commit the crime is not necessary as long as their acts manifest a common design and oneness of purpose.

Although Paquito Solayao testified that it was Fleno Quita whom he saw stab the victim, the act of Gregorio Quita in holding the hands of the victim while he was being stabbed by Fleno Quita showed a common design and oneness of purpose to inflict harm upon the victim. Hence, the basic principle of conspiracy that 'the act of one is the act of all' applies in this case.

By reason of the foregoing, the prosecution has sufficiently established, beyond reasonable doubt, accused-appellant's

culpability. His conviction of the crime of murder, therefore, must be upheld.[12](Emphasis supplied)

But the CA modified Gregorio's civil liability to reflect the recent jurisprudential teaching. The CA thereafter disposed as follows:

> WHEREFORE, in view of the foregoing, the appeal is hereby DENIED for lack of merit. The Decision dated December 1, 2010 rendered by the Regional Trial Court of Parañaque City, Branch 195, in Criminal Case No. 06-0294 is hereby MODIFIED, increasing the amount of civil indemnity *ex delicto* to ₱75,000.00, moral damages to ₱50,000.00 and exemplary damages to ₱30,000.00.
>
> SO ORDERED.[13]

In a Resolution[14] dated July 28, 2014, both parties were required to simultaneously file their respective supplemental briefs. However, both filed Manifestations[15] stating that the filing of a supplemental brief is no longer necessary because they have already exhaustively discussed all issues.

Our Ruling

Gregorio's appeal before this Court is predicated essentially upon the self-same lone assignment of error set forth in his Brief with the CA. Since the factual findings by the CA are binding upon this Court, especially when the CA's findings unite with the RTC's factual findings, as in this case, this Court is not at liberty to reject or disturb the factual findings of both lower courts. Indeed, this Court is satisfied that the factual findings of both lower courts are in accord with the evidence on record. However, with reference to the civil liability, the same must be modified to conform strictly to the teachings of recent jurisprudence. Thus, the award of ₱15,000.00 as actual

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[12] *Id.* at 97-101.

[13] *Id.* at 101.

[14] *Rollo*, pp. 19-20.

[15] *Id.* at 21-33.

damages is deleted and in lieu thereof, temperate damages in the amount of ₱50,000.00 is awarded; the awards of moral damages and exemplary damages are increased to ₱75,000.00 each; and the award of ₱75,000.00 as civil indemnity is maintained. Finally, all damages shall earn interest at the rate of 6% *per annum* from the date of finality of this judgment until fully paid.[16]

WHEREFORE, the appeal is **DISMISSED** for lack of merit. The January 10, 2014 Decision of the Court of Appeals in CA-G.R. CR-HC No. 04782 finding appellant Gregorio Quita alias "Greg" guilty of murder and sentencing him to suffer the penalty of *reclusion perpetua* is **AFFIRMED with MODIFICATIONS** that he is ordered to pay the heirs of Roberto Solayao ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, ₱75,000.00 as exemplary damages, and ₱50,000.00 as temperate damages, all with legal interest of 6% *per annum* from date of finality of this Resolution until full payment.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 215807. January 25, 2017]

ROSARIO E. CAHAMBING, *petitioner, vs.* **VICTOR ESPINOSA and JUANA ANG,** *respondents.*

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[16] See *People v. Jugueta*, G.R. No. 202124, April 5, 2016.

SYLLABUS

1. **REMEDIAL LAW; APPEALS; RULE 45 PETITION MAY RAISE ONLY QUESTIONS OF LAW; FACTUAL FINDINGS OF THE COURT OF APPEALS ARE GENERALLY CONCLUSIVE AND BINDING ON THE PARTIES.—** A close reading of the arguments raised by petitioner would show that they are factual in nature. A petition for review filed under Rule 45 may raise only questions of law. The factual findings of the Court of Appeals, when supported by substantial evidence, are generally conclusive and binding on the parties and are no longer reviewable unless the case falls under the recognized exceptions. This court is not a trier of facts and we are not duty-bound to re-examine evidence.

2. **ID.; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; ESSENTIAL REQUISITES; THE EXERCISE OF JUDICIAL DISCRETION BY A COURT IN INJUNCTIVE MATTERS MUST NOT BE INTERFERED WITH EXCEPT WHEN THERE IS GRAVE ABUSE OF DISCRETION.—** [F]or a Writ of Preliminary Injunction to issue, the following requisites must be present, to wit: (1) the existence of a clear and unmistakable right that must be protected, and (2) an urgent and paramount necessity for the writ to prevent serious damage. Indubitably, this Court has likewise stressed that the very foundation of the jurisdiction to issue a writ of injunction rests in the existence of a cause of action and in the probability of irreparable injury, inadequacy of pecuniary compensation, and the prevention of multiplicity of suits. *Sine dubio*, the grant or denial of a writ of preliminary injunction in a pending case, rests in the sound discretion of the court taking cognizance of the case since the assessment and evaluation of evidence towards that end involve findings of facts left to the said court for its conclusive determination. Hence, the exercise of judicial discretion by a court in injunctive matters must not be interfered with except when there is grave abuse of discretion. Grave abuse of discretion in the issuance of writs of preliminary injunction implies a capricious and whimsical exercise of judgment that is equivalent to lack of jurisdiction, or where the power is exercised in an arbitrary or despotic manner by reason of passion, prejudice or personal aversion amounting to an evasion of positive duty or to a virtual refusal to perform the duty enjoined, or to act at all in contemplation of law.

APPEARANCES OF COUNSEL

Santo Law Office for petitioner.
Eval L. Tomol for respondents.

D E C I S I O N

PERALTA, *J.*:

Before this Court is the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court dated November 28, 2014 of petitioner Rosario E. Cahambing that seeks to reverse and set aside the Decision[1] dated November 29, 2013 and Resolution dated October 28, 2014 of the Court of Appeals (*CA*), affirming the Order[2] dated September 22, 2009 and Resolution dated February 25, 2010 of the Regional Trial Court (*RTC*), Branch 25, Maasin City, Southern Leyte regarding the issuance of a writ of preliminary injunction in Civil Case No. R-2912 for Annulment of Deed of Extra-Judicial Partition.

The facts follow.

Petitioner and respondent Victor Espinosa are siblings and the children of deceased spouses Librado and Brigida Espinosa, the latter bequeathing their properties, among which is Lot B or Lot 354 with an area of 1,341 square meters, more or less, situated in Maasin City, Southern Leyte, to the said siblings in the same deceased spouses' respective Last Wills and Testaments which were duly probated.

Deceased Librado and Brigida bequeathed their respective shares over Lot 354 to respondent Victor Espinosa, however, Brigida subsequently revoked and cancelled her will, giving her one-half (1/2) share over Lot 354 to petitioner.

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[1] Penned by Associate Justice Carmelita Salandanan-Manahan, with Associate Justices Ramon Paul L. Hernando and Ma. Luisa C. Quijano-Padilla, concurring.

[2] Penned by Presiding Judge Ma. Daisy Paler Gonzalez.

Brigida Espinosa and respondent Victor Espinosa, after the death of Librado Espinosa, entered into an Extrajudicial Partition of Real Estate subdividing Lot 354 into Lot 354-A, with an area of 503.5 square meters adjudicated to Brigida Espinosa, and Lot 354-B, with an area of 837.5 square meters, adjudicated to respondent Victor Espinosa, who eventually obtained a certificate of title in his name.

Not being included in the partition of Lot 354, petitioner filed a complaint against respondent Victor Espinosa and his representative, respondent Juana Ang, for, among others, the annulment of the Extrajudicial Partition of Real Property which was docketed as Civil Case No. R-2912.

Incidentally, a commercial building named as Espinosa Building stands on Lot No. 354. At the time of the filing of the complaint, the same building had twelve (12) lessees, four (4) of whom pay rentals to petitioner, namely: Pacifica Agrivet Supplies, Family Circle, Ariane's Gift Items, and Julie's Bakeshop. Petitioner alleged that respondent Juana Ang prevailed upon Pacifica Agrivet Supplies not to renew its lease contract with petitioner but to enter into a contract of lease with respondent Victor Espinosa instead. According to petitioner, respondent Juana Ang also threatened to do the same thing with Julie's Bakeshop.

In one of the pre-trial conferences, the Clerk of Court, acting as Commissioner, issued an Order dated April 16, 1998 directing the parties to maintain the *status quo*.

Thereafter, respondent Victor Espinosa filed an Application for the Issuance of a Writ of Preliminary Injunction with Prayer for the Issuance of a Temporary Restraining Order dated March 3, 2009 against petitioner alleging that the latter violated the *status quo ante* order by allowing her sons to occupy the space rented by Jhanel's Pharmacy which is one of respondent Victor Espinosa's tenants. Respondent Victor Espinosa, through his attorney-in-fact, private respondent Juana Ang, alleged that petitioner's sons constructed a connecting door through the partition separating their cellular phone shop from Jhanel's

Pharmacy and that the contract of lease between the latter and respondent Victor Espinosa is still subsisting, hence, the entry by petitioner's sons into the pharmacy's commercial space disturbed the *status quo ante*.

The RTC, finding merit to the application for temporary restraining order filed by respondent Victor Espinosa, granted the same on March 6, 2009. Thereafter, the RTC, on September 22, 2009, issued an Order for the issuance of a writ of preliminary injunction, the dispositive portion of which reads as follows:

> IN VIEW OF THE FOREGOING, the defendant's prayer for the issuance of a writ of preliminary injunction is GRANTED. Accordingly, upon defendant's filing, within ten (10) days from receipt hereof, of the injunction bond in the sum of fifty thousand pesos (PhP50,000.00) conditioned on defendant's paying all damages, the plaintiff may sustain by reason of this injunction in case the Court should finally decide that the defendant is not entitled thereto, let a writ of preliminary injunction issue enjoining or restraining the plaintiff and all those claiming rights under her from disturbing the possession of the defendant to the leased premises or the "*status quo ante*" until after this case shall have been decided on the merits and/or until further orders from this Court.
>
> SO ORDERED.

After the denial of petitioner's motion for reconsideration in a Resolution dated February 25, 2010, petitioner filed a petition on *certiorari* under Rule 65 of the Rules of Court, with the CA imputing grave abuse of discretion on the part of the RTC when it granted the application for the issuance of a writ of preliminary injunction filed by respondent Victor Espinosa. According to petitioner, respondents themselves violated the *status quo ante* order when they wrested the space rented by Pacifica Agrivet Supplies from petitioner's control and that there was no compliance with the requisites for the issuance of the writ of preliminary injunction.

The CA, on November 29, 2013, dismissed petitioner's petition on *certiorari*, thus:

> WHEREFORE, the petition is DENIED. The Order and the Resolution, dated September 22, 2009 and February 25, 2010,

respectively, both issued by respondent court in Civil Case No. R-2912 STAND.

SO ORDERED.

In a Resolution dated October 28, 2014, the CA denied petitioner's motion for reconsideration. Hence, the present petition.

Petitioner comes before this Court with the following issues for resolution:

I.
ISSUES FOR RESOLUTION

A.

HE WHO SEEKS EQUITY MUST DO EQUITY. PRIVATE RESPONDENTS TOOK THE LAW INTO THEIR OWN HANDS BY WRESTING CONTROL OF THE SPACE BEING RENTED OUT TO PACIFICA AGRIVET SUPPLIES AND UNDER THE CONTROL OF MRS. ROSARIO CAHAMBING. THE HONORABLE COURT OF APPEALS COMMITTED LEGAL ERROR IN VALIDATING THE WRIT OF PRELIMINARY INJUNCTION GRANTED BY THE HONORABLE RTC IN FAVOR OF PRIVATE RESPONDENTS DESPITE THE LATTER'S CONDUCT WHICH DIRTIED AND SULLIED THEIR HANDS.

B.

THE WRIT OF PRELIMINARY INJUNCTION IS GRANTED ONLY IN EXTRAORDINARY CASES WHERE THE REQUISITES ARE COMPLIED WITH. THE HONORABLE COURT OF APPEALS COMMITTED LEGAL ERRORS IN VALIDATING THE WRIT OF PRELIMINARY INJUNCTION GRANTED BY THE HONORABLE RTC OF MAASIN CITY DESPITE THE LACK OF URGENCY AND DESPITE THE FACT THAT RESPONDENTS' CLAIM FOR DAMAGES ARE QUANTIFIABLE.

According to petitioner, the CA turned a blind eye and failed to consider respondents' violation of the *status quo* when it wrested possession and control of the space leased to Pacifica Agrivet Supplies and tried to do the same with Lhuillier Pawnshop; thus, committing a grave error and amounts to

discrimination since the CA recognized the *status quo* as the situation where petitioner was the lessor of Pacifica Agrivet Supplies.

Petitioner further claims that respondents failed to prove the elements before an injunction could be issued and that the CA committed an error in validating the writ of preliminary injunction without those requisites. In particular, petitioner avers the following contentions: (1) the damage claimed by respondents is quantifiable at ₱12,000.00 per month, hence, not irreparable; (2) respondent, Victor Espinosa is at best a co-owner of the subject property, while respondent Juana Ang is a stranger, and a co-owner cannot exclude another co-owner, hence, respondent Victor Espinosa's right is not clear and unmistakable; (3) there is no urgency involved because the application for injunction was filed more than one year after the incident in question; (4) contrary to the conclusion of the CA, the space occupied by Jhanel's Pharmacy was voluntarily surrendered to petitioner by the lessee; and (5) the CA committed grave legal errors when it failed to correct the RTC's issuance of the writ of preliminary injunction.

In their Comment[3] dated June 4, 2015, respondents argue that they did not have sullied hands when they applied for the writ of preliminary injunction. They also point out that the issuance of the writ of preliminary injunction was strictly in accordance with the Revised Rules on Civil Procedure.

Petitioner, in her Reply[4] dated August 14, 2015, reiterated her arguments contained in the petition for review.

The present petition is void of any merit.

A close reading of the arguments raised by petitioner would show that they are factual in nature. A petition for review filed under Rule 45 may raise only questions of law.[5] The factual

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[3] *Rollo*, pp. 179-185.

[4] *Id.* at 189-217.

[5] *Pedro Mendoza, et al. v. Reynosa Valte*, G.R. No. 172961, September 7, 2015.

findings of the Court of Appeals, when supported by substantial evidence, are generally conclusive and binding on the parties and are no longer reviewable unless the case falls under the recognized exceptions.[6] This court is not a trier of facts and we are not duty-bound to re-examine evidence.[7]

Nevertheless, the CA did not err in ruling that the RTC did not commit any grave abuse of discretion in issuing the questioned writ of preliminary injunction.

In *Philippine National Bank v. RJ Ventures Realty and Development Corporation, et al.*,[8] this Court exhaustively discussed the nature of a writ of preliminary injunction, thus:

> Foremost, we reiterate that the sole object of a preliminary injunction is to maintain the *status quo* until the merits can be heard.[9] A preliminary injunction[10] is an order granted at any stage of an action prior to judgment or final order, requiring a party, court, agency, or person to refrain from a particular act or acts. It is a preservative remedy to ensure the protection of a party's substantive rights or interests pending the final judgment in the principal action. A plea for an injunctive writ lies upon the existence of a claimed emergency or extraordinary situation which should be avoided for otherwise,

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[6] *Id.*, citing *Medina v. Court of Appeals*, G.R. No. 137582, August 29, 2012, 679 SCRA 191.

[7] *Id.*

[8] 534 Phil. 769 (2006).

[9] "Status quo" to be preserved by a preliminary injunction is the last actual, peaceable, uncontested status which preceded the pending controversy. (See *Black's Law Dictionary*, 6th Ed., p. 1410, citing *Edgewater Constr. Co., Inc. v. Percy Wilson Mortg. & Finance Corp.*, 2111 Dec. 864, 357 N.E.2d 1307, 1314; *Knecht v. Court of Appeals*, G.R. No. 56122, November 18, 1993, 228 SCRA 1, 6, citing *Rodulfa v. Alfonso*, 76 Phil. 225 [1946]; *Philippine Economic Zone Authority v. Vianzon*, 391 Phil. 186, 193 [2000].)

[10] There are generally two kinds of preliminary injunction: (1) a prohibitory injunction which commands a party to refrain from doing a particular act; and (2) a mandatory injunction which commands the performance of some positive act to correct a wrong in the past. (See *Levi Strauss & Co. v. Clinton Apparelle, Inc.*, G.R. No. 138900, September 20, 2005, 470 SCRA 236, 252.)

the outcome of a litigation would be useless as far as the party applying for the writ is concerned.[11]

The grounds for the issuance of a Writ of Preliminary Injunction are prescribed in Section 3 of Rule 58 of the Rules of Court. Thus:

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 an act or acts, either for a limited period or perpetually;

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

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

Otherwise stated, for a Writ of Preliminary Injunction to issue, the following requisites must be present, to wit: (1) the existence of a clear and unmistakable right that must be protected, and (2) an urgent and paramount necessity for the writ to prevent serious damage.[12] Indubitably, this Court has likewise stressed that the very foundation of the jurisdiction to issue a writ of injunction rests in the existence of a cause of action and in the probability of irreparable injury, inadequacy of pecuniary compensation, and the prevention of multiplicity of suits.[13] *Sine*

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[11] *Philippine Ports Authority v. Cipres Stevedoring & Arrastre, Inc.*, G.R. No. 145742, July 14, 2005, 463 SCRA 358, 373, citing Section 1, Rule 58, 1997 Rules of Civil Procedure.

[12] *Manila International Airport Authority v. Court of Appeals*, 445 Phil. 369, 382 (2003), citing *Ong Ching Kian Chuan v. Court of Appeals*, 415 Phil. 365, 374 (2001); See also *Republic of the Philippines v. Hon. Victorino Evangelista*, G.R. No. 156015, August 11, 2005, 466 SCRA 544, 553.

[13] *Federated Realty Corporation v. Court of Appeals*, G.R. No. 127967, December 14, 2005, 477 SCRA 707, 715.

dubio, the grant or denial of a writ of preliminary injunction in a pending case, rests in the sound discretion of the court taking cognizance of the case since the assessment and evaluation of evidence towards that end involve findings of facts left to the said court for its conclusive determination.[14] Hence, the exercise of judicial discretion by a court in injunctive matters must not be interfered with except when there is grave abuse of discretion.[15] Grave abuse of discretion in the issuance of writs of preliminary injunction implies a capricious and whimsical exercise of judgment that is equivalent to lack of jurisdiction, or where the power is exercised in an arbitrary or despotic manner by reason of passion, prejudice or personal aversion amounting to an evasion of positive duty or to a virtual refusal to perform the duty enjoined, or to act at all in contemplation of law.[16]

This Court agrees with the CA and the RTC that the elements for the issuance of a writ of preliminary injunction are present in this case. As aptly ruled by the CA:

> In this case, respondent court correctly found that private respondent Victor Espinosa had established a clear and unmistakable right to a commercial space heretofore occupied by Jhanel's Pharmacy. He had an existing Contract of Lease with the pharmacy up to December 2009. Without prejudging the main case, it was established that, at the time of the issuance of the *status quo* order dated April 16, 1998, Jhanel's Pharmacy was recognized as one of private respondent Victor Espinosa's tenants. In fact, petitioner identified only Pacifica Agrivet Supplies, Family Circle, Ariane's Gift Items and Julie's Bakeshop. As such, pursuant to the *status quo* order, it is private respondent Victor Espinosa who must continue to deal with Jhanel's Pharmacy. Correspondingly, the commercial space occupied by Jhanel's Pharmacy must be deemed to be under the possession and control of private respondent Victor Espinosa as of the time of the issuance of the *status quo* order. The right of possession and control is a clear right already established by the circumstances obtaining at that time. Hence, petitioner's act of entering the premises of Jhanel's Pharmacy, through

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[14] *Cortez-Estrada v. Heirs of Domingo Samut/Antonia Samut*, G.R. No. 154407, February 14, 2005, 451 SCRA 275, 290.

[15] *Id.*

[16] *Id.* at 290-291.

her sons, is a material and substantial violation of private respondent Victor Espinosa's right, which act must be enjoined.

The RTC was also able to make the following factual findings that shows the urgency and the necessity of the issuance of the writ of preliminary injunction in order to prevent serious damage:

> By allowing the plaintiff to disturb the *status quo ante* which, for purposes of this instant application, is limited to the admission by the plaintiff regarding the lease by twelve lessees, including Jhanel's Pharmacy, of the subject commercial building, the rentals of which only four pertains to her, excluding Jhanel's Pharmacy, great and irreparable injury would result to defendant not just because he would be deprived of his right to collect rent from Jhanel's Pharmacy but more importantly, because it would make doing business with him risky, unstable and unsound, especially with respect to his other tenants having existing contracts with the defendant.

All of the above findings and considerations expounded in the CA's assailed decision and resolution contain no reversible error, thus, they should not be disturbed. It must always be remembered that the issuance of a writ of preliminary injunction rests entirely on the discretion of the court and is generally not interfered with except in cases of manifest abuse.[17] In this case, no manifest abuse can be attributed to the RTC that issued the questioned writ. This Court has also held that no grave abuse of discretion can be attributed to a judge or body issuing a writ of preliminary injunction where a party has not been deprived of its day in court as it was heard and it exhaustively presented all its arguments and defenses.[18] Verily, petitioner was given her day in court to present her side but as in all litigations, only one party prevails.

WHEREFORE, the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court dated November 28, 2014 of petitioner Rosario E. Cahambing is **DENIED**. Consequently,

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[17] *Unilever Philippines (PRC), Inc. v. CA, et al.*, 530 Phil. 91, 98 (2006), citing *Reyes v. Court of Appeals*, 378 Phil. 984 (1999).

[18] *Santos v. Court of Appeals*, G.R. No. 61218, September 23, 1992, 214 SCRA 162.

the Decision dated November 29, 2013 and Resolution dated October 28, 2014 of the Court of Appeals, affirming the Order dated September 22, 2009 and Resolution dated February 25, 2010 of the Regional Trial Court, Branch 25, Maasin City, Southern Leyte, are **AFFIRMED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 175949. January 30, 2017]

UNITED ALLOY PHILIPPINES CORPORATION, SPOUSES DAVID C. CHUA and LUTEN CHUA, *petitioners, vs.* **UNITED COCONUT PLANTERS BANK,** *respondent.*

SYLLABUS

1. CIVIL LAW; CONTRACTS; PARTIES ARE OBLIGED TO COMPLY WITH THEIR OBLIGATIONS UNDER THE CONTRACT.— As correctly held by both the RTC and the CA, Article 1159 of the Civil Code expressly provides that "[o]bligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith." The RTC as well as the CA found nothing which would justify or excuse petitioners from non-compliance with their obligations under the contract they have entered into. Thus, it becomes apparent that petitioners are merely attempting to

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[*] Designated Additional Member per Special Order No. 2416, dated January 4, 2017.

evade or, at least, delay the inevitable performance of their obligation to pay under the Surety Agreement and the subject promissory notes which were executed in respondent's favor.

2. ID.; ID.; INTEREST; IMPOSITION OF INTEREST RATES CANNOT BE LEFT SOLELY TO THE WILL OF ONE OF THE PARTIES; COURTS HAVE THE AUTHORITY TO STRIKE DOWN OR MODIFY PROVISIONS IN THE CONTRACT THAT GRANT THE LENDER UNRESTRAINED POWER TO INCREASE INTEREST RATES.— The Court notes, however, that the interest rates imposed on the subject promissory notes were made subject to review and adjustment at the sole discretion and under the exclusive will of UCPB. Moreover, aside from the Consolidated Statement of Account attached to the demand letters addressed to petitioner spouses Chua and their co-defendants, no other competent evidence was shown to prove the total amount of interest due on the above promissory notes. In fact, based on the attached Consolidated Statement of Account, UCPB has already imposed a 24% interest rate on the total amount due on respondents' peso obligation for a short period of six months. Settled is the rule that any contract which appears to be heavily weighed in favor of one of the parties so as to lead to an unconscionable result is void. Any stipulation regarding the validity or compliance of the contract which is left solely to the will of one of the parties, is likewise, invalid. Moreover, courts have the authority to strike down or to modify provisions in promissory notes that grant the lenders unrestrained power to increase interest rates, penalties and other charges at the latter's sole discretion and without giving prior notice to and securing the consent of the borrowers. This unilateral authority is anathema to the mutuality of contracts and enable lenders to take undue advantage of borrowers. Although the Usury Law has been effectively repealed, courts may still reduce iniquitous or unconscionable rates charged for the use of money. Furthermore, excessive interests, penalties and other charges not revealed in disclosure statements issued by banks, even if stipulated in the promissory notes, cannot be given effect under the Truth in Lending Act.

3. ID.; ID.; ID.; INTEREST RATES OF 12% AND 6%, IMPOSED.— The Court, thus, finds it proper to modify the

interest rates imposed on respondents' obligation. Pursuant to the ruling in *Nacar v. Gallery Frames, et al.,* the sums of US$435,494.44 and PhP26,940,950.80 due to UCPB shall earn interest at the rate of 12% per annum from the date of default, on August, 1, 2001, until June 30, 2013 and thereafter, at the rate of 6% per annum, from July 1, 2013 until finality of this Decision. The total amount owing to UCPB as set forth in this Decision shall further earn legal interest at the rate of 6% per annum from its finality until full payment thereof, this interim period being deemed to be by then an equivalent to a forbearance of credit.

APPEARANCES OF COUNSEL

A. Tan Zoleta and Associates Law Firm for petitioners.
Villa and Partners for respondent.

D E C I S I O N

PERALTA, *J.*:

Before the Court is a petition for review on *certiorari* seeking the reversal and setting aside of the Decision[1] and Resolution[2] of the Court of Appeals *(CA),* dated September 21, 2006 and December 11, 2006, respectively, in CA-G.R. CV No. 81079. The assailed Decision affirmed the Decision of the Regional Trial Court *(RTC)* of Makati City, Branch 135, in Civil Case No. 01-1332, while the questioned Resolution denied petitioners' Motion for Reconsideration.

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

On December 18, 2000, herein petitioner corporation, United Alloy Philippines Corporation *(UNIALLOY)* applied for and

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[1] Penned by Associate Justice Vicente Q. Roxas, with Associate Justices Josefina Guevara-Salonga and Apolinario D. Bruselas, Jr., concurring; Annex "A" to Petition, *rollo,* pp. 37-49.

[2] Annex "B" to Petition; *id.* at 50-51.

was granted a credit accommodation by herein respondent United Coconut Planters Bank (*UCPB)* in the amount of PhP50,000,000.00, as evidenced by a Credit Agreement.[3] Part of UNIALLOY's obligation under the Credit Agreement was secured by a Surety Agreement,[4] dated December 18, 2000, executed by UNIALLOY Chairman, Jakob Van Der Sluis *(Van Der Sluis),* UNIALLOY President, David Chua and his spouse, Luten Chua *(Spouses Chua),* and one Yang Kim Eng *(Yang).* Six (6) Promissory Notes,[5] were later executed by UNIALLOY in UCPB's favor, to wit:

1) #8111-00-20031-1, executed on December 18, 2000, in the amount of US$110,000.00;

2) #8111-00-00110-6, executed on December 18, 2000, in the amount of PhP6,000,000.00;

3) #8111-00-00112-2, executed on December 27, 2000, in the amount of PhP3,900,000.00;

4) #8111-01-20005-6, executed on February 7, 2001, in the amount of US$320,000.00;

5) #8111-01-00009-0, executed on February 26, 2001, in the amount of PhP1,600,000.00;

6) #8111-01-00030-8, executed on April 30, 2001, in the amount of PhP16,029,320.88.

In addition, as part of the consideration for the credit accommodation, UNIALLOY and UCPB also entered into a "lease-purchase" contract wherein the former assured the latter that it will purchase several real properties which UCPB co-owns with the Development Bank of the Philippines.

Subsequently, UNIALLOY failed to pay its loan obligations. As a result, UCPB filed against UNIALLOY, the spouses Chua, Yang and Van Der Sluis an action for Sum of Money with

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[3] Records, pp. 13-28.

[4] *Id.* at 29-33.

[5] *Id.* at 34-43.

Prayer for Preliminary Attachment[6] on August 27, 2001. The collection case was filed with the Regional Trial Court of Makati City *(RTC of Makati)* and docketed as Civil Case No. 01-1332. Consequently, UCPB also unilaterally rescinded its lease-purchase contract with UNIALLOY.

On the other hand, on even date, UNIALLOY filed against UCPB, UCPB Vice-President Robert Chua and Van Der Sluis a complaint for Annulment and/or Reformation of Contract with Damages, with Prayer for a Writ of Preliminary Injunction or Temporary Restraining Order.[7] Claiming that it holds office and conducts its business operations in Tagoloan, Misamis Oriental, UNIALLOY filed the case with the Regional Trial Court of Cagayan De Oro City *(RTC of CDO)* and was docketed as Civil Case No. 2001-219. UNIALLOY contended that Van Der Sluis, in cahoots with UCPB Vice-President Robert Chua, committed fraud, manipulation and misrepresentation to obtain the subject loan for their own benefit. UNIALLOY prayed, among others, that three (3) of the six (6) Promissory Notes it executed be annulled or reformed or that it be released from liability thereon.

On September 12, 2001, UNIALLOY filed an Urgent Motion to Dismiss[8] the collection case (Civil Case No. 01-1332) filed by UCPB on the ground of *litis pendentia* and forum shopping. UNIALLOY contended that its complaint for annulment of contract (Civil Case No. 2001-219) and the collection case filed by UCPB involves the same parties and causes of action. On October 31, 2001, the RTC of Makati issued an Order[9] denying UNIALLOY's motion to dismiss.

In the meantime, UCPB and its co-defendants also filed a Motion to Dismiss UNIALLOY's complaint for annulment of contract on the grounds of improper venue, forum shopping,

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[6] *Id.* at 1-12.

[7] *Id.* at 174-188.

[8] *Id.* at 162-167.

[9] *Id.* at 200.

litis pendentia, and harassment or nuisance suit. On September 13, 2001, the RTC of CDO issued an Order[10] dismissing UNIALLOY's complaint for annulment of contract. The dispositive portion of the Order reads, thus:

> ACCORDINGLY, finding meritorious that the venue is improperly laid and the complain[ant] engaged in forum-shopping and harassment of defendant Jakob Van Der Sluis, this case is hereby DISMISSED rendering the prayer for issuance of a writ of preliminary injunction moot and academic, and ordering plaintiff to turn over possession of the subject premises of the properties in question at Barangay Gracia, Tagoloan, Misamis Oriental to defendant United Coconut Planters Bank.
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> SO ORDERED.[11]

Thereafter, on motion, the RTC of CDO issued an Order of Execution, dated September 14, 2001, directing UNIALLOY to turn over to UCPB the property subject of their lease-purchase agreement.

UNIALLOY then filed a petition for *certiorari* and *mandamus* with the CA questioning the September 13 and September 14, 2001 Orders of the RTC of CDO. UNIALLOY also prayed for the issuance of a writ of preliminary injunction. The case was docketed as CA G.R. SP. No. 67079.

On February 18, 2002, the CA promulgated a Resolution[12] granting UNIALLOY's prayer for the issuance of a writ of preliminary injunction. UCPB questioned the above CA Resolution by filing a petition for *certiorari* with this Court, which was docketed as G.R. No. 152238. On March 18, 2002, this Court issued a Resolution which restrained the CA from enforcing its February 18, 2002 Resolution.

On January 28, 2005, this Court, rendered its Decision in G.R. No. 152238 denying UCPB's petition for *certiorari* and

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[10] *Id.* at 206-209.

[11] *Id.* at 209.

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

affirming the CA Resolution granting the writ of preliminary injunction.

Thereafter, on August 17, 2007, the CA promulgated a Decision dismissing UNIALLOY's *certiorari* petition and affirming the September 13 and September 14, 2001 Orders of the RTC of CDO. UNIALLOY then filed a petition for review on *certiorari* challenging the above CA Decision. The case was docketed as G.R. No. 179257.

On November 23, 2015, this Court promulgated a Decision in G.R. No. 179257 denying UNIALLOY's petition. This Court held that the CA did not err in affirming the dismissal of UNIALLOY's complaint on the grounds of improper venue, forum shopping and for being a harassment suit. This Court also ruled that the August 17, 2007 Decision of the CA neither violated this Court's January 28, 2005 Decision in G.R. No. 152238 nor contradicted the CA's February 18, 2002 Resolution granting the preliminary injunction prayed for by UNIALLOY because the dismissal of UNIALLOY's main action carried with it the dissolution of any ancillary relief previously granted in the said case, such as the abovementioned preliminary injunction. Subsequently, this Court's Decision in G.R. No. 179257 became final and executory per Entry of Judgment dated January 20, 2016.

Meanwhile, on March 15, 2002, UNIALLOY filed with the RTC of Makati an omnibus motion praying for the suspension of the proceedings of the collection case in the said court on the ground of pendency of the *certiorari* petition it filed with this Court.[13] However, the RTC denied UNIALLOY's motion in its Order[14] dated August 19, 2002.

Subsequently, on June 17, 2003, the RTC of Makati rendered Judgment in the collection case in favor of UCPB. The dispositive portion of the RTC Decision reads, thus:

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[13] *Id.* at 293-303.

[14] *Id.* at 325.

WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiff. Defendants are hereby ordered to pay plaintiff the following:

a. The sum of US DOLLARS: (US$435,494.44) with interest and penalty charges from August 1, 2001 until fully paid.

b. The sum of ₱26,940,950.80 with interest and penalty charges from August 1, 2001 until fully paid.

c. Attorney's fees in the amount of ₱1,000,000.00.

d. Costs of suit.

SO ORDERED.[15]

UNIALLOY appealed the above RTC Decision with the CA.

On September 21, 2006, the CA rendered its assailed judgment denying UNIALLOY's appeal and affirming the questioned RTC Decision.

Hence, the instant petition raising the following issues:

5.01 THE HONORABLE COURT OF APPEALS COMMITTED A SERIOUS, REVERSIBLE ERROR, IF NOT GRAVE ABUSE OF DISCRETION, IN REFUSING TO RESOLVE AS TO –

I

WHETHER OR NOT THE TRIAL COURT ERRED IN DENYING PETITIONERS' URGENT MOTION TO DISMISS

II

WHETHER OR NOT THE TRIAL COURT ERRED IN DENYING PETITIONERS' OMNIBUS MOTION TO SUSPEND PROCEEDINGS AND TO LIFT WRIT OF PRELIMINARY ATTACHMENT

III

WHETHER OR NOT THE TRIAL COURT ERRED AND/OR COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION

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[15] *Rollo,* p. 246.

IN RENDERING THE ASSAILED QUESTIONED DECISION WHEN THERE IS A PENDING CIVIL ACTION BEFORE THE REGIONAL TRIAL COURT OF CAGAYAN DE ORO, BRANCH 40, INVOLVING THE SAME PARTIES AND SUBJECT MATTER WHICH CASE, IS NOW PENDING AND ASSAILED BY THE PLAINTIFF-APPELLEE VIA PETITION BEFORE THE HONORABLE SUPREME COURT.

5.02 THE HONORABLE COURT OF APPEALS COMMITTED A SERIOUS, REVERSIBLE ERROR IF NOT GRAVE ABUSE OF DISCRETION, IN DENYING PETITIONERS' URGENT MOTION FOR RECONSIDERATION WITHOUT STATING CLEARLY AND DISTINCTLY THE FACTUAL AND LEGAL BASIS THEREOF.[16]

Petitioners' basic argument is that the resolution of the instant petition basically hinges on the outcome of the petition filed under G.R. No. 179257. Considering that the promissory notes subject of G.R. No. 179257 are among the promissory notes which are also involved in the present case, petitioner contends that a judgment by this Court in G.R. No. 179257 that reverses the Decision of the RTC of Cagayan de Oro City, which in effect would declare the nullity of the subject promissory notes, may conflict with the Decision of this Court in the present petition, which involves the collection of the sum being represented in the same promissory notes. Thus, petitioner prays for the dismissal of the collection case (Civil Case No. 01-1332) filed by UCPB or the suspension of proceedings therein pending resolution of its petition in G.R. No. 179257.

However, as mentioned above, on November 23, 2015, the 2nd Division of this Court already came up with a Decision in G.R. No. 179257 which affirmed the RTC's dismissal of UNIALLOY's complaint. Pertinent portions of the said Decision read as follows:

CA CDO did not err in affirming the dismissal of UniAlloy's Complaint on the grounds of improper venue, forum shopping and for being a harassment suit

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[16] *Id.* at 18-19.

The RTC was correct in dismissing UniAlloy's Complaint on the ground of improper venue. In general, personal actions must be commenced and tried (i) where the plaintiff or any of the principal plaintiffs resides, (ii) where the defendant or any of the principal defendants resides, or (III) in the case of a resident defendant where he may be found, at the election of the plaintiff. Nevertheless, the parties may agree in writing to limit the venue of future actions between them to a specified place.

In the case at bench, paragraph 18 of the LPA expressly provides that "[a]ny legal action arising out of or in connection with this Agreement shall be brought *exclusively* in the proper courts of Makati City, Metro Manila." Hence, UniAlloy should have filed its complaint before the RTC of Makati City, and not with the RTC of Cagayan de Oro City.

But to justify its choice of venue, UniAlloy insists that the subject matter of its Complaint in Civil Case No. 2001-219 is not the LPA, but the fictitious loans that purportedly matured on April 17, 2001.

UniAlloy's insistence lacks merit. Its Complaint unequivocally sought to declare "as null and void the unilateral rescission made by defendant UCPB of its subsisting Lease Purchase Agreement with [UniAlloy]." What UCPB unilaterally rescinded is the LPA and without it there can be no unilateral rescission to speak of. Hence, the LPA is the subject matter or at least one of the subject matters of the Complaint. Moreover, and to paraphrase the aforecited paragraph 18 of the LPA, as long as the controversy arises out of or is connected therewith, any legal action should be filed exclusively before the proper courts of Makati City. Thus, even assuming that the LPA is not the main subject matter, considering that what is being sought to be annulled is an act connected and inseparably related thereto, the Complaint should have been filed before the proper courts in Makati City.

With regard forum-shopping, our review of the records of this case revealed that UniAlloy did not disclose in the Verification/Certification of the Complaint the pendency of Civil Case No. 2001-156 entitled *"Ernesto Paraiso and United Alloy Philippines Corporation v. Jakob Van Der Sluis."* The trial court took judicial notice of its pendency as said case is also assigned and pending before it. Thus, we adopt the following unrebutted finding of the RTC:

> These two civil cases have identical causes of action or issues against defendant Jakob Van Der Sluis for having misrepresented to plaintiff and its stockholders that he can extend financial assistance in running the operation of the corporation, such that on April 6, 2001 plaintiff adopted a Stockholders Resolution making defendant Jakob chairman of the corporation for having the financial capability to provide the financial needs of plaintiff and willing to finance the operational needs thereof; that a Memorandum of Agreement was subsequently entered between the parties whereby defendant Jakob obligated to provide sufficient financial loan to plaintiff to make it profitable; that Jakob maliciously and willfully reneged [on] his financial commitments to plaintiff prompting the stockholders to call his attention and warned him of avoiding the said agreement; that defendant who had then complete control of plaintiffs bank account with defendant UCPB, through fraudulent machinations and manipulations, was able to maliciously convince David C. Chua to pre-sign several checks; that defendant Jakob facilitated several huge loans purportedly obtained by plaintiff which defendant himself could not even account and did not even pay the debts of the corporation but instead abused and maliciously manipulated plaintiffs account.
>
> Forum-shopping indeed exists in this case, for both actions involve the same transactions and same essential facts and circumstances as well as identical causes of action, subject matter and issues, x x x

As mentioned above, this Court's Decision in the above case has become final and executory on January 20, 2016.

Thus, contrary to petitioners' position, there is no longer any possibility that the Decision of the RTC of CDO may conflict with the disposition of the present case because UNIALLOY's complaint for annulment of contract has already been dismissed with finality. This Court will, thus, proceed to resolve the merits of the instant case.

The fundamental issue here is whether or not herein petitioners, together with their co-defendants Van Der Sluis and Yang, are liable to pay respondent the amounts awarded by the RTC of Makati City in its June 17, 2003 Decision.[17]

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[17] *Id.* at 217-222.

The Court rules in the affirmative.

As ruled upon by both the RTC and the CA, UNIALLOY failed to pay its obligations under the above promissory notes and that herein petitioner Spouses Chua, together with their co-defendants Van Der Sluis and Yang freely executed a Surety Agreement whereby they bound themselves jointly and severally with UNIALLOY, to pay the latter's loan obligations with UCPB. Pertinent portions of the said Surety Agreement are reproduced hereunder, to wit:

x x x x x x x x x

ARTICLE I

LIABILITIES OF SURETIES

Section 1.01. The **SURETIES**, jointly and severally with the **PRINCIPAL**, hereby unconditionally and irrevocably guarantee the full and complete payment when due, whether at stated maturity, by acceleration or otherwise, of all sums payable by the **PRINCIPAL** under the **Credit Agreement**, the Note/s and other related documents or instruments referred to therein (hereinafter referred to collectively as the **"Loan Documents"**) the terms and conditions of which are hereby deemed incorporated by reference.

The liability of the **SURETIES** shall not be limited to the aggregate principal amount of **FIFTY MILLION PESOS (₱50,000,000.00), Philippine Currency, or its foreign currency equivalent,** but shall include such interest, fees, penalties and other charges due thereon, as well as any and all renewals, extensions, restructurings or conversions of the **Accommodation** or any portion thereof, as may appear in the books and records of account of the **BANK.**

Such extension/s, renewal/s, restructuring/s, or conversion/s of the **Accommodation** or any portion thereof, including any increase in the principal amount thereof, or the imposable interest rates and other bank charges, shall be binding upon the **SURETIES** under the terms of this **SURETY AGREEMENT,** without need of any further notice to or consent or conformity of the **SURETIES,** all of which are hereby expressly waived.

Section 1.02. This **SURETY AGREEMENT** is a guarantee of payment and not merely of collection and is intended to be a perfect

and continuing indemnity in favor of the **BANK** for the amounts and to the extent stated above. For this purpose, the **SURETIES** hereby commit that for as long as this **SURETY AGREEMENT** is in effect, the **SURETIES** shall not sell, lease, transfer, assign or encumber any of its present and future properties without the written consent of the **BANK,** which consent will not be unreasonably withheld.

The liability of the **SURETIES** shall be absolute, irrevocable, unconditional, direct, immediate and not contingent upon the pursuit by the **BANK** of whatever remedies it may have against the **PRINCIPAL** or the other sureties for the Accommodation, and shall be performed by the **SURETIES** strictly in accordance with the terms hereof and under any and all circumstances, including the existence of any claim, set-off, defense or other rights which the **SURETIES** or any person or entity may have at any time against the **BANK** for any reason whatsoever, whether or not related to this **SURETY AGREEMENT,** the **Loan Documents** or under such other documents executed in relation thereto, or contemplated hereunder.

ARTICLE II

TERM

Section 2.01. This **SURETY AGREEMENT** shall remain in full force and effect until payment in full of all amount for which the **PRINCIPAL** is or may be liable as set forth in ARTICLE I hereof, regardless of the absence of any further or other assent or conformity of, or notice to the **SURETIES,** or any circumstance, or provision of law which might otherwise constitute a defense or discharge of the **SURETIES,** all of which are hereby expressly waived.

ARTICLE III

DEFAULT

Section 3.01. If the **BANK** shall declare the obligation of the **PRINCIPAL** to be due and payable because of the happening of any of the event of default as defined in the **Credit Agreement,** the **SURETIES,** upon receipt of written notice from the BANK, shall forthwith pay to the **BANK** the full amount of the said obligations, without need of demand, protest or notice of any kind, other than the notice provided herein, all of which are likewise expressly waived by the **SURETIES**.

In this connection, the **BANK** is hereby given full power and authority to apply whatever moneys or things of value belonging to the **SURETIES** which may be in the possession or control of the **BANK** in payment of the obligations mentioned above.

ARTICLE IV

BINDING EFFECT

Section 4.01. This **SURETY AGREEMENT** shall except upon the other **SURETIES**, if any whose liability(ies) is/are extinguished by way of compromise or otherwise be binding upon the **SURETIES**, their heirs and successors in interest and shall inure to the benefit of and be enforceable by the **BANK**, its assigns and successors in interest. For this purpose, the **SURETIES** have agreed, as they hereby agree, that an extinguishment of liability(ies) of any of the **SURETIES** shall not be an obstacle to the **BANK** from demanding payment from the other **SURETIES**, if any, so long as the **Accommodation** has not been fully collected.

x x x x x x x x x[18]

Petitioners do not deny their liability under the abovequoted Surety Agreement.

As correctly held by both the RTC and the CA, Article 1159 of the Civil Code expressly provides that "[o]bligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith." The RTC as well as the CA found nothing which would justify or excuse petitioners from non-compliance with their obligations under the contract they have entered into. Thus, it becomes apparent that petitioners are merely attempting to evade or, at least, delay the inevitable performance of their obligation to pay under the Surety Agreement and the subject promissory notes which were executed in respondent's favor.

The Court notes, however, that the interest rates imposed on the subject promissory notes were made subject to review and adjustment at the sole discretion and under the exclusive will of UCPB. Moreover, aside from the Consolidated Statement

[18] Records, pp. 30-31.

of Account attached to the demand letters addressed to petitioner spouses Chua and their co-defendants,[19] no other competent evidence was shown to prove the total amount of interest due on the above promissory notes. In fact, based on the attached Consolidated Statement of Account, UCPB has already imposed a 24% interest rate on the total amount due on respondents' peso obligation for a short period of six months. Settled is the rule that any contract which appears to be heavily weighed in favor of one of the parties so as to lead to an unconscionable result is void.[19] Any stipulation regarding the validity or compliance of the contract which is left solely to the will of one of the parties, is likewise, invalid.[20]

Moreover, courts have the authority to strike down or to modify provisions in promissory notes that grant the lenders unrestrained power to increase interest rates, penalties and other charges at the latter's sole discretion and without giving prior notice to and securing the consent of the borrowers.[21] This unilateral authority is anathema to the mutuality of contracts and enable lenders to take undue advantage of borrowers.[22] Although the Usury Law has been effectively repealed, courts may still reduce iniquitous or unconscionable rates charged for the use of money.[23] Furthermore, excessive interests, penalties and other charges not revealed in disclosure statements issued by banks, even if stipulated in the promissory notes, cannot be given effect under the Truth in Lending Act.[24]

The Court, thus, finds it proper to modify the interest rates imposed on respondents' obligation. Pursuant to the ruling in

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[19] *Id.* at 103-111.

[19] *Spouses Silos v. Philippine National Bank,* G.R. No. 181045, July 2, 2014, 728 SCRA 617, 648.

[20] *Id.* at 653.

[21] *Id.*

[22] *Id.* at 653-654.

[23] *Id.* at 654.

[24] *Id.*

Nacar v. Gallery Frames, et al.,[25] the sums of US$435,494.44 and PhP26,940,950.80 due to UCPB shall earn interest at the rate of 12% per annum from the date of default, on August, 1, 2001, until June 30, 2013 and thereafter, at the rate of 6% per annum, from July 1, 2013 until finality of this Decision. The total amount owing to UCPB as set forth in this Decision shall further earn legal interest at the rate of 6% per annum from its finality until full payment thereof, this interim period being deemed to be by then an equivalent to a forbearance of credit.

Finally, pursuant to the parties' Credit Agreement as well as the subject Promissory Notes, respondents are also liable to pay a penalty charge at the rate of 1% per month or 12% *per annum.*

WHEREFORE, the instant petition is **DENIED.** The Decision and Resolution of the Court of Appeals, dated September 21, 2006 and December 11, 2006, respectively, in CA-G.R. CV No. 81079, are **AFFIRMED** with **MODIFICATION** by directing petitioners and their co-defendants to pay respondent UCPB the following:

(1) the principal amounts of US$435,494.44 and PhP26,940,950.80;

(2) legal interest of 12% *per annum* on the above principal amounts reckoned from August 1, 2001 until June 30, 2013;

(3) penalty charge of 12% *per annum* from August 1, 2001 until fully paid; and

(4) an interest of 6% from July 1, 2013 until fully paid.

SO ORDERED.

Carpio (Chairperson), *Bersamin,*[*] *Mendoza,* and *Leonen, JJ.,* concur.

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[25] G.R. No. 189871, August 13, 2013, 703 SCRA 439.

[*] Designated Additional Member per Special Order No. 2416-G, dated January 4, 2017.

THIRD DIVISION

[G.R. No. 178842. January 30, 2017]

RENE H. IMPERIAL and NIDSLAND RESOURCES AND DEVELOPMENT CORPORATION, *petitioners, vs.* **HON. EDGAR L. ARMES, Presiding Judge of Branch 4, Regional Trial Court, 5TH Judicial Region, Legazpi City and ALFONSO B. CRUZ, JR.,** *respondents.*

[G.R. No. 195509. January 30, 2017]

ALFONSO B. CRUZ, *petitioner, vs.* **RENE IMPERIAL AND NIDSLAND RESOURCES AND DEVELOPMENT CORPORATION,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; JUDGMENTS; VOID JUDGMENT; NATURE.—** A void judgment is no judgment at all in legal contemplation. In *Cañero v. University of the Philippines* we held that — x x x A void judgment is not entitled to the respect accorded to a valid judgment, but may be entirely disregarded or declared inoperative by any tribunal in which effect is sought to be given to it. It has no legal or binding effect or efficacy for any purpose or at any place. It cannot affect, impair or create rights. x x x A judgment rendered without jurisdiction is a void judgment. This want of jurisdiction may pertain to lack of jurisdiction over the subject matter or over the person of one of the parties. A void judgment may also arise from the tribunal's act constituting grave abuse of discretion amounting to lack or excess of jurisdiction.

2. **ID.; ID.; ID.; REMEDIES AVAILABLE TO ASSAIL A VOID JUDGMENT.—** [T]he Rules of Court, particularly the 1997 Revised Rules on Civil Procedure, provides for a remedy that may be used to assail a void judgment on the ground of lack of jurisdiction. Rule 47 of the Rules of Court states that an action for the annulment of judgment may be filed before the

CA to annul a void judgment of regional trial courts even after it has become final and executory. If the ground invoked is lack of jurisdiction, which we have explained as pertaining to both lack of jurisdiction over the subject matter and over the person, the action for the annulment of the judgment may be filed at any time for as long as estoppel has not yet set in. In cases where a tribunal's action is tainted with grave abuse of discretion, Rule 65 of the Rules of Court provides the remedy of a special civil action for *certiorari* to nullify the act. Void judgments may also be collaterally attacked. A collateral attack is done through an action which asks for a relief other than the declaration of the nullity of the judgment but requires such a determination if the issues raised are to be definitively settled.

3. ID.; ID.; ID.; IN CASES FILED PRIOR TO REPUBLIC ACT NO. 8799, A REGIONAL TRIAL COURT PETITION IS NOT THE PROPER REMEDY TO ASSAIL THE SECURITIES AND EXCHANGE COMMISSION'S (SEC) DECISION.— The seeming confusion in the string of cases pertaining to the jurisdiction over petitions for annulment of judgment of quasi-judicial bodies is clarified when these cases are read in conjunction with *Macalalag v. Ombudsman*. While we repeated our consistent ruling that Rule 47 of the Rules of Court only applies to judgments of regional trial courts, *Macalalag* also explains that an action for the annulment of judgment is similar in nature to an appeal — both are merely statutory. No right exists unless expressly granted by law. In *Macalalag*, we implied that the key to determining whether this remedy may be had and where such action may be filed is to ascertain whether there is a law expressly allowing a resort to this action before a particular tribunal. This then requires an examination of the laws and rules relevant to a specified quasi-judicial body. While it is correct that both the regional trial courts and the CA cannot take cognizance of a petition for annulment of judgment of a quasi-judicial body under Rule 47 of the Rules of Court, they may nevertheless do so, if a law categorically provides for such a remedy and clearly provides them with jurisdiction. Applying this to the present case, we rule that there is no law at the time pertinent to this case, which allows the filing of a petition for annulment of judgment before the regional trial courts and the CA to set aside a void judgment of the SEC on the basis of lack of jurisdiction. We hasten to

emphasize, however, that this pertains only to cases filed prior to Republic Act No. 8799 (RA 8799) which transferred the jurisdiction over intra-corporate disputes to regional trial courts designated as commercial courts. As to the latter, Rule 47 clearly applies. This leads to the conclusion that the RTC Petition is not the proper remedy to assail the SEC Decision. Since it is an action for the annulment of judgment, the RTC Petition cannot prosper as we have already ruled that this remedy is not available in this particular case.

4. COMMERCIAL LAW; PRESIDENTIAL DECREE NO. 902-A; JURISDICTION OF SEC; TWO TESTS TO DETERMINE WHETHER THE SEC HAS JURISDICTION TO TAKE COGNIZANCE OF A CASE; *RELATIONSHIP TEST*, EXPLAINED.— In *Union Glass & Container Corporation v. Securities and Exchange Commission* we said that "the law [PD 902-A] explicitly specified and delimited its jurisdiction to matters intrinsically connected with the regulation of corporations, partnerships and associations and those dealing with the internal affairs of such corporations, partnerships or associations." We added that in order for the SEC to take cognizance of a case, the controversy must pertain to any of the following relationships: (1) between the corporation, partnership or association and the public; (2) between the corporation, partnership or association and the state in so far as its franchise, permit or license to operate is concerned; (3) between the corporation, partnership or association and its stockholders, partners, members or officers; and (4) among the stockholders, partners or associates themselves. This is the *relationship test*, under which the existence of any of these relationships vested the SEC with jurisdiction. In *Abejo v. De la Cruz*, we even declared that "an intra-corporate controversy is one which arises between a stockholder and the corporation. There is no distinction, qualification, nor any exemption whatsoever. The provision is broad and covers all kinds of controversies between stockholders and corporations."

5. ID.; ID.; ID.; ID.; CONTROVERSY TEST, DISCUSSED.— Later decisions of this Court, however, have moved away from this rather simplistic determination of what constitutes an intra-corporate controversy. In the 1990 case of *Viray v. Court of Appeals*, we held, thus: The establishment of any of the

relationships mentioned in *Union* will not necessarily always confer jurisdiction over the dispute on the SEC to the exclusion of the regular courts. The statement made in one case that the rule admits of no exceptions or distinctions is not that absolute. The better policy in determining which body has jurisdiction over a case would be to consider not only the status or relationship of the parties but also the nature of the question that is the subject of their controversy. This is the *controversy test*. In *Lozano v. De los Santos*, we explained that the controversy test requires that the dispute among the parties be intrinsically connected with the regulation of the corporation, partnership or association. In *Speed Distribution Corp. v. Court of Appeals*, we added that "[i]f the nature of the controversy involves matters that are purely civil in character, necessarily, the case does not involve an intra-corporate controversy."

6. ID.; ID.; ID.; SEC HAS NO JURISDICTION TO ORDER THE CANCELLATION OF THE SALE BETWEEN THE PARTIES AND TO CANCEL THE TITLE OF A PARTY AND ORDER ITS TRANSFER TO THE OTHER.— Under PD 902-A, the SEC exercised jurisdiction over intra-corporate controversies precisely because it is a highly-specialized administrative body in specialized corporate matters. It follows therefore, that where the controversy does not call for the use of any technical expertise, but the application of general laws, the case is cognizable by the ordinary courts. x x x Applying these principles to this case, we rule that the SEC does not have jurisdiction to order the cancellation of the sale between Napal and Cruz. It also has no jurisdiction to cancel Cruz's TCT and order its transfer to NIDSLAND. To assail the validity of the sale, Imperial and NIDSLAND sought to prove that the sale to Cruz was simulated. This involves the application of the law on sales. As we have already held in *Intestate Estate of Alexander T. Ty*, the issue of whether a sale is simulated falls within the jurisdiction of ordinary civil courts. It does not concern an adjudication of the rights of Imperial, NIDSLAND and Napal under the Corporation Code and the internal rules of the corporation. The resolution of these questions requires the application of an entire gamut of laws that goes well beyond the expertise of the SEC. Meanwhile, the question of whether Cruz's TCT should be cancelled goes into the proper application

of Presidential Decree No. 1529 and related doctrines. Specifically, there is a need to take into consideration whether the SEC Petition is a collateral attack on the certificate of title which goes against the well-established rule of indefeasibility. The resolution of this question demands the application of our laws on land title and deeds, a matter outside the ambit of the SEC's special competence.

7. ID.; ID.; ID.; ID.; IN DISREGARDING ESTABLISHED LAW AND JURISPRUDENCE ON ITS JURISDICTION, SEC COMMITTED GRAVE ABUSE OF DISCRETION.— [O]ur jurisprudence has leaned in favor of recognizing the jurisdiction of quasi-judicial bodies. However, this jurisdiction must always be viewed within the context of its grant. The law vests quasi-judicial powers to administrative bodies over matters that require their particular competence and specialized expertise. This grant of jurisdiction is not and should not be justification to deprive courts of law of their jurisdiction as determined by law and the Constitution. Courts of law are the instruments for the adjudication of legal disputes. In a system of government where courts of law exist alongside quasi-judicial bodies, the need to harmonize apparent conflicts in jurisdiction require a determination of whether the matter to be resolved pertains to a general question of law which belongs to ordinary courts or whether it refers to a highly specialized question that can be better resolved by a quasi-judicial body in accordance with its power vested by law. In overstepping its jurisdiction, the SEC committed grave abuse of discretion. x x x [T]he SEC, in rendering the decision, disregarded established law and jurisprudence on the jurisdiction of the SEC. Further, it adjudicated on the rights of Cruz, cancelled the deed of sale, and took away his property without giving him the opportunity to be heard. It is a breach of the basic requirements of due process.

8. REMEDIAL LAW; JUDGMENTS; EFFECTS OF VOID JUDGMENT; A VOID SEC DECISION HAS NO FORCE AND EFFECT.— [I]n *Gonzales v. Solid Cement Corporation,* x x x, we found that the CA committed grave abuse of discretion amounting to lack or excess of jurisdiction, therefore acting outside the contemplation of law. Hence, even when the period to assail the CA decision had already lapsed, we ruled that it

did not become final and immutable. A void judgment never becomes final. x x x More, our ruling in *Banco Español-Filipino v. Palanca* on the effects of a void judgment has reappeared consistently in jurisprudence touching upon the matter. In this case, we said that a void judgment is "a lawless thing, which can be treated as an outlaw and slain at sight, or ignored wherever and whenever it exhibits its head." In concrete terms, this means that a void judgment creates no rights and imposes no duties. Any act performed pursuant to it and any claim emanating from it have no legal effect. Thus, in *Heirs of Mayor Nemencio Galvez v. Court of Appeals*, we nullified an auction sale of a land as well as the resulting deed of sale and transfer certificate of title as they were the offshoot of a writ of execution carried pursuant to a void judgment. Hence, because the SEC Decision was issued with grave abuse of discretion and is therefore void, all acts emanating from it have no force and effect. Thus, the Deed of Conveyance issued pursuant to it has no legal effect.

9. ID.; ID.; ID.; ID.; CERTIFICATES OF TITLE ISSUED PURSUANT TO A VOID JUDGMENT CANNOT BE NULLIFIED IN THESE CASES FOR IT VIOLATES THE PRINCIPLE OF INDEFEASIBILITY OF TORRENS TITLE; THE NULLITY OF THE SUBJECT CERTIFICATES SHOULD BE THRESHED OUT IN A PETITION FOR CANCELLATION OF TITLE BEFORE THE PROPER COURT.— [W]hile the certificates of title issued in the name of NIDSLAND arose from a void judgment, this Court cannot nullify them in these proceedings. The indefeasibility of a Torrens title prevents us from doing so. Further, we are bound by rules on jurisdiction and the nature of the proceedings before us. Our Torrens system serves a very important purpose. As a general rule, a Torrens certificate of title is conclusive proof of ownership. Thus, provided that the requirements of law are met, a certificate of title under the Torrens system of registration is indefeasible. The value of this rule finds real meaning when viewed in practical terms. A registration under the Torrens system confirms that the person whose name appears as owner of the land is indeed the true owner. Except for specific circumstances allowed by law, a person who registers his or her ownership over a piece of land makes his or her title indefeasible because the law does not allow any other person to attack or challenge it. Because

> the title is indefeasible, third persons interested in the registered land can simply look at the certificate of title and rely on the information stated in it. This creates stability in our system of registration. This rule is so zealously protected that our laws even prohibit a collateral attack of a void certificate of title. x x x Hence, we cannot order the direct cancellation of the certificates of title issued to NIDSLAND even if they are the direct result of a void decision. The nullity of the certificates of title should be threshed out in a petition for cancellation of title brought before the proper court.

APPEARANCES OF COUNSEL

Aquende Ralla & Associates for Rene Imperial and Nidsland Resources and Development Corporation.

Leoville T. Ecarma for Alfonso B. Cruz.

D E C I S I O N

JARDELEZA, *J.*:

An action for the annulment of a void judgment, like the remedy of appeal, is a statutory right. No party may invoke it unless a law expressly grants the right and identifies the tribunal which has jurisdiction over this action. While a void judgment is no judgment at all in legal contemplation, any action to challenge it must be done through the correct remedy and filed before the appropriate tribunal. Procedural remedies and rules of jurisdiction are in place in order to ensure that litigants are able to employ the proper legal tools to obtain complete relief from the tribunal fully equipped to grant it.

The Case

Before us are two (2) consolidated petitions for review on *certiorari* under Rule 45 of the Rules of Court. The first petition, docketed as G.R. No. 178842, is filed by Rene H. Imperial (Imperial) and NIDSLAND Resources and Development Corporation (NIDSLAND) against Alfonso B. Cruz, Jr. (Cruz). It seeks the reversal of the resolutions of the Court of Appeals

(CA) dated March 6, 2007 and July 3, 2007, respectively. The second petition, G.R. No. 195509, filed by Cruz against Imperial and NIDSLAND, seeks the reversal of the Decision of the CA dated September 13, 2010.

The Facts

On September 24, 1993, Julian C. Napal (Napal) and Imperial entered into a Memorandum of Agreement[1] to organize a domestic corporation to be named NIDSLAND. Under the Memorandum of Agreement, Napal and Imperial agreed to engage in the real estate business. For his capital contribution to the corporation, Napal undertook to convey to NIDSLAND a tract of land consisting of four lots (the Property) covered by Transfer Certificate of Title (TCT) Nos. 37737, 37738, 37739 and 21026, and to Imperial a two hectare portion of the Property situated in Taysan, Legazpi City.[2] Napal and Imperial intended to develop this land into a subdivision. Imperial, on the other hand, as his contribution to NIDSLAND, committed to perform the following obligations: to settle Napal's obligation to the Rural Bank of Ligao, Inc., which was about to foreclose its mortgage on the Property; pay Napal's tax liabilities to the Bureau of Internal Revenue (BIR) which encumbered with a tax lien the largest portion of the Property; fund NIDSLAND's initial operating capital; and provide for Napal's personal drawings in an amount not exceeding ₱1,200,000.[3]

While Imperial faithfully complied with his obligations under the Memorandum of Agreement, Napal failed to convey to NIDSLAND a certain portion of the Property, in particular Lot 15-C covered by TCT No. 21026 (the Subject Property).[4] On July 24, 1996, Napal sold the Subject Property to Cruz as evidenced by a Deed of Absolute Sale.[5] While the Deed of

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[1] *Rollo* (G.R. No. 195509) pp. 176-178.

[2] *Id.* at 56, 176-177.

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

[4] *Id.* at 56-57.

[5] *Id.* at 126-127.

Absolute Sale between Napal and Cruz bore the date July 24, 1996, the sale was registered in the Registry of Deeds of Legazpi City only on August 27, 1996.[6]

As Napal continued to refuse to convey the Subject Property to NIDSLAND under the Memorandum of Agreement, Imperial filed on July 30, 1996, for himself and in representation of NIDSLAND, a derivative suit (SEC Petition) before the Securities and Exchange Commission (SEC).[7] This was filed after the sale to Cruz but before its registration. The case was docketed as SEC LEO Case No. 96-0004 (SEC Case).[8] On the same day, Imperial also filed a notice of *lis pendens* for the SEC Case with the Registry of Deeds of Legazpi City. This was annotated on TCT No. 21026[9] as Entry No. 99956/99957.[10]

Since the annotation of the *lis pendens* occurred after the sale of the Subject Property to Cruz but before its registration with the Registry of Deeds, the notice of *lis pendens* was carried over to the new TCT No. 43936[11] issued in Cruz's name.[12] Meanwhile, the SEC Case proceeded without the participation of Cruz who had possession of the new TCT covering the Subject Property during the continuation of the hearings.

On August 8, 1997 and during the pendency of the SEC Case, Imperial and NIDSLAND filed an action for annulment of sale against Cruz (Annulment of Sale Action) before the Regional Trial Court, Legazpi City (RTC Legazpi City). This was docketed as Civil Case No. 9419.[13] On August 14, 1997, the RTC Legazpi City dismissed the action and held that it should have been

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

[7] *Id.* at 101.

[8] *Id.*

[9] *Rollo* (G.R. No. 178842), pp. 183-187.

[10] *Id.* at 187.

[11] *Rollo* (G.R. No. 195509), pp. 181-183.

[12] *Id.* at 181-183.

[13] *Id.* at 39.

filed in the original case where the decree of registration was entered.[14] Imperial and NIDSLAND elevated the case to the CA through an appeal.[15] The CA affirmed the RTC Legazpi City's ruling.[16]

On November 10, 1998, SEC Hearing Officer Santer G. Gonzales (SEC Hearing Officer Gonzales) rendered a Decision[17] in favor of Imperial and NIDSLAND (SEC Decision). The Decision declared the Deed of Absolute Sale between Napal and Cruz void *ab initio* as the SEC found that the sale was simulated and was intentionally made to appear to have been perfected prior to the filing of the notice of *lis pendens*. Thus, the SEC ordered the cancellation of the TCT in the name of Cruz. Further, the SEC directed Napal to execute the proper deed of conveyance of the Subject Property in favor of NIDSLAND. The SEC also mandated Napal to deliver the possession of the Subject Property to NIDSLAND.[18]

Since Napal did not appeal the SEC Decision, it became final and executory and was enforced on January 13, 1999. As ordered in the SEC Decision, a Deed of Conveyance[19] was issued on the same date, transferring the Subject Property to NIDSLAND. TCT No. 43936 in the name of Cruz was cancelled and a new TCT No. 49730 was issued in the name of NIDSLAND on January 19, 1999.[20]

On February 18, 1999, Napal filed with the CA a Petition for Annulment of Judgment under Rule 47 of the Rules of Court (Annulment of Judgment Action). This was docketed as CA-

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[14] *Rollo* (G.R. No. 178842), p. 257.

[15] *Id.*

[16] *Rollo* (G.R. No. 195509), p. 12.

[17] *Id.* at 101-122.

[18] *Id.* at 121-122.

[19] *Rollo* (G.R. No. 178842), pp. 230-232.

[20] *Rollo* (G.R. No. 195509), pp. 9-11; *Rollo* (G.R. No. 178842), p. 13.

G.R. SP No. 51258.[21] Napal sought the nullification of the SEC Decision as well as the orders and writs issued pursuant to it. Napal argued that the SEC has no jurisdiction over the SEC Case as it did not involve any intra-corporate controversy. On April 15, 1999, Cruz filed in the Annulment of Judgment Action a Motion to Join as Party-Petitioner.[22] In his motion, Cruz claimed that he is a transferee *pendente lite* of the Subject Property.[23]

The CA promulgated a Decision[24] on August 31, 1999 dismissing the Petition for Annulment of Judgment. The CA explained that Rule 47 of the Rules of Court is not available to annul the judgment of the SEC. According to the CA, the proper remedy in this case is a special civil action for *certiorari* and prohibition. None of the parties appealed the CA Decision. Thus, entry of judgment was made on November 16, 2000.[25]

On January 22, 2001,[26] Cruz filed a pleading denominated as a "Petition" before RTC Legazpi City (RTC Petition),[27] which sought to nullify the SEC Decision. This was docketed as Civil Case No. SR-09 and raffled to Branch 4 of RTC Legazpi City.[28] In the RTC Petition, Cruz prayed for the following reliefs:

> WHEREFORE, it is respectfully prayed that after hearing, judgment be rendered as follows:
>
> a) Declaring the Decision dated 10 November 1998 of respondent Gonzales to be null and void insofar as it affects the property rights of petitioner to the Subject Property

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[21] *Id.*

[22] *Rollo* (G.R. No. 178842), pp. 233-250.

[23] *Id.* at 233; *Rollo* (G.R. No. 195509), p. 13.

[24] *Rollo*, (G.R. No. 178842), pp. 252-264. Penned by Associate Justice Romeo J. Callejo, Sr., concurred in by Associate Justices Quirino D. Abad Santos, Jr. and Mariano M. Umali.

[25] *Id.* at 266.

[26] After two years and 1 month from the SEC Decision.

[27] *Rollo* (G.R. No. 178842), pp. 172-179.

[28] *Rollo* (G.R. No. 195509), p. 14.

b) Declaring the Deed of Conveyance dated January 13, 1999 as null and void for having been issued pursuant to an invalid and void judgment

c) Declaring the cancellation of the TCT No. 43936 of petitioner, as well as the issuance of TCT No. 49730 (and its derivatives TCT Nos. 50398, 50399, 50400 and 50401) of respondent Nidsland, by respondent Register of Deeds of Legazpi City, to be invalid and illegal.

d) Directing the respondent Register of Deeds of Legazpi City to duly cancel the TCT Nos. 50398, 50399, 50400 and 50401, and restore the status of TCT No. 43936 of plaintiff prior to its cancellation, or otherwise reconvey and/or issue a new title to the Subject Property in the name of plaintiff,

e) Ordering respondents to solidarily pay to petitioner the amount of ₱500,000.00, as and for moral damages.

f) Ordering respondents to solidarily pay attorney's fees in the amount of ₱100,000.00, appearance fees and costs of suit.[29]

Presiding Judge Gregorio A. Consulta, without issuing summons, dismissed the Petition *motu proprio*.[30] He justified his dismissal on the ground that regional trial courts have no jurisdiction over the SEC and as such, an action assailing the decision of the SEC should be brought before the CA. As his motion for reconsideration of the decision was denied,[31] Cruz elevated the case to the CA by way of a special civil action for *certiorari*. This was docketed as CA G.R. SP No. 65720.[32] In a Decision[33] dated October 28, 2002, the CA held that RTC Legazpi City acted with grave abuse of discretion in dismissing the Petition, and therefore ordered that the case be remanded to RTC Legazpi City to be given due course.[34]

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[29] *Rollo* (G.R. No. 178842), p. 177.

[30] *Id.* at 267.

[31] *Id.* at 268-269.

[32] *Rollo* (G.R. No. 195509), p. 14.

[33] *Rollo* (G.R. No. 178842), pp. 270-276.

[34] *Id.* at 275-276.

In accordance with the Decision of the CA, the RTC Petition was re-docketed as Civil Case No. 10325 and was reraffled to Branch 3 of the RTC Legazpi City.[35] However, even before summons could be issued, Presiding Judge Henry B. Basilla issued an Order[36] dated April 15, 2004 dismissing the Petition. The Order stated that the RTC Petition failed to comply with the reglementary period and other procedural requirements under Rule 65 for the proper filing of a special civil action for *certiorari*.

However, upon Cruz's motion for reconsideration, Judge Basilla reversed his ruling in an Order[37] dated May 7, 2004. Thus, RTC Legazpi City summoned Imperial and NIDSLAND on July 1, 2004.[38] On July 30, 2004, Imperial and NIDSLAND filed a motion to dismiss[39] which was denied by Judge Basilla.[40]

Imperial and NIDSLAND then failed to file their answer and were declared in default.[41] Thus, Cruz was allowed to present evidence *ex-parte*. Judge Basilla eventually set aside the order of default upon motion of Imperial and NIDSLAND.[42] Judge Basilla subsequently voluntarily inhibited himself, and the RTC Petition was reraffled to Branch 4 presided by Respondent Judge Edgar L. Armes (Respondent Judge Armes).[43]

After trial, the parties to the RTC Petition submitted their respective memoranda. In Imperial and NIDSLAND's memorandum and supplemental memorandum, they again sought

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[35] *Id.* at 51.

[36] *Id.* at 277.

[37] *Id.* at 278.

[38] *Id.* at 279.

[39] *Id.* at 280-289.

[40] *Id.* at 290.

[41] *Id.* at 291.

[42] *Id.* at 292-293.

[43] *Id.* at 19, 52.

the dismissal of the RTC Petition on the ground of lack of jurisdiction. Judge Armes refused the dismissal.[44]

On August 22, 2006, Imperial and NIDSLAND filed an Omnibus Motion. This was followed by a Supplemental Motion filed on September 7, 2006.[45] In the two motions, Imperial and NIDSLAND once again prayed for the dismissal of the RTC Petition and raised, for the first time, the following grounds:

1. The failure of herein private respondent CRUZ, as petitioner in Civil Case No. 10325, to state the required material dates in his initiatory Petition necessary in order to determine compliance with the 60-days reglementary period;

2. The failure of herein private respondent CRUZ, as petitioner in Civil Case No. 10325, to show by any allegation in his initiatory Petition that there is no appeal or any other plain, speedy and adequate remedy under the ordinary course of law against the assailed decision in SEC LEO Case No. 96-0004 to warrant recourse to the extra-ordinary writ of *certiorari*;

3. The indisputable fact that the Petition in Civil Case No. 10325 was filed by herein private respondent CRUZ far beyond the 60-days reglementary period allowed under Section 4 of Rule 65 of the Rules of Court in view of the admission by said respondent CRUZ in the Motion to Join as Party-Petitioner that he filed in CA-G.R. SP No. 51258 wherein he expressly admitted having received a copy of the assailed decision in SEC LEO Case No. 96-0004 in February, 1999; and

4. The decision in SEC LEO Case No. 96-0006, which has become final and had been fully executed, is binding against herein private respondent CRUZ, he being a successor-in-interest *pendente lite* to the title over the Subject Property, of therein respondent Napal, pursuant to Section 19 of Rule 3 of the Rules of Court.[46]

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[44] *Id.* at 52.

[45] *Id.* at 20.

[46] *Id.* As quoted in Imperial and NIDSLAND's Petition for Review in G.R. No. 178842.

Respondent Judge Armes denied the Omnibus Motion and Supplemental Motion in an Order dated September 21, 2006.[47] According to the Order, the issues raised by Imperial and NIDSLAND have already been settled by the CA in the *certiorari* case filed by Cruz. The Order held that the CA ruled that the RTC Legazpi City has jurisdiction over the case and even directed the latter to give due course to the RTC Petition.

Imperial and NIDSLAND filed a motion for reconsideration of this RTC Order on October 6, 2006.[48] In this motion, Imperial and NIDSLAND argued that the ruling of the CA pertained to an entirely different jurisdictional issue from that raised in their Omnibus Motion and Supplemental Omnibus Motion.[49] Respondent Judge Armes denied the motion for reconsideration in an Order[50] dated November 23, 2006. This Order reiterated that the CA's directive that the RTC Legazpi City give due course to the RTC Petition was unqualified and unconditional. Further, the Order explained that Imperial and NIDSLAND's arguments had no merit for the following reasons:

1. This action is geared to declare the nullity of a void judgment. In the case of Paluwagan ng Bayan Savings Bank vs. King, 172 SCRA 60, it was held that an action to declare the nullity of a void judgment does not prescribe, citing also Ang Lam vs. Rosillosa and Santiago, 86 Phil. 447-452. This imprescriptibility of the action places it beyond the ambit of the 60-day reglementary period under Sec. 4, Rule 65 of the Revised Rules of Court.

2. The petitioner in this case, not being a party in SEC LEO Case No. 96-0004, was never officially notified of the assailed Decision, dated November 10, 1998 by the deciding authority simply because there was no basis therefor. The notice of the judgment, order or resolution, from which the 60-day

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[47] *Rollo* (G.R. No. 178842), pp. 113-114.

[48] *Id.* at 21.

[49] *Id.* at 21-22.

[50] *Id.* at 115-119.

> period shall be computed under Sec. 4, Rule 65 of the Rules of Court, contemplates of an official notice from the deciding authority and not mere informal information from other sources like what happened in the case at bar[.] Since the official notice from the deciding authority in SEC LEO Case No. 96-0004 was not and is not forthcoming because there was no basis thereof, it follows that the 60-day period aforesaid is not applicable to the case at bar.[51]

FIRST CONSOLIDATED CASE—G.R. No. 178842

Imperial and NIDSLAND then filed a Petition for *Certiorari* and Prohibition[52] under Rule 65 of the Rules of Court before the CA. This petition assailed the validity of Respondent Judge Armes' Orders dated September 21, 2006 and November 23, 2006. This was docketed as CA-G.R. SP No. 97823. The CA rendered a Resolution dated March 6, 2007[53] (First Assailed Resolution) dismissing Imperial and NIDSLAND's Petition for *Certiorari* and Prohibition for lack of merit. Imperial and NIDSLAND filed a motion for reconsideration which was denied by the CA in a Resolution dated July 3, 2007[54] (Second Assailed Resolution).

Hence, on August 2, 2007, Imperial and NIDSLAND filed this Petition for Review on *Certiorari*[55] under Rule 45 of the Rules of Court seeking a reversal of the two assailed resolutions (First Petition). In their petition, Imperial and NIDSLAND argue that the CA erred in affirming the RTC Decision on the RTC Petition. They argue that the CA should have reversed the error of the RTC Legazpi City in allowing the filing of the RTC Petition way beyond the 60-day period for the filing of a special

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[51] *Id.* at 118.

[52] *Id.* at 59-108.

[53] *Id.* at 48-55. Penned by Associate Justice Marina L. Buzon and concurred in by Associate Justices Edgardo F. Sundiam and Monina Arevalo-Zenarosa.

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

[55] *Id.* at 3-47.

civil action for *certiorari*. They stress that the RTC Petition was filed three and a half years after the finality of the SEC Decision and two years and three months from the time Cruz received notice of its promulgation. They argue that neither the CA nor Cruz was able to present any compelling reason for the relaxation of the reglementary period.

SECOND CONSOLIDATED CASE—G.R. No. 195509

While the First Petition was pending, RTC Legazpi City rendered a Decision[56] dated March 24, 2009 (RTC Main Decision). The RTC Legazpi City ruled that SEC Hearing Officer Gonzales acted with grave abuse of discretion when he annulled the Deed of Sale of the Subject Property between Napal and Cruz, ordered the cancellation of Cruz's TCT, and directed Napal to execute a deed of conveyance in favor of NIDSLAND. According to the RTC Main Decision, the CA has already definitively settled the issue of RTC Legazpi City's jurisdiction over the case. It held that there is no merit in Imperial and NIDSLAND's contention that the RTC Petition should have been dismissed for non-compliance with the 60-day period for the filing of a special civil action for *certiorari* and for failure of the RTC Petition to state the material dates. On the other hand, the RTC Main Decision found that the SEC had no jurisdiction over Cruz and as such, in issuing orders affecting his ownership over the Subject Property, it violated Cruz's right not to be deprived of property without due process of law. Further, the RTC Main Decision stated that RTC Legazpi City cannot settle the issue as to the rightful ownership of the Subject Property in a special civil action for *certiorari*. The RTC Main Decision however affirmed the award of damages in favor of Imperial and NIDSLAND in the SEC Case. The dispositive portion held—

WHEREFORE, premises considered, judgment is hereby rendered in favor of the petitioner, as follows:

1. The Decision in SEC-LEO Case No. 96-0004, dated November 10, 1998, signed by respondent Santer G. Gonzales, is hereby DECLARED NULL AND VOID ONLY WITH RESPECT

[56] *Rollo* (G.R. No. 195509), pp. 71-93.

TO PARAGRAPHS 1 AND 2 OF THE DISPOSITIVE PORTION THEREOF regarding the annulment of the Deed of Sale of the subject property by Napal to petitioner Cruz, the cancellation of the title issued pursuant to the said sale in the name of petitioner Cruz and the directive to Napal to execute the deed of conveyance in favor of respondent herein Nidsland as well as the delivery of possession of the subject property to Nidsland and the designation of then Clerk of Court Atty. Antonio C. Bagagnan to execute the proper deed of conveyance in the event of refusal on the part of Napal.

2. The following documents are hereby DECLARED NULL AND VOID:

   a) Deed of Conveyance, dated [January] 13, 1999 issued by Atty. Antonio C. Bagagnan, Clerk of Court MTCC, Legazpi City (Exh. "E" and Exh. "11")

   b) TCT No. 49730 in the name of respondent Nidsland (Exh. "F" and Exh. "12")

   c) TCT No. 50398 in the name of respondent Nidsland (Exh. "F-1" and Exh. "13")

   d) TCT No. 50399 (Exh. "F-2" and Exh. "14")

   e) TCT No. 50400 (Exh. "F-3" and Exh. "15")

   f) TCT No. 50401 (Exh. "F-4" and Exh. "16")

3. Respondent Register of Deeds of Legazpi City Atty. Danilo B. Lorena is hereby ordered to cancel the foregoing titles, to wit: TCT Nos. 49730; 50398; 50399; 50400; and 50401;

4. Respondent Lorena is hereby further ordered to recall or lift the cancellation of TCT No. 43936 in the name of petitioner Alfonso Cruz, Jr., covering the subject property.

The parties' claims and counterclaims on their respective damages are hereby ordered DISMISSED.

SO ORDERED.[57]

Aggrieved by the RTC Main Decision, Imperial and NIDSLAND filed before the CA an appeal under Rule 41 of

[57] *Id.* at 92-93.

the Rules of Court. In a Decision[58] dated September 13, 2010 (Second Assailed Decision), the CA reversed the RTC Decision. The dispositive portion of the Assailed Decision states—

> **WHEREFORE**, the assailed decision dated March 24, 2009, issued by the Regional Trial Court, Branch 4, Legazpi City is hereby **REVERSED** and **SET ASIDE**; accordingly, Civil Case No. 10325 is hereby **DISMISSED**.
>
> No costs.
>
> **SO ORDERED.**[59]

On March 24, 2011, Cruz filed a Petition for Review on *Certiorari*[60] (Second Petition) challenging the Second Assailed Decision. Cruz raised the following arguments: first, Cruz claimed that he is the registered owner of the Subject Property. He was thus an indispensable party to the SEC Case and as such, should have been impleaded. Since the SEC Case was a personal action and he was never impleaded, Cruz argues that the SEC never acquired jurisdiction over him. Thus, any decision cannot prejudice his property rights over the Subject Property. Further, as an indispensable party, any judgment obtained by Imperial and NIDSLAND in the SEC Case has no binding effect on Cruz. Second, Cruz also claims that since the property was already registered in his name, any deed of conveyance which Napal executed pursuant to the SEC Decision transfers no rights since Napal no longer had rights over the Subject Property at the time. Third, Cruz states that the CA erred when it held that he is already estopped from challenging the cancellation of his TCT. He explains that he could not have participated in the SEC Case to protect his rights. The SEC Case pertained to an intra-corporate dispute. As he was obviously not a stockholder of NIDSLAND, he had no basis to intervene. He also emphasizes that Imperial and NIDSLAND never prayed for the cancellation

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[58] *Id.* at 52-67. Penned by Associate Justice Stephen C. Cruz and concurred in by Associate Justices Isaias P. Dicdican and Franchito N. Diamante.

[59] *Id.* at 67.

[60] *Id.* at 35-50.

of his TCT in the SEC Case and thus, had no real reason to interfere until SEC Hearing Officer Gonzales ruled that his TCT should be cancelled. Cruz also raises the argument that he could not have filed a separate action to protect his rights over the property since Imperial and NIDSLAND had already filed the Annulment of Sale action against him for the annulment of the sale and cancellation of his TCT before RTC Legazpi City. Cruz claims that he actively participated in this case which attained finality only in 2003. According to Cruz, filing another case while this case was pending would have amounted to multiplicity of suits.

We resolve the issues raised in these two consolidated cases.

The Issues

The core issue is whether RTC Legazpi City has jurisdiction to declare the nullity of the Decision of the SEC. To resolve this issue, we once again clarify the apparent clash of jurisdiction between the SEC and the ordinary courts in cases involving Presidential Decree No. 902-A[61] (PD 902-A).

The Ruling of the Court

We rule that that the RTC Petition should have been dismissed for lack of jurisdiction. We likewise rule that the SEC Decision was issued with grave abuse of discretion amounting to an excess of jurisdiction.

Nature of a void judgment

A void judgment is no judgment at all in legal contemplation. In *Cañero v. University of the Philippines*[62] we held that—

> x x x A void judgment is not entitled to the respect accorded to a valid judgment, but may be entirely disregarded or declared inoperative by any tribunal in which effect is sought to be given to it. It has no legal or binding effect or efficacy for any purpose or at

[61] Reorganization of the Securities and Exchange Commission with Additional Power and Placing Said Agency Under the Administrative Supervision of the Office of the President (1976).

[62] G.R. No. 156380, September 8, 2004, 437 SCRA 630.

any place. It cannot affect, impair or create rights. It is not entitled to enforcement and is, ordinarily, no protection to those who seek to enforce. In other words, a void judgment is regarded as a nullity, and the situation is the same as it would be if there was no judgment. x x x[63]

A judgment rendered without jurisdiction is a void judgment. This want of jurisdiction may pertain to lack of jurisdiction over the subject matter or over the person of one of the parties.

A void judgment may also arise from the tribunal's act constituting grave abuse of discretion amounting to lack or excess of jurisdiction. In *Yu v. Judge Reyes-Carpio*,[64] we explained-

The term "grave abuse of discretion" has a specific meaning. An act of a court or tribunal can only be considered as with grave abuse of discretion when such act is done in a "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction." x x x [T]he use of a petition for *certiorari* is restricted only to "truly extraordinary cases wherein the act of the lower court or quasi-judicial body is wholly void" x x x.[65]

In *Guevarra v. Sandiganbayan, Fourth Division*,[66] we further explained-

x x x However, if the Sandiganbayan acts in excess or lack of jurisdiction, or with grave abuse of discretion amounting to excess or lack of jurisdiction in dismissing a criminal case, the dismissal is null and void. A tribunal acts without jurisdiction if it does not have the legal power to determine the case; there is excess of jurisdiction where a tribunal, being clothed with the power to determine the case, oversteps its authority as determined by law. A void judgment or order has no legal and binding effect, force or efficacy for any purpose. In contemplation of law, it is non-existent. Such judgment or order may be resisted in any action or proceeding whenever it is involved. x x x[67]

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[63] *Id.* at 644.

[64] G.R. No. 189207, June 15, 2011, 652 SCRA 341.

[65] *Id.* at 348.

[66] G.R. Nos. 138792-804, March 31, 2005, 454 SCRA 372.

[67] *Id.* at 382.

To give flesh to these doctrines, the Rules of Court, particularly the 1997 Revised Rules on Civil Procedure, provides for a remedy that may be used to assail a void judgment on the ground of lack of jurisdiction. Rule 47 of the Rules of Court states that an action for the annulment of judgment may be filed before the CA to annul a void judgment of regional trial courts even after it has become final and executory. If the ground invoked is lack of jurisdiction, which we have explained as pertaining to both lack of jurisdiction over the subject matter and over the person, the action for the annulment of the judgment may be filed at any time for as long as estoppel has not yet set in. In cases where a tribunal's action is tainted with grave abuse of discretion, Rule 65 of the Rules of Court provides the remedy of a special civil action for *certiorari* to nullify the act.

Void judgments may also be collaterally attacked. A collateral attack is done through an action which asks for a relief other than the declaration of the nullity of the judgment but requires such a detennination if the issues raised are to be definitively settled.

Nature of the RTC Petition

The RTC Petition filed by Cruz has been treated by the CA and the parties as a special civil action for *certiorari*. The RTC Petition, however, prays for the nullification of the SEC Decision and thus purports to be an action for the annulment of a void judgment. Ascertaining the true nature of the RTC Petition is crucial as it determines whether Cruz properly invoked the correct remedy in assailing the SEC Decision.

The nature of an action is determined by the material allegations in the complaint and the type of relief prayed for.[68] We have examined the RTC Petition, and we rule that contrary to the findings of the lower courts, it is an action for the annulment of judgment on the ground of lack of jurisdiction. The meat of the RTC Petition's allegation is that the SEC declared as void

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[68] *Hilario v. Salvador*, G.R. No. 160384, April 29, 2005, 457 SCRA 815, 824.

ab initio the sale between Napal and Cruz without impleading Cruz in the proceedings. The SEC also had no power to order the transfer of title over the Subject Property from Cruz to NIDSLAND because Cruz was never heard in these proceedings. Cruz asserts that the SEC never acquired jurisdiction over his person. Cruz thus prayed in the RTC Petition that the SEC Decision be declared null and void.

The RTC Petition clearly captures the material allegations in a petition for annulment of judgment on the ground of lack of jurisdiction over the person of one of the parties under Rule 47 of the Rules of Court. In sharp contrast, the RTC Petition makes no allegations that the SEC Decision was rendered with grave abuse of discretion. It cannot be treated as a special civil action for *certiorari* under Rule 65.

The necessary question before us now is whether Cruz invoked the proper remedy. There have been several attempts to use an action for annulment of judgment under Rule 47 of the Rules of Court to set aside a void judgment of a quasi-judicial body. We retrace our jurisprudence on the matter in order to ascertain if this remedy may be properly invoked. A review of the relevant cases reveals two interrelated issues. First, whether this remedy is available to set aside a void judgment of a quasi-judicial body; and second, which tribunal has jurisdiction over it.

Jurisdiction over annulment of judgment of quasi-judicial bodies

Prior to *Batas Pambansa Bilang* 129 (BP 129),[69] we had the chance to rule on the question of jurisdiction over the annulment of judgment of quasi-judicial bodies in *BF Northwest Homeowners Association, Inc. v. Intermediate Appellate Court*.[70] In that case, we held that regional trial courts can annul the judgment of quasi-judicial bodies which are of the same rank as courts of first instance. This ruling established two things:

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[69] The Judiciary Reorganization Act of 1980.

[70] G.R. No. 72370, May 29, 1987, 150 SCRA 543.

first, an action for the annulment of judgment is a remedy available against a void judgment of a quasi-judicial body. Second, regional trial courts had jurisdiction whenever the quasi-judicial body involved is of inferior rank.

With the passage of BP 129, this doctrine appears to have been altered. Section 9(a) of BP 129 expressly vested the CA with jurisdiction over annulment of judgments of regional trial courts. Notably, it does not mention jurisdiction over annulment of judgment of quasi-judicial bodies. In fact, quasi-judicial bodies are mentioned only in Section 9(3)[71] which provides for the CA's appellate jurisdiction over their judgments, orders, resolutions and awards.

In 1997, the new rules of civil procedure took effect. These rules provided, for the first time, a remedy called annulment of judgment on the ground of extrinsic fraud and lack of jurisdiction. Rule 47, however, limits its application to regional trial courts and municipal trial courts.

We had the opportunity to apply these relevant provisions in the 2000 case of *Cole v. Court of Appeals*.[72] In this case, we explained that the CA has no jurisdiction over a petition for annulment of judgment under Rule 47 against a decision of the Housing and Land Use Regulatory Board, a quasi-judicial body. Rule 47 allows a resort to the CA only in instances where the judgment challenged was rendered by regional trial courts. This

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[71] Section 9. *Jurisdiction*. — The Court of Appeals shall exercise:

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3. Exclusive appellate jurisdiction over all final judgments, resolutions, orders or awards of Regional Trial Courts and quasi-judicial agencies, instrumentalities, boards or commission, including the Securities and Exchange Commission, the Social Security Commission, the Employees Compensation Commission and the Civil Service Commission, Except those falling within the appellate jurisdiction of the Supreme Court in accordance with the Constitution, the Labor Code of the Philippines under Presidential Decree No. 442, as amended, the provisions of this Act, and of subparagraph (1) of the third paragraph and subparagraph 4 of the fourth paragraph of Section 17 of the Judiciary Act of 1948.

[72] G.R. No. 137551, December 26, 2000, 348 SCRA 692.

was also the import of our ruling in *Elcee Farms, Inc. v. Semillano*[73] when we held that the CA has no jurisdiction over the annulment of judgment of the National Labor Relations Commission.

This was reiterated in the 2005 case *Galang v. Court of Appeals*[74] which dealt with decisions rendered by the SEC. In that case, we categorically ruled that the CA has no jurisdiction over annulment of a void judgment rendered by the SEC since Rule 47 of the Rules of Court clearly states that this jurisdiction only pertains to judgments rendered by regional trial courts.

Springfield Development Corporation, Inc. v. Presiding Judge, RTC, Misamis Oriental, Br. 40, Cagayan de Oro City[75] summarized our foregoing rulings in determining whether the CA has jurisdiction to annul a void judgment of the Department of Agrarian Reform Adjudication Board (DARAB). This case was a significant development in the then growing jurisprudence which all merely said that an action to annul a judgment of a quasi-judicial body cannot be brought before the CA, and which did not categorically state whether the action may be filed before any other court.

In *Springfield*, we explained that regional trial courts have no jurisdiction to annul judgments of quasi-judicial bodies of equal rank. It then proceeded to state that the CA also has no jurisdiction over such an action. *Springfield* emphasized that Section 9 of BP 129 and Rule 47 of the Rules of Court both state that the CA has jurisdiction over annulment of judgments of regional trial courts only. We ruled in this case that the "silence of B.P. Blg. 129 on the jurisdiction of the CA to annul judgments or final orders and resolutions of quasi-judicial bodies like the DARAB indicates its lack of such authority."[76] While this case

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[73] G.R. No. 150286, October 17, 2003, 413 SCRA 669.

[74] G.R. No. 139448, October 11, 2005, 472 SCRA 259.

[75] G.R. No. 142628, February 6, 2007, 514 SCRA 326.

[76] *Id.* at 340.

explained that neither the regional trial courts nor the CA possess jurisdiction over an action to annul the judgment of quasi-judicial bodies, it did not categorically state that the remedy itself does not exist in the first place. Notably, we disposed of this case by remanding the action filed before us—a special civil action for prohibition—to the CA because the matter required a determination of facts which this Court cannot do. We then held that the CA may rule upon the validity of the judgment by noting that a void judgment may be collaterally attacked in a proceeding such as an action for prohibition.[77]

The seeming confusion in the string of cases pertaining to the jurisdiction over petitions for annulment of judgment of quasi-judicial bodies is clarified when these cases are read in conjunction with *Macalalag v. Ombudsman*.[78] While we repeated our consistent ruling that Rule 47 of the Rules of Court only applies to judgments of regional trial courts, *Macalalag* also explains that an action for the annulment of judgment is similar in nature to an appeal-—both are merely statutory. No right exists unless expressly granted by law.[79] In *Macalalag*, we implied that the key to determining whether this remedy may be had and where such action may be filed is to ascertain whether there is a law expressly allowing a resort to this action before a particular tribunal. This then requires an examination of the laws and rules relevant to a specified quasi-judicial body. While it is correct that both the regional trial courts and the CA cannot take cognizance of a petition for annulment of judgment of a quasi-judicial body under Rule 47 of the Rules of Court, they may nevertheless do so, if a law categorically provides for such a remedy and clearly provides them with jurisdiction.

Applying this to the present case, we rule that there is no law at the time pertinent to this case, which allows the filing of a petition for annulment of judgment before the regional

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[77] *Id.* at 344.

[78] G.R. No. 147995, March 4, 2004, 424 SCRA 741.

[79] *Id.* at 745-746.

trial courts and the CA to set aside a void judgment of the SEC on the basis of lack of jurisdiction. We hasten to emphasize, however, that this pertains only to cases filed prior to Republic Act No. 8799 [80] (RA 8799) which transferred the jurisdiction over intra-corporate disputes to regional trial courts designated as commercial courts. As to the latter, Rule 47 clearly applies.

This leads to the conclusion that the RTC Petition is not the proper remedy to assail the SEC Decision. Since it is an action for the annulment of judgment, the RTC Petition cannot prosper as we have already ruled that this remedy is not available in this particular case.

However, the error in Cruz's RTC Petition does not automatically warrant a dismissal of these proceedings. We rule that the SEC, in nullifying the sale between Napal and Cruz and in ordering the cancellation of Cruz's TCTs in favor of NIDSLAND, overstepped its jurisdiction. The SEC Decision was rendered with grave abuse of discretion.

Grave Abuse of Discretion and the SEC's Jurisdiction

In 1976, PD 902-A vested the SEC with the quasi-judicial power over intra-corporate disputes. While this jurisdiction was eventually transferred to regional trial courts designated as special commercial courts by The Securities Regulation Code in 2000, the SEC had the authority over intra- corporate disputes at the time relevant to this case.

Through the years that the SEC had quasi-judicial power over intra-corporate controversies, this Court explained the delineation of jurisdiction between the trial courts and the SEC. Our finding in this case that the SEC acted with grave abuse of discretion is rooted on the proper understanding of the limits of the jurisdiction of the SEC. We now review this Court's pertinent rulings on the jurisdiction of the SEC.

Under Section 5 of PD 902-A, the applicable law at the time the SEC Case was filed, the SEC has original and exclusive jurisdiction to hear and decide cases involving the following:

[80] The Securities Regulation Code (2000).

(a) Devices or schemes employed by or any acts, of the board of directors, business associates, its officers or partnership, amounting to fraud and misrepresentation which may be detrimental to the interest of the public and/or of the stockholder, partners, members of associations or organizations registered with the Commission;

(b) Controversies arising out of intra-corporate or partnership relations, between and among stockholders, members, or associates; between any or all of them and the corporation, partnership or association of which they are stockholders, members or associates, respectively; and between such corporation, partnership or association and the state insofar as it concerns their individual franchise or right to exist as such entity; and

(c) Controversies in the election or appointments of directors, trustees, officers or managers of such corporations, partnerships or associations.

In *Union Glass & Container Corporation v. Securities and Exchange Commission*[81] we said that "the law [PD 902-A] explicitly specified and delimited its jurisdiction to matters intrinsically connected with the regulation of corporations, partnerships and associations and those dealing with the internal affairs of such corporations, partnerships or associations."[82] We added that in order for the SEC to take cognizance of a case, the controversy must pertain to any of the following relationships: (1) between the corporation, partnership or association and the public; (2) between the corporation, partnership or association and the state in so far as its franchise, permit or license to operate is concerned; (3) between the corporation, partnership or association and its stockholders, partners, members or officers; and (4) among the stockholders, partners or associates themselves.[83]

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[81] G.R. No. 64013, November 28, 1983, 126 SCRA 31.

[82] *Id.* at 38.

[83] *Id.*; *Rivera v. Florendo*, G.R. No. 57586, October 8, 1986, 144 SCRA

This is the *relationship test*, under which the existence of any of these relationships vested the SEC with jurisdiction. In *Abejo v. De la Cruz*,[84] we even declared that "an intra-corporate controversy is one which arises between a stockholder and the corporation. There is no distinction, qualification, nor any exemption whatsoever. The provision is broad and covers all kinds of controversies between stockholders and corporations."[85]

Later decisions of this Court, however, have moved away from this rather simplistic determination of what constitutes an intra-corporate controversy. In the 1990 case of *Viray v. Court of Appeals*,[86] we held, thus:

> The establishment of any of the relationships mentioned in *Union* will not necessarily always confer jurisdiction over the dispute on the SEC to the exclusion of the regular courts. The statement made in one case that the rule admits of no exceptions or distinctions is not that absolute. The better policy in determining which body has jurisdiction over a case would be to consider not only the status or relationship of the parties but also the nature of the question that is the subject of their controversy.[87]

This is the *controversy test*. In *Lozano v. De los Santos*,[88] we explained that the controversy test requires that the dispute among the parties be intrinsically connected with the regulation of the corporation, partnership or association.[89] In *Speed Distribution Corp. v. Court of Appeals*,[90] we added that "[i]f

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643; *Abejo v. De la Cruz*, G.R. Nos. 63558 & 68450-51, May 19, 1987, 149 SCRA 654, 671.

[84] G.R. Nos. 63558 & 68450-51, May 19, 1987, 149 SCRA 654.

[85] *Id.* at 666.

[86] G.R. No. 92481, November 9, 1990, 191 SCRA 308.

[87] *Id.* at 322-323. Emphasis supplied.

[88] G.R. No. 125221, June 19, 1997, 274 SCRA 452.

[89] *Id.* at 457-458. See also *Saura v. Saura, Jr.*, G.R. No. 136159, September 1, 1999, 313 SCRA 465; and *Speed Distributing Corp. v. Court of Appeals*, G.R. No. 149351, March 17, 2004, 425 SCRA 691.

[90] *Supra*.

the nature of the controversy involves matters that are purely civil in character, necessarily, the case does not involve an intra-corporate controversy."[91]

Taking all these holdings together, the issue of whether the SEC has the power to hear and decide a case depends on two determinants: (1) the status or relationship of the parties; and (2) the nature of the question that is the subject of their controversy.[92]

The application of these two tests has allowed for the proper delineation of the seeming overlap in the jurisdiction of the SEC and the courts.

By way of illustration, in *Union Glass* we ruled that the action filed by the dissenting stockholders against their corporation Pioneer Glass Manufacturing (Pioneer) questioning its *dacion en pago* of Pioneer's plant in favor of Union Glass is an intra-corporate dispute as it clearly pertained to the internal affairs of the corporation. However, we held that the recovery of the possession of the plant should have been filed with the trial court because the SEC possesses no jurisdiction over Union Glass (the third-party purchaser) because it has no intra-corporate relationship with any of the parties.

In *Embassy Farms, Inc. v. Court of Appeals*,[93] the respondent, under a memorandum of agreement, undertook to deliver certain parcels of land and shares of stock of Embassy Farms, Inc. to the other party in exchange for the latter's payment of a certain amount. When the other party failed to comply with his obligation to pay the amount, we held that the conflict arising between them pertains to their contractual obligations under the memorandum of agreement. It does not refer to the enforcement of rights and obligations under the Corporation Code or the internal or intra-corporate affairs of the corporation.

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[91] *Id.* at 707.

[92] *Lozano v. De los Santos, supra* note 87 at 457.

[93] G.R. No. 80682, August 13, 1990, 188 SCRA 492.

In *Saura v. Saura, Jr.*,[94] certain stockholders sold a parcel of land to a corporation without the consent of the other stockholders. When the latter filed an action for the annulment of the sale against the purchasing corporation and the selling stockholders before the trial court, the question of whether the case is an intra-corporate dispute arose. Applying the two tests, we found that the case is not intra-corporate. The action was ultimately directed against a third party even if the selling stockholders of the corporation were also impleaded.

Further, in *Intestate Estate of Alexander T. Ty v. Court of Appeals*,[95] where a stockholder filed an action against the estate of another stockholder for the annulment of a sale of shares which the former claims was simulated for lack of consideration, we ruled that the jurisdiction properly belongs to the regional trial court. We explained that "[t]he determination whether a contract is simulated or not is an issue that could be resolved by applying pertinent provisions of the Civil Code, particularly those relative to obligations and contracts. Disputes concerning the application of the Civil Code are properly cognizable by courts of general jurisdiction."[96]

The development of both the concept and application of the *relationship test* and *controversy test* reveals a growing emphasis on the delineated jurisdiction between the SEC and ordinary courts. The delineation is based on the very purpose for which the SEC was granted quasi-judicial powers in the first place. Under PD 902-A, the SEC exercised jurisdiction over intra-corporate controversies precisely because it is a highly-specialized administrative body in specialized corporate matters. It follows therefore, that where the controversy does not call for the use of any technical expertise, but the application of general laws, the case is cognizable by the ordinary courts. In *Macapalan v. Katalbas-Moscardon*,[97] we said—

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[94] G.R. No. 136159, September 1, 1999, 313 SCRA 465.

[95] G.R. Nos. 112872 & 114672, April 19, 2001, 356 SCRA 661.

[96] *Id.* at 668.

[97] G.R. No. 101711, October 1, 1993, 227 SCRA 49.

It is true that the trend is towards vesting administrative bodies like the SEC with the power to adjudicate matters coming under their particular specialization, to insure a more knowledgeable solution of the problems submitted to them. This would also relieve the regular courts of a substantial number of cases that would otherwise swell their already clogged dockets. But as expedient as this policy may be, it should not deprive the courts of justice of their power to decide ordinary cases in accordance with the general laws that do not require any particular expertise or training to interpret and apply. Otherwise, the creeping take-over by the administrative agencies of the judicial power vested in the courts would render the judiciary virtually impotent in the discharge of the duties assigned to it by the Constitution.[98]

Applying these principles to this case, we rule that the SEC does not have jurisdiction to order the cancellation of the sale between Napal and Cruz. It also has no jurisdiction to cancel Cruz's TCT and order its transfer to NIDSLAND.

To assail the validity of the sale, Imperial and NIDSLAND sought to prove that the sale to Cruz was simulated. This involves the application of the law on sales. As we have already held in *Intestate Estate of Alexander T. Ty*, the issue of whether a sale is simulated falls within the jurisdiction of ordinary civil courts. It does not concern an adjudication of the rights of Imperial, NIDSLAND and Napal under the Corporation Code and the internal rules of the corporation. The resolution of these questions requires the application of an entire gamut of laws that goes well beyond the expertise of the SEC.

Meanwhile, the question of whether Cruz's TCT should be cancelled goes into the proper application of Presidential Decree No. 1529[99] and related doctrines. Specifically, there is a need to take into consideration whether the SEC Petition is a collateral attack on the certificate of title which goes against the well-established rule of indefeasibility. The resolution of this question demands the application of our laws on land title and deeds, a matter outside the ambit of the SEC's special competence.

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[98] *Id.* at 55.

[99] The Property Registration Decree (1978).

Indeed, our jurisprudence has leaned in favor of recognizing the jurisdiction of quasi-judicial bodies. However, this jurisdiction must always be viewed within the context of its grant. The law vests quasi-judicial powers to administrative bodies over matters that require their particular competence and specialized expertise. This grant of jurisdiction is not and should not be justification to deprive courts of law of their jurisdiction as determined by law and the Constitution. Courts of law are the instruments for the adjudication of legal disputes. In a system of government where courts of law exist alongside quasi-judicial bodies, the need to harmonize apparent conflicts in jurisdiction require a determination of whether the matter to be resolved pertains to a general question of law which belongs to ordinary courts or whether it refers to a highly specialized question that can be better resolved by a quasi-judicial body in accordance with its power vested by law.

In overstepping its jurisdiction, the SEC committed grave abuse of discretion.

Grave abuse of discretion is the capricious and whimsical exercise of judgment. It is the exercise of a power in an arbitrary manner. It must be so patent or gross as to amount to the evasion of a positive duty or to a virtual refusal to perform a duty enjoined or to act at all in contemplation of law. In *Air Transportation Office v. Court of Appeals*,[100] we explained that grave abuse of discretion exists when the act is: (1) done contrary to the Constitution, the law or jurisprudence; or (2) executed whimsically, capriciously or arbitrarily out of malice, ill will or personal bias.[101]

In *Thenamaris Philippines Inc. v. Court of Appeals*,[102] we ruled that grave abuse of discretion exists where the assailed decision of the CA displayed patent errors. In *Air Transportation Office*, the patent violation of the Rules of Court merited a finding that there was grave abuse of discretion.

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[100] G.R. No. 173616, June 25, 2014, 727 SCRA 196.

[101] *Id.* at 221.

[102] G.R. No. 191215, February 3, 2014, 715 SCRA 153.

In this case, the SEC, in rendering the decision, disregarded established law and jurisprudence on the jurisdiction of the SEC. Further, it adjudicated on the rights of Cruz, cancelled the deed of sale, and took away his property without giving him the opportunity to be heard. It is a breach of the basic requirements of due process.

Further, the incorrectness and impracticality of presenting these issues before the SEC are highlighted by the reliefs granted by SEC Hearing Officer Gonzales in the SEC Case. The SEC annulled the deed of sale between Napal and Cruz. This was based on evidence presented during the SEC Hearing which consisted of Imperial's testimony that the price that Cruz paid for the Subject Property was grossly below its value. While we will not delve into the propriety of the SEC's factual findings, we note that there appears nothing in the record, other than Imperial's statements, to support the contention that the consideration was indeed grossly below the actual value of the Subject Property. Furthermore, the SEC also found that the Deed of Sale was antedated to make it appear that it took place prior to the annotation of the notice of *lis pendens*. Again, this was based solely on Imperial's testimony during the SEC Hearing. We note that there was nothing in the records, other than Imperial's bare statement, to establish this.

The SEC Decision even went further and ordered the cancellation of Cruz's TCT. This did not take into consideration the indefeasibility of a Torrens title. While this is not a question that we seek to resolve in these consolidated cases, we emphasize that a proper adjudication of this matter requires, at the very least, an analysis of the effect of the notice of *lis pendens*, the rights of a transferee *pendente lite*, and the propriety of a collateral attack on a certificate of title. Clearly, the SEC is not the appropriate forum to delve into these civil law concepts.

The SEC also does not possess the expertise to go into the reception of evidence and the conduct of hearings geared for the purpose of resolving issues proper for a civil action. The resolution of a civil action requires preponderance of evidence as a burden of proof. On the other hand, cases before quasi-

judicial bodies require only substantial evidence. Hence, the propriety of annulling a sale and cancelling a Torrens title—which are in the nature of a civil action—on the basis merely of substantial evidence determined by an administrative body raises due process concerns.

Effects of a void judgment

When grave abuse of discretion taints a judgment, it becomes wholly void. It may be challenged by direct action which has for its object the declaration of the nullity of the judgment. It may also be set aside through a collateral attack.

Thus, in *Guevarra*, we allowed the filing of a motion for reconsideration even if it was made beyond the reglementary 15-day period. We based our ruling on the ground that the order challenged by the motion for reconsideration was issued with grave abuse of discretion and is null and void. We explained—

> Such judgment or order may be resisted in any action or proceeding whenever it is involved. It is not even necessary to take any steps to vacate or avoid a void judgment or final order; it may simply be ignored.[103]

Our ruling in *Gonzales v. Solid Cement Corporation*[104] is more unequivocal. In this case, we found that the CA committed grave abuse of discretion amounting to lack or excess of jurisdiction, therefore acting outside the contemplation of law. Hence, even when the period to assail the CA decision had already lapsed, we ruled that it did not become final and immutable. A void judgment never becomes final. We ruled thus—

> The CA's actions outside its jurisdiction cannot produce legal effects and cannot likewise be perpetuated by a simple reference to the principle of immutability of final judgment; a void decision can never become final. "The only **exceptions to the rule** on the immutability of final judgments are (1) the correction of clerical

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[103] *Supra* note 65 at 382-383.

[104] G.R. No. 198423, October 23, 2012, 684 SCRA 344.

errors, (2) the so-called *nunc pro tunc* entries which cause no prejudice to any party, and (3) void judgments." x x x[105]

More, our ruling in *Banco Español-Filipino v. Palanca*[106] on the effects of a void judgment has reappeared consistently in jurisprudence touching upon the matter. In this case, we said that a void judgment is "a lawless thing, which can be treated as an outlaw and slain at sight, or ignored wherever and whenever it exhibits its head."[107] In concrete terms, this means that a void judgment creates no rights and imposes no duties. Any act performed pursuant to it and any claim emanating from it have no legal effect.[108] Thus, in *Heirs of Mayor Nemencio Galvez v. Court of Appeals*,[109] we nullified an auction sale of a land as well as the resulting deed of sale and transfer certificate of title as they were the offshoot of a writ of execution carried pursuant to a void judgment.

Hence, because the SEC Decision was issued with grave abuse of discretion and is therefore void, all acts emanating from it have no force and effect. Thus, the Deed of Conveyance issued pursuant to it has no legal effect.

Nevertheless, while the certificates of title issued in the name of NIDSLAND arose from a void judgment, this Court cannot nullify them in these proceedings. The indefeasibility of a Torrens title prevents us from doing so. Further, we are bound by rules on jurisdiction and the nature of the proceedings before us.

Our Torrens system serves a very important purpose: As a general rule, a Torrens certificate of title is conclusive proof of ownership. Thus, provided that the requirements of law are

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[105] *Id.* at 351. Emphasis in the original.

[106] 37 Phil. 921 (1918).

[107] *Id.* at 949.

[108] *Land Bank of the Philippines v. Orilla*, G.R. No. 194168, February 13, 2013, 690 SCRA 610, 619.

[109] G.R. No. 119193, March 29, 1996, 255 SCRA 672.

met, a certificate of title under the Torrens system of registration is indefeasible. The value of this rule finds real meaning when viewed in practical terms. A registration under the Torrens system confirms that the person whose name appears as owner of the land is indeed the true owner. Except for specific circumstances allowed by law, a person who registers his or her ownership over a piece of land makes his or her title indefeasible because the law does not allow any other person to attack or challenge it. Because the title is indefeasible, third persons interested in the registered land can simply look at the certificate of title and rely on the information stated in it. This creates stability in our system of registration. This rule is so zealously protected that our laws even prohibit a collateral attack of a void certificate of title.

This is the spirit that infused our ruling in *Heirs of Spouses Benito Gavino and Juana Euste v. Court of Appeals*.[110] In this case, we explained that the general rule that the direct result of a void contract caimot be valid is inapplicable when the integrity of the Torrens system is involved. Thus, a void certificate of title cannot be cancelled in a proceeding not instituted for the purpose. We further said—

> x x x The effect of such outright cancellation will be to impair public confidence in the certificate of title. The sanctity of the Torrens system must be preserved; otherwise, everyone dealing with the property registered under the system will have to inquire in every instance as to whether the title had been regularly or irregularly issued, contrary to the evident purpose of the law. Every person dealing with the registered land may safely rely on the correctness of the certificate of title issued therefor and the law will in no way oblige him to go behind the certificate to determine the condition of the property.[111]

We cited this ruling in subsequent cases such as *Rabaja Ranch Development Corporation v. AFP Retirement and Separation*

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[110] G.R. No. 120154, June 29, 1998, 291 SCRA 495.

[111] *Id.* at 509. Citation omitted.

Benefits System,[112] *Spouses Chua v. Soriano*,[113] and *Republic v. Orfinada, Sr.*[114] The stability and reliability of the Torrens system is so important that we cannot, in this case, undermine it for the sake of expediency.

Hence, we cannot order the direct cancellation of the certificates of title issued to NIDSLAND even if they are the direct result of a void decision. The nullity of the certificates of title should be threshed out in a petition for cancellation of title brought before the proper court.[115]

Moreover, there are procedural barriers that prevent us from determining the validity of the certificates of title questioned in this case. First, we do not have jurisdiction over the cancellation of certificates of title. Second, the nature of the action before us bars us from going into the certificates of title themselves. We emphasize that this case is a petition for review on *certiorari* of an action for annulment of judgment on the ground of lack of jurisdiction. Our ruling is anchored on the lack of jurisdiction of the SEC to annul the sale to Cruz and order the cancellation of the certificates of title. In this Decision, we emphasized that the proper jurisdiction to annul the sale and to cancel the certificates of title belongs to the regular courts, in particular, the regional trial courts. We must thus also respect the rule on jurisdiction and exercise restraint in this case. The proper action to cancel the void certificates of title must be brought before the tribunal designated by law to possess jurisdiction over the matter. The proper party may, however, use this Decision as it definitively settles that the certificates of title issued to NIDSLAND arose out of a void judgment and as such, should have no force and effect. This Decision is *res judicata* as to this question.

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[112] G.R. No. 177181, July 7, 2009, 592 SCRA 201, 217-218.

[113] G.R. No. 150066, April 13, 2007, 521 SCRA 68, 82.

[114] G.R. No. 141145, November 12, 2004, 442 SCRA 342, 359.

[115] Presidential Decree No. 1529, Sec. 108.

Further, we also cannot rule on the validity of the sale of the Subject Property to Cruz as well as Napal's obligation to Imperial and NIDSLAND under the Memorandum of Agreement. These matters require the presentation of facts before the proper forum and through appropriate procedural remedies. While we endeavor to fully settle legal disputes brought before us, we must also place premium on the importance of rules of procedure. Rules of procedure serve to protect the interests of litigants who seek redress before the courts. They ensure that litigants plead before the proper forum that has the necessary expertise and legal tools to fully resolve a legal problem. They also ensure that litigants employ the proper remedies that will allow them to successfully obtain the appropriate relief. With this in mind, litigants must be more circumspect in invoking the jurisdiction of the various tribunals and the multiple remedies available to them.

WHEREFORE, the Court of Appeals' Resolution dated March 6, 2007 in the First Consolidated Case is **REVERSED** and **SET ASIDE**. Further, we rule that Branch 4, Regional Trial Court, Legazpi City has no jurisdiction over Cruz's Petition. Thus, the Regional Trial Court's Decision dated March 24, 2009 is **NULLIFIED**.

The Court of Appeals' Decision dated September 13, 2010 in the Second Consolidated Case is also **REVERSED** and **SET ASIDE**. We rule that the Securities and Exchange Commission's Decision dated November 10, 1998 is **VOID**. Thus, the Deed of Conveyance dated January 13, 1999 executed in compliance with this Decision is **NULLIFIED**. The proper parties can file the appropriate petition for cancellation of title in the trial court which has jurisdiction to nullify the certificates of title issued to NIDSLAND by virtue of the void SEC Decision.

SO ORDERED.

Velasco, Jr. (Chairperson), Bersamin, Reyes, and *Caguioa,*[*] *JJ.,* concur.

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[*] Designated as Fifth Member of the Third Division per Special Order No. 2417 dated January 4, 2017.

THIRD DIVISION

[G.R. No. 181596. January 30, 2017]

JENESTOR B. CALDITO and MARIA FILOMENA T. CALDITO, *petitioners, vs.* **ISAGANI V. OBADO and GEREON V. OBADO,** *respondents.*

SYLLABUS

1. CIVIL LAW; LAND REGISTRATION; QUIETING OF TITLE; TWO ESSENTIAL REQUISITES.— In this case, the petitioners' cause of action relates to an action to quiet title which has two indispensable requisites, namely: (1) the plaintiff or complainant has a legal or an equitable title to or interest in the real property subject of the action; and (2) the deed, claim, encumbrance or proceeding claimed to be casting cloud on his title must be shown to be in fact invalid or inoperative despite its *prima facie* appearance of validity or legal efficacy.

2. ID.; ID.; ID.; ID.; PETITIONER FAILED TO PROVE EQUITABLE TITLE OR OWNERSHIP OVER THE SUBJECT PARCEL OF LAND.— From the foregoing provisions, it is clear that the petitioners' cause of action must necessarily fail mainly in view of the absence of the first requisite since the petitioners were not able to prove equitable title or ownership over the subject parcel of land. The petitioners' claim of legal title over the subject parcel of land by virtue of the Deed of Sale and Affidavit of Ownership issued by Antonio cannot stand because they failed to prove the title of their immediate predecessors-in-interest, the Spouses Ballesteros. The Court cannot give full credence to Antonio's Affidavit of Ownership for he simply made general and self-serving statements therein which were favorable to him, and which were not supported with documentary evidence, with no specifics as to when their predecessors-in-interest acquired the subject parcel of land, and when the Donations *Propter Nuptias* were made. Indeed, such is hardly the well-nigh incontrovertible evidence required in cases of this nature. The petitioners must present proof of specific acts of ownership to substantiate his claim and cannot just offer general statements which are mere conclusions of law than factual evidence of possession.

3. ID.; ID.; POSSESSION; PRESENTATION OF TAX DECLARATIONS AND TAX RECEIPTS OF ANCIENT ERA INDICATES POSSESSION IN THE CONCEPT OF AN OWNER.— Although tax declarations or realty tax payment of property are not conclusive evidence of ownership, as in the instant case, they are good indicia of possession in the concept of owner, for no one in his right mind would be paying taxes for a property that is not in his actual or constructive possession. They constitute evidence of great weight in support of the claim of title of ownership by prescription when considered with the actual possession of the property by the applicant. Indeed, the respondents' presentation of the tax declarations and tax receipts which all are of ancient era indicates possession in the concept of an owner by the respondents and their predecessors-in-interests.

4. ID.; ID.; ACQUISITIVE PRESCRIPTION; RESPONDENTS' POSSESSION WHEN TACKED TO THAT OF THEIR FATHER IS SUFFICIENT TO VEST EXTRAORDINARY ACQUISITIVE PRESCRIPTION OVER THE PROPERTY ON THEM.— The tax declarations in the name of Paterno take on great significance because the respondents can tack their claim of ownership to that of their father. It is worthy to note that the respondents' father Paterno to whom they inherited the entire Lot No. 1633 paid the taxes due under his name from 1961 to 1989; and subsequently, the respondents paid the taxes due after the death of Paterno in 2003. Granting without admitting that Felipe's possession of Lot No. 1633 cannot be tacked with the respondents' possession, the latter's possession can be tacked with that of Paterno. Thus, from 1961 to the time of the filing of the quieting of title by the petitioners in 2003, the respondents have been in possession of the entire Lot No. 1633 in the concept of an owner for almost 42 years. This period of time is sufficient to vest extraordinary acquisitive prescription over the property on the respondents. As such, it is immaterial now whether the respondents possessed the property in good faith or not.

5. ID.; ID.; PRINCIPLE OF BUYER IN GOOD FAITH OR BAD FAITH DOES NOT APPLY WHEN THE PROPERTY INVOLVED IS AN UNREGISTERED LAND.— While the findings of the CA that the petitioners were a buyer in bad faith is in accord with the evidence on record, it must be pointed out, however, that they overlooked the fact that Lot No. 1633

is an unregistered piece of land. The Court had already ruled that the issue of good faith or bad faith of a buyer is relevant only where the subject of the sale is a registered land but not where the property is an unregistered land. One who purchases an unregistered land does so at his peril. His claim of having bought the land in good faith, *i.e.* without notice that some other person has a right to, or interest in, the property, would not protect him if it turns out that the seller does not actually own the property. All the same, the application of this doctrine will not affect the outcome of this case.

6. ID.; ID.; POSSESSION; CIRCUMSTANCES IN CASE AT BAR NEGATE PETITIONERS' CLAIM OF POSSESSION IN GOOD FAITH AND WITH JUST TITLE.— [T]he petitioners cannot benefit from the deed of sale of the subject parcel of land, executed by the Spouses Ballesteros in their favor, to support their claim of possession in good faith and with just title. The Court noted that in Filomena's testimony, she even admitted that the respondents own the bigger portion of Lot No. 1633. Thus, it is clear that the petitioners chose to close their eyes to facts which should have put a reasonable man on his guard. The petitioners failed to ascertain whether the Spouses Ballesteros were the lawful owner of the subject parcel of land being sold. Far from being prudent, the petitioners placed full faith on the Affidavit of Ownership that Antonio executed. Hence, when the subject parcel of land was bought by the petitioners, they merely stepped into the shoes of the Spouses Ballesteros and acquired whatever rights and obligations appertain thereto. It is also worthy to note of the respondents' reaction when the petitioners tried to construct a house in the subject parcel of land in 2002. Upon learning that a house was being built on the eastern portion of Lot No. 1633, the respondents went to the barangay to file a complaint. Clearly, this indicates the respondents' vigilance to protect their property. The Court also notes that in the respondent's possession of the entire Lot No. 1633 for almost 42 years, there was no instance during this time that the petitioners or their predecessors-in-interest, for that matter, questioned the respondents' right over Lot No. 1633.

APPEARANCES OF COUNSEL

Pablo R. Calvan for petitioners.
Jose Armand C. Arevalo for respondents.

D E C I S I O N

REYES, *J.*:

Assailed in this petition for review on *certiorari*[1] under Rule 45 of Revised Rules of Court are the Decision[2] dated July 17, 2007 and the Resolution[3] dated January 29, 2008 of the Court of Appeals (CA) in CA-G.R. CV No. 87021, which reversed and set aside the Decision[4] dated December 23, 2005 of the Regional Trial Court (RTC) of Laoag City, Ilocos Norte, Branch 12, in Civil Case No. 12932-12.

The Facts

This petition stemmed from a complaint[5] for quieting of ownership over a parcel of land covering the 272.33 square meters eastern portion of Lot No. 1633 situated at Barangay No. 5, San Vicente, Sarrat, Ilocos Norte, filed by Spouses Jenestor B. Caldito and Ma. Filomena Tejada Caldito (Filomena) (petitioners) against Isagani V. Obado (Isagani) and Gereon V. Obado (respondents).

The record showed that as early as 1921, Lot No. 1633 was declared for taxation purposes in the name of Felipe Obado (Felipe). After Felipe's death, Paterno Obado (Paterno), whom

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[1] *Rollo*, pp. 9-28.

[2] Penned by Associate Justice Rebecca De Guia-Salvador, with Associate Justices Magdangal M. De Leon and Ricardo R. Rosario concurring; *id.* at 224-241.

[3] *Id.* at 248.

[4] *Id.* at 147-175.

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

Felipe treated like his own son, subsequently occupied Lot No. 1633 and continued to pay the realty taxes of the same.[6]

Sometime in 1995, Antonio Ballesteros (Antonio) executed an Affidavit of Ownership dated February 23, 1995 narrating his claim over the subject parcel of land. In his affidavit, Antonio claimed that Lot No. 1633 was co-owned by Felipe with his five siblings, namely: Eladia, Estanislao, Maria, Severino and Tomasa, all surnamed Obado.[7]

On the next day following the execution of the said affidavit or on February 24, 1995, Antonio and Elena Ballesteros (Spouses Ballesteros) sold the subject parcel of land to the petitioners for the sum of ₱70,000.000 evidenced by a Deed of Absolute Sale. Thereafter, the petitioners declared the subject lot for taxation purposes and paid the realty taxes thereon.[8]

In 2002, the petitioners attempted to build a house on the subject parcel of land but the respondents prevented them from completing the same. The respondents then filed a complaint before the barangay but no amicable settlement was reached between the parties.[9] Hence, on December 8, 2003, the petitioners instituted a complaint for quieting of ownership against the respondents before the RTC, as well as an injunctive writ to prevent the respondents from interfering with the construction of their house.[10]

For their part, the respondents averred that the Spouses Ballesteros were not the owners and possessors of the subject parcel of land. They maintained that Lot No. 1633 was inherited by their father, Paterno, from its original owner Felipe, and they have been paying the real property taxes for the entire property. They asserted that the petitioners are buyers in bad

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[6] *Id.* at 225-226.

[7] *Id.* at 226.

[8] *Id.* at 228.

[9] *Id.*

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

faith since their family had been in possession of the entire Lot No. 1633 since 1969 and had been in open, peaceful and uninterrupted possession of the whole property up to the present or for more than 30 years in the concept of an owner.[11]

After trial, the court *a quo* rendered its judgment in favor of the petitioners. The trial court upheld the validity of the sale between the petitioners and the Spouses Ballesteros and dismissed the respondents' claim of ownership over Lot No. 1633. The trial court held that the petitioners presented convincing evidence of ownership over the subject parcel of land which consists of the following: (a) the Deed of Absolute Sale executed between the petitioners and the Spouses Ballesteros; (b) the tax declarations all paid by the petitioners only; and (c) the Affidavit of Ownership allegedly executed by Antonio. The trial court also found that the respondents have no successional rights over the property of Felipe based on the governing law and on the order of intestate succession at that time and the established facts. Thus, the RTC disposed as follows:

WHEREFORE, IN VIEW OF ALL THE FOREGOING PREMISES, the preponderance of evidence having substantially and sufficiently tilted in favor of the [petitioners] herein and against the [respondents] herein named and their siblings, this Court hereby renders judgment declaring the validity of the 272.33 square meters eastern portion of Lot No. 1633 in favor of the [petitioners] and, the [respondents] are hereby ordered to do the following:

1. ***to respect, recognize and not to molest the lawful ownership and possession of the [petitioners] over the 272.33 square meters located at the eastern portion of Lot No. 1633 of the Sarrat Cadastre;***

2. ***to pay jointly and severally to the [petitioners] the total sum of:***

   2.a. ₱118,453.50 - as and for actual damages;
   2.b. ₱400,000.00 - as and for moral damages;
   2.c. ₱100,000.00 - as and for nominal damages;
   2.d. ₱200,000.00 - as and for temperate damages; and

[11] *Id.* at 229.

2.e. ₱300,000.00 - as and for exemplary damages or corrective.

With costs against the [respondents].

SO ORDERED.[12] (Emphasis and italics in the original)

On appeal, the CA reversed and set aside the RTC decision upon finding that: (1) the petitioners failed to prove the title of their immediate predecessors-in-interest, the Spouses Ballesteros; (2) the petitioners failed to support their claim that Felipe and his siblings, Eladia, Estanislao, Maria, Severino and Tomasa, co-owned Lot No. 1633; (3) Antonio should have been called to the witness stand to testify on the contents of his Affidavit of Ownership; (4) the Deed of Absolute Sale is not a sufficient and convincing evidence that the petitioners' predecessors-in-interest have a title on the subject parcel of land which they can transfer; (5) the petitioners are not innocent purchasers for value since the subject lot is not registered and is in the possession of another person, other than the Spouses Ballesteros; (6) nothing in the record could establish the relationship between Felipe and his supposed legal heirs; and (7) the respondents enjoy a legal presumption of just title in their favor since they are in possession of the entire Lot No. 1633. The CA then ruled that:

> For a party seeking to quiet their "ownership" of the portion in litigation, [the petitioners] have, for starters, miserably failed to prove the title of their immediate predecessors-in-interest, the [Spouses Ballesteros]. Except for the February 23, 1995 ***Affidavit of Ownership*** executed by [Antonio], there is, in fact, no evidence on record to support the claim that the subject parcel was, indeed, co-owned by [Felipe] [and] his siblings, Eladia, Estanislao, Maria, Severino and Tomasa, all surnamed Obado. To our mind, the fact that [Antonio] was not even called to the witness stand to testify on the contents of his ***Affidavit of Ownership*** should have immediately impelled the trial court to discount its probative value and, with it, the very foundation of [the respondents'] supposed cause of action.
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[12] *Id.* at 175.

With even greater reason are we disposed towards the reversal of the trial court's holding that, pursuant to the provisions of the ***Spanish Civil Code of 1889*** on intestate succession, Eladia, Estanislao, Maria, Severino and Tomasa, all surnamed Obado were the ones who have rightfully inherited the subject parcel from their brother, [Felipe]. Except for the aforesaid February 23, 1995 ***Affidavit of Ownership*** executed by [Antonio], [the respondents] correctly argue that there is nothing on record from which the relationship of said decedent and his supposed legal heirs may be reasonably deduced. Even if said relationship were, moreover, assumed, the absence of evidence showing that [Felipe] predeceased all of his supposed siblings impel us to regard, with considerable askance, the trial court's disposition of the case by application of said rules on intestate succession. Litigations cannot be properly resolved by suppositions, deductions, or presumptions, with no basis in evidence for the truth must have, to be determined by the hard rules on admissibility and proof. This is particularly true of the case at bench where the successional rights determined by the trial court are diametrically opposed to [Antonio's] ***Affidavit of Ownership*** which dubiously claimed that the subject parcel was, in fact, co-owned by [Felipe] and his ostensible siblings and had already been partitioned by and among them.[13]

The petitioners moved for reconsideration[14] but the same was denied.[15] Hence, this petition.

The Issue

WHETHER OR NOT THE PETITIONERS WERE ABLE TO PROVE OWNERSHIP OVER THE SUBJECT PARCEL OF LAND.

Ruling of the Court

The petition has no merit.

At the outset, it bears to emphasize that there is no dispute with respect to the fact that Felipe was the original owner of

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[13] *Id.* at 235-238.

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

[15] *Id.* at 248.

the entire parcel of unregistered land known as Lot No. 1633 which he started declaring as his property for taxation purposes as early as 1921. When Felipe died without issue, Lot No. 1633 was subsequently occupied by Paterno who then declared the same for taxation purposes and paid the realty taxes thereon.

The petitioners' complaint styled as being for the "quieting of ownership" is in fact an action for quieting of title. The petitioners anchor their cause of action upon the Deed of Sale and the Affidavit of Ownership executed by Antonio. On the other hand, the respondents countered that: (1) they inherited from their father, Paterno, Lot No. 1633, of which the herein disputed subject parcel of land is part; and (2) they have been in possession of the same for more than 30 years in the concept of an owner.

Essentially, the issues raised center on the core question of whether the petitioners were able to prove ownership over the subject parcel of land. In resolving this issue, the pertinent point of inquiry is whether the petitioners' predecessors-in-interest, the Spouses Ballesteros, have lawful title over the subject parcel of land.

While the question raised is essentially one of fact, of which the Court normally abstains from, yet, considering the incongruent factual conclusions of the courts below, the Court is constrained to go by the exception to the general rule and proceed to reassess the factual circumstances of the case and make its own assessment of the evidence and documents on record. But even if the Court were to re-evaluate the evidence presented, there is still no reason to depart from the CA's ruling that Lot No. 1633 is owned by the respondents.

The Court concurs with the disquisition of the CA that the petitioners failed to: (1) prove the title of their immediate predecessors-in-interest, the Spouses Ballesteros; and (2) present evidence supporting the claim that Lot No. 1633 was co-owned by Felipe and his siblings, Eladia, Estanislao, Maria, Severino and Tomasa. Also, the Court finds that the RTC mistakenly relied upon the Affidavit of Ownership, executed by Antonio,

to conclude that the petitioners were possessors in good faith and with just title who acquired the subject parcel of land through a valid deed of sale.

In this case, the petitioners' cause of action relates to an action to quiet title which has two indispensable requisites, namely: (1) the plaintiff or complainant has a legal or an equitable title to or interest in the real property subject of the action; and (2) the deed, claim, encumbrance or proceeding claimed to be casting cloud on his title must be shown to be in fact invalid or inoperative despite its *prima facie* appearance of validity or legal efficacy.[16]

From the foregoing provisions, it is clear that the petitioners' cause of action must necessarily fail mainly in view of the absence of the first requisite since the petitioners were not able to prove equitable title or ownership over the subject parcel of land.

The petitioners' claim of legal title over the subject parcel of land by virtue of the Deed of Sale and Affidavit of Ownership issued by Antonio cannot stand because they failed to prove the title of their immediate predecessors-in-interest, the Spouses Ballesteros. The Court cannot give full credence to Antonio's Affidavit of Ownership for he simply made general and self-serving statements therein which were favorable to him, and which were not supported with documentary evidence, with no specifics as to when their predecessors-in-interest acquired the subject parcel of land, and when the Donations *Propter Nuptias* were made. Indeed, such is hardly the well-nigh incontrovertible evidence required in cases of this nature. The petitioners must present proof of specific acts of ownership to substantiate his claim and cannot just offer general statements which are mere conclusions of law than factual evidence of possession.[17] Moreso, Antonio was not even called to the witness stand to testify on the contents of his Affidavit of Ownership,

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[16] *Heirs of Delfin and Maria Tappa v. Heirs of Jose Bacud, Henry Calabazaron and Vicente Malupeng*, G.R. No. 187633, April 4, 2016.

[17] *Republic of the Philippines v. Carrasco*, 539 Phil. 205, 216 (2006).

thus, making the affidavit hearsay evidence and its probative value questionable. Accordingly, this affidavit must be excluded from the judicial proceedings being inadmissible hearsay evidence.

Furthermore, the said affidavit was executed by Antonio only a day before the subject parcel of land was sold to the petitioners.[18] The trial court should have considered this in evaluating the value of the said affidavit in relation to the ownership of the subject parcel of land. The trial court's reliance on the Affidavit of Ownership executed by Antonio that the entire Lot No. 1633 was co-owned by Felipe and his siblings, Eladia, Estanislao, Maria, Severino and Tomasa is misplaced, considering that nothing on record shows the relationship between Felipe and his supposed legal heirs. It also indicates the fact that there is no evidence showing Felipe predeceasing all his supposed siblings.[19] Moreover, no other piece of evidence was ever presented to prove that Lot No. 1633 was ever subdivided. In fact, the petitioners admitted that the subject lot has always been declared for taxation purposes in the name of Felipe and that the Spouses Ballesteros or the siblings of Felipe have never declared the same for taxation purposes in their names.

While the petitioners submitted official receipts and tax declarations to prove payment of taxes, nowhere in the evidence was it shown that Spouses Ballesteros declared the subject parcel of land in their name for taxation purposes or paid taxes due thereon. True, a tax declaration by itself is not sufficient to prove ownership. Nonetheless, it may serve as sufficient basis for inferring possession.[20] In fact, what the petitioners presented as their pieces of evidence are receipts and tax declarations which they, as the new owners of the subject parcel of land, have paid. Thus, the petitioners could not also rely on these tax declarations and receipts because those are of recent vintage

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[18] *Rollo*, pp. 235-236.

[19] *Id.* at 238.

[20] *Republic of the Philippines v. Carrasco*, *supra* note 17.

and do not reflect the fact that their predecessors-in-interest have been paying realty taxes for the subject parcel of land.

Be that as it may, the rights of the respondents as owners of Lot No. 1633 were never alienated from them despite the sale of the subject parcel of land by the Spouses Ballesteros to the petitioners nor does the fact that the petitioners succeeded in paying the real property taxes of the subject parcel of land. Besides, it seems that the petitioners knew of the fact that they did not have a title to the subject parcel of land and could not, therefore, have validly registered the same, because of the respondents' possession of the entire property.

The respondents also presented the following pieces of evidence: (1) old certified photocopies of declarations of real property and original copy of tax receipts from year 1921 to 1944 in the name of Felipe, covering payments by the latter for Lot N. 1633 from which the subject parcel of land was taken;[21] (2) original copy of tax receipts from year 1961 to year 1989 in the name of the respondents' father Paterno, covering payments by the latter for Lot No. 1633;[22] (3) original copy of tax receipt dated July 21, 2004 in the name of Isagani, covering payments by the latter for Lot No. 1633;[23] (4) original copy of the Certification issued by the Municipal Treasurer of Sarrat, Ilocos Norte that Lot No. 1633 covered by Tax Declaration No. 03-001-00271 declared in the name of Felipe is not delinquent in the payment of realty taxes.[24]

Although tax declarations or realty tax payment of property are not conclusive evidence of ownership, as in the instant case, they are good indicia of possession in the concept of owner, for no one in his right mind would be paying taxes for a property that is not in his actual or constructive possession.[25] They

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[21] Records, pp. 136-152.

[22] *Id.* at 153-160.

[23] *Id.* at 161.

[24] *Id.* at 162.

[25] *Larena v. Mapili*, 455 Phil. 944, 953 (2003).

constitute evidence of great weight in support of the claim of title of ownership by prescription when considered with the actual possession of the property by the applicant.[26]

Indeed, the respondents' presentation of the tax declarations and tax receipts which all are of ancient era indicates possession in the concept of an owner by the respondents and their predecessors-in-interests. The tax declarations in the name of Paterno take on great significance because the respondents can tack their claim of ownership to that of their father. It is worthy to note that the respondents' father Paterno to whom they inherited the entire Lot No. 1633 paid the taxes due under his name from 1961 to 1989; and subsequently, the respondents paid the taxes due after the death of Paterno in 2003.[27] Granting without admitting that Felipe's possession of Lot No. 1633 cannot be tacked with the respondents' possession, the latter's possession can be tacked with that of Paterno. Thus, from 1961 to the time of the filing of the quieting of title by the petitioners in 2003, the respondents have been in possession of the entire Lot No. 1633 in the concept of an owner for almost 42 years. This period of time is sufficient to vest extraordinary acquisitive prescription over the property on the respondents. As such, it is immaterial now whether the respondents possessed the property in good faith or not.

Admittedly, the respondents built their house at the western portion of Lot No. 1633, and Isagani has declared that the eastern part was their family's garden. Thus, it was fenced with bamboo and was planted with banana trees and different vegetables. Clearly, there is no doubt that the respondents did not only pay the taxes due for the whole Lot No. 1633, in which the eastern portion is a part, but rather, the respondents were able to prove that they have possession of the whole lot.

While the findings of the CA that the petitioners were a buyer in bad faith is in accord with the evidence on record, it must

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[26] *Borillo v. Court of Appeals*, 284-A Phil. 576, 594 (1992).

[27] Records, pp. 153-162.

be pointed out, however, that they overlooked the fact that Lot No. 1633 is an unregistered piece of land. The Court had already ruled that the issue of good faith or bad faith of a buyer is relevant only where the subject of the sale is a registered land but not where the property is an unregistered land. One who purchases an unregistered land does so at his peril. His claim of having bought the land in good faith, *i.e.* without notice that some other person has a right to, or interest in, the property, would not protect him if it turns out that the seller does not actually own the property.[28] All the same, the application of this doctrine will not affect the outcome of this case.

Obviously, the petitioners cannot benefit from the deed of sale of the subject parcel of land, executed by the Spouses Ballesteros in their favor, to support their claim of possession in good faith and with just title. The Court noted that in Filomena's testimony, she even admitted that the respondents own the bigger portion of Lot No. 1633.[29] Thus, it is clear that the petitioners chose to close their eyes to facts which should have put a reasonable man on his guard. The petitioners failed to ascertain whether the Spouses Ballesteros were the lawful owner of the subject parcel of land being sold. Far from being prudent, the petitioners placed full faith on the Affidavit of Ownership that Antonio executed. Hence, when the subject parcel of land was bought by the petitioners, they merely stepped into the shoes of the Spouses Ballesteros and acquired whatever rights and obligations appertain thereto.

It is also worthy to note of the respondents' reaction when the petitioners tried to construct a house in the subject parcel of land in 2002. Upon learning that a house was being built on the eastern portion of Lot No. 1633, the respondents went to the barangay to file a complaint.[30] Clearly, this indicates the respondents' vigilance to protect their property. The Court also

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[28] *Rural Bank of Siaton (Negros Oriental), Inc. v. Macajilos*, 527 Phil. 456, 471 (2006).

[29] TSN, October 6, 2004, p. 11.

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

notes that in the respondent's possession of the entire Lot No. 1633 for almost 42 years, there was no instance during this time that the petitioners or their predecessors-in-interest, for that matter, questioned the respondents' right over Lot No. 1633.

From the foregoing disquisitions, it is clear that the petitioners were not able to prove equitable title or ownership over the subject parcel of land. Except for their claim that they merely purchased the same from the Spouses Ballesteros, the petitioners presented no other justification to disprove the ownership of the respondents. Since the Spouses Ballesteros had no right to sell the subject parcel of land, the petitioners cannot be deemed to have been the lawful owners of the same.

WHEREFORE, the petition is **DENIED**. The Decision dated July 17, 2007 and the Resolution dated January 29, 2008 of the Court of Appeals in CA-G.R. CV No. 87021 are **AFFIRMED**.

SO ORDERED.

Velasco, Jr. (Chairperson), Bersamin, Jardeleza, and *Caguioa*,[*] *JJ.*, concur.

FIRST DIVISION

[G.R. No. 206390. January 30, 2017]

JACK C. VALENCIA, *petitioner, vs.* **CLASSIQUE VINYL PRODUCTS CORPORATION, JOHNNY CHANG (Owner) and/or CANTINGAS MANPOWER SERVICES,** *respondents.*

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[*] Designated Fifth Member of the Third Division per Special Order No. 2417 dated January 4, 2017.

SYLLABUS

1. REMEDIAL LAW; PETITION FOR REVIEW ON *CERTIORARI*; THE ISSUE OF WHETHER OR NOT AN EMPLOYER-EMPLOYEE RELATIONSHIP EXISTED BETWEEN THE PARTIES IS A QUESTION OF FACT.— The core issue here is whether there exists an employer-employee relationship between Classique Vinyl and Valencia. Needless to state, it is from the said determination that the other issues raised, *i.e.*, whether Valencia was illegally dismissed by Classique Vinyl and whether the latter is liable for his monetary claims, hinge. However, as correctly pointed out by Classique Vinyl, "[t]he issue of whether or not an employer-employee relationship existed between [Valencia] and [Classique Vinyl] is essentially a question of fact." "The Court is not a trier of facts and will not review the factual findings of the lower tribunals as these are generally binding and conclusive." While there are recognized exceptions, none of them applies in this case.

2. LABOR AND SOCIAL LEGISLATION; LABOR CODE; EMPLOYER-EMPLOYEE RELATIONSHIP; THE BURDEN TO PROVE THE ELEMENTS THEREOF RESTS UPON THE PARTY WHO IS CLAIMING IT; EMPLOYEE FAILED TO PRESENT COMPETENT EVIDENCE TO PROVE IT.— "It is an oft-repeated rule that in labor cases, as in other administrative and quasi-judicial proceedings, 'the quantum of proof necessary is substantial evidence, or such amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.' 'The burden of proof rests upon the party who asserts the affirmative of an issue'." Since it is Valencia here who is claiming to be an employee of Classique Vinyl, it is thus incumbent upon him to proffer evidence to prove the existence of employer-employee relationship between them. He "needs to show by substantial evidence that he was indeed an employee of the company against which he claims illegal dismissal." Corollary, the burden to prove the element of an employe–employee relationship, *viz.*: (l) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the power of control, lies upon Valencia. Indeed, there is no hard and fast rule designed to establish the afore-mentioned elements of employer-employee relationship. "Any competent and relevant

evidence to prove the relationship may be admitted." In this case, however, Valencia failed to present competent evidence, documentary or otherwise, to support his claimed employer–employee relationship between him and Classique Vinyl. All he advanced were mere factual assertions unsupported by proof.

3. ID.; ID.; LABOR-ONLY CONTRACTING, NOT A CASE OF; PRESENTATION OF CERTIFICATE OF REGISTRATION WITH THE DEPARTMENT OF TRADE AND INDUSTRY AND LICENSE FROM THE DEPARTMENT OF LABOR AND EMPLOYMENT PREVENT THE LEGAL PRESUMPTION THAT A CONTRACTOR IS A LABOR-ONLY CONTRACTOR FROM ARISING; FACTS OF THIS CASE NEGATE ANY CIRCUMVENTION OF LABOR LAWS AS TO CALL FOR THE CREATION OF EMPLOYER-EMPLOYEE RELATIONSHIP BETWEEN THE PARTIES.— [T]he Court finds untenable Valencia's argument that neither Classique Vinyl nor CMS was able to present proof that the latter is a legitimate independent contractor and therefore, unable to rebut the presumption that a contractor is presumed to be a labor-only contractor. "Generally, the presumption is that the contractor is a labor-only [contractor] unless such contractor overcomes the burden of proving that it has the substantial capital, investment, tools and the like." Here, to prove that CMS was a legitimate contractor, Classique Vinyl presented the former's Certificate of Registration with the Department of Trade and Industry and, License as private recruitment and placement agency from the Department of Labor and Employment. Indeed, these documents are not conclusive evidence of the status of CMS as a contractor. However, such fact of registration of CMS prevented the legal presumption of it being a mere labor-only contractor from arising. In any event, it must be stressed that "in labor-only contracting, the statute creates an employer-employee relationship for a comprehensive purpose: to prevent a circumvention of labor laws. The contractor is considered merely an agent of the principal employer and the latter is responsible to the employees of the labor-only contractor as if such employees had been directly employed by the principal employer. The principal employer therefore becomes solidarily liable with the labor-only contractor for all the rightful claims of the employees." The facts of this case, however, failed to establish that there is any circumvention of

labor laws as to call for the creation by the statute of an employer-employee relationship between Classique Vinyl and Valencia.

APPEARANCES OF COUNSEL

Legal Advocates for Workers' Interest (LAWIN) for petitioner.

D E C I S I O N

DEL CASTILLO, *J.*:

This Petition for Review on *Certiorari* assails the December 5, 2012 Decision[1] and March 18, 2013 Resolution[2] of the Court of Appeals (CA) in CA- G.R. SP No. 120999, which respectively denied the Petition for *Certiorari* filed therewith by petitioner Jack C. Valencia (Valencia) and the motion for reconsideration thereto.

Factual Antecedents

On March 24, 2010, Valencia filed with the Labor Arbiter a Complaint[3] for Underpayment of Salary and Overtime Pay; Non-Payment of Holiday Pay, Service Incentive Leave Pay, 13th Month Pay; Regularization; Moral and Exemplary Damages; and, Attorney's Fees against respondents Classique Vinyl Products Corporation (Classique Vinyl) and its owner Johnny Chang (Chang) and/or respondent Cantingas Manpower Services (CMS). When Valencia, however, asked permission from Chang to attend the hearing in connection with the said complaint on April 17, 2010, the latter allegedly scolded him and told him not to report for work anymore. Hence, Valencia amended his complaint to include illegal dismissal.[4]

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[1] CA *rollo*, pp. 325-336; penned by Associate Justice Leoncia Real-Dimagiba and concurred in by Associate Justices Rosmari D. Carandang and Ricardo R. Rosario.

[2] *Id.* at 389-390.

[3] NLRC records, pp. 1-3.

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

In his *Sinumpaang Salaysay*,[5] Valencia alleged that he applied for work with Classique Vinyl but was told by the latter's personnel office to proceed to CMS, a local manpower agency, and therein submit the requirements for employment. Upon submission thereof, CMS made him sign a contract of employment[6] but no copy of the same was given to him. He then proceeded to Classique Vinyl for interview and thereafter started working for the company in June 2005 as felitizer operator. Valencia claimed that he worked 12 hours a day from Monday to Saturday and was receiving ₱187.52 for the first eight hours and an overtime pay of ₱117.20 for the next four hours or beyond the then minimum wage mandated by law. Five months later, he was made to serve as extruder operator but without the corresponding increase in salary. He was neither paid his holiday pay, service incentive leave pay, and 13th month pay. Worse, premiums for Philhealth and Pag-IBIG Fund were not paid and his monthly deductions for Social Security System (SSS) premiums were not properly remitted. He was also being deducted the amounts of ₱100.00 and ₱60.00 a week for Cash Bond and Agency Fee, respectively. Valencia averred that his salary was paid on a weekly basis but his pay slips neither bore the name of Classique Vinyl nor of CMS; that all the machineries that he was using/operating in connection with his work were all owned by Classique Vinyl; and, that his work was regularly supervised by Classique Vinyl. He further averred that he worked for Classique Vinyl for four years until his dismissal. Hence, by operation of law, he had already attained the status of a regular employee of his true employer, Classique Vinyl, since according to him, CMS is a mere labor–only contractor. Valencia, therefore, argued that Classique Vinyl should be held guilty of illegal dismissal for failing to comply with the twin-notice requirement when it dismissed him from the service and be made to pay for his monetary claims.

Classique Vinyl, for its part, denied having hired Valencia and instead pointed to CMS as the one who actually selected,

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[5] *Id.* at 27-29.

[6] *Id.* at 139.

engaged, and contracted out Valencia's services. It averred that CMS would only deploy Valencia to Classique Vinyl whenever there was an urgent specific task or temporary work and these occasions took place sometime in the years 2005, 2007, 2009 and 2010. It stressed that Valencia's deployment to Classique Vinyl was intermittent and limited to three to four months only in each specific year. Classique Vinyl further contended that Valencia's performance was exclusively and directly supervised by CMS and that his wages and other benefits were also paid by the said agency. It likewise denied dismissing Valencia from work and instead averred that on April 16, 2010, while deployed with Classique Vinyl, Valencia went on a prolonged absence from work for reasons only known to him. In sum, Classique Vinyl asserted that there was no employer-employee relationship between it and Valencia, hence, it could not have illegally dismissed the latter nor can it be held liable for Valencia's monetary claims. Even assuming that Valencia is entitled to monetary benefits, Classique Vinyl averred that it cannot be made to pay the same since it is an establishment regularly employing less than 10 workers. As such, it is exempted from paying the prescribed wage orders in its area and other benefits under the Labor Code. At any rate, Classique Vinyl insisted that Valencia's true employer was CMS, the latter being an independent contractor as shown by the fact that it was duly incorporated and registered not only with the Securities and Exchange Commission but also with the Department of Labor and Employment; and, that it has substantial capital or investment in connection with the work performed and services rendered by its employees to clients.

CMS, on the other hand, denied any employer-employee relationship between it and Valencia. It contended that after it deployed Valencia to Classique Vinyl, it was already the latter which exercised full control and supervision over him. Also, Valencia's wages were paid by Classique Vinyl only that it was CMS which physically handed the same to Valencia.

Ruling of the Labor Arbiter

On September 13, 2010, the Labor Arbiter issued a Decision,[7] the pertinent portions of which read:

> Is [Valencia] a regular employee of respondent [Classique Vinyl]?
>
> The Certificate of Business Name Registration issued by the Department of Trade and Industry dated 17 August 2007 and the Renewal of PRPA License No. M-08-03-269 for the period 29 August 2008 to 28 August 2010 issued by the Regional Director of the National Capital Region of the Department of Labor and Employment [on the] 1st day of September 2008 are pieces of evidence to prove that respondent [CMS] is a legitimate Private Recruitment and Placement Agency.
>
> Pursuant to its business objective, respondent CMS entered into several Employment Contracts with complainant Valencia as Contractual Employee for deployment to respondent [Classique Vinyl], the last of which was signed by [Valencia] on 06 February 2010.
>
> The foregoing Employment Contract for a definite period supports respondent [Classique Vinyl's] assertion that [Valencia] was not hired continuously but intermittently ranging from 3 months to 4 months for the years 2005, 2007, 2009 and 2010. Notably, no controverting evidence was offered to dispute respondent [Classiquc Vinyl's] assertion.
>
> Obviously, [Valencia] was deployed by CMS to [Classique Vinyl] for a fixed period.
>
> In Pangilinan v. General Milling Corporation, G.R. No. 149329, July 12, 2004, the Supreme Court ruled that it does not necessarily follow that where the duties of the employee consist of activities usually necessary or desirable in the usual business of the employer, the parties are forbidden from agreeing on a period of time for the performance of such activities. There is thus nothing essentially contradictory between a definite period of employment and the nature of the employee's duties.
>
> Thus, even if respondent [Classique Vinyl] exercises full control and supervision over the activities performed by [Valencia], the latter's employment cannot be considered as regular.

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[7] *Id.* at 208-215; penned by Labor Arbiter Geobel A. Bartolabac.

Likewise, even if [Valencia] is considered the regular employee of respondent CMS, the complaint for illegal dismissal cannot prosper as [the] employment was not terminated by respondent CMS.

On the other hand, there is no substantial evidence to support [Valencia's] view that he was actually dismissed from his employment by respondent [Classique Vinyl]. After all, it is elementary that he who makes an affirmative allegation has the burden of proof. On this score, [Valencia] failed to establish that he was actually dismissed from his job by respondent [Classique Vinyl], aside from his bare allegation.

With regard to underpayment of salary, respondent CMS admitted that it received from respondent [Classique Vinyl] the salary for [Valencia's] deployment. Respondent CMS never contested that the amount received was sufficient for the payment of [Valencia's] salary.

Furthermore, respondent [Classique Vinyl] cannot be obliged to pay [Valencia's] overtime pay, holiday pay, service incentive leave and 13th month pay as well as the alleged illegal deduction on the following grounds:

a) [Valencia] is not a rank-and-file employee of [Classique Vinyl];

b) No proof was offered to establish that [Valencia] actually rendered overtime services;

c) [Valencia had] not [worked] continuously or even intermittently for [one whole] (1) year[-]period during the specific year of his deployment with respondent [Classique Vinyl] to be entitled to service incentive leave pay.

d) [Valencia] failed to offer substantia1 evidence to prove that respondent [Classique Vinyl] illegally deducted from his salary the alleged agency and cash bond.

Moreover, as against respondent CMS[,] the record is bereft of factual basis for the exact computation of [Valencia's] money claims as it has remained uncontroverted that [Valencia] was not deployed continuously neither with respondent [Classique Vinyl] and/or to such other clientele.

WHEREFORE, premises considered, judgment is hereby rendered [d]ismissing the above-entitled case fur lack of merit and/or factual basis.

SO ORDERED.[8]

Ruling of the National Labor Relations Commission

Valencia promptly appealed to the National Labor Relations Commission (NLRC). Applying the four-fold test, the NLRC, however, declared CMS as Valencia's employer in its Resolution[9] dated April 14, 2011, *viz.*:

> In Order to determine the existence of an employer-employee relationship, the following yardstick had been consistently applied: (1) the selection and engagement; (2) payment of wages; (3) power of dismissal and; (4) the power to control the employee[']s conduct.
>
> In this case, [Valencia] admitted that he applied for work with respondent [CMS] x x x. Upon the acceptance of his application, he was made to sign an employment contract x x x. [Valencia] also admitted that he received his wages from respondent [CMS] x x x. As a matter of fact, respondent [CMS] argued that [Valencia] was given a non-cash wage in the approximate amount of Php3,000.00 x x x.
>
> Notably, it is explicitly stated in the employment contract of [Valencia] that he is required to observe all the rules and regulations of the company as well as [the] lawful instructions of the management during his employment. That failure to do so would cause the termination of his employment contract. The pertinent provision of the contract reads:
>
> > *2. The employee shall observe all the rules and regulations of the company during the period of employment and [the] lawful instructions of the management or its representatives. Failure to do so or if performance is below company standards, management [has] the right to immediately cancel this contract.*
> > x x x
>
> The fact that [Valencia] was subjected to such restriction is an evident exercise of the power of control over [Valencia].

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[8] *Id.* at 213-215.

[9] *Id.* at 263-273; penned by Commissioner Teresita D. Castillon-Lora and concurred in by Presiding Commissioner Raul T. Aquino and Commissioner Napoleon M. Menese.

The power of control of respondent [CMS] over Valencia was further bolstered by the declaration of the former that they will not take against [Valencia] his numerous tardiness and absences at work and[;] his non-observance of the company rules. The statement of [CMS] reads:

> *Needless to say that [Valencia] in the course of his employment has incurred many infractions like tardiness and absences, non-observance of company rules, but respondent [CMS], in reiteration will not take this up as leverage against [Valencia].* x x x

Though [Valencia] worked in the premises of Classique Vinyl x x x and that the [equipment] he used in the performance of his work was provided by the latter, the same is not sufficient to establish employer-employee relationship between [Valencia] and Classique Vinyl x x x in view of the foregoing circumstances earlier reflected. Besides, as articulated by jurisprudence, the power of control does not require actual exercise of the power but the power to wield that power x x x.

With the foregoing chain of events, it is evident that [Valencia] is an employee of respondent [CMS].

x x x x x x x x x[10]

Accordingly, the NLRC held that there is no basis for Valencia to hold Classique Vinyl liable for his alleged illegal dismissal as well as for his money claims. Hence, the NLRC dismissed Valencia's appeal and affirmed the decision of the Labor Arbiter.

Valencia's motion for reconsideration thereto was likewise denied for lack of merit in the Resolution[11] dated June 8, 2011.

Ruling of the Court of Appeals

When Valencia sought recourse from the CA, the said court rendered a Decision[12] dated December 5, 2012 denying his Petition for *Certiorari* and affirming the ruling of the NLRC.

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[10] *Id.* at 270-272.

[11] *Id.* at 317-318.

[12] CA *rollo*, pp. 325-336.

Valencia's motion for reconsideration was likewise denied in a Resolution[13] dated March 18, 2013.

Hence, this Petition tor Review on *Certiorari* imputing upon the CA the following errors:

WITH DUE RESPECT, IT IS A SERIOUS ERROR WHICH CONSITITUTE[S] GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION ON THE PART OF THE HONORABLE COURT OF APPEALS TO HAVE RULED THAT PETITIONER IS AN EMPLOYEE OF CMS AND FURTHER RULED THAT HE IS NOT ENTITLED TO HIS MONETARY CLAIMS.

WITH DUE RESPECT, THE HONORABLE COURT OF APPEALS['] DECISION AND RESOLUTION ARE CONTRARY TO LAW AND WELL-SETTLED RULE.[14]

Valencia points out that the CA, in ruling that he was an employee of CMS, relied heavily on the employment contract which the latter caused him to sign. He argues, however, that the said contract deserves scant consideration since aside from being improperly filled up (there were many portions without entries), the same was not notarized, Valencia likewise stresses that the burden of proving that CMS is a legitimate job contractor lies with respondents. Here, neither Classique Vinyl nor CMS was able to present proof that the latter has substantial capital to do business as to be considered a legitimate independent contractor. Hence, CMS is presumed to be a mere labor-only contractor and Classique Vinyl, as CMS' principal, was Valencia's true employer. As to his alleged dismissal, Valencia argues that respondents failed to establish just or authorized cause, thus, his dismissal was illegal Anent his monetary claims, Valencia invokes the principle that he who pleads payment has the burden of proving it. Since respondents failed to present even a single piece of evidence that he has been paid his labor standards benefits, he believes that he is entitled to recover

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[13] *Id.* at 396-397.

[14] *Rollo*, p. 8.

them from respondents who must be held jointly and severally liable for the same. Further, Valencia contends that respondents should be assessed moral and exemplary damages for circumventing pertinent labor laws by preventing him from attaining regular employment status. Lastly, for having been compelled to engage the services of counsel, Valencia claims that he is likewise entitled to attorney's fees.

For their part, respondents Classique Vinyl and Chang point out that the issues raised by Valencia involve questions of fact which are not within the ambit of a petition for review on *certiorari*. Besides, findings of facts of the labor tribunals when affirmed by the CA are generally binding on this Court. At any rate, the said respondents reiterate the arguments they raised before the labor tribunals and the CA.

With respect to respondent CMS, the Court dispensed with the filing of its comment[15] when the resolution requiring it to file one was returned to the Court unserved[16] and after Valencia informed the Court that per Certification[17] of the Office of the Treasurer of Valenzuela City where CMS's office was located, the latter had already closed down its business on March 21, 2012.

Our Ruling

There is no merit in the Petition.

The core issue here is whether there exists an employer-employee relationship between Classique Vinyl and Valencia. Needless to state, it is from the said determination that the other issues raised, *i.e.*, whether Valencia was illegally dismissed by Classique Vinyl and whether the latter is liable for his monetary claims, hinge. However, as correctly pointed out by Classique Vinyl, "[t]he issue of whether or not an employer-employee relationship existed between [Valencia] and [Classique

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[15] *Id.* at 448-449.

[16] *Id.* at 441-442.

[17] *Id.* at 448-449.

Vinyl] is essentially a question of fact."[18] "The Court is not a trier of facts and will not review the factual findings of the lower tribunals as these are generally binding and conclusive."[19] While there are recognized exceptions,[20] none of them applies in this case.

Even if otherwise, the Court is not inclined to depart from the uniform findings of the Labor Arbiter, the NLRC and the CA.

"It is an oft-repeated rule that in labor cases, as in other administrative and quasi-judicial proceedings, 'the quantum of proof necessary is substantial evidence, or such amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.' 'The burden of proof rests upon the party who asserts the affirmative of an issue'."[21] Since it is Valencia here who is claiming to be an employee of Classique Vinyl, it is thus incumbent upon him to proffer evidence to prove the existence of employer-employee relationship between them. He "needs to show by substantial evidence that he was indeed an employee of the company against which he claims

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[18] *Legend Hotel (Manila) v. Realuyo*, 691 Phil. 226, 236 (2012).

[19] *Cavite Apparel, Incorporated v. Marquez*, 703 Phil. 46, 53 (2013).

[20] These exceptions are: (1) when the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) 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 the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) the findings of the Court of Appeals are contrary to those of the trial court; (8) when the findings of fact are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; and (10) the findings of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record, (*Pascual v. Burgos*, G.R. No. 171722, January 11, 2016, 778 SCRA 189, 205 206).

[21] *Tenazas v. R. Villegas Taxi Transport*, G.R. No. 192998, April 2, 2014, 720 SCRA 467, 480-481.

illegal dismissal."[22] Corollary, the burden to prove the elements of an employer-employee relationship, *viz.*: (l) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the power of control, lies upon Valencia.

Indeed, there is no hard and fast rule designed to establish the afore-mentioned elements of employer-employee relationship.[23] "Any competent and relevant evidence to prove the relationship may be admitted."[24] In this case, however, Valencia failed to present competent evidence, documentary or otherwise, to support his claimed employer–employee relationship between him and Classique Vinyl. All he advanced were mere factual assertions unsupported by proof.

In fact, most of Valencia's allegations even militate against his claim that Classique Vinyl was his true employer. For one, Valencia stated in his *Sinumpaang Salaysay* that his application was actually received and processed by CMS which required him to submit the necessary requirements for employment. Upon submission thereof, it was CMS that caused him to sign an employment contract, which upon perusal, is actually a contract between him and CMS. It was only after he was engaged as a contractual employee of CMS that he was deployed to Classique Vinyl. Clearly, Valencia's selection and engagement was undertaken by CMS and conversely, this negates the existence of such element insofar as Classique Vinyl is concerned. It bears to state, in addition, that as opposed to Valencia's argument, the lack of notarization of the said employment contract did not adversely affect its veracity and effectiveness since significantly, Valencia does not deny having signed the same.[25] The CA, therefore, did not err in relying on the said employment contract in its determination of the merits of this case. For another,

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[22] *Javier v. Fly Ace Corporation*, 682 Phil. 359, 372 (2012).

[23] *Tenazas v. R. Villegas Taxi Transport*, *supra* at 481.

[24] *Id.*

[25] *Gelos v. Court of Appeals*, 284-A Phil. 114, 120 (1992).

Valencia himself acknowledged that the pay slips[26] he submitted do not bear the name of Classique Vinyl. While the Court in *Vinoya v. National Labor Relations Commission*[27] took judicial notice of the practice of employer to course through the purported contractor the act of paying wages to evade liabilities under the Labor Code, hence, the non-appearance of employer's name in the pay slip, the Court is not inclined to rule that such is the case here. This is considering that although CMS claimed in its supplemental Position Paper/Comment that the money it used to pay Valencia's wages came from Classique Vinyl,[28] the same is a mere allegation without proof. Moreover, such allegation is inconsistent with CMS's earlier assertion in its Position Paper[29] that Valencia received from it non-cash wages in an approximate amount of ₱3,000.00. A clear showing of the element of payment of wages by Classique Vinyl is therefore absent.

Aside from the afore-mentioned inconsistent allegations of Valencia, his claim that his work was supervised by Classique Vinyl does not hold water. Again, the Court finds the same as a self-serving assertion unworthy of credence. On the other hand, the employment contract which Valencia signed with CMS categorically states that the latter possessed not only the power of control but also of dismissal over him, *viz.*:

x x x x x x x x x

2. That the employee shall observe all rules and regulations of the company during the period of employment and [the] lawful instructions of the management or its representatives. Failure to do so or if performance is below company standards, management [has] the right to immediately cancel this contract.

x x x x x x x x x[30]

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[26] NLRC records, pp. 30-31.

[27] 381 Phil. 460, 480 (2000).

[28] See CMS' Position Paper/Comment, Supplemental, NLRC records, pp. 144-147 at 146.

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

[30] *Id.* at 139.

Clearly, therefore, no error can be attributed on the part of the labor tribunals and the CA in ruling out the existence of employer-employee relationship between Valencia and Classique Vinyl.

Further, the Court finds untenable Valencia's argument that neither Classique Vinyl nor CMS was able to present proof that the latter is a legitimate independent contractor and therefore, unable to rebut the presumption that a contractor is presumed to be a labor-only contractor. "Generally, the presumption is that the contractor is a labor-only [contractor] unless such contractor overcomes the burden of proving that it has the substantial capital, investment, tools and the like."[31] Here, to prove that CMS was a legitimate contractor, Classique Vinyl presented the former's Certificate of Registration[32] with the Department of Trade and Industry and, License[33] as private recruitment and placement agency from the Department of Labor and Employment. Indeed, these documents are not conclusive evidence of the status of CMS as a contractor. However, such fact of registration of CMS prevented the legal presumption of it being a mere labor-only contractor from arising.[34] In any event, it must be stressed that "in labor-only contracting, the statute creates an employer-employee relationship for a comprehensive purpose: to prevent a circumvention of labor laws. The contractor is considered merely an agent of the principal employer and the latter is responsible to the employees of the labor-only contractor as if such employees had been directly employed by the principal employer. The principal employer therefore becomes solidarity liable with the labor-only contractor for all the rightful claims of the employees."[35] The facts of this

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[31] *Garden of Memories Park and Life Plan, Inc. v. National Labor Relations Commission*, 681 Phil. 299, 311 (2012).

[32] NLRC records, p. 183.

[33] *Id.* at 184.

[34] *Babas v. Lorenzo Shipping Corporation*, 653 Phil. 421, 433 (2010).

[35] *7K Corporation v. National Labor Relations Commission*, 537 Phil. 664, 680-681 (2006).

case, however, failed to establish that there is any circumvention of labor laws as to call for the creation by the statute of an employer-employee relationship between Classique Vinyl and Valencia. In fact, even as against CMS, Valencia's money claims has been debunked by the labor tribunals and the CA. Again, the Court is not inclined to disturb the same.

In view of the above disquisition, the Court finds no necessity to dwell on the issue of whether Valencia was illegally dismissed by Classique Vinyl and whether the latter is liable for Valencia's money claims.

WHEREFORE, the Petition for Review on *Certiorari* is **DENIED**. The assailed December 5, 2012 Decision and March 18, 2013 Resolution of the Court of Appeals in CA-G.R. SP No. 120999 are **AFFIRMED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 206617. January 30, 2017]

PHILIPPINE NUMISMATIC AND ANTIQUARIAN SOCIETY, *petitioner, vs.* **GENESIS AQUINO, ANGELO BERNARDO, JR., EDUARDO M. CHUA, FERNANDO FRANCISCO, JR., FERMIN S. CARINO, PERCIVAL M. MANUEL, FERNANDO M. GAITE, JR., JOSE CHOA, TOMAS DE GUZMAN, JR., LI VI JU, CATALINO M. SILANGIL, RAMUNDO SANTOS, PETER SY, and WILSON YULOQUE,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; REAL PARTY-IN-INTEREST; EVERY ACTION MUST BE PROSECUTED OR DEFENDED IN THE NAME OF THE REAL PARTY IN INTEREST; PURPOSE.— The Rules of Court, specifically Section 2 of Rule 3 thereof, requires that unless otherwise authorized by law or the Rules of Court, every action must be prosecuted or defended in the name of the real party-in-interest, thus x x x[.] This provision has two requirements: (1) to institute an action, the plaintiff must be the real party-in-interest; and (2) the action must be prosecuted in the name of the real party-in-interest. Interest within the meaning of the Rules of Court means material interest or an interest in issue to be affected by the decree or judgment of the case, as distinguished from mere curiosity about the question involved. One having no material interest to protect cannot invoke the jurisdiction of the court as the plaintiff in an action. x x x The purposes of the requirement for the real party in interest prosecuting or defending an action at law are: (a) to prevent the prosecution of actions by persons without any right, title or interest in the case; (b) to require that the actual party entitled to legal relief be the one to prosecute the action; (c) to avoid a multiplicity of suits; and (d) to discourage litigation and keep it within certain bounds, pursuant to sound public policy. The rule on real party-in-interest ensures, therefore, that the party with the legal right to sue brings the action, and this interest ends when a judgment involving the nominal plaintiff will protect the defendant from a subsequent identical action. Such a rule is intended to bring before the court the party rightfully interested in the litigation so that only real controversies will be presented and the judgment, when entered, will be binding and conclusive and the defendant will be saved from further harassment and vexation at the hands of other claimants to the same demand.

2. ID.; ID.; ID.; FOR A CORPORATION TO BE A REAL PARTY-IN-INTEREST, THE OFFICER OR AGENT WHO IS SUING OR DEFENDING IN BEHALF OF THE CORPORATION MUST BE AUTHORIZED TO DO SO THROUGH A BOARD RESOLUTION; ABSENT SUCH BOARD RESOLUTION, THE PETITION MAY NOT BE GIVEN DUE COURSE.— In the case at bar, PNAS, as a

corporation, is the real party-in-interest because its personality is distinct and separate from the personalities of its stockholders. A corporation has no power, except those expressly conferred on it by the Corporation Code and those that are implied or incidental to its existence. In turn, a corporation exercises said powers through its board of directors and/or its duly-authorized officers and agents. Thus, it has been observed that the power of a corporation to sue and be sued in any court is lodged with the board of directors that exercises its corporate powers. In turn, physical acts of the corporation, like the signing of documents, can be performed only by natural persons duly authorized for the purpose by corporate by-laws or by a specific act of the board of directors. It necessarily follows that "an individual corporate officer cannot solely exercise any corporate power pertaining to the corporation without authority from the board of directors". Section 23, in relation to Sec. 25 of the Corporation Code, clearly enunciates that all corporate powers are exercised, all business conducted, and all properties controlled by the board of directors. A corporation has a separate and distinct personality from its directors and officers and can only exercise its corporate powers through the board of directors. Thus, it is clear that an individual corporate officer cannot solely exercise any corporate power pertaining to the corporation without authority from the board of directors. Absent the said board resolution, a petition may not be given due course.

3. ID.; ID.; ID.; ID.; EFFECTS WHERE THE PERSON SUING IN BEHALF OF THE CORPORATION FAILED TO PRESENT PROOF OF HIS AUTHORITY; DISMISSAL OF THE COMPLAINT FOR FAILURE TO STATE A CAUSE OF ACTION IS PROPER.— [T]here was no proof submitted that Atty. Villareal was duly authorized by petitioner to file the complaint and sign the verification and certification against forum shopping dated December 21, 2009. Where the plaintiff is not the real party-in-interest, the ground for the motion to dismiss is lack of cause of action. The reason for this is that the courts ought not to pass upon questions not derived from any actual controversy. Truly, a person having no material interest to protect cannot invoke the jurisdiction of the court as the plaintiff in an action. Nor does a court acquire jurisdiction over a case where the real party-in-interest is not present or impleaded. Under our procedural rules, "a case is dismissible for lack of

personality to sue upon proof that the plaintiff is not the real party-in-interest, hence, grounded on failure to state a cause of action." Indeed, considering that all civil actions must be based on a cause of action, defined as the act or omission by which a party violates the right of another, the former as the defendant must be allowed to insist upon being opposed by the real party-in-interest so that he is protected from further suits regarding the same claim. Under this rationale, the requirement benefits the defendant because "the defendant can insist upon a plaintiff who will afford him a setup providing good *res judicata* protection if the struggle is carried through on the merits to the end.

APPEARANCES OF COUNSEL

Siguion Reyna Montecillo & Ongsiako for petitioner.
Faustino S. Tugade, Jr., for respondents Chua, *et al.*

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 September 6, 2012, and Resolution[3] dated March 19, 2013 of the Court of Appeals (*CA*) in CA-G.R. SP No. 113864, which affirmed the dismissal of Civil Case No. 09-122709 entitled *Philippine Numismatic and Antiquarian Society, Inc. v. Genesis Aquino, et al*. by the Regional Trial Court (*RTC*), Branch 24, Manila.

The factual antecedents are as follows:

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[1] *Rollo*, pp. 9-29.

[2] Penned by Associate Justice Agnes Reyes-Carpio, with Associate Justices Rosalinda Asuncion-Vicente and Priscilla J. Baltazar-Padilla, concurring; *id*. at 32-38.

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

Petitioner Philippine Numismatic and Antiquarian Society, Inc. (*PNAS*) is a non-stock, non-profit domestic corporation duly organized in accordance with Philippine Laws.[4] On October 29, 2009, petitioner filed a complaint with the RTC, Branch 24, Manila docketed as Civil Case No. 09-122388[5] praying for the issuance of a writ of a preliminary injunction against respondent Angelo Bernardo, Jr. The complaint was verified by respondents Eduardo M. Chua, Catalino M. Silangil and Percival M. Manuel who claimed to be the attorneys-in-fact of petitioner as per Secretary's Certificate attached to the complaint. Petitioner was represented by Atty. Faustino S. Tugade as counsel.[6]

On December 22, 2009, another complaint[7] was filed by petitioner against respondents Genesis Aquino, Angelo Bernardo, Jr., Eduardo M. Chua, Fernando Francisco, Jr., Fermin S. Carino, Percival M. Manuel, Fernando M. Gaite, Jr., Jose Choa, Tomas De Guzman, Jr., Li Vi Ju, Catalino M. Silangil, Raymundo Santos, Peter Sy, and Wilson Yuloque docketed as Civil Case No. 09-122709 praying that the Membership Meeting conducted by defendants on November 25, 2008 be declared null and void. It is, likewise prayed that a temporary restraining order or a writ of preliminary injunction be issued for the defendants to desist from acting as the true members, officers and directors of petitioner. The verification was signed by Atty. William L. Villareal.[8] The petitioner was represented by Siguion Reyna Montecillo and Ongsiako Law Office.[9]

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[4] PNAS was organized for the purpose of, among others, to promote the science of numismatics and antiquary through the study and collection of coins, paper money, medals, seals, plaques, antiques, etc. and to encourage the preservation of existing historical monuments and tablets in different parts of the country; *id.* at 360 and 11.

[5] A Judgment Based on Compromise was rendered in Civil Case No. 09-122388 on December 8, 2010, *id*. at 364.

[6] *Rollo*, p. 33.

[7] *Id.* at 207-216.

[8] *Id.* at 217-218.

[9] *Id.* at 205.

On January 26, 2010, considering that there were two different parties claiming to be the representative of petitioner, the RTC issued a Joint Order directing the parties to submit within fifteen (15) days from notice the appropriate pleadings as to who are the true officers of PNAS and to submit all the documentary exhibits in support of their respective positions.[10]

Only respondents Eduardo M. Chua, Tomas De Guzman, Jr., Catalino M. Silangil, Peter Sy, Fernando Francisco, Jr., and Percival M. Manuel in Civil Case No. 09-122709 complied with the aforesaid Joint Order. In their Memorandum, they alleged that Atty. William F. Villareal who signed the verification in the complaint was not authorized by the Board of Directors of PNAS to institute the complaint in behalf of petitioner corporation, and that his action in filing the complaint is an *ultra vires* act and was in violation of Section 23 of the Corporation Code.[11] The aforesaid respondents also filed their Answer dated January 29, 2010.

On the part of respondents Genesis Aquino, Angelo Bernardo, Jr., Li Vi Ju, and Raymundo Santos, they filed a Special Entry of Appearance to Question the Issue of Improper Service of Summons and Notices and Motion to Defer the Proceedings Until All the Said Issues Have Been Resolved. Petitioner then filed a Motion to Declare Defendants in Default and for Judgment Based on the Complaint dated February 10, 2010. Petitioner likewise filed a Request for Admission[12] dated February 17, 2010.

Subsequently, on March 15, 2010, the RTC issued a Joint Order[13] dismissing the complaint, thus:

> The failure of plaintiff represented by Atty. William F. Villareal who alleged in the complaint that he is the President of Philippine Numismatic and Antiquarian Society, Inc. and its duly-authorized representative to file the appropriate pleadings and submit documentary

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[10] *Id.* at 204.

[11] *Id.* at 205.

[12] *Id.* at 14.

[13] *Id.* at 204-206.

exhibits relative to his authority to file the instant complaint for and in behalf of plaintiff Philippine Numismatic and Antiquarian Society, Inc. as mandated by the order of this Court during the hearing on January 26, 2010 lends credence to the assertion of defendants that he has no authority to represent plaintiff and to file the complaint in Civil Case No. 09-122709. Consequently, the court has no other recourse but to order the dismissal of Civil Case No. 09-122709

Accordingly, Civil Case No. 09-122709 entitled Philippine Numismatic and Antiquarian Society, Inc. versus Genesis Aquino, Angelo Bernardo, Jr., Eduardo M. Chua, Fernando Francisco, Jr., Fermin S. Carino, Percival M. Manuel, Fernando M. Gaite, Jr., Jose Choa, Tomas De Guzman, Jr., Li Vi Ju, Catalino M. Silangil, Raymundo Santos, Peter Sy, and Wilson Yuloque is hereby ordered DISMISSED.

This Order likewise renders moot and academic the Motion to Declare Defendants in Default and For Judgment Based on the Complaint filed by plaintiff in Civil Case No. 09-122709.

SO ORDERED.[14]

Petitioner then filed a Petition for Review[15] dated May 12, 2010 with the CA under Rule 43 of the Rules of Court, in relation to A.M. No. 04-09-07 dated September 14, 2004. In a Decision dated September 6, 2012, the CA dismissed the petition.

Petitioner filed a motion for reconsideration,[16] but the same was denied by the CA on March 19, 2013.

Hence, this petition, raising the following issues:

I

THE COURT OF APPEALS COMMITTED A GRAVE ERROR WHEN IT UPHELD THE DISMISSAL OF THE INTRA-CORPORATE CASE FOR PURPORTEDLY BEING A NUISANCE SUIT;

II

THE COURT OF APPEALS COMMITTED A GRAVE ERROR WHEN IT REFUSED TO CONSIDER, CONTRARY TO

[14] *Id.* at 205-206.

[15] *Id.* at 180-203.

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

ESTABLISHED JURISPRUDENCE, A BOARD RESOLUTION/ SECRETARY'S CERTIFICATE AS PROOF OF AUTHORITY TO FILE INITIATORY PLEADINGS FOR AND ON A COMPANY'S BEHALF;

III

THE COURT OF APPEALS DEPARTED FROM THE USUAL COURSE OF PROCEDURE WHEN IT DISMISSED THE CASE ON PROCEDURAL GROUNDS RATHER THAN ON THE MERITS AND THUS PRECLUDING PETITIONER FROM A JUST AND PROPER DETERMINATION OF ITS CASE.[17]

We deny the petition.

There is no question that a litigation should be disallowed immediately if it involves a person without any interest at stake, for it would be futile and meaningless to still proceed and render a judgment where there is no actual controversy to be thereby determined. Courts of law in our judicial system are not allowed to delve on academic issues or to render advisory opinions. They only resolve actual controversies involving rights that are legally demandable and enforceable.[18]

The Rules of Court, specifically Section 2 of Rule 3 thereof, requires that unless otherwise authorized by law or the Rules of Court, every action must be prosecuted or defended in the name of the real party-in-interest, thus:

> Sec. 2. *Parties-in-interest.* — A real party-in-interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party-in-interest.

This provision has two requirements: (1) to institute an action, the plaintiff must be the real party-in-interest; and (2) the action

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[17] *Id.* at 15.

[18] *Stronghold Insurance Company, Inc. v. Tomas Cuenca, et al.*, 705 Phil. 441, 454 (2013).

must be prosecuted in the name of the real party-in-interest. Interest within the meaning of the Rules of Court means material interest or an interest in issue to be affected by the decree or judgment of the case, as distinguished from mere curiosity about the question involved. One having no material interest to protect cannot invoke the jurisdiction of the court as the plaintiff in an action.[19]

The Interim Rules of Procedure for Intra-Corporate Controversies under Republic Act No. 8799 in A.M. No. 01-2-04-SC, effective on April 1, 2001 considers the suppletory application of the Rules of Court under Section 2, Rule 1, thus:

> Section 2. *Suppletory application of the Rules of Court.* — The Rules of Court, in so far as they may be applicable and are not inconsistent with these Rules, are hereby adopted to form an integral part of these Rules.

Moreover, We consider the summary nature of the proceedings governed by the Interim Rules which is premised on one objective which is the expeditious disposition of cases.[20]

The purposes of the requirement for the real party in interest prosecuting or defending an action at law are: (a) to prevent the prosecution of actions by persons without any right, title or interest in the case; (b) to require that the actual party entitled to legal relief be the one to prosecute the action; (c) to avoid a multiplicity of suits; and (d) to discourage litigation and keep it within certain bounds, pursuant to sound public policy.[21]

The rule on real party-in-interest ensures, therefore, that the party with the legal right to sue brings the action, and this interest ends when a judgment involving the nominal plaintiff will protect the defendant from a subsequent identical action. Such a rule

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[19] *Gerve Magallanes v. Palmer Asia, Inc.*, G.R. No. 205179, July 18, 2014, 730 SCRA 259, 269.

[20] *Sy Tiong Shiou, et al. v. Sy Chim, et al.*, 601 Phil. 510, 535 (2009).

[21] *Stronghold Insurance Company, Inc. v. Tomas Cuenca, et al., supra* note 18, at 455.

is intended to bring before the court the party rightfully interested in the litigation so that only real controversies will be presented and the judgment, when entered, will be binding and conclusive and the defendant will be saved from further harassment and vexation at the hands of other claimants to the same demand.[22]

In the case at bar, PNAS, as a corporation, is the real party-in-interest because its personality is distinct and separate from the personalities of its stockholders. A corporation has no power, except those expressly conferred on it by the Corporation Code and those that are implied or incidental to its existence. In turn, a corporation exercises said powers through its board of directors and/or its duly-authorized officers and agents. Thus, it has been observed that the power of a corporation to sue and be sued in any court is lodged with the board of directors that exercises its corporate powers. In turn, physical acts of the corporation, like the signing of documents, can be performed only by natural persons duly authorized for the purpose by corporate by-laws or by a specific act of the board of directors.[23] It necessarily follows that "an individual corporate officer cannot solely exercise any corporate power pertaining to the corporation without authority from the board of directors".[24]

Section 23, in relation to Sec. 25 of the Corporation Code, clearly enunciates that all corporate powers are exercised, all business conducted, and all properties controlled by the board of directors. A corporation has a separate and distinct personality from its directors and officers and can only exercise its corporate powers through the board of directors. Thus, it is clear that an individual corporate officer cannot solely exercise any corporate power pertaining to the corporation without authority from the

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[22] *Id.*

[23] *Republic v. Coalbrine International Philippines, Inc.*, 631 Phil. 487, 495 (2010); *Shipside, Inc. v. Court of Appeals*, 404 Phil. 981, 994 (2001).

[24] *Swedish Match Philippines, Inc. v. The Treasurer of the City of Manila*, 713 Phil. 240, 247 (2013).

board of directors.[25] Absent the said board resolution, a petition may not be given due course. The application of the rules must be the general rule, and the suspension or even mere relaxation of its application, is the exception. This Court may go beyond the strict application of the rules only on exceptional cases when there is truly substantial compliance with the rule.[26]

Hence, since petitioner is a corporation, the certification attached to its complaint filed with the RTC must be executed by an officer or member of the board of directors or by one who is duly authorized by a resolution of the board of directors; otherwise, the complaint will have to be dismissed.[27] Courts are not, after all, expected to take judicial notice of corporate board resolutions or a corporate officers' authority to represent a corporation.[28] Petitioner's failure to submit proof that Atty. William L. Villareal has been authorized by PNAS to file the complaint is a sufficient ground for the dismissal thereof.

In *Tamondong v. Court of Appeals*,[29] we held that if a complaint is filed for and in behalf of the plaintiff who is not authorized to do so, the complaint is not deemed filed. An unauthorized complaint does not produce any legal effect. Hence, the court should dismiss the complaint on the ground that it has no jurisdiction over the complaint and the plaintiff.[30]

In the present case, the real issue is whether Atty. William L. Villareal who claimed to be the President of PNAS in 2009,

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[25] *South Cotabato Communications Corp., et al. v. Sto. Tomas*, 653 Phil. 240, 248 (2010).

[26] *Esguerra v. Holcim Philippines, Inc.*, 717 Phil. 77, 90 (2013).

[27] *Cosco Philippines Shipping, Inc. v. Kemper Insurance Company*, 686 Phil. 327, 337 (2012); citing *Tamondong v. Court of Appeals*, 486 Phil. 729, 742 (2004).

[28] *Development Bank of the Philippines v. Court of Appeals, et al.*, 483 Phil. 216, 221 (2004).

[29] *Supra* note 27.

[30] *Cosco Philippines Shipping, Inc. v. Kemper Insurance Company, supra* note 27.

was indeed authorized through a Board Resolution to represent PNAS in filing Civil Case No. 09-122709.

Respondents Genesis Aquino, Angelo Bernardo, Jr., Li Vi Ju, and Raymundo Santos aver that Atty. Villareal was President in 2007 and was never reelected from then on. They presented the notarized Certificate of Elections dated November 25, 2008 which shows that respondent Angelo Bernardo, Jr. was the one elected as President, while respondent Francisco Fernando, Jr. was elected as Secretary for the year 2009 during the election held on November 25, 2008.[31] Though the election of officers on November 25, 2008 was the subject of the complaint that was dismissed, Atty. Villareal did not present any proof that indeed he was President in 2009 when he filed the complaint.

As correctly ruled by the CA, Atty. Villareal was given the opportunity to prove his authority to institute the complaint considering that there were two different parties representing the petitioner in two cases filed before the RTC, Branch 24, Manila. If indeed Atty. Villareal was authorized to file the complaint, he could have simply presented a Board Resolution to prove that he was authorized. Neither did he file the appropriate pleadings and submit documentary exhibits relative to his authority to file the complaint for and in behalf of petitioner as mandated by the Joint Order of the RTC during its hearing on January 26, 2010. As correctly stated by the RTC, such failure on the part of Atty. Villareal gave credence to the assertion of respondents herein that he has no authority to represent petitioner and to file the complaint in Civil Case No. 09-122709.

Moreover, the records would show that Atty. Villareal ceased to be a director in 2009, not in 2008 as erroneously found by the CA. But what is material is that he was not anymore a director in 2009 at the time he filed the complaint. This is evidenced by the notarized Certificate of Elections[32] dated November 23, 2008 which shows that he was not among the eleven (11) Directors elected for 2009. The Board of Directors elected were respondents

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[31] *Rollo*, p. 337.

[32] *Id.* at 293.

Fernando Gaite, Angelo Bernardo, Jr., Fermin S. Cariño, Eduardo M. Chua, Catalino M. Silangil, Peter Sy, Fernando Francisco, Jr., Tomas De Guzman, Jr., Li Vi Ju, Jose Choa and Percival M. Manuel. Also the General Information Sheet (*GIS*)[33] filed on November 27, 2008 shows that respondent Angelo Bernardo, Jr.[34] was the one elected as President for the year 2009, while respondent Francisco Fernando, Jr. was elected as Secretary.

Assuming the officers for 2009 were illegally elected as claimed by Atty. Villareal, We note that Atty. Villareal could not even be President in a hold-over capacity because he was not the one elected as President in 2008. From his own evidence attached to the petition as Annex "A", the GIS filed on July 10, 2008[35] shows that it was respondent Tomas Z. De Guzman who was elected as President and respondent Eduardo M. Chua as Secretary for the year 2008.

The said fact was also stated by the respondents Eduardo M. Chua, Fernando Francisco, Jr., Fermin S. Cariño, Percival M. Manuel, Tomas De Guzman, Jr., Catalino M. Silangil and Peter Sy in their comment to the instant petition. They averred that Atty. William Villareal was 2007 President of PNAS. In the year 2008, he was still elected as one of the eleven (11) members of the Board of Directors during the election on November 25, 2007 held at the Manila Yacht Club at Roxas Boulevard, Manila. But, he was not anymore elected president. It was respondent Tomas Z. De Guzman who was elected by a vote of six directors[36] as against five votes for Atty. William

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[33] *Id.* at 248-251.

[34] On May 7, 2010, a group of respondents led by Eduardo M. Chua, Catalino M. Silangil and Percival M. Manuel allegedly conducted an "illegal" election to oust respondent Bernardo from his post which resulted in the filing of Civil Case No. 09-122388. But, a Judgment Based on Compromise was rendered in Civil Case No. 09-122388 on December 8, 2010; *id.* at 319 and 364.

[35] *Id.* at 52-55.

[36] Those who voted were respondents Tomas Z. Guzman, Catalino M. Silangil, Eduardo M. Chua, Genesis Aquino, Angelo Bernardo, Jr. (Auditor) and Fernando Gaite.

Villareal.[37] The other officers elected were respondents Catalino M. Silangil (*Vice President*), Eduardo M. Chua (*Secretary*), Genesis Aquino (*Treasurer*) and Angelo Bernardo, Jr. (*Auditor*).

The aforesaid respondents further averred that Atty. William Villareal and his minority group of directors, namely, Antonio Carinan, Edward Nocom, Rufino Fermin and Albert Dealino, refused to honor the new set of officers.[38] Also, Atty. William Villareal allegedly refused to turn-over and submit an accounting of all the records. Thus, respondents Catalino M. Silangil, Eduardo M. Chua, Angelo Bernardo, Jr. and Fernando M. Gaite, Jr. filed a Complaint for Annulment of Corporate Acts, Accounting, Inventory, Recovery of Corporate Items, Funds and Properties and for Damages with Prayer for TRO and Preliminary Injunction before RTC, Branch 46, Manila docketed as Civil Case No. 08-120341.[39]

Furthermore, it was alleged in the instant petition that Atty. Villareal is a member of the Board of Directors since 2001 to present. The General Information Sheet (*GIS*) for the years 2008 to 2011[40] were attached to the petition to prove the allegation. We wonder, however, why these documents were not presented in the RTC nor attached to the petition filed with the CA. We also observe that there were no elected officers for the year 2008 as appearing on the GIS which was accomplished and filed only in May 18, 2011.[41] Likewise, the GIS for the years 2009 to 2011 where it was stated that Atty. Villaruel was the President appears no indication that it was filed with the SEC.

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[37] *Id.* at 361.

[38] Allegedly as a result of the election, respondents Angelo Bernardo, Jr., Eduardo M. Chua, Fernando M. Gaite, Jr., Tomas De Guzman, Jr., Catalino M. Silangil filed a derivative suit docketed as Q-08-189 at Branch 93, RTC, Quezon City but was dismissed due to wrong venue; *id.* at 317-318.

[39] On October 28, 2009, the case was dismissed for failure of the court to acquire jurisdiction over the persons of the defendants, *id.* at 285 and 364.

[40] *Id.* at 52-74.

[41] *Id.* at 60.

As stated in the instructions on the GIS, a GIS Form is required to be filed within thirty (30) days following the date of the annual or a special meeting, and must be certified and sworn to by the corporate secretary, or by the president, or any duly authorized officer of the corporation.[42]

Indeed, there was no proof submitted that Atty. Villareal was duly authorized by petitioner to file the complaint and sign the verification and certification against forum shopping[43] dated December 21, 2009. Where the plaintiff is not the real party-in-interest, the ground for the motion to dismiss is lack of cause of action. The reason for this is that the courts ought not to pass upon questions not derived from any actual controversy. Truly, a person having no material interest to protect cannot invoke the jurisdiction of the court as the plaintiff in an action. Nor does a court acquire jurisdiction over a case where the real party-in-interest is not present or impleaded.[44]

Under our procedural rules, "a case is dismissible for lack of personality to sue upon proof that the plaintiff is not the real party-in-interest, hence, grounded on failure to state a cause of action."[45] Indeed, considering that all civil actions must be based on a cause of action, defined as the act or omission by which a party violates the right of another, the former as the defendant must be allowed to insist upon being opposed by the real party-in-interest so that he is protected from further suits regarding the same claim. Under this rationale, the requirement benefits the defendant because "the defendant can insist upon a plaintiff who will afford him a setup providing good *res judicata* protection if the struggle is carried through on the merits to the end.[46]

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[42] *Sy Tiong Shiou, et al. v. Sy Chim, et al., supra* note 20.

[43] *Rollo,* pp. 217-218.

[44] *Stronghold Insurance Company, Inc. v. Tomas Cuenca, et al., supra* note 18.

[45] *Gerve Magallanes v. Palmer Asia, Inc., supra* note 19.

[46] *Stronghold Insurance Company, Inc. v. Tomas Cuenca, et al., supra* note 18, at 455.

Procedural rules are not to be disdained as mere technicalities that may be ignored at will to suit the convenience of a party. Adjective law is important in ensuring the effective enforcement of substantive rights through the orderly and speedy administration of justice. These rules are not intended to hamper litigants or complicate litigation but, indeed to provide for a system under which a suitor may be heard in the correct form and manner and at the prescribed time in a peaceful confrontation before a judge whose authority they acknowledge.[47]

WHEREFORE, the petition is **DENIED**. The Decision of the Court of Appeals dated September 6, 2012, and its Resolution dated March 19, 2013 in CA-G.R. SP No. 113864 are hereby **AFFIRMED**.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 207786. January 30, 2017]

SPOUSES MARCELIAN TAPAYAN and ALICE TAPAYAN, *petitioners, vs.* **PONCEDA M. MARTINEZ,** *respondent.*

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[47] *Bank of the Philippine Islands v. Court of Appeals, et al.*, 646 Phil. 617, 627 (2010).

[*] Designated Additional Member per Special Order No 2416, Dated January 4, 2017.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; BEST EVIDENCE RULE; HAVING BEEN FAILED TO OBJECT TO THE ADMISSION OF THE DEED OF UNDERTAKING, PETITIONERS ARE DEEMED TO HAVE WAIVED THE SAME AND THEY ARE NOW PRECLUDED TO ASSAIL THE PROBATIVE VALUE OF THE PLAIN COPY OF SUCH DEED.— The best evidence rule requires that the original document be produced whenever its contents are the subject of inquiry, except in certain limited cases laid down in Section 3 of Rule 130. However, to set this rule in motion, a proper and timely objection is necessary. The Court's ruling in *Lorenzana v. Lelina* is instructive: x x x **Nevertheless, evidence not objected to is deemed admitted and may be validly considered by the court in arriving at its judgment. Courts are not precluded to accept in evidence a mere photocopy of a document when no objection was raised when it was formally offered.** x x x **And when a party failed to interpose a timely objection to evidence at the time they were offered in evidence, such objection shall be considered as waived.** x x x The Court notes that Petitioners failed to object to the admission of the plain copy of the Deed of Undertaking at the time it was formally offered in evidence before the RTC. In fact, in their Reply, Petitioners admit that they only raised this objection for the *first time* before the CA. x x x Having failed to timely raise their objection when the Formal Offer of Evidence was filed in the RTC, Petitioners are deemed to have waived the same. Hence, they are precluded from assailing the probative value of the plain copy of the Deed of Undertaking.

2. ID.; ID.; PRESUMPTION OF REGULARITY ASCRIBED TO A NOTARIZED DOCUMENT; THE COURT UPHOLDS THE PRESUMPTION OF REGULARITY ASCRIBED TO THE SUBJECT DEED IN VIEW OF PETITIONERS' FAILURE TO PRESENT CLEAR AND CONVINCING EVIDENCE THAT THEIR SIGNATURES THEREON WERE FORGED.— As correctly held by the RTC and CA, the Deed of Undertaking became a public document by virtue of its acknowledgment before a notary public. Hence, it enjoys the presumption of regularity, which can only be overcome by clear and convincing evidence. Thus, in *Spouses Santos v.*

Spouses Lumbao, this Court upheld the presumption of regularity, finding the bare denial of petitioners therein insufficient to overcome the same: x x x **It is well-settled that a document acknowledged before a notary public is a public document that enjoys the presumption of regularity. It is a *prima facie* evidence of the truth of the facts stated therein and a conclusive presumption of its existence and due execution. To overcome this presumption, there must be presented evidence that is clear and convincing. Absent such evidence, the presumption must be upheld.** x x x While Petitioners vehemently deny participation in the execution of the Deed of Undertaking, they did not present any evidence to support their claim that their signatures thereon were forged. Hence, consistent with the ruling of the RTC and CA, the Court upholds the presumption of regularity ascribed to the Deed of Undertaking.

3. CIVIL LAW; CIVIL CODE; LOANS; ACCOMODATION BORROWER; CIRCUMSTANCES NEGATING PETITIONERS' CLAIM THAT THEY WERE MERE ACCOMODATION BORROWERS.— [A]part from the statements in the Joint Affidavit affirmed solely by the testimony of Mario Delos Reyes, which is in turn corroborated only by petitioner Marcelian's self-serving declarations, the Court finds no other evidence on record to support the existence of the alleged joint venture, and the verbal agreement of the Joint Venturers in respect of the DBP Loan. In fact, the theory that Petitioners acted as mere accommodation borrowers is belied by their own allegations respecting the payment of fees relating to the DBP Loan, x x x[.]Petitioners' payment of the interest on the DBP Loan, the insurance premiums corresponding to the Pingol Property, and other incidental fees solely on their account, *without seeking reimbursement from the alleged Joint Venturers*, establishes Petitioners' direct interest in the DBP Loan, and negates the claim that they are mere accommodation borrowers. Since the proceeds of the DBP Loan redounded to Petitioners' benefit, they must bear the liability arising from its non-payment, and comply with the obligations imposed by the Deed of Undertaking executed in connection therewith.

APPEARANCES OF COUNSEL

Marcelian C. Tapayan for petitioners.
Rasonable Law Office for respondent.

D E C I S I O N

CAGUIOA, *J.*:

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court (Petition), seeking the reversal of the Decision dated May 30, 2013[2] (assailed Decision) rendered by the Court of Appeals, Cagayan de Oro City - Twenty-First Division (CA). The assailed Decision stems from a complaint filed before the Regional Trial Court of Ozamiz City (RTC), by respondent Ponceda Martinez (Respondent) against petitioners, spouses Marcelian and Alice Tapayan (Petitioners), for Specific Performance with Damages.[3]

The Facts

The parties herein are relatives by affinity. Petitioner Alice Tapayan is the sister of Clark Martinez's (Clark) wife. Clark is Respondent's son.

Respondent is the registered owner of a parcel of land situated along Pingol Street, Ozamiz City, covered by Original Certificate of Title (OCT) No. P-1223 (Pingol Property).[4] Based on the records, it appears that two (2) mortgages were constituted over this property—the first in favor of Philippine National Bank (PNB Mortgage), and the second in favor of Development Bank of the Philippines (DBP Mortgage). The particulars of these mortgages are summarized as follows:

Mortgage	Parties	Purpose
PNB Mortgage	Respondent as mortgagor and Philippine National Bank, Ozamiz Branch (PNB) as mortgagee	To secure a One Hundred Thousand Peso (₱100,000.00) loan in the name of Respondent[5]

[1] *Rollo*, pp. 10-57.

[2] *Id.* at 59-72. Penned by Associate Justice Renato C. Francisco, with Associate Justices Romulo V. Borja and Oscar V. Badelles concurring.

[3] *Id.* at 15, 60.

[4] *Id.* at 59.

[5] *Id.* at 32.

DBP Mortgage	Respondent as mortgagor and Development Bank of the Philippines, Ozamiz Branch (DBP) as mortgagee	To secure a One Million Peso (₱1,000,000.00) renewable credit line in the name of Petitioners (DBP Loan)[6]

The records further show that Respondent agreed to constitute the DBP Mortgage upon Clark's request,[7] and that, in order to release the Pingol Property from the PNB Mortgage, the Petitioners and Respondent agreed to utilize a portion of the proceeds of the DBP Loan to settle the remaining balance of Respondent's PNB Loan, then amounting to Sixty-Five Thousand Three Hundred Twenty Pesos and 55/100 (₱65,320.55).[8]

Subsequently, the parties herein executed a Deed of Undertaking dated August 29, 1998 (Deed of Undertaking) in reference to the DBP Mortgage. The Deed of Undertaking bears the following stipulations, to wit:

1. that the "Second Party [Respondent] has no liability whatsoever insofar as the aforesaid loan contracted by the First Party [Petitioners] concerned;"
2. that "to secure the aforesaid amount, the First Party [Petitioners] shall execute a second mortgage in favor of the Second Party [Respondent] over his House and Lot covered by TCT No. T-10143, situated at Carangan, Ozami[z] City x x x"[9]
3. x x x
4. [t]hat in the event the First Party [Petitioners] could not pay the loan and consequently, the property of the Second Party [Respondent] is foreclosed and is not redeemed by the First Party [Petitioners] with[in] the one (1) year redemption period;

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[6] *Id.* at 12-13, 59-60.

[7] *Id.* at 13, 42.

[8] *Id.* at 32-33.

[9] *Id.* at 60.

> or in case the loan shall be paid by the Second Party [Respondent] just to save the property from being foreclosed, the First Party [Petitioners] shall acknowledge as his indebtedness the amount due to the Development Bank of the Philippines upon foreclosure or the amount paid by the Second Party [Respondent] in paying the loan, but in either case shall be deducted therefrom the amount of ₱65,320.55 plus interests and fees paid by the First [P]arty [Petitioners] to PNB, Ozamiz City[.][10] (Emphasis and underscoring omitted)

The DBP Loan was not paid when it fell due.

Proceedings before the RTC

On September 14, 1999, Respondent filed a complaint for Specific Performance with Damages (Complaint) against Petitioners before the RTC.[11] The Complaint sought to compel Petitioners to constitute a mortgage over their house and lot situated in Carangan, Ozamiz City covered by Transfer Certificate of Title (TCT) No. T-10143 (Carangan Property), in accordance with the provisions of the Deed of Undertaking.[12]

Respondent averred that Petitioners used the proceeds of the DBP Loan exclusively for their own purposes,[13] and that since Petitioners failed to pay the DBP Loan, she and her children were constrained to pay DBP the sum of One Million One Hundred Eighty Thousand Two Hundred Pesos and 10/100 (₱1,180,200.10) to save the Pingol Property from foreclosure.[14] Notwithstanding this, Petitioners have neither paid their indebtedness nor executed a mortgage over the Carangan Property to secure the same.[15]

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

[11] *Id.* at 60.

[12] *Id.* at 60-61.

[13] *Id.* at 60.

[14] See *id.* at 61.

[15] See *id.*

The Petitioners denied Respondent's allegations and claimed that the Deed of Undertaking "is a falsity."[16]

Petitioners argued that the proceeds of the DBP Loan were primarily used as capital for the construction business that petitioner Marcelian put up with Clark, Mario Delos Reyes, and Richard Sevilla (collectively, Joint Venturers).[17] Petitioners supposedly applied for the DBP Loan in furtherance of the verbal agreement among the Joint Venturers, while Respondent freely agreed to constitute the DBP Mortgage to secure said loan upon Clark's request.[18] Petitioners further emphasized that a portion of the proceeds of the DBP Loan was used to pay of the balance of Respondent's PNB Loan.[19] Moreover, while the DBP Loan was in the nature of a renewable credit line, it was not renewed since Respondent refused to give her written consent for this purpose.[20]

On the procedural aspect, Petitioners argued that Respondent's Complaint was premature and should have been be dismissed outright, since she failed to resort to barangay conciliation proceedings before filing her Complaint with the RTC.[21]

To support their allegations, Petitioners presented a Joint Affidavit executed by Mario Delos Reyes and Richard Sevilla, attesting to the formation of the joint venture and the conclusion of the verbal agreement to apply for the DBP Loan in the interest of the Joint Venturers.[22]

After trial, the RTC rendered a decision dated September 28, 2009 in favor of Respondent (RTC Decision), the dispositive portion of which reads:

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[16] *Id.* at 62.

[17] *Id.* at 12, 62, 67.

[18] See *id.* at 62.

[19] See *id.*

[20] *Id.*

[21] *Id.* at 64.

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

WHEREFORE premises considered, judgment is hereby rendered ordering defendant spouses Atty. Marcelian and Alice Tapayan to execute the second mortgage of (sic) their lot and house covered by Transfer Certificate of Title No. T-10143 located at Carangan, Ozamiz City in favor of plaintiff Mrs. Ponceda Martinez, unless they reimburse the latter of the total amount of ₱1,180,200.10 paid by her to the Development Bank of the Philippines, Ozamiz Branch for the redemption of the mortgage, and requiring defendants to pay to plaintiff the amount of ₱20,000.00 for attorney's fees.

SO ORDERED.[23]

In so ruling, the RTC noted that the Deed of Undertaking was acknowledged before Atty. Emmanuel V. Chiong, a notary public, and reasoned that since the latter enjoys the presumption of having performed his duties regularly, Petitioners' claim that the Deed of Undertaking was a falsity must be rejected.[24] On such basis, the RTC held that the Deed of Undertaking constitutes a valid and binding contract, which Petitioners are bound to respect.[25]

Proceedings before the CA

Aggrieved, Petitioners elevated the case to the CA. In their appeal, Petitioners prayed that the CA determine (i) whether the RTC validly acquired jurisdiction over the Complaint notwithstanding Respondent's failure to comply with the Revised *Katarungang Pambarangay* Law, (ii) whether Respondent is an accommodation mortgagor, and (iii) whether the Petitioners may be compelled to constitute a mortgage over the Carangan Property in Respondent's favor.[26]

On May 30, 2013, the CA rendered the assailed Decision denying the Petitioners' appeal. The dispositive portion of the assailed Decision reads:

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[23] *Id.* at 62-63.

[24] *Id.* at 63.

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

[26] *Id.* at 64.

WHEREFORE, premises considered, the instant appeal is hereby **DENIED**. The Decision of the RTC dated 28 September 2009 is hereby **AFFIRMED**. Defendants-appellants are ordered to execute the Second Mortgage on their house and lot covered by Transfer Certificate of Title (TCT) No. T-10143 in favor [of] plaintiff-appellee. Costs against appellants.

SO ORDERED.[27]

Contrary to the Petitioners' claim, the CA found that the requirements of the *Katarungang Pambarangay* Law were complied with, as evidenced by the Certificate to File Action filed by the *Lupon Tagapamayapa* before the RTC on August 16, 2000.[28]

Moreover, the CA held that the Deed of Undertaking merits consideration, since Petitioners failed to overcome the presumption of regularity ascribed to it as a public document.[29] Thus, on the basis of the stipulations in the Deed of Undertaking, the CA concluded that Respondent indeed stood as Petitioners' accommodation mortgagor. Hence, Respondent possesses the right to enforce the Deed of Undertaking and compel Petitioners to comply with its stipulations.[30]

Petitioners received a copy of the assailed Decision on June 13, 2013.[31]

On June 27, 2013, Petitioners filed a motion praying for an additional period of thirty (30) days within which to file a petition for review on *certiorari* before this Court.[32] Thereafter, on July 26, 2013, Petitioners filed this Petition, ascribing multiple errors to the CA.

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[27] *Id.* at 72.

[28] *Id.* at 65.

[29] *Id.* at 71-72.

[30] *Id.* at 66-67, 69-70.

[31] *Id.* at 4.

[32] *Id.* at 4-7.

Respondent filed her Comment to the Petition on May 30, 2014.[33] Petitioners filed their Reply on October 17, 2014.[34]

On February 26, 2015, the Court received a notice from Respondent's counsel of record, informing the Court of Respondent's death. The notice identified the Respondent's eight (8) children as her legal representatives, namely: Clark, Jeff Martinez, Rock Martinez, Gary Martinez, Patricia Martinez Olson, Eleanor Martinez Fassnacht, Treccie Martinez Kappes, and Sheila Martinez Sachs.[35]

Issue

The sole issue for this Court's resolution is whether the CA erred in affirming the RTC Decision directing Petitioners to execute a mortgage over the Carangan Property in favor of Respondent.

The Court's Ruling

As a rule, only questions of law may be raised in petitions filed under Rule 45,[36] subject only to recognized exceptions, 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

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[33] *Id.* at 93-98.

[34] *Id.* at 104-110.

[35] *Id.* at 113-114.

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

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[37] (Emphasis supplied; citations omitted)

The Petition invokes the fourth exception above, and calls on this Court to review the factual findings of the RTC, which were later affirmed by the CA.

In sum, Petitioners pose that the CA erred when it affirmed the following factual findings of the RTC:

1. The Deed of Undertaking presented by Respondent is genuine, and constitutes a valid and binding contract enforceable against Petitioners;
2. Petitioners applied for the DBP Loan for their own interest and sole account;
3. Petitioners are bound to reimburse Respondent One Million One Hundred Eighty Thousand Two Hundred Pesos and 10/100 (₱1,180,200.10) representing the amount she and her daughters paid to avert the foreclosure of the DBP Mortgage; and
4. To secure the full amount due Respondent, Petitioners are bound to constitute a mortgage over the Carangan Property, pursuant to the provisions of the Deed of Undertaking.

The Court holds that no misapprehension of facts was committed by both the RTC and the CA so as to justify deviation from their findings, except only as to the RTC's finding regarding the amount that Petitioners are bound to reimburse to Respondent.

Petitioners waived their right to object to the admission of the Deed of Undertaking on the basis of the best evidence rule.

[37] *Ambray and Ambray, Jr. v. Tsourous, et al.*, G.R. No. 209264, July 5, 2016, pp. 6-7.

In this Petition, Petitioners assert that the RTC and CA erred in ruling that the plain copy of the Deed of Undertaking was admissible as proof of its contents, in violation of the best evidence rule under Rule 130 of the Rules of Court.

Petitioners' assertion is erroneous.

The best evidence rule requires that the original document be produced whenever its contents are the subject of inquiry,[38] except in certain limited cases laid down in Section 3 of Rule 130. However, to set this rule in motion, a proper and timely objection is necessary. The Court's ruling in *Lorenzana v. Lelina*[39] is instructive:

> The best evidence rule requires that when the subject of inquiry is (sic) the contents of a document, no evidence is admissible other than the original document itself except in the instances mentioned in Section 3, Ru1e 130 of the Revised Rules of Court. As such, mere photocopies of documents are inadmissible pursuant to the best evidence rule. **Nevertheless, evidence not objected to is deemed admitted and may be validly considered by the court in arriving at its judgment. Courts are not precluded to accept in evidence a mere photocopy of a document when no objection was raised when it was formally offered.**
>
> In order to exclude evidence, the objection to admissibility of evidence must be made at the proper time, and the grounds specified. Objection to evidence must be made at the time it is formally offered. **In case of documentary evidence, offer is made after all the witnesses of the party making the offer have testified, specifying the purpose for which the evidence is being offered. It is only at this time, and not at any other, that objection to the documentary evidence may be made. And when a party failed to interpose a timely objection to evidence at the time they were offered in evidence, such objection shall be considered as waived.** This is true even if by its nature the evidence is inadmissible and would have surely been rejected if it had been challenged at the proper time. Moreover, grounds for objection must be specified in any case.

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[38] *Country Bankers Insurance Corporation v. Lagman*, 669 Phil. 205, 215 (2011).

[39] G.R. No. 187850, August 17, 2016.

Grounds for objections not raised at the proper time shall be considered waived, even if the evidence was objected to on some other ground. Thus, even on appeal, the appellate court may not consider any other ground of objection, except those that were raised at the proper time.[40] (Emphasis and underscoring supplied; citations omitted)

The Court notes that Petitioners failed to object to the admission of the plain copy of the Deed of Undertaking at the time it was formally offered in evidence before the RTC. In fact, in their Reply, Petitioners admit that they only raised this objection for the *first time* before the CA. The relevant portions of said Reply state:

> Instead of arguing against the truth of this established fact, the respondent made an implied admission of the truth thereof when she shifted instead to raise the argument that petitioner cannot raise this issue for the first time in this petition. Respondent said:
>
> "I That petitioners have raised issues of facts before this Honorable Court not otherwise raised in the court a quo."
>
> x x x x x x x x x
>
> NOTHING CAN BE MORE WRONG!
>
> Petitioner certainly raised the issue covered by Ground I of this Petition in the lower [c]ourt. Unfortunately, with utmost due respect, it inadvertently escaped the attention of the Honorable Court of Appeals. It was only very unfortunate that petitioner failed to give it a superlative emphasis adequate enough so as not to be ignored by the lower court. **It can also be reasonably surmised that the new counsel of respondent <u>may not have perused in detail the appellant's brief in the Court of Appeals, ofwhich brief brought this issue</u>** under the Issue No
>
> "E.1 THERE WERE CIRCUMSTANTIAL EVIDENCE THAT THE DEED OF UNDERTAKING WAS FALSIFIED."
>
> For easy reference, **the averments on pages 31 to 33 of the <u>Appellant's Brief in the Court of Appeals</u>** are hereby repleaded and reiterated as follows:

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

x x x x x x x x x

"Aside from the obtaining circumstances earlier discussed herein that the Deed of Undertaking (Exh. "K") is a falsified document, the records will show that plaintiff caused only a temporary marking of a machine copy of the same, placed as an annex to the Complaint and in a review of the records, defendants could not find that plaintiff caused a substitution of the temporarily marked machine copy with an original thereof, then subsequently marked after being identified by plaintiff witness Ponceda Martinez. x x x

x x x x x x x x x"

Verily, it is crystal clear that Ground I is not raised for the first time in this petition. **It is admitted, however, that there was no highest emphasis given to the same as it was placed in the last pages of the discussion in the appellant's brief.** Albeit the inadvertence, it is now given the greatest emphasis and significance by placing it under Ground I of this Petition because petitioners rationally and realistically believe that it goes into the heart of this Petition.[41] (Emphasis and underscoring supplied)

Having failed to timely raise their objection when the Formal Offer of Evidence was filed in the RTC, Petitioners are deemed to have waived the same. Hence, they are precluded from assailing the probative value of the plain copy of the Deed of Undertaking.

Petitioners failed to rebut the presumption of regularity ascribed to the Deed of Undertaking as a notarized public document.

Notwithstanding the findings of the RTC and CA, Petitioners still assail the genuineness and due execution of the Deed of Undertaking before this Court. Petitioners insist that the Deed of Undertaking is a falsity and should not be given credence.

The Court disagrees.

As correctly held by the RTC and CA, the Deed of Undertaking became a public document by virtue of its acknowledgment

[41] *Rollo,* pp. 105-107.

before a notary public. Hence, it enjoys the presumption of regularity, which can only be overcome by clear and convincing evidence. Thus, in *Spouses Santos v. Spouses Lumbao*,[42] this Court upheld the presumption of regularity, finding the bare denial of petitioners therein insufficient to overcome the same:

> Furthermore, both "Bilihan ng Lupa" documents dated 17 August 1979 and 9 January 1981 were duly notarized before a notary public. **It is well-settled that a document acknowledged before a notary public is a public document that enjoys the presumption of regularity. It is a *prima facie* evidence of the truth of the facts stated therein and a conclusive presumption of its existence and due execution. To overcome this presumption, there must be presented evidence that is clear and convincing. Absent such evidence, the presumption must be upheld.** In addition, one who denies the due execution of a deed where one's signature appears has the burden of proving that contrary to the recital in the *jurat*, one never appeared before the notary public and acknowledged the deed to be a voluntary act. **Nonetheless, in the present case petitioners' denials without clear and convincing evidence to support their claim of fraud and falsity were not sufficient to overthrow the above-mentioned presumption**; hence, the authenticity, due execution and the truth of the facts stated in the aforesaid "Bilihan ng Lupa" are upheld.[43] (Emphasis and underscoring supplied; citations omitted)

While Petitioners vehemently deny participation in the execution of the Deed of Undertaking, they did not present any evidence to support their claim that their signatures thereon were forged. Hence, consistent with the ruling of the RTC and CA, the Court upholds the presumption of regularity ascribed to the Deed of Undertaking.

Petitioners' claim that they are mere accommodation borrowers is not supported by sufficient evidence.

Petitioners claim that they are mere accommodation borrowers who applied for the DBP Loan for and on behalf of the Joint

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[42] 548 Phil. 332 (2007).

[43] *Id.* at 349.

Venturers, in furtherance of the verbal agreement between and among petitioner Marcelian and the Joint Venturers. Thus, Petitioners aver that the liability arising from the non-payment of the DBP Loan should be assumed not by Petitioners Marcelian and Alice, but by Petitioner Marcelian and the rest of the Joint Venturers—Clark, Mario Delos Reyes and Richard Sevilla.[44]

To support this claim, Petitioners rely on the Joint Affidavit executed by two (2) of the alleged Joint Venturers—Mario Delos Reyes and Richard Sevilla,[45] the pertinent portions of which read:

> 1. That we entered into a business venture with Atty. Marcelian C. Tapayan and Clark Martinez, engaging in the construction business;
>
> 2. That the loan obtained by Atty. Marcelian [T]apayan and Mr. Clark Martinez for ₱1 Million from DBP, Ozamiz City, was used partly to liquidate the loan of Mrs. Ponceda Martinez for about ₱65 thousand and the balance was used to finance as additional capital in the construction business[.][46]

Curiously, however, only Mario Delos Reyes testified before the RTC to affirm the statements in the Joint Affidavit, as Richard Sevilla had allegedly fled to the United States as an undocumented alien.[47]

Hence, apart from the statements in the Joint Affidavit affirmed solely by the testimony of Mario Delos Reyes, which is in turn corroborated only by petitioner Marcelian's self-serving declarations, the Court finds no other evidence on record to support the existence of the alleged joint venture, and the verbal agreement of the Joint Venturers in respect of the DBP Loan.

In fact, the theory that Petitioners acted as mere accommodation borrowers is belied by their own allegations

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[44] See *rollo*, pp. 36-37.

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

[46] *Id.* at 38.

[47] See *id.* at 15, 29.

respecting the payment of fees relating to the DBP Loan, which the Court quotes hereunder:

> [P]etitioner Marcelian Tapayan endeavored in good faith to fully pay the interests and fees of the ₱1 Million loan with the DBP, Ozamiz City. The loan is in the nature of a one-year credit line drawable against 60 to 150-day promissory notes, and is renewable yearly as long as the interests were paid. The first release of the loan was on December 27, 1996 via a promissory note 96/109 for ₱400,000.00 for 150 days (Exhibit "6") which was extended for another 150 days via an Addendum to Promissory Note (Exh "7"). The second release was on February 4, 1997 via Promissory Note No. 97-010 for ₱600,000.00 (Exh "8") for a term of 150 days extended for another 150 days via an Addendum to Promissory Note (Exh "9"). **The admitted documentary exhibits of petitioners evidently show that the interests and other fees (doc. stamps) were fully paid by petitioners covering the period from the date of the first loan release on December 27, 1996 and until the date of the extensions and even beyond the one-year term of the credit line as interests were paid up to February 28, 1998 as per Exhibits "10" to "27". Further, petitioners also paid the premium on the insurance coverage of the mortgaged property from May 15, 1997 to May 15, 1998, and in anticipation of the renewal of the credit line, petitioners also paid the insurance premium covering the period from May 15, 1998 to May 15, 1999, as can be gleaned from Exhibits "28" to "31".** The foregoing facts sufficiently indicated that amid the hard times, petitioners were up-to-date in the payments of interests and fees covering the promissory notes and extensions (Exhs. "6" to "9"), which is a basic requirement in the consideration of the renewal of the credit line. In sum, petitioners exercised utmost good faith in complying with the terms and conditions of the credit line.[48] (Emphasis supplied)

Petitioners' payment of the interest on the DBP Loan, the insurance premiums corresponding to the Pingol Property, and other incidental fees solely on their account,[49] *without seeking reimbursement from the alleged Joint Venturers*, establishes Petitioners' direct interest in the DBP Loan, and negates the

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

[49] *Id.*

claim that they are mere accommodation borrowers. Since the proceeds of the DBP Loan redounded to Petitioners' benefit, they must bear the liability arising from its non-payment, and comply with the obligations imposed by the Deed of Undertaking executed in connection therewith.

The amount paid to PNB must be deducted from Petitioners' total liability in accordance with the provisions of the Deed.

Petitioners aver that the RTC's determination respecting the amount due Respondent is erroneous, since it failed to consider the deductions stipulated in the Deed of Undertaking. Hence, Petitioners submit that should the Court order the execution of a mortgage over the Carangan Property, such mortgage should only be made to secure the amount of One Million One Hundred Fourteen Thousand Eight Hundred Seventy-Nine Pesos and 55/100 (₱1,114,879.55),[49-a] which represents the amount paid by Respondent to DBP to avert the foreclosure of the DBP Mortgage, *net of the deductions stipulated in the Deed of Undertaking*.

The Court agrees.

The RTC Decision directed Petitioners to execute a mortgage in favor of Respondent to secure the amount of One Million One Hundred Eighty Thousand Two Hundred Pesos and 10/100 (₱1,180,200.10), *unless* Petitioners reimburse Respondent said amount in full.

In so ruling, the RTC completely disregarded the fourth paragraph of the Deed of Undertaking, which specifically requires Respondent to deduct all prior payments made in favor of PNB from Petitioners' total liability, thus:

That in the event the First Party could not pay the loan and consequently, the property of the Second Party is foreclosed and is

[49-a] One Million One Hundred Eighty Thousand Two Hundred Pesos and 10/100 (₱1,180,200.10) representing the amount paid by Respondent to DBP, less Sixty-Five Thousand Three Hundred Twenty Pesos and 55/100 (₱65,320.55) representing the amount paid by Petitioners to PNB on Respondent's behalf. (See *rollo*, pp. 31-32.)

not redeemed by the First Party with[in] the one (1) year redemption period; or in case the loan shall be paid by the Second Party just to save the property from being foreclosed, **the First Party shall acknowledge as his indebtedness the amount due to the Development Bank of the Philippines upon foreclosure or the amount paid by the Second Party in paying the loan, but in either case shall be deducted therefrom the amount of ₱65,320.55 plus interests and fees paid by the First [P]arty to PNB, Ozamiz City**[.][50] (Emphasis supplied)

This oversight was adopted by the CA when it affirmed the RTC Decision *in toto*. The Court now corrects this error.

Respondent anchors her cause of action on the Deed of Undertaking in its entirety. To allow Respondent to selectively invoke the validity and enforceability of the provisions that support her cause, and disregard those that operate against her interests would promote injustice at the expense of Petitioners.

Notably, Respondent does not deny that a portion of the DBP Loan was in fact utilized to settle part of her PNB Loan. Respondent merely avers that such payment was necessary to clear the title of the Pingol Property, and that the resolution of such issue would be inconsequential to the ultimate disposition of the assailed Decision:

> Grounds 2 and 3 relied upon by [P]etitioners raise questions of fact so insubstantial that they do not affect the ultimate disposition of the action that [P]etitioners execute a mortgage on their propert[y] in favor of [R]espondent. It is an admitted fact x x x that [R]espondent obtained a One Million Peso bank loan as capital for [P]etitioners' construction business. If [P]etitioners needed to clear [R]espondent's title of an existing minor lien to be able to use it for their purpose, expenses incurred for the process were par for the course.[51]

This argument is specious, as the actual amount Petitioners are bound to reimburse constitutes the very same obligation Respondent seeks to secure through the execution of the mortgage subject of this dispute.

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[50] *Rollo*, pp. 31-32.

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

Thus, the Court modifies the assailed Decision, and rules that Sixty-Five Thousand Three Hundred Twenty Pesos and 55/100 (₱65,320.55) should be deducted from Petitioners' total liability, representing the reimbursement to be paid by the latter to PNB.[52] Consequently, the amount Petitioners should reimburse to Respondent is One Million One Hundred Fourteen Thousand Eight Hundred Seventy-Nine Pesos and 55/100 (₱1,114,879.55).

WHEREFORE, premises considered, the Petition for Review is **GRANTED IN PART**. The Decision dated May 30, 2013 of the Court of Appeals in CA-G.R. CV No. 02081-MIN is hereby **AFFIRMED WITH MODIFICATION**. Petitioners Marcelian and Alice Tapayan are directed to execute a mortgage on their house and lot covered by TCT No. T-10143 located at Carangan, Ozamiz City in favor of Respondent Ponceda Martinez, unless they reimburse the latter the amount of One Million One Hundred Fourteen Thousand Eight Hundred Seventy-Nine Pesos and 55/100 (₱1,114,879.55). Petitioners are likewise directed to pay Respondent attorney's fees in the amount of Twenty Thousand Pesos (₱20,000.00), in accordance with the Decision dated September 28, 2009 rendered by the Regional Trial Court in Civil Case No. OZC-99-38.

SO ORDERED.

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

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[52] *Id.* at 33-35.

SECOND DIVISION

[G.R. No. 210328. January 30, 2017]

GOVERNMENT SERVICE INSURANCE SYSTEM (GSIS), *petitioner, vs.* **APOLINARIO C. PAUIG,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; CIVIL SERVICE; CONCEPT OF RETIREMENT BENEFITS.—** Retirement benefits are given to government employees to reward them for giving the best years of their lives to the service of their country. This is especially true with those in government service occupying positions of leadership or positions requiring management skills because the years they devote to government service could be spent more profitably elsewhere, such as in lucrative appointments in the private sector. Hence, in exchange for their selfless dedication to government service, they should enjoy security of tenure and be ensured of a reasonable amount of support after they leave the government.

2. **ID.; ID.; ID.; PERMANENT APPOINTMENT, TEMPORARY APPOINTMENT AND CASUAL EMPLOYMENT, DISTINGUISHED.—** A permanent appointment is one issued to a person who has met the requirements of the position to which appointment is made, in accordance with the provisions of the Civil Service Act and the Rules and Standards, while temporary appointment is made in the absence of appropriate eligibles and it becomes necessary in the public interest to fill a vacancy. Casual employment, on the other hand, is not permanent but occasional, unpredictable, sporadic and brief in nature.

3. **ID.; ID.; ID.; RULING IN *GSIS V. CSC*, NOT APPLICABLE; ONLY PERIODS OF SERVICE WHERE PREMIUM PAYMENTS WERE ACTUALLY MADE AND DULY REMITTED TO THE GOVERNMENT SERVICE INSURANCE SYSTEM (GSIS) SHALL BE INCLUDED IN THE COMPUTATION OF RETIREMENT BENEFITS.—** [I]n *GSIS v. CSC,* the Court allowed the claimants to avail of their retirement benefits although no deductions were made from their salaries during the disputed periods when they were

paid on a *per diem* basis. However, unlike in the case at bar, deductions were actually made from claimant's fixed salary before and after the short controversial period. She assumed in all good faith that she continued to be covered by the GSIS insurance benefits considering that, in fact and in practice, the deductions are virtually mandatorily made from all government employees on an essentially involuntary basis. More importantly, neither of the claimants in this case of *GSIS v. CSC* was a casual or temporary employee like Pauig, both of them being elective officials. Here, the primordial reason why there were no deductions during those fourteen (14) years was because Pauig was not yet a GSIS member at that time. There was thus no legal obligation to pay the premium as no basis for the remittance of the same existed. And since only periods of service where premium payments were actually made and duly remitted to the GSIS shall be included in the computation of retirement benefits, said disputed period of fourteen (14) years must corollarily be removed from Pauig's creditable service.

4. ID.; ID.; D.; WHERE THE LANGUAGE OF THE RETIREMENT LAW IS CLEAR AND UNEQUIVOCAL, LIBERAL CONSTRUCTION CANNOT BE INVOKED; CASUAL AND TEMPORARY SERVICE IN THE GOVERNMENT MUST BE EXCLUDED FROM THE CREDITABLE PERIOD FOR RETIREMENT PURPOSES.— The Court must deny Pauig's appeal to liberal construction since the applicable law is clear and unambiguous. The primary modality of addressing the present case is to look into the provisions of the retirement law itself. Guided by the rules of statutory construction in this consideration, the Court finds that the language of the retirement law is clear and unequivocal; no room for construction or interpretation exists, only the application of the letter of the law. Therefore, Pauig's casual and temporary service in the government from February 12, 1964 to July 18, 1977 must necessarily be excluded from the creditable period of service for retirement purposes.

APPEARANCES OF COUNSEL

GSIS Legal Services Group for petitioner.
Haxley M. Galano for respondent.

D E C I S I O N

PERALTA, *J.*:

This is a Petition for Review which petitioner Government Service Insurance System *(GSIS)* filed assailing the Decision[1] dated July 15, 2013 and Order[2] dated December 4, 2013 of the Regional Trial Court *(RTC)* of Cabagan, Isabela, Branch 22, in Civil Case No. 22-1035.

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

Respondent Apolinario C. Pauig *(Pauig)* was the Municipal Agriculturist of the Municipality of San Pablo, Isabela. He started in the government service on February 12, 1964 as Emergency Laborer on casual status. Later, he became a temporary employee from July 5, 1972 to July 18, 1977. On July 19, 1977, he became a permanent employee, and on August 1, 1977, he became a GSIS member, as indicated in his Information for Membership.

Thereafter, on November 3, 2004, he retired from the service upon reaching the mandatory retirement age of sixty-five (65) years old. But when he filed his retirement papers with the GSIS-Cauayan, the latter processed his claim based on a Record of Creditable Service *(RCS)* and a Total Length of Service of only twenty-seven (27) years. Disagreeing with the computation, Pauig wrote a letter-complaint to the GSIS, arguing that his first fourteen (14) years in the government service had been erroneously omitted.

The GSIS ratiocinated that Pauig's first fourteen (14) years in the government were excluded in the computation of his retirement benefits because during those years, no premium payments were remitted to it. Under the Premium-Based Policy of the GSIS which took effect on August 1, 2003, only periods of service where premium payments were made and duly remitted

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[1] Penned by Judge Felipe Jesus Torio II; *rollo,* pp. 27-32.

[2] *Id.* at 44.

to the System shall be included in the computation of retirement benefits. Aggrieved, Pauig filed a case before the RTC of Cabagan, Isabela.

On July 15, 2013, the RTC rendered a Decision, the decretal portion of which reads:

> WHEREFORE, premises considered, the court hereby renders judgment as follows:
>
> 1. Declaring the Premium-Based Policy under Resolution No. 90 and Policy and Procedural Guidelines No. 171-03, both dated April 2, 2013, of the Government Service and Insurance System (GSIS) as in accordance with law and thus lawful, valid, binding and effective.
>
> 2. Directing the GSIS to credit under Policy and Procedural Guidelines No. 171-03 the casual/temporary service from February 10, 1964 to July 18, 1977 in government of the plaintiff Apolinario C. Pauig as creditable service for retirement purposes upon payment of the premium contributions and interest thereon in accordance with the provisions thereof.
>
> No pronouncement as to Damages and Cost.
>
> SO DECIDED, this 15th day of July 2013 at the Judge's Chamber, Cabagan, Isabela.[3]

GSIS then filed a motion for reconsideration, which was later denied. Thus, the instant petition.

The main and sole issue to be resolved is whether or not the GSIS should include Pauig's first fourteen (14) years in government service for the calculation of the latter's retirement benefits claim.

The Court rules in the negative.

Retirement benefits are given to government employees to reward them for giving the best years of their lives to the service of their country. This is especially true with those in government

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[3] *Rollo,* p. 32.

service occupying positions of leadership or positions requiring management skills because the years they devote to government service could be spent more profitably elsewhere, such as in lucrative appointments in the private sector. Hence, in exchange for their selfless dedication to government service, they should enjoy security of tenure and be ensured of a reasonable amount of support after they leave the government.[4]

Pauig insists that retirement laws must be liberally construed in favor of the retirees because the intention is to provide for their sustenance, and hopefully even comfort, when they no longer have the stamina to continue earning their livelihood. After devoting the best years of his life to public service, Pauig asserts that he deserves the appreciation of a grateful government as best concretely expressed in a generous retirement gratuity commensurate with the value and length of his services. That generosity, he argues, is the least he should expect now that his work is done and his youth is gone. Even as he feels the weariness in his bones and glimpses the approach of the lengthening shadows, he should be able to savor the fruits of his toil.[5]

However, the doctrine of liberal construction cannot be applied in this case, where the law invoked is clear, unequivocal and leaves no room for interpretation or construction. To uphold Pauig's position will contravene the very words of the law, and will defeat the ends which it seeks to attain.[6]

Pauig claims that his service in the government from February 12, 1964 to July 18, 1977 should be credited for the purpose of computing his retirement benefits. The RTC, in ruling in his favor, relied on Policy 2 of Policy and Procedural Guidelines No. 171-03 dated February 2, 2003, which states:

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[4] *Government Service Insurance System v. Civil Service Commission,* 315 Phil. 159, 171 (1995).

[5] *Santiago v. Commission on Audit,* 276 Phil. 127, 136 (1991).

[6] *Supra* note 4.

2. Services, for purposes of computing all the benefits that a member may secure from GSIS shall mean only such services rendered by a member in any government agency, whether national, local or government-owned or controlled corporation under the following conditions:

The member was receiving a fixed basic monthly compensation for such services.

The corresponding monthly premium contributions were timely and currently remitted or paid to the GSIS.

The RTC explained that it is clear from the aforequoted provision that the word "service" is not qualified and does not refer only to service with a permanent status. What is simply required is that the member was receiving a fixed basic monthly compensation for his services and the corresponding monthly premium contributions were timely remitted to the GSIS.

In order to bring life to the true intention of the law, however, Policy and Procedural Guidelines No. 171-03 must be read together with other laws pertinent at the time of the contested period of service. Section 4 of Commonwealth Act (*C.A.*) No. 186, or the *Government Service Insurance Act of 1936 provides:*

SEC. 4. *Scope of Application of* System.—**Regular membership in the system shall be compulsory upon —**

(a) All **regularly and permanently** appointed employees of the Government of the Commonwealth;

(b) All regular and permanent employees of the National Assembly;

(c) All members of the judiciary;

(d) All officers and enlisted men of the Regular Force, Philippine Army;

(e) All regular and permanent employees of the Metropolitan Water District;

(f) Regular and permanent employees of other Government boards or agencies, except the University of the Philippines and the Government-owned or controlled business corporations; and

(g) Those subject to the provisions of Act Numbered Thirty hundred and fifty, as amended, excluding the persons employed to take the place of teachers on maternity or sick leave, or otherwise employed temporarily: *Provided,* That any provincial, city or municipal government, or the University of the Philippines or any other corporation owned or controlled by the Government, shall have the option of joining the System, and if it so joins, the membership shall be compulsory upon all its **permanent and regular employees,** and it shall pay its share of the contribution of three *per centum per annum* of its employees' basic annual salaries or compensation, plus the extra premiums, if any, due to extra hazards of the member's occupation: *Provided, further,* That it shall be compulsory for the municipal, city and provincial governments to pay the required government contributions corresponding to the employees now subject to the provisions of Act Numbered Three thousand and fifty, as amended: *And provided, finally,* That membership shall not include (a) officers or personnel detailed from the Army, the Navy, or the Civil Service of the United States, and (b) employees who are not citizens of the United States or of the Philippines.[7]

Likewise relevant are Republic Act *(R.A.)* Nos. 4968 and 660, amending C.A. No. 186, thus:

SEC. 4. *Scope of application of System.—*

(a) Membership in the System **shall be compulsory upon all regularly and permanently appointed employees,** including those whose tenure of office is fixed or limited by law; upon all teachers except only those who are substitutes; and **upon all regular officers** and enlisted men of the Armed Forces of the Philippines: *Provided,* That it shall be compulsory upon **regularly and permanently appointed employees of a municipal government** below first class only if and when said government has joined the System under such terms and conditions as the latter may prescribe.

(b) Membership in the System shall be appointed with an elective official of the National Government or of a local government that is a member of the System: *Provided,* That if he desires to come within

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[7] Commonwealth Act No. 186, Entitled An Act To Create And Establish A "Government Service Insurance System," To Provide For Its Administration, And To Appropriate The Necessary Funds Therefor, November 14, 1936. (Emphasis ours)

the purview of this Act, he must notify the System in writing to that effect: *Provided, Further,* That he complies with the requirements of the System and that he is in the Government service when his insurance takes effect: And provided, finally, That after his admission into the System he shall be entitled to life insurance benefit for which he shall pay either one per centum or three per centum of his monthly salary, depending on the kind of insurance selected by him, and his employer shall likewise pay for him the same amount.[8]

Section 2. Subsection (a) of Section four of the same Act, as amended, is hereby further amended to read as follows:

"(a) Membership in the System **shall be compulsory upon all appointive officers and employees** in the executive, legislative, and judicial branches of the government, including those whose tenure of office is fixed or limited by the Constitution or by law; **upon all regular employees** of the Philippine Tuberculosis Society and the Philippine National Red Cross, and other employees of the government-owned or controlled corporations; upon all regular officers and enlisted men of the Armed Forces of the Philippines; and **upon all elective officials** receiving compensation as defined in this Act: ***Provided,* That casual, substitute, or temporary employees and substitute or temporary teachers shall be hereby covered for purposes of term insurance** for two thousand seven hundred and fifty pesos if appointed for a period of not less than two months, the term insurance to be effective in the month next following the month in which the premium prescribed in Section five hereof has been paid: And provided, further, **That said casual, substitute or temporary employees and substitute or temporary teachers shall not be covered by the retirement insurance plan provided for in this Act:** *Provided, finally,* That the term 'appointive officer and employee' as used herein shall include those extended permanent appointments and provisional appointments as used in the civil service law but excluding those without any kind of civil service eligibility when so required."[9]

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[8] Commonwealth Act No. 186, as amended by Republic Act No. 660, June 16, 1951.

[9] Republic Act No. 4968, Entitled An Act Amending Further Commonwealth Act Numbered One Hundred and Eighty-Six, As Amended, June 17, 1967. (Emphasis ours)

Moreover, Presidential Decree *(P.D.)* No. 1146 also mentions the employees covered by the compulsory membership in the GSIS, thus:

B. COVERAGE OF THE SYSTEM

Section 3. *Compulsory Coverage.* Membership in the System shall **be compulsory for all permanent employees** below 60, years of age upon appointment to permanent status: Provided, That upon approval by the President of the Philippines and subject to the availability of funds, compulsory coverage may be extended to non-permanent employees of national government agencies and local governments, either simultaneously in phases or by groups; Provided, Further, That non-permanent employees of government-owned or control corporations may be covered upon approval by the System upon request of their respective Governing Boards; Provided, Finally, that the coverage of temporary employees under R.A. No. 4968 shall remain in force.[10]

Indubitably, compulsory coverage under the GSIS had previously and consistently included regular and permanent employees, and expressly excluded casual, substitute or temporary employees from its retirement insurance plan. A permanent appointment is one issued to a person who has met the requirements of the position to which appointment is made, in accordance with the provisions of the Civil Service Act and the Rules and Standards, while temporary appointment is made in the absence of appropriate eligibles and it becomes necessary in the public interest to fill a vacancy. Casual employment, on the other hand, is not permanent but occasional, unpredictable, sporadic and brief in nature.[11] Based on the records, Pauig began his career in the government on February 12, 1964 as Emergency Laborer on a casual status. Then, he became a temporary employee from July 5, 1972 to July 18, 1977. However, the Court notes that it was not until 1997 that the compulsory

[10] Presidential Decree No. 1146, Entitled Amending, Expanding, Increasing and Integrating The Social Security and Insurance Benefits of Government Employees and Facilitating The Payment Thereof Under Commonwealth Act No. 186, As Amended, And For Other Purposes, May 31, 1977.

[11] *Chua v. Civil Service Commission,* 282 Phil. 970, 982 (1992).

membership in the GSIS was extended to employees other than those on permanent status, to wit:

B. MEMBERSHIP IN THE GSIS

SEC. 3. *Compulsory Membership.* - Membership in the GSIS **shall be compulsory for all employees** receiving compensation who have not reached the compulsory retirement age, **irrespective of employment status**, except members of the Armed Forces of the Philippines and the Philippine National Police, subject to the condition that they must settle first their financial obligation with the GSIS, and contractuals who have no employer and employee relationship with the agencies they serve.

Except for the members of the judiciary and constitutional commissions who shall have life insurance only, all members of the GSIS shall have life insurance, retirement, and all other social security protections such as disability, survivorship, separation, and unemployment benefits.[12]

Pauig cited the case of *GSIS v. CSC,*[13] where the Court ruled that the basis for the provision of retirement benefits is service to the government. Indeed, while a government insurance system rationalizes the management of funds necessary to keep this system of retirement support afloat and is partly dependent on contributions made by the thousands of members of the system, the fact that these contributions are minimal when compared to the amount of retirement benefits actually received shows that such contributions, while necessary, are not absolutely determinative in drawing up criteria for those who would qualify as recipients of the retirement benefit system.

Unfortunately, Pauig's reliance on the aforecited case is misplaced. True, in *GSIS v. CSC,* the Court allowed the claimants to avail of their retirement benefits although no deductions were

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[12] Republic Act No. 8291, Entitled An Act Amending Presidential Decree No. 1146, As Amended, Expanding And Increasing The Coverage And Benefits Of The Government Service Insurance System, Instituting Reforms Therein And For Other Purposes, May 30, 1997. (Emphasis ours)

[13] *Supra* note 4.

made from their salaries during the disputed periods when they were paid on a *per diem* basis. However, unlike in the case at bar, deductions were actually made from claimant's fixed salary before and after the short controversial period. She assumed in all good faith that she continued to be covered by the GSIS insurance benefits considering that, in fact and in practice, the deductions are virtually mandatorily made from all government employees on an essentially involuntary basis. More importantly, neither of the claimants in this case of *GSIS v. CSC* was a casual or temporary employee like Pauig, both of them being elective officials.[14] Here, the primordial reason why there were no deductions during those fourteen (14) years was because Pauig was not yet a GSIS member at that time. There was thus no legal obligation to pay the premium as no basis for the remittance of the same existed. And since only periods of service where premium payments were actually made and duly remitted to the GSIS shall be included in the computation of retirement benefits, said disputed period of fourteen (14) years must corollarily be removed from Pauig's creditable service.

The Court must deny Pauig's appeal to liberal construction since the applicable law is clear and unambiguous. The primary modality of addressing the present case is to look into the provisions of the retirement law itself. Guided by the rules of statutory construction in this consideration, the Court finds that the language of the retirement law is clear and unequivocal; no room for construction or interpretation exists, only the application of the letter of the law.[15] Therefore, Pauig's casual and temporary service in the government from February 12, 1964 to July 18, 1977 must necessarily be excluded from the creditable period of service for retirement purposes.

WHEREFORE, IN VIEW OF THE FOREGOING, the Court **GRANTS** the petition and **REVERSES AND SETS ASIDE** the Decision dated July 15, 2013 and Order dated December 4, 2013 of the Regional Trial Court *(RTC)* of Cabagan,

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[14] *Id.*

[15] *Fetalino v. COMELEC,* 700 Phil. 129, 149 (2012).

Isabela, Branch 22, in Civil Case No. 22-1035 insofar as it directs the Government Service Insurance System to include Apolinario C. Pauig's casual and temporary service in the government from February 12, 1964 to July 18, 1977 as creditable service for purposes of computing his retirement benefits.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 214303. January 30, 2017]

DELFIN C. GONZALEZ, JR., *petitioner, vs.* **MAGDALENO M. PEÑA, ALABANG COUNTRY CLUB, INC., and MS. ARSENIA VERA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENT, EXECUTION OF; AN EXECUTION SALE THAT HAD BEEN DECLARED VOID PRODUCES NO LEGAL AND BINDING EFFECT; A PERSON WHO ACQUIRED PROPERTY THROUGH A VOID EXECUTION SALE CANNOT BE A VALID TRANSFEREE THEREOF.— There is no factual dispute that Peña acquired the ACCI shares of petitioner by virtue of a winning bid in an execution sale that had already been declared by this Court, with finality, as null and void. **In no uncertain terms, we declared that the "concomitant execution pending appeal is likewise without**

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[*] Designated Additional Member per Special Order No. 2416, dated January 4, 2017.

any effect. x x x. Consequently, all levies, garnishment and sales executed pending appeal are declared null and void, with the concomitant duty of restitution x x x." Void transactions do not produce any legal or binding effect, and any contract directly resulting from that illegality is likewise void and inexistent. Therefore, Peña could not have been a valid transferee of the property. As a consequence, his successor-in-interest, Vera, could not have validly acquired those shares. The RTC thus erred in refusing to restore the actual ACCI shares to petitioner on the basis of their void transfer to Vera.

2. **CIVIL LAW; OBLIGATIONS; IMPOSSIBLE OBLIGATION, NOT A CASE OF; ACTUAL RESTITUTION OF CLUB SHARES IS NOT LEGALLY IMPOSSIBLE NOTWITHSTANDING ITS PERFECTED SALE TO ANOTHER PERSON; A BUYER WHO ACQUIRED THE PROPERTIES BY VIRTUE OF A VOID EXECUTION SALE ACQUIRED NO BETTER TITLE TO THE GOODS THAN THE SELLER.—** Neither was the RTC correct in its characterization of the actual restitution of the ACCI shares to petitioner as "impossible." For the obligation to be considered impossible under Article 1266 of the Civil Code, its physical or legal impossibility must first be proven. Here, the RTC did not make any finding on whether or not it was physically impossible to effect the actual restitution of the property. On the other hand, petitioner correctly points out that since the shares are movable by nature, the same can be transferred back to Gonzalez, Jr. by recording the transaction in the stock and transfer book of the club. As regards legal impossibility, the RTC appears to have jumped to the conclusion that because of the perfected sale of the shares to Vera, petitioner can no longer claim actual restitution of the property. However, Article 1505 of the Civil Code instructs that "x x x where goods are sold by a person who is not the owner thereof, and who does not sell them under authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell. x x x." The Court itself settled that Peña acquired the properties by virtue of a null and void execution sale. In effect, his buyers acquired no better title to the goods than he had. Therefore, the RTC erred in appreciating the existence of legal impossibility in this case on the mere

pretext that the properties had already been transferred to third parties. By virtue of Article 1505, the true owners of the goods are definitely not legally precluded from claiming the ownership of their actual properties.

3. ID.; ID.; ID.; ID.; PETITIONER MUST BE RESTORED AS OWNER OF THE CLUB SHARES.— [G]iven the encompassing and overarching declaration of this Court nullifying the acquisition by Peña of the properties of Urban Bank and its directors, and considering that actual restitution of the movable properties is neither physically nor legally impossible, this Court finds that the refusal of the RTC to restore the actual shares on the mere pretext that these had been transferred by Peña to third persons as utterly devoid of basis. Consequently, pursuant to our final ruling in *Urban Bank*, petitioner must be restored as owner of the actual ACCI shares, and not just be paid the full value of the property.

APPEARANCES OF COUNSEL

Angara Abello Concepcion Regala & Cruz for petitioner.
Roem J. Arbolado for respondent M. Peña.
Medialdea Ata Bello & Suarez for respondent Alabang Country Club, Inc.

R E S O L U T I O N

SERENO, *C.J.*:

Before this Court is a Petition for Review on Certiorari assailing the Omnibus Resolution and Resolution of the Regional Trial Court (RTC) of Makati City, Branch 65,[1] which denied the prayer of petitioner Delfin C. Gonzalez, Jr. to be restored as owner of the shares issued by respondent Alabang Country Club, Inc. (ACCI).

The facts in this case are not disputed.

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[1] *Rollo*, pp. 162-208, 209-214. The Omnibus Resolution dated 30 April 2014 and Resolution dated 17 September 2014 in Civil Case No. 12-758 was penned by Presiding Judge Edgardo M. Caldona.

In its Decision dated 28 May 1999, the RTC of Bago City adjudged petitioner liable to respondent Magdaleno M. Peña for the payment of the agency's fees and damages amounting to ₱28.5 million. Petitioner, together with his co-petitioners in that case,[2] appealed the Decision, while Peña moved for execution pending appeal of this ruling. The grant of that motion resulted in the sale to Peña of petitioner's ACCI shares on 16 October 2000.[3] Through a private sale on 2 May 2001, he was able to sell and transfer the subject shares to respondent Arsenia Vera.[4]

On 19 October 2011, this Court issued a Decision in G.R. Nos. 145817, 145822, 162562, entitled *Urban Bank, Inc. v. Peña*, which vacated with finality the Decision of the RTC of Bago City dated 28 May 1999.[5]

Considering that the Decision of the RTC of Bago City had been completely vacated and declared null and void, this Court held that the concomitant execution pending appeal was likewise null and without effect. Thus, we held that Urban Bank and its officers and directors, including petitioner herein, were entitled to the full restoration of their ownership and possession of all properties that were executed pending appeal, such as the subject shares. In the dispositive portion of the Decision, we categorically issued the fo1lowing directives:[6]

a. Urban Bank, Teodoro Borlongan, Delfin C. Gonzalez, Jr., Benjamin L. de Leon, P. Siervo H. Dizon, Eric L. Lee, Ben Y. Lim, Jr., Corazon Bejasa, and Arturo Manuel, Jr. (respondent bank officers) shall be restored to full ownership and possession of all properties executed pending appeal;

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[2] His co-petitioners are Urban Bank, Inc., Benjamin L. de Leon, and Eric L. Lee.

[3] *Rollo*, pp. 216-217; Order of the RTC of Bago City, Branch 62, dated 18 October 2000.

[4] *Id.* at 220; letter dated 15 June 2004 issued by Alabang Country Club, Inc.

[5] *Id.* at 134-137; Entry of Judgment made on 9 May 2012.

[6] *Urban Bank, Inc. v. Peña*, 675 Phil. 474, 584-585 (2011).

b. If the property levied or garnished has been sold on execution pending appeal and Atty. Magdaleno Peña is the winning bidder or purchaser, he must fully restore the property to Urban Bank or respondent bank officers, and if actual restitution of the property is impossible, then he shall pay the full value of the property at the time of its seizure, with interest;

c. If the property levied or garnished has been sold to a third party purchaser at the public auction, and **title to the property has not been validly and timely transferred to the name of the third party**, the ownership and possession of the property shall be returned to Urban Bank or respondent bank officers, subject to the third party's right to claim restitution for the purchase price paid at the execution sale against the judgment creditor;

d. If the purchaser at the public auction is a third party, and **title to the property has already been validly and timely transferred to the name of that party**, Atty. Peña must pay Urban Bank or respondent bank officers the amount realized from the sheriff's sale of that property, with interest from the time the property was seized. (Emphasis and underscoring in the original)

We then ordered that the proceedings with respect to any due restitution under the circumstances shall be transferred to a regional trial court in the National Capital Region, Makati City.

The restitution proceedings were raffled to the RTC of Makati City, Branch 65. Thereafter, petitioner moved for execution, seeking restoration of his actual ACCI shares. The ACCI countered that the club shares petitioner was claiming could no longer be returned to him, because they had already been transferred by Peña to Vera.

In its Omnibus Resolution dated 30 April 2014, the RTC concluded that Peña's private sale of the shares to Vera on 2 May 2001 was valid, given that the latter was an innocent purchaser for value. As such, Vera could not be charged with knowledge of the controversy involving the ACCI shares. Considering the validity of the sale, the trial court held that the actual restitution of the property to petitioner was no longer possible. Applying paragraph (b) of the above-quoted dispositive

portion of the Decision, it directed Peña to pay for the value of the property instead. The RTC ruling reads:[7]

IV. PROPERTIES SUBJECT OF RESTITUTION OR REPARATION OF DAMAGES WITH RESPECT TO DELFIN C. GONZALEZ, JR.:

x x x x x x x x x

c. The title to the share in Alabang Country Club having been validly and timely transferred to the name of Arsenia Vera, Magdaleno Peña shall pay Delfin C. Gonzalez, Jr. the full value of the property at the time of its seizure with interest counted as of said date.

x x x x x x x x x

SO ORDERED.

Aside from herein petitioner, Delfin C. Gonzalez, Jr., his co-petitioners in *Urban Bank*— Eric L. Lee and Urban Bank, were likewise not restored to their ownership of their movable properties. The RTC held that:[8]

I. PROPERTIES SUBJECT OF RESTITUTION OR REPARATION OF DAMAGES WITH RESPECT TO URBAN BANK (NOW EXPORT INDUSTRY BANK):

x x x x x x x x x

b. Regarding the three (3) shares of Urban Bank in Tagaytay Highlands International Golf Club previously covered by Certificate Nos. 3027, 3166, and 3543 which are now in the names of third parties under Certificate Nos. 3848, 3847, and 3837, respectively, Magdaleno Peña must pay Urban Bank the amount realized from the sheriff's sale of these three (3) shares, with interest from the time these properties were seized;

x x x x x x x x x

II. PROPERTIES SUBJECT OF RESTITUTION OR REPARATION OF DAMAGES WITH RESPECT TO ERIC L. LEE:

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[7] *Rollo*, pp. 207-208.

[8] *Id.* at 204-206.

x x x x x x x x x

b. Regarding the Manila Golf and Country Club previously in the name of Eric Lee which was validly and timely transferred in the name of Jose Singson, Magdaleno Peña must pay Eric Lee the amount realized from the sheriff's sale thereof, with interest from the time the said share was seized;

c. As to the share in Sta. Elena Golf Club (previously Certificate No. M099A), the title thereto having been validly and timely transferred in the name of Oscar Reyes and later to his assignee, Christian Osmond Reyes, Magdaleno Peña must pay Eric Lee the amount realized from the sheriff's sale, with interest from the time the property was seized;

x x x x x x x x x

In all these instances, the RTC refused to restore to Urban Bank, Eric L. Lee, and Delfin C. Gonzales, Jr. the actual ownership of their respective club shares on the pretext that these had already been transferred to third parties.

Subsequently, petitioner moved for reconsideration, but the RTC denied his motion in its Resolution dated 17 September 2014. Aggrieved, he came directly to this Court and asked for the reversal of the ruling of the trial court's ruling, as well as for the cancellation of the shares in the name of Vera.

Petitioner points out that Peña obtained the property at a public auction that has been declared void by this Court. He then asserts that Vera, as successor-in-interest, has no right over those shares. He further claims that the trial court erred in concluding that the actual restitution of the club shares to him was impossible, since the transfer of the property could have simply been recorded in the club's stock and transfer books.

In their Comments filed before this Court, both the ACCI[9] and Peña[10] submit that no error can be imputed to the RTC for declaring the impossibility of the actual restitution of the shares.

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[9] *Id.* at 289-298.

[10] *Id.* at 330-335.

In particular, the ACCI claims that because the subject property has been transferred to a third person, its return to petitioner is no longer possible. Respondent Vera failed to file her comment despite notice.[11]

This case presents a lone question of law: whether or not the RTC faithfully complied with our directive to restore to Urban Bank and the latter's officers their properties illegally obtained by Peña.

RULING OF THE COURT

We grant the Petition. Indeed, the RTC did not comply with our ruling in *Urban Bank* when it refused to restore to petitioner the actual ownership of his club shares on the mere pretext that these had already been sold by Peña to his successor-in-interest.

As stated in this Court's Decision dated 19 October 2011, the RTC was bound to comply with this relevant directive:[12]

> b. If the property levied or garnished has been sold on execution pending appeal and **Atty. Magdaleno Peña is the winning bidder or purchaser**, he must fully restore the property to Urban Bank or respondent bank officers, and **if actual restitution of the property is impossible**, then he shall pay the full value of the property at the time of its seizure, with interest; (Emphasis supplied)

There is no factual dispute that Peña acquired the ACCI shares of petitioner by virtue of a winning bid in an execution sale that had already been declared by this Court, with finality, as null and void. **In no uncertain terms, we declared that the "concomitant execution pending appeal is likewise without any effect. x x x. Consequently, all levies, garnishment and sales executed pending appeal are declared null and void, with the concomitant duty of restitution x x x."**[13]

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[11] *Id.* at 337; Proof of Service of the Resolution of this Court dated 28 June 2016 reiterating compliance with the requirement to file a separate comment per Resolution dated 23 February 2015.

[12] *Urban Bank, Inc. v. Peña*, 675 Phil. 474, 584 (2011).

[13] *Urban Bank, Inc. v. Peña*, 675 Phil. 474, 555 (2011).

Void transactions do not produce any legal or binding effect, and any contract directly resulting from that illegality is likewise void and inexistent.[14] Therefore, Peña could not have been a valid transferee of the property. As a consequence, his successor-in-interest, Vera, could not have validly acquired those shares.[15] The RTC thus erred in refusing to restore the actual ACCI shares to petitioner on the basis of their void transfer to Vera.

Neither was the RTC correct in its characterization of the actual restitution of the ACCI shares to petitioner as "impossible." For the obligation to be considered impossible under Article 1266 of the Civil Code, its physical or legal impossibility must first be proven.[16]

Here, the RTC did not make any finding on whether or not it was physically impossible to effect the actual restitution of the property. On the other hand, petitioner correctly points out that since the shares are movable by nature, the same can be transferred back to Gonzalez, Jr. by recording the transaction in the stock and transfer book of the club.[17]

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[14] *Conjugal Partnership of the Spouses Cadavedo v. Lacaya*, 724 Phil. 300 (2014).

[15] *Dingal v. Intermediate Appellate Court*, 252 Phil. 395 (1989).

[16] CIVIL CODE OF THE PHILIPPINES, Article 1266:

The debtor in obligations to do shall also be released when the prestation becomes legally or physically impossible without the fault of the obligor.

[17] CORPORATION CODE OF THE PHILIPPINES, Section 63:

Certificate of Stock and Transfer of Shares. — The capital stock of stock corporations shall be divided into shares for which certificates signed by the president or vice -president, countersigned by the secretary or assistant secretary, and sealed with the seal of the corporation shall be issued in accordance with the by-laws. **Shares of stock so issued are personal property and may be transferred by delivery of the certificate or certificates** indorsed by the owner or his attorney-in-fact or other person legally authorized to make the transfer. No transfer, however, shall be valid, except as between the parties, until the **transfer is recorded in the books of the corporation so as to show the names of the parties to the transaction, the date of the transfer, the number of the certificate or certificates and the number of shares transferred**. x x x (Emphasis supplied)

As regards legal impossibility, the RTC appears to have jumped to the conclusion that because of the perfected sale of the shares to Vera, petitioner can no longer claim actual restitution of the property.

However, Article 1505 of the Civil Code instructs that "x x x where goods are sold by a person who is not the owner thereof, and who does not sell them under authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell. x x x."

The Court itself settled that Peña acquired the properties by virtue of a null and void execution sale. In effect, his buyers acquired no better title to the goods than he had. Therefore, the RTC erred in appreciating the existence of legal impossibility in this case on the mere pretext that the properties had already been transferred to third parties. By virtue of Article 1505, the true owners of the goods are definitely not legally precluded from claiming the ownership of their actual properties.

All told, given the encompassing and overarching declaration of this Court nullifying the acquisition by Peña of the properties of Urban Bank and its directors, and considering that actual restitution of the movable properties is neither physically nor legally impossible, this Court finds that the refusal of the RTC to restore the actual shares on the mere pretext that these had been transferred by Peña to third persons as utterly devoid of basis. Consequently, pursuant to our final ruling in *Urban Bank*, petitioner must be restored as owner of the actual ACCI shares, and not just be paid the full value of the property.

WHEREFORE, premises considered, this Court resolves to:

A. **REVERSE** the Omnibus Resolution dated 30 April 2014 and Resolution dated 17 September 2014 issued in Civil Case No. 12-758 by the Regional Trial Court of Makati City, Branch 65, insofar as these rulings refused to restore to the original owners the actual ownership of their club shares on the mere

pretext that these had already been sold by Magdaleno Peña to his successor-in-interest, and thus **SET ASIDE** the following pronouncements by the Regional Trial Court in the Omnibus Resolution dated 30 April 2014 as affirmed in the Resolution dated 17 September 2014:

I. PROPERTIES SUBJECT OF RESTITUTION OR REPARATION OF DAMAGES WITH RESPECT TO URBAN BANK (NOW EXPORT INDUSTRY BANK):

x x x x x x x x x

b. Regarding the three (3) shares of Urban Bank in Tagaytay Highlands International Golf Club previously covered by Certificate Nos. 3027, 3166, and 3543 which are now in the names of third parties under Certificate Nos. 3848, 3847, and 3837, respectively, Magdaleno Peña must pay Urban Bank the amount realized from the sheriff's sale of these three (3) shares, with interest from the time these properties were seized;

x x x x x x x x x

II. PROPERTIES SUBJECT OF RESTITUTION OR REPARATION OF DAMAGES WITH RESPECT TO ERIC L. LEE:

x x x x x x x x x

b. Regarding the Manila Golf and Country Club previously in the name of Eric Lee which was validly and timely transferred in the name of Jose Singson, Magdaleno Peña must pay Eric Lee the amount realized from the sheriff's sale thereof, with interest from the time the said share was seized;

c. As to the share in Sta. Elena Golf Club (previously Certificate No. M099A), the title thereto having been validly and timely transferred in the name of Oscar Reyes and later to his assignee, Christian Osmond Reyes, Magdaleno Peña must pay Eric Lee the amount realized from the sheriff's sale, with interest from the time the property was seized;

x x x x x x x x x

IV. PROPERTIES SUBJECT OF RESTITUTION OR REPARATION OF DAMAGES WITH RESPECT TO DELFIN C. GONZALEZ, JR.:

x x x x x x x x x

c. The title to the share in Alabang Country Club having been validly and timely transferred to the name of Arsenia Vera, Magdaleno Peña shall pay Delfin C. Gonzalez, Jr. the full value of the property at the time of its seizure with interest counted as of said date.

B. **ORDER** the presiding judge of the Regional Trial Court of Makati City, Branch 65 to **EXECUTE FULLY AND WITH DISPATCH, WITH RESPECT TO ALL PERSONS AND PROPERTIES COVERED**, the Decision of this Court dated 19 October 2011 in G.R. Nos. 145817, 145822, and 162562 to restore and deliver to Urban Bank and its directors the full ownership and possession of all their actual properties executed pending appeal.

SO ORDERED.

Leonardo-de Castro, del Castillo, Perlas-Bernabe, and *Caguioa, JJ.*, concur.

SECOND DIVISION

[G.R. No. 219345. January 30, 2017]

SECURITY BANK CORPORATION, *petitioner, vs.* **GREAT WALL COMMERCIAL PRESS COMPANY, INC., ALFREDO BURIEL ATIENZA, FREDINO CHENG ATIENZA and SPS. FREDERICK CHENG ATIENZA and MONICA CU ATIENZA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; PROVISIONAL REMEDIES; PRELIMINARY ATTACHMENT; CONCEPT.— A writ of preliminary

attachment is a provisional remedy issued upon the order of the court where an action is pending. Through the writ, the property or properties of the defendant may be levied upon and held thereafter by the sheriff as security for the satisfaction of whatever judgment might be secured by the attaching creditor against the defendant. The provisional remedy of attachment is available in order that the defendant may not dispose of the property attached, and thus prevent the satisfaction of any judgment that may be secured by the plaintiff from the former.

2. **ID.; ID.; ID.; REQUIREMENT FOR A WRIT OF PRELIMINARY ATTACHMENT TO ISSUE.—** For a writ of preliminary attachment to issue under the above-quoted rule, the applicant must sufficiently show the factual circumstances of the alleged fraud. It is settled that fraudulent intent cannot be inferred from the debtor's mere non-payment of the debt or failure to comply with his obligation. While fraud cannot be presumed, it need not be proved by direct evidence and can well be inferred from attendant circumstances. Fraud by its nature is not a thing susceptible of ocular observation or readily demonstrable physically; it must of necessity be proved in many cases by inferences from circumstances shown to have been involved in the transaction in question.

3. **COMMERCIAL LAW; PRESIDENTIAL DECREE NO. 115; TRUST RECEIPT TRANSACTION; TWO OBLIGATIONS IN A TRUST RECEIPT TRANSACTION AND THE EFFECTS OF FAILURE TO COMPLY THEREWITH.—** A trust receipt transaction is one where the entrustee has the obligation to deliver to the entruster the price of the sale, or if the merchandise is not sold, to return the merchandise to the entruster. There are, therefore, two obligations in a trust receipt transaction: the first refers to money received under the obligation involving the duty to turn it over (*entregarla*) to the owner of the merchandise sold, while the second refers to the merchandise received under the obligation to "return" it (*devolvera*) to the owner. The obligations under the trust receipts are governed by a special law, Presidential Decree (*P.D.*) No. 115, and non-compliance have particular legal consequences. Failure of the entrustee to turn over the proceeds of the sale of the goods, covered by the trust receipt to the entruster or to return said goods if they were not disposed of in accordance with the terms

of the trust receipt shall be punishable as *estafa* under Article 315 (1) of the Revised Penal Code, without need of proving intent to defraud. The offense punished under P.D. No. 115 is in the nature of *malum prohibitum*. Mere failure to deliver the proceeds of the sale or the goods, if not sold, constitutes a criminal offense that causes prejudice not only to another, but more to the public interest.

4. REMEDIAL LAW; PROVISIONAL REMEDIES; PRELIMINARY ATTACHMENT; VIOLATION OF THE TRUST RECEIPT AGREEMENTS WARRANTS THE ISSUANCE OF THE WRIT OF PRELIMINARY ATTACHMENT.— After a judicious study of the records, the Court finds that Security Bank was able to substantiate its factual allegation of fraud, particularly, the violation of the trust receipt agreements, to warrant the issuance of the writ of preliminary attachment. x x x Security Bank's complaint stated that Great Wall, through its Vice President Fredino Cheng Atienza, executed various trust receipt agreements in relation to its loan transactions. The trust receipts stated that in consideration of the delivery to the entrustee (Great Wall) of the possession of the goods, it obligates itself to hold in trust for the bank the goods, to sell the goods for the benefit of the bank, to turn over the proceeds of the sale to the bank, and to return the goods to the bank in the event of non-sale. By signing the trust receipt agreements, respondents fully acknowledged the consequences under the law once they failed to abide by their obligations therein. The said trust receipt agreements were attached to the complaint. Upon the maturity date, however, respondents failed to deliver the proceeds of the sale to Security Bank or to return the goods in case of non-sale. Security Bank sent a final demand letter to respondents, which was also attached to the complaint, but it was unheeded. Curiously, in their letter, dated January 23, 2013, respondents did not explain their reason for non-compliance with their obligations under the trust receipts; rather, they simply stated that Great Wall was having a sudden drop of its income. Such unsubstantiated excuse cannot vindicate respondents from their failure to fulfill their duties under the trust receipts. In addition, Security Bank attached Pulgar's affidavit, which substantiated its allegation that respondents failed to comply with its obligations under the trust receipts. x x x The Court is of the view that Security Bank's allegations of violation of the

trust receipts in its complaint was specific and sufficient to assert fraud on the part of respondents. These allegations were duly substantiated by the attachments thereto and the testimony of Security Bank's witness.

5. ID.; ID.; ID.; FRAUD IN CONTRACTING AN OBLIGATION (*DOLO CAUSANTE*) AND FRAUD IN THE PERFORMANCE OF THE OBLIGATION (*DOLO INCIDENTE*) ARE BOTH GROUNDS FOR ISSUANCE OF PRELIMINARY ATTACHMENT.— Previously, Section 1(d), Rule 57 of the 1964 Rules of Court provided that a writ of preliminary attachment may be issued "[i]n an action against a party who has been guilty of a fraud in contracting the debt or incurring the obligation upon which the action is brought x x x" Thus, the fraud that justified the issuance of a writ of preliminary attachment then was only fraud committed in contracting an obligation (*dolo causante*). When the 1997 Rules of Civil Procedure was issued by the Court, Section 1(d) of Rule 57 conspicuously included the phrase "in the performance thereof." Hence, the fraud committed in the performance of the obligation (*dolo incidente*) was included as a ground for the issuance of a writ of preliminary attachment. This significant change in Section 1(d) of Rule 57 was recognized recently in *Republic v. Mega Pacific eSolutions, Inc*. The Court stated therein that "[a]n amendment to the Rules of Court added the phrase "in the performance thereof to include within the scope of the grounds for issuance of a writ of preliminary attachment those instances relating to fraud in the performance of the obligation."

6. ID.; ID.; ID.; ID.; CIRCUMSTANCES OF FRAUD COMMITTED BY RESPONDENTS IN THE PERFORMANCE OF THEIR OBLIGATION SUPPORT THE ISSUANCE OF A WRIT OF PRELIMINARY ATTACHMENT IN FAVOR OF PETITIONER.— [T]he alleged fraud committed by respondents in the performance of their obligation should have been considered by the CA. Security Bank detailed in its complaint that respondents, knowing fully well that they were in default, submitted a Repayment Proposal. Then, they requested for a meeting with the bank to discuss their proposal. For unknown reasons, they did not meet the representatives of the Security Bank. Respondents even attached to its Motion to Lift Writ of Preliminary Attachment *Ad Cautelam*

the correspondence they had with Security Bank, which revealed that they did not meet the representatives of the latter despite providing a specific date to discuss the proposed repayment scheme. Respondents merely offered lame excuses to justify their absence in the arranged meeting and, ultimately, they failed to clarify the non-compliance with their commitments. Such acts bared that respondents were not sincere in paying their obligation despite their maturity, substantiating the allegations of fraud in the performance thereof. These circumstances of the fraud committed by respondents in the performance of their obligation undoubtedly support the issuance of a writ of preliminary attachment in favor of Security Bank.

APPEARANCES OF COUNSEL

Lariba Perez Mangrobang Miralles Dumbrique Avila Castro & Fulgencio for petitioner.
Oliver M. Zorilla for respondents.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for review on *certiorari* seeking to reverse and set aside the December 12, 2014 Decision[1] and June 26, 2015 Resolution[2] of the Court of Appeals (*CA*) in CA-G.R. SP No. 131714, which lifted the writ of preliminary attachment issued by the Regional Trial Court, Branch 59, Makati City (*RTC*), in Civil Case No. 13-570, in favor of petitioner Security Bank Corporation (*Security Bank*).

The Antecedents

On May 15, 2013, Security Bank filed a Complaint for Sum of Money (with Application for Issuance of a Writ of Preliminary Attachment)[3] against respondents Great Wall Commercial Press

[1] *Rollo*, pp. 32-42.

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

[3] *Id.* at 81-89.

Company, Inc. (*Great Wall*) and its sureties, Alfredo Buriel Atienza, Fredino Cheng Atienza, and Spouses Frederick Cheng Atienza and Monica Cu Atienza (*respondents*), before the RTC. The complaint sought to recover from respondents their unpaid obligations under a credit facility covered by several trust receipts and surety agreements, as well as interests, attorney's fees and costs. Security Bank argued that in spite of the lapse of the maturity date of the obligations from December 11, 2012 to May 7, 2013, respondents failed to pay their obligations. The total principal amount sought was ₱10,000,000.00.

On May 31, 2013, after due hearing, the RTC granted the application for a writ of preliminary attachment of Security Bank, which then posted a bond in the amount of ₱10,000,000.00.

On June 3, 2013, respondents filed their Motion to Lift Writ of Preliminary Attachment *Ad Cautelam*,[4] claiming that the writ was issued with grave abuse of discretion based on the following grounds: (1) Security Bank's allegations in its application did not show a *prima facie* basis therefor; (2) the application and the accompanying affidavits failed to allege at least one circumstance which would show fraudulent intent on their part; and (3) the general imputation of fraud was contradicted by their efforts to secure an approval for a loan restructure.[5]

The RTC Orders

In its Order,[6] dated July 4, 2013, the RTC denied respondents' motion to lift, explaining that the Credit Agreement[7] and the Continuing Suretyship Agreement[8] contained provisions on representations and warranties; that the said representations and warranties were the very reasons why Security Bank decided to extend the loan; that respondents executed various trust receipt

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[4] *Id.* at 161-173.

[5] *Id.* at 33.

[6] *Id.* at 46-49. Issued by Presiding Judge Winlove M. Dumayas.

[7] *Id.* at 91-94.

[8] *Id.* at 95-98.

agreements but did not pay or return the goods covered by the trust receipts in violation thereof; that they failed to explain why the goods subject of the trust receipts were not returned and the proceeds of sale thereof remitted; and that it was clear that respondents committed fraud in the performance of the obligation.[9]

Respondents filed a motion for reconsideration, but it was denied by the RTC in its Order,[10] dated August 12, 2013.

Dissatisfied, respondents filed a petition for *certiorari* before the CA seeking to reverse and set aside the RTC orders denying their motion to lift the writ of preliminary attachment issued.

The CA Ruling

In its assailed decision, dated December 12, 2014, the CA *lifted* the writ of preliminary attachment. The appellate court explained that the allegations of Security Bank were insufficient to warrant the provisional remedy of preliminary attachment. It pointed out that fraudulent intent could not be inferred from a debtor's inability to pay or comply with its obligations. The CA opined that the non-return of the proceeds of the sale and/or the goods subject of the trust receipts did not, by itself, constitute fraud and that, at most, these were only averments for the award of damages once substantiated by competent evidence. It also stressed that respondents' act of offering a repayment proposal negated the allegation of fraud. The CA held that fraud must be present at the time of contracting the obligation, not thereafter, and that the rules on the issuance of a writ of attachment must be construed strictly against the applicant. It disposed the case in this wise:

> WHEREFORE, for the foregoing reasons, the instant petition is GRANTED. Accordingly, the attachment over any property of petitioners by the writ of preliminary attachment is ordered LIFTED effective upon the finality of this Decision. No costs.
>
> SO ORDERED.[11]

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[9] *Id.* at 47-48.

[10] *Id.* at 50.

[11] *Id.* at 41.

Security Bank moved for reconsideration but its motion was denied by the CA in its assailed resolution, dated June 26, 2015.

Hence, this petition raising the lone

ISSUE

WHETHER OR NOT THE COURT OF APPEALS ERRED IN NULLIFYING THE WRIT OF PRELIMINARY ATTACHMENT ISSUED BY THE TRIAL COURT.[12]

Security Bank argues that there are sufficient factual and legal bases to justify the issuance of the writ of preliminary attachment. It claims that it was misled by respondents, who employed fraud in contracting their obligation, as they made the bank believe that they had the capacity to pay; that respondents also committed fraud in the performance of their obligation when they failed to turn over the goods subject of the trust receipt agreements,[13] or remit the proceeds thereof despite demands; and that these were not mere allegations in the complaint but facts that were testified to by its witness and supported by written documents.

Security Bank added that respondents' effort to settle their outstanding obligation was just a subterfuge to conceal their real intention of not honoring their commitment and to delay any legal action that the bank would take against them; that respondents submitted a repayment proposal through a letter, dated January 23, 2013, knowing fully well that they were already in default; that they requested a meeting to discuss their proposal but they failed to show up and meet with the bank's representative; and that respondents did not submit any supporting documents to back up their repayment proposal.

In their Comment,[14] respondents countered that there was insufficient basis for the issuance of the writ of preliminary attachment against them; that the mere failure to pay their

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[12] *Id.* at 15.

[13] *Id.* at 99-143.

[14] *Id.* at 260-273.

obligation was not an act of fraud; that the application for the issuance of the writ of preliminary attachment, the affidavit of merit and judicial affidavit merely cited general allegations of fraud and Security Bank failed to sufficiently show the factual circumstances constituting fraud. Moreover, respondents claimed that they did not commit fraud because they were earnestly negotiating with Security Bank for a loan restructuring as shown by their Letter,[15] dated January 23, 2013, and email correspondences.

In its Reply,[16] Security Bank stressed that respondents misled them on their financial capacity and ability to pay their obligations. It emphasized that there were specific allegations in its complaint and its witness testified that respondents committed fraud, specifically their failure to comply with the trust receipt agreements, that they would turn over the goods covered by the trust receipt agreements or the proceeds thereof to Security Bank.

The Court's Ruling

The Court finds merit in the petition.

Preliminary Attachment

A writ of preliminary attachment is a provisional remedy issued upon the order of the court where an action is pending. Through the writ, the property or properties of the defendant may be levied upon and held thereafter by the sheriff as security for the satisfaction of whatever judgment might be secured by the attaching creditor against the defendant. The provisional remedy of attachment is available in order that the defendant may not dispose of the property attached, and thus prevent the satisfaction of any judgment that may be secured by the plaintiff from the former.[17]

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[15] *Id.* at 174.

[16] *Id.* at 327-335.

[17] *Republic v. Mega Pacific eSolutions, Inc.*, G.R. No. 184666, June 27, 2016.

In this case, Security Bank relied on Section 1 (d), Rule 57 of the Rules of Court as basis of its application for a writ of preliminary attachment. It reads:

RULE 57

Preliminary Attachment

Section 1. Grounds upon which attachment may issue. — At the commencement of the action or at any time before entry of judgment, a plaintiff or any proper party may have the property of the adverse party attached as security for the satisfaction of any judgment that may be recovered in the following cases:

x x x x x x x x x

(d) In an action against a party who has been guilty of a fraud in contracting the debt or incurring the obligation upon which the action is brought, or in the performance thereof;

x x x x x x x x x

For a writ of preliminary attachment to issue under the above-quoted rule, the applicant must sufficiently show the factual circumstances of the alleged fraud. It is settled that fraudulent intent cannot be inferred from the debtor's mere non-payment of the debt or failure to comply with his obligation.[18]

While fraud cannot be presumed, it need not be proved by direct evidence and can well be inferred from attendant circumstances. Fraud by its nature is not a thing susceptible of ocular observation or readily demonstrable physically; it must of necessity be proved in many cases by inferences from circumstances shown to have been involved in the transaction in question.[19]

The allegations of Security Bank in support of its application for a writ of preliminary attachment are as follow:

15. During the negotiation for the approval of the loan application/ renewal of Respondents the latter through Alfredo Buriel Atienza,

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[18] *Metro, Inc. v. Lara's Gift and Decors, Inc.*, 621 Phil. 162, 170 (2009).

[19] *Republic v. Mega Pacific eSolutions, Inc., supra* note 17.

Fredino Cheng Atienza and Sps. Frederick Cheng Atienza and Monica Cu Atienza, assured SBC that the loan obligation covered by the several Trust Receipts shall be paid in full on or before its maturity date pursuant to the terms and conditions of the aforesaid trust receipts. However, Respondents as well as the sureties failed to pay the aforesaid obligation.

16. In addition, the assurance to pay in full the obligation is further solidified by the warranty of solvency provisions of the Credit Agreement, the pertinent portion of which states that:

> "5. Representations at Warranties. — The Borrower further represents and warrants that xxxe) The maintenance of the Credit Facility is premised on the Borrower's continued ability to service its obligations to its creditors. Accordingly, the Borrower hereby warrants that while any of the Credit Obligations remain unpaid, the Borrower shall at all times have sufficient liquid assets to meet operating requirements and pay all its/his debts as they fall due. Failure of the Borrower to pay any maturing interest, principal or other charges under the Credit Facility shall be conclusive evidence of violation of this warranty."

17. To allay whatever fear or apprehension of herein plaintiff on the commitment of Respondents to honor its obligations, defendants-sureties likewise executed a "Continuing Suretyship Agreement.

18. Under paragraph 3 of the said Suretyship Agreement, it is provided that:

> "3. Liability of the Surety — The liability of the Surety is solidary, direct and immediate and not contingent upon the pursuit by SBC of whatever remedies it may have against the Borrower or the collateral/liens it may possess. If any of the Guaranteed Obligations is not paid or performed on due date (at stated maturity or by acceleration), or upon the occurrence of any of the events of default under Section 5 hereof and/or under the Credit Instruments, the Surety shall without need for any notice, demand or any other act or deed, immediately and automatically become liable therefor and the Surety shall pay and perform the same."

19. Thus, in the light of the representation made by Respondents Commercial Press Co, Inc., Alfredo Buriel Atienza, Fredino Cheng Atienza and Sps. Frederick Cheng Atienza and Monica Cu Atienza that the loan shall be paid in full on or before maturity, coupled by

the warranty of solvency embodied in the Credit Agreement as well as the execution of the Continuing Suretyship Agreement, the loan application was eventually approved.

20. Needless to say that without said representations and warranties, including the Continuing Suretyship Agreement, the plaintiff would not have approved and granted the credit facility to Respondents. It is thus clear that Respondents, Alfredo Buriel Atienza, Fredino Cheng Atienza and Sps. Frederick Cheng Atienza and Monica Cu Atienza, misled SBC and employed fraud in contracting said obligation.

21. Respondents, through its Vice President Fredino Cheng Atienza, likewise executed various Trust Receipt Agreements with the plaintiff whereby it bound itself under the following provision:

> "2. In consideration of the delivery to the Entrustee of the possession of the Goods/Documents, the Entrustee hereby agrees and undertakes, in accordance with the provisions of the Presidential Decree No. 115; (i) to hold in trust for the Bank the Goods/Documents; (ii) to sell the Goods for cash only for the account and benefit of the Bank, and without authority to make any other disposition of the Goods/Documents or any part thereof, or to create a lien thereon; (iii) to turn over to the Bank, without need of demand, the proceeds of the sale of the Goods to the extent of the amount of obligation specified above (the "Obligation"), including the interest thereon, and other amounts owing by the Entrustee to the Bank under this Trust Receipt, on or before the maturity date above-mentioned (the "Maturity Date"); or (iv) to return, on or before Maturity Date, without need of demand and at the Entrustee's expense, the Goods/Documents to the Bank, in the event of non-sale of the Goods."

Despite the above covenants, defendants failed to pay nor return the goods subject of the Trust Receipt Agreements.

22. Knowing fully well that they are already in default, Respondents and defendants sureties submitted a repayment proposal through their letter dated January 23, 2013. Through their lawyer, they likewise requested the bank for a meeting to discuss their proposal. However, as it turned out, the proposed repayment proposal for their loan was only intended to delay legal action against them. They failed to meet with the Bank's representative and neither did they submit supporting documents to back up their repayment proposal.[20]

[20] *Rollo*, pp. 85-87.

To support its allegation of fraud, Security Bank attached the Affidavit[21] of German Vincent Pulgar IV (*Pulgar*), the Manager of the Remedial Management Division of the said bank. He detailed how respondents represented to Security Bank that they would pay the loans upon their maturity date. Pulgar added that respondents signed the Credit Agreement which contained the Warranty of Solvency and several Trust Receipt Agreements in favor of Security Bank. The said trust receipts were attached to the complaint which stated that respondents were obligated to turn over to Security Bank the proceeds of the sale of the good or to return the goods. The several demand letters sent by Security Bank to respondents, which were unheeded, were likewise attached to the complaint. These pieces of evidence were presented by Security Bank during the hearing of the application for the issuance of a writ of preliminary attachment in the RTC.

After a judicious study of the records, the Court finds that Security Bank was able to substantiate its factual allegation of fraud, particularly, the violation of the trust receipt agreements, to warrant the issuance of the writ of preliminary attachment.

There were violations of the trust receipts agreements

While the Court agrees that mere violations of the warranties and representations contained in the credit agreement and the continuing suretyship agreement do not constitute fraud under Section 1(d) of Rule 57 of the Rules of Court, the same cannot be said with respect to the violation of the trust receipts agreements.

A trust receipt transaction is one where the entrustee has the obligation to deliver to the entruster the price of the sale, or if the merchandise is not sold, to return the merchandise to the entruster. There are, therefore, two obligations in a trust receipt transaction: the first refers to money received under the obligation involving the duty to turn it over (*entregarla*) to the owner of

[21] *Id.* at 154-156.

the merchandise sold, while the second refers to the merchandise received under the obligation to "return" it (*devolvera*) to the owner.[22] The obligations under the trust receipts are governed by a special law, Presidential Decree (*P.D.*) No. 115, and non-compliance have particular legal consequences.

Failure of the entrustee to turn over the proceeds of the sale of the goods, covered by the trust receipt to the entruster or to return said goods if they were not disposed of in accordance with the terms of the trust receipt shall be punishable as *estafa* under Article 315 (1) of the Revised Penal Code, without need of proving intent to defraud.[23] The offense punished under P.D. No. 115 is in the nature of *malum prohibitum*. Mere failure to deliver the proceeds of the sale or the goods, if not sold, constitutes a criminal offense that causes prejudice not only to another, but more to the public interest.[24]

The present case, however, only deals with the civil fraud in the non-compliance with the trust receipts to warrant the issuance of a writ of preliminary attached. A *fortiori*, in a civil case involving a trust receipt, the entrustee's failure to comply with its obligations under the trust receipt constitute as civil fraud provided that it is alleged, and substantiated with specificity, in the complaint, its attachments and supporting evidence.

Security Bank's complaint stated that Great Wall, through its Vice President Fredino Cheng Atienza, executed various trust receipt agreements in relation to its loan transactions. The trust receipts stated that in consideration of the delivery to the entrustee (Great Wall) of the possession of the goods, it obligates itself to hold in trust for the bank the goods, to sell the goods for the benefit of the bank, to turn over the proceeds of the sale to the bank, and to return the goods to the bank in the event of non-sale. By signing the trust receipt agreements, respondents

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[22] *Ng v. People*, 633 Phil. 304, 316 (2010).

[23] *Colinares v. Court of Appeals*, 394 Phil. 106, 118 (2000).

[24] *Metropolitan Bank & Trust Co. v. Gonzales*, 602 Phil. 1000, 1014 (2009).

fully acknowledged the consequences under the law once they failed to abide by their obligations therein. The said trust receipt agreements were attached to the complaint.

Upon the maturity date, however, respondents failed to deliver the proceeds of the sale to Security Bank or to return the goods in case of non-sale. Security Bank sent a final demand letter to respondents, which was also attached to the complaint, but it was unheeded. Curiously, in their letter, dated January 23, 2013, respondents did not explain their reason for non-compliance with their obligations under the trust receipts; rather, they simply stated that Great Wall was having a sudden drop of its income. Such unsubstantiated excuse cannot vindicate respondents from their failure to fulfill their duties under the trust receipts.

In addition, Security Bank attached Pulgar's affidavit, which substantiated its allegation that respondents failed to comply with its obligations under the trust receipts. During the hearing before the RTC, Security Bank presented him and his judicial affidavit. Regarding the trust receipts, he testified:

> Q: Do you have any other basis in saying that you have grounds for attachment?
> A: Yes, defendants not only failed to pay but they also failed to return the goods covered by the Trust Receipt.
>
> Q: What do you mean by failure to return the goods?
> A: They executed several TRs where they obligated to turn over the proceeds of sale of goods or pay the value thereof or return the goods themselves if they are unable to pay.
>
> Q: What happened in this case?
> A: Defendants failed to pay the value of the goods covered by the TRs and they likewise failed to return the goods without any explanation. Hence, obviously they misappropriated the proceeds of the sale of goods.[25]

The Court is of the view that Security Bank's allegations of violation of the trust receipts in its complaint was specific and sufficient to assert fraud on the part of respondents. These

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[25] *Rollo*, pp. 20-21.

allegations were duly substantiated by the attachments thereto and the testimony of Security Bank's witness.

The case of Philippine Bank of Communications v. Court of Appeals is inapplicable

The CA cited *Philippine Bank of Communications v. Court of Appeals*[26] (*PBCom*) to bolster its argument that fraudulent intent cannot be inferred from a debtor's inability to pay or comply with its obligations and that there must be proof of a preconceived plan not to pay.[27]

At face value, *PBCom* and the present case may show a semblance of similarity. Thus, the CA cannot be faulted for relying on the said case. A closer scrutiny of these two cases, however, shows that their similarity is more apparent than real.

In *PBCom*, the applicant for the writ of preliminary attachment simply stated in its motion that the defendant therein failed to remit the proceeds or return the goods subject of the trust receipt and attached an ambiguous affidavit stating that the case was covered by Sections 1(b) and (d) of Rule 57. Obviously, these allegations and attachments are too general and vague to prove that the defendant committed fraud. Likewise, there was no hearing conducted in the RTC before it granted the issuance of the writ of preliminary attachment. Thus, the Court had no option but to lift the said writ.

In contrast, the complaint in the present case explained in detail the factual circumstances surrounding the execution of the trust receipts, its contents and the subsequent violation thereof. Security Bank attached supporting annexes and presented its witness during the hearing in the RTC to substantiate the specific violation of trust receipts by respondents. Security Bank took great lengths to explain the contents of the trust receipt and show that respondents expressed their conformity to it. When the obligation became due, respondents did not satisfactorily

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[26] 405 Phil. 271 (2001).

[27] *Id.* at 268.

explain the non-compliance of their obligations, and, despite a final demand, they did not fulfill their obligations under the trust receipts. Clearly, *PBCom* is inapplicable in the present case.

Fraud in the performance of the obligation must be considered

The CA stated in the assailed decision that under Section 1(d) of Rule 57, fraud must only be present at the time of contracting the obligation, and not thereafter. Hence, the CA did not consider the allegation of fraud — that respondents offered a repayment proposal but questionably failed to attend the meeting with Security Bank regarding the said proposal — because these acts were done after contracting the obligation.

In this regard, the CA erred.

Previously, Section 1(d), Rule 57 of the 1964 Rules of Court provided that a writ of preliminary attachment may be issued "[i]n an action against a party who has been guilty of a fraud in contracting the debt or incurring the obligation upon which the action is brought xxx" Thus, the fraud that justified the issuance of a writ of preliminary attachment then was only fraud committed in contracting an obligation (*dolo causante*).[28] When the 1997 Rules of Civil Procedure was issued by the Court, Section 1(d) of Rule 57 conspicuously included the phrase "in the performance thereof." Hence, the fraud committed in the performance of the obligation (*dolo incidente*) was included as a ground for the issuance of a writ of preliminary attachment.[29]

This significant change in Section 1(d) of Rule 57 was recognized recently in *Republic v. Mega Pacific eSolutions, Inc*.[30] The Court stated therein that "[a]n amendment to the Rules

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[28] Riano, Civil Procedure (The Bar Lectures Series), Volume II, 2012 ed., p. 26.

[29] *Id.*

[30] *Supra* note 17.

of Court added the phrase "in the performance thereof" to include within the scope of the grounds for issuance of a writ of preliminary attachment those instances relating to fraud in the performance of the obligation."

Accordingly, the alleged fraud committed by respondents in the performance of their obligation should have been considered by the CA. Security Bank detailed in its complaint that respondents, knowing fully well that they were in default, submitted a Repayment Proposal.[31] Then, they requested for a meeting with the bank to discuss their proposal. For unknown reasons, they did not meet the representatives of the Security Bank.

Respondents even attached to its Motion to Lift Writ of Preliminary Attachment *Ad Cautelam*[32] the correspondence they had with Security Bank, which revealed that they did not meet the representatives of the latter despite providing a specific date to discuss the proposed repayment scheme. Respondents merely offered lame excuses to justify their absence in the arranged meeting and, ultimately, they failed to clarify the non-compliance with their commitments. Such acts bared that respondents were not sincere in paying their obligation despite their maturity, substantiating the allegations of fraud in the performance thereof.

These circumstances of the fraud committed by respondents in the performance of their obligation undoubtedly support the issuance of a writ of preliminary attachment in favor of Security Bank.

Final Note

While the Court finds that Security Bank has substantiated its allegation of fraud against respondents to warrant the issuance of writ or preliminary attachment, this finding should not in any manner affect the merits of the principal case. The writ of

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[31] *Rollo,* p. 174.

[32] *Id.* at 161-173.

preliminary attachment is only a provisional remedy, which is not a cause of action in itself but is merely adjunct to a main suit.[33]

WHEREFORE, the December 12, 2014 Decision and the June 26, 2015 Resolution of the Court of Appeals in CA-G.R. SP No. 131714 are **REVERSED** and **SET ASIDE**. The issuance of the writ of preliminary attachment by the Regional Trial Court, Branch 59, Makati City, in Civil Case No. 13-570, pursuant to its May 31, 2013 Order, is upheld.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 220617. January 30, 2017]

NESTLE PHILIPPINES, INC., *petitioner, vs.* **BENNY A. PUEDAN, JR., JAYFER D. LIMBO, BRODNEY N. AVILA, ARTHUR C. AQUINO, RYAN A. MIRANDA, RONALD R. ALAVE, JOHNNY A. DIMAYA, MARLON B. DELOS REYES, ANGELITO R. CORDOVA, EDGAR S. BARRUGA, CAMILO B. CORDOVA, JR., JEFFRY B. LANGUISAN, EDISON U. VILLAPANDO, JHEIRNEY S. REMOLIN, MARY LUZ A. MACATALAD,* JENALYN M. GAMUROT, DENNIS G. BAWAG, RAQUEL A. ABELLERA, and RICANDRO G. GUATNO, JR.,** *respondents.*

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[33] *Spouses Estares v. Court of Appeals*, 498 Phil. 640, 653 (2005).

* "Nacatalad" in some parts of the record.

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; DUE PROCESS; ADMINISTRATIVE PROCEEDINGS; THE ALLEGED DENIAL OF DUE PROCESS WAS CURED BY PETITIONER'S FILING OF A MOTION FOR RECONSIDERATION AND ELEVATION OF THE CASE TO THE COURT OF APPEALS; THERE WAS NO DENIAL OF DUE PROCESS WHEN A PARTY WAS AFFORDED THE FAIR AND REASONABLE OPPORTUNITY TO EXPLAIN ITS SIDE.— [A]s correctly pointed out by the CA, NPI was furnished via courier of a copy of the amended complaint filed by the respondents against it as shown by LBC Receipt No. 125158910840. It is also apparent that NPI was also furnished with the respondents' Position Paper, Reply, and Rejoinder. Verily, NPI was indeed accorded due process, but as the LA mentioned, the former chose not to file any position paper or appear in the scheduled conferences. Assuming *arguendo* that NPI was somehow deprived of due process by either of the labor tribunals, such defect was cured by: (*a*) NPI's filing of its motion for reconsideration before the NLRC; (*b*) the NLRC's subsequent issuance of its Resolution dated August 30, 2013 wherein the tribunal considered all of NPI's arguments as contained in its motion; and (*c*) NPI's subsequent elevation of the case to the CA. In *Gonzales v. Civil Service Commission*, the Court reiterated the rule that "[a]ny seeming defect in [the] observance [of due process] is cured by the filing of a motion for reconsideration," and that "denial of due process cannot be successfully invoked by a party who [was] afforded the opportunity to be heard x x x." Similarly, in *Autencio v. Manara*, it was held that defects in procedural due process may be cured when the party has been afforded the opportunity to appeal or to seek reconsideration of the action or ruling complained of. Evidently, the foregoing shows that NPI was not denied due process of law as it was afforded the fair and reasonable opportunity to explain its side.

2. LABOR AND SOCIAL LEGISLATION; LABOR CODE; LABOR-ONLY CONTRACTING, NOT A CASE OF; WHERE THE AGREEMENT REVEALS THAT THE RELATIONSHIP OF THE PETITIONER AND ALLEGED CONTRACTOR IS THAT OF A SELLER AND A BUYER/

RE-SELLER AND SUCH AGREEMENT DOES NOT OPERATE TO CONTROL OR FIX METHODOLOGY ON HOW THE LATTER SHOULD DO ITS BUSINESS AS A DISTRIBUTOR OF PETITIONER'S PRODUCTS, LABOR-ONLY CONTRACTING IS NEGATED; PETITIONER CANNOT BE HELD JOINTLY AND SEVERALLY LIABLE TO ITS DISTRIBUTOR'S MONETARY OBLIGATIONS TOWARDS RESPONDENTS.— [A] closer examination of the Distributorship Agreement reveals that the relationship of NPI and ODSI is not that of a principal and a contractor (regardless of whether labor-only or independent), but that of a seller and a buyer/re-seller. As stipulated in the Distributorship Agreement, NPI agreed to sell its products to ODSI at discounted prices, which in turn will be re-sold to identified customers, ensuring in the process the integrity and quality of the said products based on the standards agreed upon by the parties. x x x [C]ontrary to the CA's findings, the aforementioned stipulations in the Distributorship Agreement hardly demonstrate control on the part of NPI over the means and methods by which ODSI performs its business, nor were they intended to dictate how ODSI shall conduct its business as a distributor. Otherwise stated, the stipulations in the Distributorship Agreement do not operate to control or fix the methodology on how ODSI should do its business as a distributor of NPI products, but merely provide rules of conduct or guidelines towards the achievement of a mutually desired result – which in this case is the sale of NPI products to the end consumer. In *Steelcase, Inc. v. Design International Selections, Inc*., the Court held that the imposition of minimum standards concerning sales, marketing, finance and operations are nothing more than an exercise of sound business practice to increase sales and maximize profits, x x x [.] Verily, it was only reasonable for NPI – it being a local arm of one of the largest manufacturers of foods and grocery products worldwide – to require its distributors, such as ODSI, to meet various conditions for the grant and continuation of a distributorship agreement for as long as these conditions do not control the means and methods on how ODSI does its distributorship business, as shown in this case. This is to ensure the integrity and quality of the products which will ultimately fall into the hands of the end consumer. Thus, the foregoing circumstances show that ODSI was not a labor-only contractor

of NPI; hence, the latter cannot be deemed the true employer of respondents. As a consequence, NPI cannot be held jointly and severally liable to ODSI's monetary obligations towards respondents.

APPEARANCES OF COUNSEL

Viesca Dones & Malang Law Offices for petitioner.
Cristeta D. Tamayo for respondents.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated March 26, 2015 and the Resolution[3] dated September 17, 2015 of the Court of Appeals (CA) in CA-G.R. SP No. 132686, which affirmed the Decision[4] dated May 30, 2013 and the Resolution[5] dated August 30, 2013 of the National Labor Relations Commission (NLRC) in LAC No. 02-000699-13/ NCR-03-04761-12, declaring petitioner Nestle Philippines, Inc. (NPI), jointly and severally liable with Ocho de Septiembre, Inc. (ODSI) to respondents Benny A. Puedan, Jr., Jayfer D. Limbo, Bradney N. Avila, Arthur C. Aquino, Ryan A. Miranda, Ronald R. Alave, Johnny A. Dimaya, Marlon B. Delos Reyes, Angelita R. Cordova, Edgar S. Barruga, Camilo B. Cordova, Jr., Jeffry B. Languisan, Edison U. Villapando, Jheirney S. Remolin, Mary Luz A. Macatalad, Jenalyn M. Gamurot, Dennis G. Bawag, Raquel A. Abellera, and Ricandro G. Guatno, Jr.

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

[2] *Id*. at 39-51. Penned by Associate Justice Agnes Reyes-Carpio with Associate Justices Rosmari D. Carandang and Romeo F. Barza concurring.

[3] *Id*. at 53-54.

[4] *Id.* at 86-99. Penned by Commissioner Nieves E. Vivar-De Castro with Commissioners Joseph Gerard E. Mabilog and Isabel G. Panganiban-Ortiguerra concurring.

[5] *Id*. at 101-112.

(respondents) for separation pay, nominal damages, and attorney's fees.

The Facts

The instant case arose from an amended[6] complaint[7] dated July 6, 2012 for illegal dismissal, damages, and attorney's fees filed by respondents against, *inter alia*, ODSI and NPI. Respondents alleged that on various dates, ODSI and NPI hired them to sell various NPI products in the assigned covered area. After some time, respondents demanded that they be considered regular employees of NPI, but they were directed to sign contracts of employment with ODSI instead. When respondents refused to comply with such directives, NPI and ODSI terminated them from their position.[8] Thus, they were constrained to file the complaint, claiming that: (*a*) ODSI is a labor-only contractor and, thus, they should be deemed regular employees of NPI; and (*b*) there was no just or authorized cause for their dismissal.[9]

For its part, ODSI averred that it is a company engaged in the business of buying, selling, distributing, and marketing of goods and commodities of every kind and it enters into all kinds of contracts for the acquisition thereof. ODSI admitted that on various dates, it hired respondents as its employees and assigned them to execute the Distributorship Agreement[10] it entered with NPI,[11] the relevant portions of which state:

> 3.1 DISTRIBUTOR (ODSI) shall assign a sales force in his/her regular employ, dedicated solely to the handling of NPI

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[6] Said complaint was amended to include NPI as one of the respondents therein; see *id*. at 234 and 245.

[7] See *id*. at 152-156.

[8] See *id*. at 159.

[9] *Id*. at 40.

[10] ODSI entered into the Distributorship Agreement with NPI when the former was still named "Service Edge Distribution, Inc." *Id*. at 127-139.

[11] *Id*. at 40.

Grocery Retail Products under this Agreement, and who shall exclusively cover assigned areas/channels of distribution.

3.2 DISTRIBUTOR shall service the outlets within the Territory by re-selling Products obtained exclusively from Nestle Philippines, Inc. and not from any other source.

3.3 DISTRIBUTOR shall utilize booking and distribution salesmen to undertake territory development. Booking done by DISTRIBUTOR shall be delivered by its personnel. Collection of accounts shall be taken cared (*sic*) of by DISTRIBUTOR, without prejudice to the provisions of Clause 13 hereof.

3.4 DISTRIBUTOR's route salesmen shall exclusively cover assigned ex-truck areas/channels of distribution.

3.5 DISTRIBUTOR shall also provide training to its staff or personnel where necessary, to improve operations in servicing the requirements of DISTRIBUTOR's customers. From time to time, NESTLE shall offer to DISTRIBUTOR suggestions and recommendations to improve sales and to further develop the market.

3.6 DISTRIBUTOR shall meet the sales, reach and distribution targets agreed upon by NESTLE and DISTRIBUTOR. For purposes of this clause, reach targets refer to the number of stores, dealers and/or outlets which DISTRIBUTOR should cover or service within a particular period. Distribution targets refer to the number of stock keeping units and/or product lines covered by this Agreement.

In the event of DISTRIBUTOR's failure to meet NESTLE's sales targets, NESTLE has the sole discretion of assigning another distributor of the Products and/or reducing the Territory covered by DISTRIBUTOR.

3.7 DISTRIBUTOR agrees to provide at its own cost and expense facilities and other resources necessary for the distribution and sale of the Products.

3.8 NESTLE's sales personnel may get orders for the Products distributed by DISTRIBUTOR and pass on the said orders to DISTRIBUTOR.

3.9 NESTLE shall provide the necessary promotional and marketing support for the Products through promotional materials, product information literature, participation in trade fairs, and other market development activities.

3.10 Should NESTLE manufacture and/or distribute other products not subject of this Agreement, which, in NESTLE's opinion, should likewise be extended to DISTRIBUTOR's outlets, such additional products shall be included among those listed in Annex "A" hereof.

NESTLE shall deliver the Products to DISTRIBUTOR's warehouse(s) at its own expenses. Immediately upon receipt of the Products, DISTRIBUTOR shall carry out a visual inspection thereof. In the event any quantity of the Products is found to be defective upon such visual inspection, NESTLE shall replace such quantity of the Products at no cost to DISTRIBUTOR.

3.11 All costs for transportation and/or shipment of the Products from DISTRIBUTOR's warehouse(s) to its outlets/customers shall be the account of the DISTRIBUTOR.[12]

However, the business relationship between NPI and ODSI turned sour when the former's sales department badgered the latter regarding the sales targets. Eventually, NPI downsized its marketing and promotional support from ODSI which resulted to business reverses and in the latter's filing of a petition for corporate rehabilitation and, subsequently, the closure of its Nestle unit due to the termination of the Distributorship Agreement and the failure of rehabilitation. Under the foregoing circumstances, ODSI argued that respondents were not dismissed but merely put in floating status.[13]

On the other hand, NPI did not file any position paper or appear in the scheduled conferences.[14]

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

[13] See *id*. at 41-43.

[14] *Id*. at 234.

The Labor Arbiter Ruling

In a Decision[15] dated December 28, 2012, the Labor Arbiter (LA) dismissed the complaint for lack of merit, but nevertheless, ordered, *inter alia*, ODSI and NPI to pay respondents nominal damages in the aggregate amount of ₱235,728.00 plus attorney's fees amounting to ten percent (10%) of the total monetary awards.[16] The LA found that: (*a*) respondents were unable to prove that they were NPI employees; and (*b*) respondents were not illegally dismissed as ODSI had indeed closed down its operations due to business losses.[17] As to the issue on the failure to give respondents a thirty (30)-day notice prior to such closure, the LA concluded that all the impleaded respondents therein (*i.e.*, including NPI) should be held liable for the payment of nominal damages plus attorney's fees.[18]

Aggrieved, respondents appealed to the NLRC.[19]

The NLRC Ruling

In a Decision[20] dated May 30, 2013, the NLRC reversed and set aside the LA ruling and, accordingly, ordered ODSI and NPI to pay each of the respondents: (*a*) separation pay amounting to ½ month pay for every year of service reckoned from the time they were employed until the finality of the Decision; and (*b*) nominal damages in the amount of ₱30,000.00. The NLRC likewise ordered NPI and ODSI to pay respondents attorney's fees amounting to ten percent (10%) of the monetary awards.[21]

Contrary to the LA's findings, the NLRC found that while ODSI indeed shut down its operations, it failed to prove that

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[15] *Id*. at 228-238. Penned by Labor Arbiter Lilia S. Savari.

[16] See *id*. at 237-238.

[17] See *id*. at 235-236.

[18] See *id*. at 236.

[19] See Memorandum of Appeal dated January 28, 2013; *id*. at 241-256.

[20] *Id*. at 86-99.

[21] *Id*. at 97-99.

such closure was due to serious business losses as it did not present evidence, *e.g.*, financial statements, to corroborate its claims. As such, it ruled that respondents are entitled to separation pay. In this relation, the NLRC also found that since ODSI failed to notify respondents of such closure, the latter are likewise entitled to nominal damages.[22]

Further, the NLRC found ODSI to be a labor-only contractor of NPI, considering that: (*a*) ODSI had no substantial capitalization or investment; (*b*) respondents performed activities directly related to NPI's principal business; and (*c*) the fact that respondents' employment depended on the continuous supply of NPI products shows that ODSI had not been carrying an independent business according to its own manner and method.[23] Consequently, the NLRC deemed NPI to be respondents' true employer, and thus, ordered it jointly and severally liable with ODSI to pay the monetary claims of respondents.[24]

Respondents moved for a partial reconsideration,[25] arguing that since it was only ODSI that closed down operations and not NPI and, considering the finding that the latter was deemed to be their true employer, NPI should reinstate them, or if not practicable, to pay them separation pay equivalent to one (1) month pay for every year of service. NPI also moved for reconsideration,[26] contending that: (*a*) it was deprived of its right to participate in the proceedings before the LA and the NLRC; and (*b*) it had no employer-employee relationship with respondents as ODSI was never its contractor, whether independent or labor-only.[27] However, the NLRC denied both

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[22] See *id*. at 95-96.

[23] See *id*. at 91-92.

[24] See *id*. at 92-93 and 96-97.

[25] See Partial Motion for Reconsideration dated June 24, 2013; *id*. at 272-278.

[26] See Motion for Reconsideration dated July 12, 2013; CA *rollo*, pp. 61-73.

[27] See *rollo*, pp. 102-103.

motions in a Resolution[28] dated August 30, 2013, holding that: (*a*) respondents' termination was due to the closure of ODSI's Nestle unit, an authorized cause and, thus, the monetary awards in their favor were proper; (*b*) NPI was not deprived of its right to participate in the proceedings as it was duly served with copies of the parties' respective pleadings, as well as the rulings of both the LA and the NLRC; (*c*) assuming *arguendo* that NPI was indeed deprived of due process, its subsequent filing of a motion for reconsideration before the NLRC cured the defect as it was able to argue its position in the said motion; and (*d*) the circumstances surrounding the Distributorship Agreement between ODSI and NPI showed that the former is indeed a labor-only contractor of the latter.[29]

Dissatisfied, NPI filed a petition for *certiorari*[30] before the CA, essentially insisting that: (*a*) it was deprived of due process before the tribunals *a quo*; and (*b*) there was no employer-employee relationship between NPI and respondents.[31] Records reveal that no other party elevated the matter before the CA.

The CA Ruling

In a Decision[32] dated March 26, 2015, the CA affirmed the NLRC ruling. Anent the issue on due process, the CA held that NPI was not deprived of its opportunity to be heard as it was able to receive a copy of the complaint and other pleadings, albeit it failed to respond thereto.[33] As regards the substantive issue, the CA ruled that despite ODSI and NPI's contract being denominated as a "Distributorship Agreement," it contained provisions demonstrating a labor-only contracting arrangement between them, as well as NPI's exercise of control over the

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[28] *Id*. at 101-112.

[29] See *id*. at 103-111.

[30] Dated November 15, 2013. *Id*. at 55-81.

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

[32] *Id.* at 39-51.

[33] *Id*. at 47.

business of ODSI. Moreover, the CA pointed out that: (*a*) there was nothing in the records which showed that ODSI had substantial capital to undertake an independent business; and (*b*) respondents performed tasks essential to NPI's business.[34]

Undaunted, NPI moved for reconsideration,[35] which was, however, denied in a Resolution[36] dated September 17, 2015; hence, this petition.

The Issues Before the Court

The essential issues for the Court's resolution are whether or not the CA correctly ruled that: (*a*) NPI was accorded due process by the tribunals *a quo*; and (*b*) ODSI is a labor-only contractor of NPI, and consequently, NPI is respondents' true employer and, thus, deemed jointly and severally liable with ODSI for respondents' monetary claims.

The Court's Ruling

To justify the grant of the extraordinary remedy of *certiorari*, the petitioner must satisfactorily show that the court or quasi-judicial authority gravely abused the discretion conferred upon it. Grave abuse of discretion connotes a capricious and whimsical exercise of judgment, done in a despotic manner by reason of passion or personal hostility, the character of which being so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.[37]

In labor disputes, grave abuse of discretion may be ascribed to the NLRC when, *inter alia*, its findings and conclusions are not supported by substantial evidence, or that amount of relevant

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[34] *Id*. at 48-50.

[35] See Motion for Reconsideration dated May 6, 2015; *id*. at 333-349.

[36] *Id*. at 53-54.

[37] See *Sta. Isabel v. Perla Campañia De Seguros, Inc.*, G.R. No. 219430, November 7, 2016.

evidence which a reasonable mind might accept as adequate to justify a conclusion.[38]

Guided by the foregoing considerations, the Court finds that the CA was correct in ruling that the labor tribunals *a quo* gave NPI an opportunity to be heard. However, it erred in not ascribing grave abuse of discretion on the NLRC's finding that ODSI is a labor-only contractor of NPI and, thus, the latter is the respondents' true employer, and jointly and severally liable with ODSI for respondents' monetary claims. As will be explained hereunder, such finding by the NLRC is not supported by substantial evidence.

I.

The observance of fairness in the conduct of any investigation is at the very heart of procedural due process. The essence of due process is to be heard, and, as applied to administrative proceedings, this means 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.[39] The Court's disquisition in *Ledesma v. CA*[40] is instructive on this matter, to wit:

> Due process, as a constitutional precept, does not always and in all situations require a trial-type proceeding. Due process is satisfied when a person is notified of the charge against him and given an opportunity to explain or defend himself. In administrative proceedings, the filing of charges and giving reasonable opportunity for the person so charged to answer the accusations against him constitute the minimum requirements of due process. **The essence of due process is simply to be heard, or as applied to administrative proceedings,**

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[38] See *id*., citation omitted.

[39] *Vivo v. Philippine Amusement and Gaming Corporation*, 721 Phil. 34, 39 (2013), citations omitted.

[40] 565 Phil. 731 (2007).

an opportunity to explain ones side, or an opportunity to seek a reconsideration of the action or ruling complained of.[41] (Emphasis and underscoring supplied)

In this case, NPI essentially claims that it was deprived of its right to due process when it was not notified of the proceedings before the LA and did not receive copies and issuances from the other parties and the LA, respectively.[42] However, as correctly pointed out by the CA, NPI was furnished via courier of a copy of the amended complaint filed by the respondents against it as shown by LBC Receipt No. 125158910840.[43] It is also apparent that NPI was also furnished with the respondents' Position Paper, Reply, and Rejoinder.[44] Verily, NPI was indeed accorded due process, but as the LA mentioned, the former chose not to file any position paper or appear in the scheduled conferences.[45]

Assuming *arguendo* that NPI was somehow deprived of due process by either of the labor tribunals, such defect was cured by: (*a*) NPI's filing of its motion for reconsideration before the NLRC; (*b*) the NLRC's subsequent issuance of its Resolution dated August 30, 2013 wherein the tribunal considered all of NPI's arguments as contained in its motion; and (*c*) NPI's subsequent elevation of the case to the CA. In *Gonzales v. Civil Service Commission*,[46] the Court reiterated the rule that "[a]ny seeming defect in [the] observance [of due process] is cured by the filing of a motion for reconsideration," and that "denial of due process cannot be successfully invoked by a party who [was] afforded the opportunity to be heard x x x."[47] Similarly, in *Autencio v. Mañara*,[48] it was held that defects in procedural due process

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[41] *Id*. at 740, citations omitted.

[42] *Rollo*, pp. 20-24.

[43] See *rollo*, p. 156 and CA *rollo*, p. 104.

[44] See CA *rollo*, pp. 119, 129, and 134.

[45] *Rollo*, p. 234.

[46] 524 Phil. 271 (2006).

[47] *Id*. at 278.

[48] 489 Phil. 752 (2005).

may be cured when the party has been afforded the opportunity to appeal or to seek reconsideration of the action or ruling complained of.[49]

Evidently, the foregoing shows that NPI was not denied due process of law as it was afforded the fair and reasonable opportunity to explain its side.

II.

In holding NPI jointly and severally liable with ODSI for the monetary awards in favor of respondents, both the NLRC and the CA held that based on the provisions of the Distributorship Agreement between them, ODSI is merely a labor-only contractor of NPI.[50] In this regard, the CA opined that the following stipulations of the said Agreement evinces that NPI had control over the business of ODSI, namely, that: (*a*) NPI shall offer to ODSI suggestions and recommendations to improve sales and to further develop the market; (*b*) NPI prohibits ODSI from exporting its products (the No-Export provision); (*c*) NPI provided standard requirements to ODSI for the warehousing and inventory management of the sold goods; and (*d*) prohibition imposed on ODSI to sell any other products that directly compete with those of NPI.[51]

However, a closer examination of the Distributorship Agreement reveals that the relationship of NPI and ODSI is not that of a principal and a contractor (regardless of whether labor-only or independent), but that of a seller and a buyer/re-seller. As stipulated in the Distributorship Agreement, NPI agreed to sell its products to ODSI at discounted prices,[52] which in turn will be re-sold to identified customers, ensuring in the process the integrity and quality of the said products based on the standards agreed upon by the parties.[53] As aptly explained

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[49] See *id*. at 761.

[50] See *rollo*, pp. 48-50 and 91-93.

[51] *Id*. at 48.

[52] *Id*. at 128.

[53] See *id*. at 128-129.

by NPI, the goods it manufactures are distributed to the market through various distributors, *e.g.*, ODSI, that in turn, re-sell the same to designated outlets through its own employees such as the respondents. Therefore, the reselling activities allegedly performed by the respondents properly pertain to ODSI, whose principal business consists of the "buying, selling, distributing, and marketing goods and commodities of every kind" and "[entering] into all kinds of contracts for the acquisition of such goods [and commodities]."[54]

Thus, contrary to the CA's findings, the aforementioned stipulations in the Distributorship Agreement hardly demonstrate control on the part of NPI over the means and methods by which ODSI performs its business, nor were they intended to dictate how ODSI shall conduct its business as a distributor. Otherwise stated, the stipulations in the Distributorship Agreement do not operate to control or fix the methodology on how ODSI should do its business as a distributor of NPI products, but merely provide rules of conduct or guidelines towards the achievement of a mutually desired result[55] — which in this case is the sale of NPI products to the end consumer. In *Steelcase, Inc. v. Design International Selections, Inc.*,[56] the Court held that the imposition of minimum standards concerning sales, marketing, finance and operations are nothing more than an exercise of sound business practice to increase sales and maximize profits, to wit:

> Finally, both the CA and DISI rely heavily on the Dealer Performance Expectation required by Steelcase of its distributors to prove that DISI was not functioning independently from Steelcase because the same imposed certain conditions pertaining to business planning, organizational structure, operational effectiveness and efficiency, and financial stability. It is actually logical to expect that Steelcase, being one of the major manufacturers of office systems

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[54] See *id.* at 40.

[55] See *Bernarte v. Philippine Basketball Association*, 673 Phil. 384, 395 (2011), citing *Sonza v. ABS-CBN Broadcasting Corporation*, G.R. No. 138051, June 10, 2004, 431 SCRA 583, 603-604.

[56] 686 Phil. 59 (2012).

furniture, would require its dealers to meet several conditions for the grant and continuation of a distributorship agreement. **The imposition of minimum standards concerning sales, marketing, finance and operations is nothing more than an exercise of sound business practice to increase sales and maximize profits for the benefit of both Steelcase and its distributors. For as long as these requirements do not impinge on a distributor's independence, then there is nothing wrong with placing reasonable expectations on them.**[57] (Emphasis and underscoring supplied)

Verily, it was only reasonable for NPI — it being a local arm of one of the largest manufacturers of foods and grocery products worldwide — to require its distributors, such as ODSI, to meet various conditions for the grant and continuation of a distributorship agreement for as long as these conditions do not control the means and methods on how ODSI does its distributorship business, as shown in this case. This is to ensure the integrity and quality of the products which will ultimately fall into the hands of the end consumer.

Thus, the foregoing circumstances show that ODSI was not a labor-only contractor of NPI; hence, the latter cannot be deemed the true employer of respondents. As a consequence, NPI cannot be held jointly and severally liable to ODSI's monetary obligations towards respondents.

WHEREFORE, the petition is **GRANTED**. The Decision dated March 26, 2015 and the Resolution dated September 17, 2015 of the Court of Appeals in CA-G.R. SP No. 132686 are hereby **REVERSED** and **SET ASIDE**. Accordingly, the Decision dated May 30, 2013 and the Resolution dated August 30, 2013 of the National Labor Relations Commission in LAC No. 02-000699-13/NCR-03-04761-12 are **MODIFIED**, **DELETING** petitioner Nestle Philippines, Inc.'s solidary liability with Ocho de Septiembre, Inc. (ODSI) for the latter's monetary obligations to respondents Benny A. Puedan, Jr., Jayfer D. Limbo, Brodney N. Avila, Arthur C. Aquino, Ryan A. Miranda, Ronald R. Alave, Johnny A. Dimaya, Marlon B. Delos

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[57] *Id*. at 69-70.

Reyes, Angelito R. Cordova, Edgar S. Barruga, Camilo B. Cordova, Jr., Jeffry B. Languisan, Edison U. Villapando, Jheirney S. Remolin, Mary Luz A. Macatalad, Jenalyn M. Gamurot, Dennis G. Bawag, Raquel A. Abellera, and Ricandro G. Guatno, Jr.

SO ORDERED.

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

EN BANC

[A.C. No. 10533. January 31, 2017]

SILVESTRA MEDINA and SANTOS MEDINA LORAYA, *complainants, vs.* **ATTY. RUFINO LIZARDO,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; REPRESENTING CONFLICTING INTEREST, COMMITTED.— [I]t is undeniable that complainants Silvestra and Santos, on one hand, and Martinez, on the other, have conflicting interests with regard to the disputed property, particularly Lot 456 covered by TCT No. 3900 which complainants assert they never sold to Martinez. Atty. Lizardo now finds himself arguing against the ownership by Silvestra and Santos of their shares in the disputed property, which is the very legal position he was bound to defend as their counsel in the partition case. x x x. The Court observes that the complaint for partition in the Regional Trial Court (RTC) of Makati, Branch 143 is the only case filed in court concerning the subject properties, and Atty. Lizardo is the counsel of record therein

of Silvestra and Alicia. There is no mention of Martinez in said Complaint. As argued by complainants, if Martinez was indeed also Atty. Lizardo's client in the partition case, he should have included Martinez as one of the plaintiffs in order to protect the latter's interests. Likewise, after the death of Alicia and the execution of the Extrajudicial Settlement of her estate, Atty. Lizardo had yet another chance to implead Martinez to protect his interest as sole owner of the shares of Silvestra and Alicia in TCTs No. 13866 and 3900, but again failed to do so for no discernible reason. These inactions make it hard for us to believe Atty. Lizardo's claim that Martinez engaged his services concurrently with Silvestra and Alicia in the filing of the partition case. There is no credible proof on record that Atty. Lizardo was from the beginning engaged to represent Silvestra, Alicia and Martinez as their common counsel. In his Motion for Reconsideration of the IBP Board of Governors Resolution dated March 21, 2013, Atty. Lizardo admits that after the signing of the Extrajudicial Settlement with Sale he received instructions from Martinez to hold the TCTs allegedly for the transfer in the latter's name of the interest of Silvestra and Alicia's heirs in the subject properties. This subsequent engagement by Martinez of Atty. Lizardo as counsel against Silvestra and Santos in the matter of the possession of the subject titles amounts to conflict of interest and requires the written consent of all the parties concerned given after a full disclosure of the facts, a requirement he clearly failed to procure.

2. ID.; ID.; WITHHOLDING OF TRANSFER CERTIFICATES OF TITLE ENTRUSTED BY CLIENT IS A CLEAR VIOLATION OF CANON 16, RULE 16.03 AND CANON 17 OF THE CODE OF PROFESSIONAL RESPONSIBILITY.— As counsel for Silvestra and Alicia, Atty. Lizardo is required to deliver the property of his client when due or upon demand, and mandated to always be loyal to them and vigilant to protect their interests, in accordance with [Canon 16, Rule 16.03 and Canon 17] of the Code of Professional Responsibility[.] x x x Atty. Lizardo's withholding of the TCTs entrusted to him by his clients to protect another purported client who surreptitiously acquired his services despite a conflict of interest is therefore a clear violation of several provisions of the Code of Professional Responsibility. For this

reason, we also uphold the grant of complainants' prayer for the return of the subject titles which they turned over to Atty. Lizardo for safekeeping. In any event, the return of said TCTs will not unduly prejudice Martinez who may cause his adverse claim to be duly annotated thereon.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Complainants Silvestra Medina (Silvestra) and her nephew Santos Medina Loraya (Santos) filed a Complaint[1] with the Integrated Bar of the Philippines (IBP) Commission on Bar Discipline against Atty. Rufino C. Lizardo (Atty. Lizardo). Complainants allege that Silvestra, because of her advanced age, entrusted the owner's duplicates of Transfer Certificates of Title (TCT) Nos. 13866 and 3900 to Atty. Lizardo. However, since complainants are not the only owners of the properties covered by said TCTs, and other heirs were asking for the original duplicate copies, complainants went to the residence of Atty. Lizardo and requested the return of said TCTs on March 5, 2011. Atty. Lizardo refused to turn over the TCTs to the complainants. Complainants submitted the following prayer in their Complaint:

WHEREFORE, premises considered it is most respectfully prayed of this Honorable Commission, after hearing, THAT:

1. Respondent turnover to the custody of complainant SILVESTRA MEDINA the above-mentioned original duplicate of certificate of titles in the presence of the Honorable Commission or its duly authorized representative;

2. Other reliefs, just and equitable under the premises are also prayed for.[2]

In his Answer,[3] Atty. Lizardo primarily argues that the Commission on Bar Discipline has no jurisdiction to hear and

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

[2] *Id.* at 4.

[3] *Id.* at 9-14.

decide the complaint since it involves an action for specific performance.

Atty. Lizardo admitted that he is the counsel of Silvestra and her sister, the late Alicia Medina (Alicia), who is also the mother of Santos. According to Atty. Lizardo, Silvestra entrusted TCTs No. 13866 and 3900 to him sometime in 1987 because Silvestra, Santos, and Alicia sold their shares in lots 456, 457 and 458 in favor of a certain Renato Martinez (Martinez). Atty. Lizardo claims that he refused to return the subject TCTs because complainants did not secure the written consent of Martinez.

To prove his allegation, Atty. Lizardo presented the *Malayang Salaysay*[4] of Silvestra dated April 10, 1981 which states:

> 1. Na, ako ay isang kamagari sa sa [sic] dalawang lagay na lupa na nasa Cupang, Muntinlupa, Rizal (Metro-Manila) na ang nasabing dalawang lagay na lupa ay kilala sa mga sumusunod:
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> "Lot 457 Muntinlupa Estate (LRC) Record No. 6137 situated at Cupang, Muntinlupa, Rizal, with an area of 664 Sqms."
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> "Lot 458 Muntinlupa Estate (LRC) Record No. 6137 situated at Cupang, Muntinlupa, Rizal with and area of 1427 Sqms.
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> na ang nasabing mga lagay na lupa sa itaas nito ay sinasakop ng isang Titul, "Transfer Certificate of Title No. 23866 ng Talaan ng mga kasulatan sa Rizal[.]

The *Malayang Salaysay* was signed by Silvestra and notarized by Atty. Lizardo. Atty. Lizardo also presented the *Sinumpaang Salaysay*[5] of the late Alicia Medina dated May 24, 1982 stating that she received the amount of ₱10,000.00 as initial payment for the sale of the property.

Atty. Lizardo notes that complainants only had a one-fourth share in the subject lots. Atty. Lizardo presented the Decision[6] dated May 16, 1962 of the Court of First Instance (CFI) of Rizal based on a compromise agreement wherein Silvestra and

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[4] *Id.* at 15.

[5] *Id.* at 16.

[6] *Id.* at 17-19.

Alicia were awarded one-fourth share in Lot 456 (described in TCT No. 3900) and Lots 457 and 458 (described in TCT No. 13866). Complainants allegedly sold this one-fourth share to Martinez, but their co-owners resisted the transfer of the titles to said properties, forcing Silvestra and Alicia to file a Complaint for Partition,[7] docketed as Civil Case No. 18400, on September 4, 1987. According to Atty. Lizardo, Martinez supposedly shouldered all the legal expenses for the partition to protect his interest, as evidenced by Martinez's affidavit[8] dated May 10, 2011. Upon the death of Alicia, her heirs executed an Extrajudicial Settlement With Sale[9] dated July 16, 1992 wherein said heirs appear to have agreed to convey in favor of Martinez and his spouse all their shares in TCTs No. 3900 and 13866 covering Lots 456, 457 and 458. The pertinent part of the Extrajudicial Settlement reads:

> That, we, together with SILVESTRA MEDINA, owner of the other [o]ne (½) half portion of the above-mentioned [o]ne [f]ourth (¼) portion of the estate of ALICIA MEDINA LORAYA by these presents have decided to sell the (sic) our share, interest and participation over the parcels of land described above:
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> That, for and in consideration of the sum of ONE HUNDRED FIFTY THOUSAND (₱150,000.00) PESOS, Philippine Currency, receipt of which in full satisfaction is acknowledged and confessed, hereby SELL, TRANSFER and CONVEY unto and in favor of Spouses RENATO MARTINEZ and PURIFICACION LOMEDA MARTINEZ our share, interest and participation in the above-mentioned Three (3) parcels of land, known as Lot 456, covered by TCT 3900 and Lot 457 and 458, covered by TCT 13866 free from any liens and encumbrances except those required by law.

Atty. Lizardo avers that when complainants learned that the sheriff was implementing the writ of execution issued in Civil Case No. 18400, they demanded the return of the two TCTs.

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[7] *Id.* at 20-22.

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

[9] *Id.* at 30-33.

During the Mandatory Conference on July 21, 2011, Santos testified that he and Silvestra did not notice that Lot 456 covered by TCT No. 3900 was sold together with Lots 457 and 458 covered by TCT No. 13866. Santos claims that they did not read the Extrajudicial Settlement since they trusted Atty. Lizardo to sell only one parcel of land[10] covering 1,000 square meters to Martinez.[11]

In a Letter-Appeal/Manifestation, complainants informed the Investigating Commissioner of their letter terminating the services of Atty. Lizardo as counsel in Civil Case No. 18400 for total loss of trust and confidence and prayed for the latter's disbarment.

When the original Investigating Commissioner was elected president of his IBP chapter, the case was reassigned to a new commissioner who set another hearing for mandatory conference on November 4, 2011. At the November 4, 2011 mandatory conference, complainants were present while a paralegal appeared for Atty. Lizardo and brought a verified medical certificate attesting that Atty. Lizardo was indisposed. After noting the rule that failure of any party to appear at the mandatory conference despite notice is considered a waiver of his/her right to participate in the proceedings, the Investigating Commissioner proceeded with the mandatory conference and gave complainants an opportunity to clarify matters not tackled or discussed in the mandatory conference held on July 21, 2011. The parties were thereafter directed to file their respective verified position papers.[12]

In the Commissioner's Report[13] dated August 3, 2012, the Investigation Commissioner recommended that Atty. Lizardo

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[10] Complainants speak of Lots 457 and 458 both covered by TCT No. 13866 as one parcel of land.

[11] TSN, July 21, 2011, p. 37, *rollo*, p. 85.

[12] *See* Order dated November 4, 2011, *rollo*, p. 102.

[13] *Rollo*, pp. 133-144, submitted by Commissioner Jose I. dela Rama, Jr.

be suspended from the practice of law for two years, since the former believed that disbarment was too harsh a penalty under the circumstances. On March 21, 2013, the Board of Governors of the IBP issued a Resolution adopting and approving the Report and Recommendation of the Investigating Commissioner, thereby suspending Atty. Lizardo from the practice of law for two years.

The Investigating Commissioner observed that Martinez stated in his Affidavit dated May 10, 2011 that Silvestra sold her share in Lots 456, 457 and 458 to him, and incorporated into said affidavit a copy of Silvestra's *Malayang Salaysay* dated April 10, 1981. In the *Malayang Salaysay*, however, Silvestra mentioned only two parcels of land: Lot 457 with an area of 664 square meters, and Lot 458 with an area of 1,427 square meters. According to the Investigating Commissioner, Atty. Lizardo should have known this because he was the one who prepared and notarized Silvestra's *Malayang Salaysay*.

The Commissioner's Report adopted in the IBP Board of Governors Resolution thereby found Atty. Lizardo to have represented conflicting interests, to wit:

> As above stated, during the mandatory conference, Mr. Santos Medina Loraya stated the following:
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> > Mr. Santos Medina Loraya: Paanong mangyaring naiipit e sya ang legal counsel po namin. Siguro kami ang dapat niyang protektahan
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> > (TSN dated July 21, 2011, page 38)
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> The question thrown by the complainants during the said conference is very alarming as far as the undersigned is concerned. Complainants firmly believe that as their lawyer, Atty. Lizardo should protect their interests and legal rights. Respondent should not favor other persons except his clients. It would appear that as admitted by Renato Martinez, he was the one who shouldered all legal expenses including that of the respondent. Respondent should not have allowed the same to happen because definitely, a conflict of interest might arise later on, as what is happening now. Respondent is lawyering for the complainants and at the same time, lawyering for the interest of Renato Martinez.[14]

[14] *Id.* at 140.

The Investigating Commissioner further observed that Atty. Lizardo did not merely represent conflicting interests, but even actively participated in deceiving his clients, the complainants in the case at bar:

> Not only that, respondent allowed himself to be used by Renato Martinez in deceiving the complainants to make it appear that they sold three (3) parcels of land. The intention to deceive the complainants and the heirs is very evident because as stated by the complainants, the Extra-judicial Settlement with Sale was signed during the wake of Alicia Medina. Why would an Extra-judicial Settlement with Sale be executed and signed at the time of the wake of Alicia Medina? Why is the respondent and Renato Martinez in a hurry to have the document signed?
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> Probably, the heirs, at the time were still grieving for the loss of Alicia Medina. The timing of the preparation and signing is highly questionable as far as the undersigned is concerned.[15] (Underscoring omitted.)

On Atty. Lizardo's allegation that the Commission on Bar Discipline does not have jurisdiction over the complaint, the report adopted by the IBP Board of Governors held:

> It is the position of the respondent that the Commission on Bar Discipline has no jurisdiction on the subject controversy. The undersigned begs to differ. The Commission on Bar Discipline, as the investigating body of the Integrated Bar of the Philippines and the Supreme Court, has jurisdiction over all cases involving lawyers. The jurisdiction of this Commission covers transactions committed either in their personal or professional capacity. x x x.[16]

Atty. Lizardo filed a Motion for Reconsideration,[17] alleging that he did not represent conflicting interests. He claims that Silvestra, Alicia and Martinez all engaged his services to file the partition case, but agreed that the named complainants shall only be Silvestra and Alicia in accordance with the decision of

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[15] *Id.* at 141-142.

[16] *Id.* at 143.

[17] *Id.* at 195-212.

the CFI of Pasay City. As the share of Silvestra and Alicia were already sold to Martinez, it was Martinez who shouldered the expenses and appeared in every hearing. According to Atty. Lizardo, Silvestra, Alicia, and Martinez had the same interest in the filing of the partition case.

Atty. Lizardo denied that the Extrajudicial Settlement with Sale was signed during the wake of Alicia. He claims that the preparation, execution, signing and notarization of the Extrajudicial Settlement with Sale were all done in his office in Alabang, Muntinlupa City in the presence of the parties and Martinez on July 16, 1992, which was already beyond the period of the wake of Alicia who died sometime in May 1992. Atty. Lizardo further alleges that in said meeting on July 16, 1992, Silvestra and the heirs of Alicia, including Santos himself, expressed that the sale includes Lot 456 covered by TCT No. 3900.[18]

Complainants filed their Comment[19] expressing that Atty. Lizardo's allegations that Martinez was also his client and that Silvestra and the heirs of Alicia appeared before him on July 16, 1992 are fabrications and mere afterthoughts.

On March 21, 2014, the Board of Governors of the IBP issued a Resolution[20] denying Atty. Lizardo's Motion for Reconsideration with a modification further directing Atty. Lizardo to return TCTs No. 3900 and 13866 to complainant Silvestra.

This Court resolves to adopt with modification the Resolutions of the IBP Board of Governors.

The main charge against Atty. Lizardo is his alleged violation of Rule 15.03, Canon 15 of the Code of Professional Responsibility, which provides:

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[18] *Id.* at 201.

[19] *Id.* at 214-219.

[20] *Id.* at 226-227.

Rule 15.03 — A lawyer shall not represent conflicting interests except by written consent of all concerned given after a full disclosure of the facts[.]

This Court has explained the test in determining whether conflicting interests are being represented in this wise:

There is conflict of interest when a lawyer represents inconsistent interests of two or more opposing parties. The test is "whether or not in behalf of one client, it is the lawyer's duty to fight for an issue or claim, but it is his duty to oppose it for the other client. In brief, if he argues for one client, this argument will be opposed by him when he argues for the other client." This rule covers not only cases in which confidential communications have been confided, but also those in which no confidence has been bestowed or will be used. Also, there is conflict of interests if the acceptance of the new retainer will require the attorney to perform an act which will injuriously affect his first client in any matter in which he represents him and also whether he will be called upon in his new relation to use against his first client any knowledge acquired through their connection. Another test of the inconsistency of interests is **whether the acceptance of a new relation will prevent an attorney from the full discharge of his duty of undivided fidelity and loyalty to his client or invite suspicion of unfaithfulness or double dealing in the performance thereof**.[21] (Citations omitted; emphasis supplied.)

In another case, we held that:

The rule prohibiting conflict of interest applies to situations wherein a lawyer would be representing a client whose interest is directly adverse to any of his present or former clients. It also applies when the lawyer represents a client against a former client in a controversy that is related, directly or indirectly, to the subject matter of the previous litigation in which he appeared for the former client. **This rule applies regardless of the degree of adverse interests.** What a lawyer owes his former client is to maintain inviolate the client's confidence or to refrain from doing anything which will injuriously affect him in any matter in which he previously represented him. A lawyer may only be allowed to represent a client involving the same or a substantially related matter that is materially adverse to the former

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[21] *Hornilla v. Salunat*, 453 Phil. 108, 111-112 (2003).

client only if the former client consents to it after consultation.[22] (Citations omitted; emphasis supplied.)

In the case at bar, it is undeniable that complainants Silvestra and Santos, on one hand, and Martinez, on the other, have conflicting interests with regard to the disputed property, particularly Lot 456 covered by TCT No. 3900 which complainants assert they never sold to Martinez. Atty. Lizardo now finds himself arguing against the ownership by Silvestra and Santos of their shares in the disputed property, which is the very legal position he was bound to defend as their counsel in the partition case.

Atty. Lizardo, however, tries to find justification for the situation by implying in his pleadings that Martinez engaged his services concurrently with Silvestra and Alicia in the filing of the partition case, and that they all had the same interest in the outcome of the case: the eventual transfer of the shares of Silvestra and Alicia to Martinez.

The Court observes that the complaint for partition[23] in the Regional Trial Court (RTC) of Makati, Branch 143 is the only case filed in court concerning the subject properties, and Atty. Lizardo is the counsel of record therein of Silvestra and Alicia. There is no mention of Martinez in said Complaint. As argued by complainants, if Martinez was indeed also Atty. Lizardo's client in the partition case, he should have included Martinez as one of the plaintiffs in order to protect the latter's interests. Likewise, after the death of Alicia and the execution of the Extrajudicial Settlement of her estate, Atty. Lizardo had yet another chance to implead Martinez to protect his interest as sole owner of the shares of Silvestra and Alicia in TCTs No. 13866 and 3900, but again failed to do so for no discernible reason. These inactions make it hard for us to believe Atty. Lizardo's claim that Martinez engaged his services concurrently with Silvestra and Alicia in the filing of the partition case. There

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[22] *Mabini Colleges, Inc. v. Pajarillo*, A.C. No. 10687, July 22, 2015, 763 SCRA 288, 295.

[23] *Rollo*, p. 20.

is no credible proof on record that Atty. Lizardo was from the beginning engaged to represent Silvestra, Alicia and Martinez as their common counsel.

In his Motion for Reconsideration of the IBP Board of Governors Resolution dated March 21, 2013, Atty. Lizardo admits that after the signing of the Extrajudicial Settlement with Sale he received instructions from Martinez to hold the TCTs allegedly for the transfer in the latter's name of the interest of Silvestra and Alicia's heirs in the subject properties. This subsequent engagement by Martinez of Atty. Lizardo as counsel against Silvestra and Santos in the matter of the possession of the subject titles amounts to conflict of interest and requires the written consent of all the parties concerned given after a full disclosure of the facts, a requirement he clearly failed to procure.

As counsel for Silvestra and Alicia, Atty. Lizardo is required to deliver the property of his client when due or upon demand, and mandated to always be loyal to them and vigilant to protect their interests, in accordance with the following provisions of the Code of Professional Responsibility:

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

Rule 16.03 -— A lawyer shall deliver the funds and property of his client when due or upon demand. However, he shall have a lien over the funds and may apply so much thereof as may be necessary to satisfy his lawful fees and disbursements, giving notice promptly thereafter to his client. He shall also have a lien to the same extent on all judgments and executions he has secured for his client as provided for in the Rules of Court.

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

Atty. Lizardo's withholding of the TCTs entrusted to him by his clients to protect another purported client who surreptitiously acquired his services despite a conflict of interest is therefore a clear violation of several provisions of the Code

of Professional Responsibility. For this reason, we also uphold the grant of complainants' prayer for the return of the subject titles which they turned over to Atty. Lizardo for safekeeping. In any event, the return of said TCTs will not unduly prejudice Martinez who may cause his adverse claim to be duly annotated thereon.

As previously mentioned, the Investigating Commissioner found that Atty. Lizardo allowed himself to be used by Martinez to supposedly defraud Silvestra and the heirs of Alicia and therefore, held that Atty. Lizardo also violated Canon 1, Rule 1.01 and Canon 7, Rule 7.03 of the Code of Professional Responsibility.[24] However, we refrain from passing upon the finding of the Investigating Commissioner that Atty. Lizardo was guilty of deceit in allegedly inducing Silvestra and the heirs of Alicia into selling their interest in all three lots covered by the subject TCTs in the Extrajudicial Settlement with Sale when their purported intention was to sell only the parcels covered by TCT No. 13866. The matter of fraud in the execution of said agreement which will have implications on its validity and legal effects must be first threshed out by the parties in the appropriate proceedings.

The IBP recommends the suspension of Atty. Lizardo from the practice of law for a period of two years. This is the same penalty in *Villanueva v. Atty. Gonzales*,[25] one of the cases cited in the Commissioner's Report. We observe, however, that in

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[24] CANON 1 - **A lawyer shall uphold the constitution, obey the laws of the land and promote respect for the law and legal processes.**

Rule 1.01 - A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

CANON 7 - **A lawyer shall at all times uphold the integrity and dignity of the legal profession and support the activities of the integrated bar.**

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Rule 7.03 - A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor shall he, whether in public or private life, behave in a scandalous manner to the discredit of the legal profession.

[25] 568 Phil. 379, 388 (2008).

Villanueva, the lawyer not only withheld the TCT entrusted to him by his client, but likewise avoided her for three years, and did not give her *any* information about the status of her case or respond to her request for information. He likewise repeatedly failed to file an answer to the complaint and to appear at the mandatory conference as required by the IBP. The Court held that these actions demonstrate his high degree of irresponsibility and lack of respect for the IBP and its proceedings.[26] We find that the conduct of Atty. Lizardo, while reprehensible and unworthy of a member of the Bar, is not quite at par with that in *Villanueva*. Moreover, considering that we find insufficient basis to hold Atty. Lizardo liable for violation of Canon 1, Rule 1.01 and Canon 7, Rule 7.03 at this point in time, a lighter penalty is in order. Suspension from the practice of law for one year is sufficient in the case at bar.

WHEREFORE, the Court finds respondent Atty. Rufino C. Lizardo **GUILTY** of violating Canons 16 and 17, and Rules 15.03 and 16.03 of the Code of Professional Responsibility. Accordingly, the Court **SUSPENDS** him from the practice of law for one year effective upon finality of this Decision, **ORDERS** him, under pain of contempt, to return TCTs No. 3900 and 13866 to complainant Silvestra Medina within 15 days from notice of this Decision, and **WARNS** him that a repetition of the same or similar offense shall be dealt with more severely.

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

SO ORDERED.

Sereno, C. J. (Chairperson), *Carpio, Velasco, Jr., Peralta, Bersamin, del Castillo, Mendoza, Reyes, Perlas-Bernabe, Leonen, Jardeleza*, and *Caguioa, JJ.*, concur.

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[26] *Id.*

EN BANC

[A.C. No. 11095. January 31. 2017]

EUFEMIA A. CAMINO, *complainant, vs.* **ATTY. RYAN REY L. PASAGUI**, *respondent.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENT, EXECUTION OF; DECISION OF THE SUPREME COURT IN AN ORIGINAL ACTION FOR DISBARMENT WHICH WAS DECLARED TO BE IMMEDIATELY EXECUTORY MAY BE EXECUTED AS A MATTER OF RIGHT THROUGH A MOTION FOR ISSUANCE OF A WRIT OF EXECUTION.— In a *Per Curiam* Decision dated September 20, 2016, the Court, ruling in favor of the complainant, found that respondent was guilty of deceit, malpractice and gross misconduct for converting the money of his client to his own personal use without her consent. By his failure to make good of their agreement to use the proceeds of the loan for the transfer of the title in complainant's name, Atty. Pasagui not only betrayed the trust and confidence reposed upon him by his client, but he is likewise guilty of engaging in dishonest and deceitful conduct. For his acts, Atty. Pasagui degraded himself and besmirched the fair name of an honorable profession. Thus, the Court affirmed the findings and conclusions of the IBP Board of Governors, but modified the recommended penalty and instead imposed the penalty [of] Disbarment. The Court also ordered Atty. Pasagui to return the loan proceeds he received from Perpetual Help Credit Cooperative, Inc. (*PHCCI*) on behalf of the complainant, with interest, together with all the documents pertinent to the loan application and those he received from the complainant x x x[.] [J]udgments declared to be immediately executory, as in the present case, are enforceable after their rendition. Similar to judgments or orders that become final and executory, the execution of the decision in the case at bar is already a matter of right. The judgment obligee may, therefore, file a motion for the issuance of a writ of execution in the court of origin as provided for under Rule 39, Sec. 1, of the 1997 Rules of Civil Procedure. In this particular case, however, the case did not

originate, from the lower courts, but instead is an original action for disbarment filed by the complainant against Atty. Pasagui, accusing the latter of Estafa through Abuse of Confidence. Consequently, pursuant to Section 6, Rule 135 of the Rules of Court, the Clerk of Court of the Supreme Court should issue the Writ of Execution prayed for. But, in as much as this Court does not have a sheriff of its own to execute its own decision and considering that the complainant resides in Tacloban City, the ***Ex-Officio*** **Sheriff of Tacloban City** is directed to execute the money judgment against respondent in accordance with Rule 39, Section 9 of the Rules of Court. Likewise, the ***Ex-Officio*** **Sheriff of Tacloban City** is ordered to enforce the Court's directive for respondent to return all the pertinent documents in his possession to the complainant pursuant to Section 11 of the Rules of Court.

APPEARANCES OF COUNSEL

Gonzales & Quismorio Law Offices for respondent.

R E S O L U T I O N

***PER CURIAM*:**

Before the Court is a Motion for Issuance of Writ of Execution[1] filed by Complainant Eufemia A. Camino, relative to the Court's *Per Curiam* Decision dated September 20, 2016 in A.C. No. 11095.

In a Disbarment Complaint dated July 13, 2011 filed by complainant against respondent Atty. Ryan Rey L. Pasagui *(Atty. Pasagui)* before the Integrated Bar of the Philippines-Commission on Bar Discipline *(IBP-CBD),* docketed as CBD Case No. 11-3140, now A.C. No. 11095, complainant alleged, among other things, that respondent violated their agreement for the latter to facilitate and secure a loan in order to finance the payment of necessary expenses to transfer the title of a certain property under her name. She claimed that respondent

[1] *Rollo,* pp. 269-271.

obtained a loan in her name and that of her husband, using their property as collateral, but Atty. Pasagui arrogated the proceeds thereof to himself.

In a *Per Curiam* Decision[2] dated September 20, 2016, the Court, ruling in favor of the complainant, found that respondent was guilty of deceit, malpractice and gross misconduct for converting the money of his client to his own personal use without her consent. By his failure to make good of their agreement to use the proceeds of the loan for the transfer of the title in complainant's name, Atty. Pasagui not only betrayed the trust and confidence reposed upon him by his client, but he is likewise guilty of engaging in dishonest and deceitful conduct. For his acts, Atty. Pasagui degraded himself and besmirched the fair name of an honorable profession. Thus, the Court affirmed the findings and conclusions of the IBP Board of Governors, but modified the recommended penalty and instead imposed the penalty of Disbarment. The Court also ordered Atty. Pasagui to return the loan proceeds he received from Perpetual Help Credit Cooperative, Inc. *(PHCCI)* on behalf of the complainant, with interest, together with all the documents pertinent to the loan application and those he received from the complainant, to wit:

WHEREFORE, Resolution No. XXI-2014-938 dated December 14, 2014 of the IBP-Board of Governors which found respondent Atty. Ryan Rey L. Pasagui **GUILTY** of violation of Rule 1.01 of the Code of Professional Responsibility is **AFFIRMED with MODIFICATION as to the penalty.** Respondent Atty. Ryan Rey L. Pasagui is instead meted the penalty of **DISBARMENT.** Respondent is further **ORDERED** to immediately **RETURN** the loan proceeds amounting to ₱1,000,000.00 and to pay legal interest at the rate of twelve percent (12%) *per annum* computed from the release of the loan on February 15, 2011 up to June 30, 2013, and six percent (6%) *per annum* from July 1, 2013 until fully paid, as well as, the ₱20,000.00 received for the purpose of transferring the title in the name of the complainant and to pay legal interest at the rate of twelve percent (12%) *per annum* computed from receipt of the amount on February

[2] *Id.* at 248-258.

3, 2011 up to June 30, 2013, and six percent (6%) *per annum* from July 1, 2013 until fully paid. He is likewise **ORDERED** to **RETURN** all other documents pertinent to the loan obtained from PHCCI and those received from complainant.

Let a copy of this Decision be furnished to the Office of the Bar Confidant, to be appended to the personal record of respondent; the Integrated Bar of the Philippines; and the Office of the Court Administrator for circulation to all courts in the country for their information and guidance.

This Decision shall be immediately executory.

SO ORDERED.[3]

In the present Motion for Issuance of Writ of Execution, complainant now prays for the issuance of a Writ of Execution for the enforcement of the said judgment.

Generally, once a judgment or order becomes final and executory, the judgment obligee may file a motion for the issuance of a writ of execution in the court of origin as provided for under Rule 39, Sec. 1, of the 1997 Rules of Civil Procedure, *viz.*:

SEC. 1. ***Execution upon judgments or final orders***. — Execution shall issue as a matter of right, on motion, upon a judgment or order that disposes of the action or proceeding upon the expiration of the period to appeal therefrom if no appeal has been duly perfected.

If the appeal has been duly perfected and finally resolved, the execution may forthwith be applied for in the court of origin, on motion of the judgment obligee, submitting therewith certified true copies of the judgment or judgments or final order or orders sought to be enforced and of the entry thereof, with notice to the adverse party.

The appellate court may, on motion in the same case, when the interest of justice so requires, direct the court of origin to issue the writ of execution.

Likewise, a judgment or final order may also be executed pending appeal as provided for in Rule 39, Sec. 2, as follows:

[3] *Id.* at 256-257.

SEC. 2. ***Discretionary execution***. -

(a) ***Execution of a judgment or final order pending appeal.*** - On motion of the prevailing party with notice to the adverse party filed in the trial court while it has jurisdiction over the case and is in possession of either the original record or the record on appeal, as the case may be, at the time of the filing of such motion, said court may, in its discretion, order execution of a judgment or final order even before the expiration of the period to appeal.

After the trial court has lost jurisdiction, the motion for execution pending appeal may be filed in the appellate court.

Discretionary execution may only issue upon good reasons to be stated in a special order after due hearing.

(b) ***Execution of several, separate or partial judgments***. - A several, separate or partial judgment may be executed under the same terms and conditions as execution of a judgment or final order pending appeal.

Corollarily, judgments declared to be immediately executory, as in the present case, are enforceable after their rendition. Similar to judgments or orders that become final and executory, the execution of the decision in the case at bar is already a matter of right.[4] The judgment obligee may, therefore, file a motion for the issuance of a writ of execution in the court of origin as provided for under Rule 39, Sec. 1, of the 1997 Rules of Civil Procedure.

In this particular case, however, the case did not originate from the lower courts, but instead is an original action for disbarment filed by the complainant against Atty. Pasagui, accusing the latter of Estafa through Abuse of Confidence.[5]

Consequently, pursuant to Section 6,[6] Rule 135 of the Rules of Court, the Clerk of Court of the Supreme Court should issue

[4] See *Anama v. Court of Appeals,* 680 Phil. 305 (2012).

[5] *Rollo,* p. 2.

[6] **Section 6**. *Means to carry jurisdiction into effect.* — When by law jurisdiction is conferred on a court or judicial officer, all auxiliary writs, processes and other means necessary to carry it into effect may be

the Writ of Execution prayed for. But, in as much as this Court does not have a sheriff of its own to execute its own decision and considering that the complainant resides in Tacloban City, the ***Ex-Officio*** **Sheriff of Tacloban City** is directed to execute the money judgment against the respondent in accordance with Rule 39, Section 9[7] of the Rules of Court. Likewise, the ***Ex-Officio*** **Sheriff of Tacloban City** is ordered to enforce the Court's directive for respondent to return all the pertinent documents

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employed by such court or officer; and if the procedure to be followed in the exercise of such jurisdiction is not specifically pointed out by law or by these rules, any suitable process or mode of proceeding may be adopted which appears comfortable to the spirit of the said law or rules.

[7] **SEC. 9.** ***Execution of judgments for money, how enforced. — (a) Immediate payment on demand. —*** The officer shall enforce an execution of a judgment for money by demanding from the judgment obligor the immediate payment of the full amount stated in the writ of execution and all lawful fees. The judgment obligor shall pay in cash, certified bank check payable to the judgment obligee, or any other form of payment acceptable to the latter, the amount of the judgment debt under proper receipt directly to the judgment obligee or his authorized representative if present at the time of payment. The lawful fees shall be handed under proper receipt to the executing sheriff who shall turn over the said amount within the same day to the clerk of court of the court that issued the writ.

If the judgment obligee or his authorized representative is not present to receive payment, the judgment obligor shall deliver the aforesaid payment to the executing sheriff. The latter shall turn over all the amounts coming into his possession within the same day to the clerk of court of the court that issued the writ, or if the same is not practicable, deposit said amounts to a fiduciary account in the nearest government depository bank of the Regional Trial Court of the locality.

The clerk of said court shall thereafter arrange for the remittance of the deposit to the account of the court that issued the writ whose clerk of court shall then deliver said payment to the judgment obligee in satisfaction of the judgment. The excess, if any, shall be delivered to the judgment obligor while the lawful fees shall be retained by the clerk of court for disposition as provided by law. In no case shall the executing sheriff demand that any payment by check be made payable to him.

(b) ***Satisfaction by levy.*** — If the judgment obligor cannot pay all or part of the obligation in cash, certified bank check or other mode of payment acceptable to the judgment obligee, the officer shall levy upon the properties of the judgment obligor of every kind and nature whatsoever which may be disposed of for value and not otherwise exempt from execution giving the

in his possession to the complainant pursuant to Section 11[8] of the Rules of Court.

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latter the option to immediately choose which property or part thereof may be levied upon, sufficient to satisfy the judgment. If the judgment obligor does not exercise the option, the officer shall first levy on the personal properties, if any, and then on the real properties if the personal properties are insufficient to answer for the judgment.

The sheriff shall sell only a sufficient portion of the personal or real property of the judgment obligor which has been levied upon.

When there is more property of the judgment obligor than is sufficient to satisfy the judgment and lawful fees, he must sell only so much of the personal or real property as is sufficient to satisfy the judgment and lawful fees.

Real property, stocks, shares, debts, credits, and other personal property, or any interest in either real or personal property, may be levied upon in like manner and with like effect as under a writ of attachment.

(c) ***Garnishment of debts and credits.*** — The officer may levy on debts due the judgment obligor and other credits, including bank deposits, financial interests, royalties, commissions and other personal property not capable of manual delivery in the possession or control of third parties. Levy shall be made by serving notice upon the person owing such debts or having in his possession or control such credits to which the judgment obligor is entitled. The garnishment shall cover only such amount as will satisfy the judgment and all lawful fees.

The garnishee shall make a written report to the court within five (5) days from service of the notice of garnishment stating whether or not the judgment obligor has sufficient funds or credits to satisfy the amount of the judgment. If not, the report shall state how much funds or credits the garnishee holds for the judgment obligor. The garnished amount in cash, or certified bank check issued in the name of the judgment obligee, shall be delivered directly to the judgment obligee within ten (10) working days from service of notice on said garnishee requiring such delivery, except the lawful fees which shall be paid directly to the court.

In the event there are two or more garnishees holding deposits or credits sufficient to satisfy the judgment, the judgment obligor, if available, shall have the right to indicate the garnishee or garnishees who shall be required to deliver the amount due; otherwise, the choice shall be made by the judgment obligee.

The executing sheriff shall observe the same procedure under paragraph (a) with respect to delivery of payment to the judgment obligee.

[8] **SEC. 11.** ***Execution of special judgments.*** — When a judgment requires the performance of any act other than those mentioned in the two preceding

WHEREFORE, premises considered, the Court resolves to **GRANT** complainant's Motion for Issuance of Writ of Execution by **DIRECTING** the **Clerk of Court** of the Supreme Court to issue the Writ of Execution prayed for **ORDERING** respondent **ATTY. RYAN REY L. PASAGUI:**

1. To IMMEDIATELY RETURN to complainant EUFEMIA A. CAMINO the amount of ₱1,000,000.00, plus interest of 12% *per annum* from February 15, 2011 up to June 30, 2013; and interest of 6% *per annum* from July 1, 2013 until fully paid;

2. To pay to complainant EUFEMIA A. CAMINO the further amount of ₱120,000.00, plus interest of 12% *per annum* from February 3, 2011 up to June 30, 2013; and interest of 6% *per annum* from July 1, 2013 until fully paid; and

3. To forthwith return to complainant EUFEMIA A. CAMINO all other documents pertinent to the loan obtained from PHCCI and those received from complainant.

The Clerk of Court of the Supreme Court shall transmit the Writ of Execution to the Clerk of Court and *Ex Officio* Sheriff of the Regional Trial Court in Tacloban City (with the certified copies of this Resolution and the decision promulgated on September 20, 2016) for prompt service and implementation either directly or by a duly authorized deputy sheriff.

The legal fees for the service and implementation of the Writ of Execution as provided in Rule 141 of the *Rules of Court* shall be paid by respondent ATTY. PASAGUI.

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sections, a certified copy of the judgment shall be attached to the writ of execution and shall be served by the officer upon the party against whom the same is rendered, or upon any other person required thereby, or by law, to obey the same, and such party or person may be punished for contempt if he disobeys such judgment.

The Executive Judge of the Regional Trial Court in Tacloban City is hereby expressly authorized to oversee the proceedings of execution; act on and resolve any incident arising therefrom; issue *alias* writ of execution, if necessary, as if the judgment under execution was rendered by the Regional Trial Court; receive and approve the Sheriff's Return on satisfaction (full or partial) or failure of satisfaction; and to submit a final Report on the execution to the Clerk of Court of the Supreme Court.

Complainant EUFEMIA A. CAMINO is directed to hereafter deal with the Clerk of Court and *Ex Officio* Sheriff of Tacloban City in relation to the enforcement of the decision promulgated in this adminisrative matter.

SO ORDERED.

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

EN BANC

[A.M. No. P-16-3550. January 31, 2017]
(Formerly A.M. IPI No. 14-4252-P)

JUDGE GUILLERMO P. AGLORO, *complainant, vs.* **COURT INTERPRETER LESLIE BURGOS, OFFICER-IN-CHARGE/CLERK III ANNALIZA P. SANTIAGO, COURT STENOGRAPHER MARISSA M. GARCIA, and CLERK III JULIETA FAJARDO, all of Regional Trial Court, Branch 83, Malolos City, Bulacan,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CASE; RESPONDENT'S DEATH CANNOT BE CONSIDERED SUFFICIENT GROUND TO JUSTIFY THE DISMISSAL OF THE ADMINISTRATIVE CASE AGAINST HER.— As regards Fajardo, jurisprudence is settled that the death of a respondent does not preclude a finding of administrative liability, subject to certain exceptions. In the case of *Gonzales v. Escalona* (*Gonzales*), the Court wrote: While his death intervened after the completion of the investigation, it has been settled that the Court is not ousted of its jurisdiction over an administrative matter by the mere fact that the respondent public official ceases to hold office during the pendency of the respondent's case; jurisdiction once acquired, continues to exist until the final resolution of the case. The above rule, however, admits of exceptions. In *Gonzales,* citing the case of *Limliman vs. Judge Ulat-Marrero*, the Court held that the death of the respondent necessitated the dismissal of the administrative case upon a consideration of any of the following factors: *first*, if the respondent's right to due process was not observed; *second*, the presence of exceptional circumstances in the case on the grounds of equitable and humanitarian reasons; and *third*, the kind of penalty imposed. In the case against Fajardo, none of the aforesaid exceptions exists. As borne by the records, Fajardo's right to due process was not violated as she was given the opportunity to answer the charges against her. In fact, Fajardo was able to file her comment before the OCA. Neither could equitable or humanitarian reasons be sufficient ground for the dismissal of the present case. Respondent's demise, alone, could not be considered sufficient ground to justify the dismissal of the administrative case on the ground of equitable or humanitarian reason. Thus, the case against Fajardo could not be dismissed merely on account of her death.

2. ID.; ID.; ID.; DISHONESTY AND MISCONDUCT, DEFINED AND DISTINGUISHED; RESPONDENTS ARE GUILTY OF GRAVE MISCONDUCT, SERIOUS DISHONESTY AND CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE BY CONNIVING TO GUARANTEE THAT THE PETITION FOR RECONSTITUTION OF FOUR

TITLES WOULD BE ACTED ON FAVORABLY.— The Court likewise concurs with the recommendation of the OCA with respect to Garcia, but modifies its findings in the case of Santiago. The Court is convinced that Santiago is also administratively liable for grave misconduct, serious dishonesty, and conduct prejudicial to the best interest of the service. Dishonesty is defined as a disposition to lie, cheat, deceive or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray. Misconduct, on the other hand, is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer. The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law, or to disregard established rules, which must be established by substantial evidence. Conduct prejudicial to the best interest of the service refers to acts or omissions that violate the norm of public accountability and diminish – or tend to diminish – the people's faith in the Judiciary. Understandably, dishonesty and grave misconduct constitute conduct prejudicial to the best interest of the service. In this case, the record is replete with evidence pointing not only to Garcia but also to Santiago as the persons responsible for the subject misdeed. x x x the totality of the evidence shows that **Garcia and Santiago connived** to guarantee that the LRC petition would be acted on favorably. Clearly, they were united in their efforts to ensure the realization of their scheme without being found out. Despite the positive evidence and allegations hurled against them, Garcia and Santiago chose to simply deny their complicity without addressing the actions attributed to them. Verily, their responsibility and culpability with regard to the misdeed were established by substantial evidence. Their respective participation in this misdeed and their continuous feigning of innocence, constitute gross misconduct, serious dishonesty, and conduct prejudicial to the best interest of the service.

3. **ID.; ID.; ID.; ID.; ID.; DISMISSAL FROM THE SERVICE WITH ACCESSORY PENALTY, IMPOSED.—** Under Section 46, Rule 10 of the Revised Rules of Administrative Cases in the Civil Service, Grave Misconduct and Serious Dishonesty are grave offenses which merit the penalty of

> dismissal from service even for the first offense. Such penalty shall carry with it the cancellation of civil service eligibility, forfeiture of retirement and other benefits, and perpetual disqualification from re-employment in any government agency or instrumentality, including any government-owned and controlled corporation or government financial institution. x x x Respondents Marissa M. Garcia, Court Stenographer, and Annaliza P. Santiago, Clerk III, both of Branch 83, Regional Trial Court of Malolos City, Bulacan, are found **GUILTY** of Grave Misconduct, Dishonesty, and Conduct Prejudicial to the Best Interest of the Service and are, thus, **DISMISSED** from the service with forfeiture of all their retirement and other benefits, except accrued leave credits, with prejudice to re-employment in any government office, including government-owned and controlled corporations.

D E C I S I O N

***PER CURIAM*:**

This is an administrative matter which stemmed from an oral report made by the complainant, Judge Guillermo P. Agloro (*Judge Agloro*), Presiding Judge of Branch 83, Regional Trial Court, Malolos City, Bulacan (*RTC-Malolos*), regarding certain irregularities relative to the petition for reconstitution of four (4) transfer certificates of title docketed as LRC Case No. P-335-2011 (*LRC case*).[1]

The Antecedents

On May 17, 2012, Judge Agloro formalized his oral report to then Executive Judge Renato C. Francisco (*EJ Francisco*) of RTC-Malolos. In his Private and Confidential Memo[2] to EJ Francisco, he reported that, based on his own investigation, the LRC case was raffled off to Branch 77 but for "unknown reason," the record of the case appeared in Branch 83; that the petition was heard and granted by Branch 83 in its Order,[3] dated

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[1] *Rollo*, pp. 74-84.

[2] *Id.* at 25.

[3] *Id.* at 274-278.

November 4, 2011; that he came to know that the registration of the entry of judgment for the November 4, 2011 Order was refused by the Office of the Clerk of Court (*OCC*) because the LRC case was raffled off to Branch 77, and not to Branch 83; and that he was in a predicament because there was a pending motion for execution, yet the decision was not yet final and executory.

In response, EJ Francisco issued a memorandum[4] to the OCC personnel and to the OIC/Legal Researcher of Branch 77 to explain how the LRC case was raffled to Branch 77 and yet appeared in Branch 83.

On July 5, 2012, the new Executive Judge, Ma. Theresa V. Mendoza-Arcega (*EJ Arcega*),[5] wrote a letter[6] addressed to Deputy Court Administrator Raul B. Villanueva, referring the matter to the Office of the Court Administrator (*OCA*) after she had conducted her own investigation on the personnel of the OCC and Branch 83 regarding the apparent anomalies surrounding the LRC case. She also forwarded the case folder of the LRC case from Branch 77 and the case folder from Branch 83, together with the affidavits of the court personnel.

In a letter,[7] dated September 28, 2012, the OCA acknowledged the letter of EJ Arcega and directed her to conduct a more exhaustive investigation and to submit a detailed report.

The Investigation Report of EJ Arcega

In compliance, EJ Arcega submitted her Report,[8] dated February 18, 2013, confirming what Judge Agloro had previously reported to then EJ Francisco that the LRC case was raffled off to Branch 77. EJ Arcega further explained that the case records delivered to, and received by, Branch 77 contained the

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[4] *Id.* at 26.

[5] Replaced EJ Francisco who was appointed Justice of the Court of Appeals.

[6] *Rollo*, p. 24.

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

[8] *Id.* at 6-19.

raffle sheet bearing the signatures of the eight (8) members of the raffle committee, and the summary of legal fees and assessment form from the Office of the Provincial Prosecutor of Bulacan. On the other hand, the case records found with Branch 83 did not include the summary of legal fees and assessment. Furthermore, it bore only three (3) signatures which were already declared by EJ Francisco and the other members of the raffle committee as forgeries. EJ Arcega also summarized the explanation given by every person apparently involved in the irregularities, attending the LRC case, as follows:

Judge Rolando J. Bulan, Presiding Judge, Branch 77, explained that the LRC case was raffled off to Branch 77 on June 6, 2011. He, however, noticed that the Transfer Certificate of Title (*TCT*) numbers of the four (4) certificates sought to be reconstituted were not indicated in the petition and instead, "N/A's" were written in their respective places. Thus, he issued an order, dated July 15, 2011, directing petitioner Felicisima B. Buendia (*Buendia*) to show legal basis stating that a TCT without the corresponding number could be reconstituted. The LRC case was, however, not set for hearing because Buendia failed to comply with the aforementioned directive.[9]

Atty. Miguel Larida (*Atty. Larida*), Buendia's counsel, claimed that sometime in June or July 2011, his office received a copy of an order from Branch 83 setting the LRC case for initial hearing; that Atty. Renato Dilag appeared for their office as counsel for Buendia; that he was confronted by an order issued by Branch 77, also assuming jurisdiction over the LRC case, but he did not entertain the same because the proceedings before Branch 83 were about to be terminated; and that he had neither knowledge nor information as to how the LRC case was assigned to Branch 83.[10]

Liwayway S.J. Pagdangan, Administrative Officer I; **Ronalie B. Reyes,** Clerk III; and **Cinderella T. Canoza**, Clerk III, all of the OCC, denied any participation in the anomaly. They

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

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

explained that after the raffle of the LRC case to Branch 77, the records thereof were delivered to the said branch by **Marita M. Esguerra** (*Esguerra*), the duly authorized utility worker assigned in the LRC Section.[11] Esguerra corroborated the aforesaid statements and asserted that the receipt of the subject records was acknowledged by **Cecilia Baesa**, Clerk of Branch 77, as evidenced by her signature in the record book Esguerra was carrying at that time.[12]

Juliana M. Raymundo, OIC of Branch 77, confirmed the receipt of the subject records by their branch. She further clarified that the said records remained in their custody because they officially received the same.[13]

Leslie J. Burgos (*Burgos*), OIC/Interpreter of Branch 83, averred that sometime in May 2012, she was informed by **Julieta Fajardo** (*Fajardo*), then Clerk-in-Charge for criminal cases of Branch 83, that she came across a raffle sheet which indicated that the LRC case was actually raffled to Branch 77, and not to their branch. Fajardo, when summoned, orally confirmed the statement of Burgos that she confronted respondent **Annaliza P. Santiago** (*Santiago*), Clerk-in-Charge for civil and land registration cases of Branch 83, regarding her discovery, but the latter responded merely by pointing her lips at the direction of **Marissa Garcia** (*Garcia*), Court Stenographer of Branch 83.[14]

To personally confirm the information, Burgos checked the logbook for land registration cases raffled to their branch and discovered that the LRC case was not recorded therein. She further stated that previously, a motion for the issuance of a writ of execution relating to the LRC case was filed in their branch, but the same was denied. Subsequently, however, another motion for execution[15] was filed, but this time, a photocopy of

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

[12] *Id.* at 66.

[13] *Id.* at 43.

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

[15] *Id.* at 291-300.

the cancelled entry of judgment was attached thereto. Burgos further claimed that she had nothing to do with the attempt to register the entry of judgment on February 20, 2012 as the same did not bear her signature. The entry of judgment was apparently prepared by Garcia who signed the same for Burgos.[16]

Annaliza P. Santiago, Clerk III, OCC, but detailed at Branch 83, claimed that sometime in June 2011, she came across the records of the LRC case on top of her table; and that, per her usual practice, she stamped received the said record, docketed it in their docket book, and transmitted it to the person in charge of the preparation of the initial hearing.[17]

For her part, Branch 83 Stenographer ***Marissa M. Garcia*** admitted that she prepared the order setting the LRC case for initial hearing, and the final order granting the petition. She reasoned, however, that she only did the same in her capacity as a senior stenographer who merely assisted another stenographer, Marilou de Guzman (*de Guzman*). She also admitted signing the cancelled entry of judgment, but only because then OIC Burgos was absent or her whereabouts at that time were unknown to them. Burgos, however, denied that she was absent on February 20, 2012, as evidenced by her daily time record (*DTR*) for said date. She also alleged in her supplemental affidavit that Branch 83 was using an old logbook as record book for newly raffled cases, which she earlier checked and found that the LRC case was never recorded, but that after the February 20, 2012 incident, the logbook turned up neatly covered and the LRC case had already been entered in the said logbook.[18]

On March 5, 2014, the OCA Legal Office recommended that the July 5, 2012 Letter and the February 18, 2013 Investigation Report of EJ Arcega be considered as a complaint against Burgos, Santiago, Garcia, and Fajardo, all of Branch 83, RTC-Malolos,

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

[17] *Id.* at 68.

[18] *Id.* at 13-14.

and that the said respondents be directed to comment on the complaint.[19]

On April 4, 2014, the OCA directed respondents Burgos, Fajardo, Santiago, and Garcia to file their respective comments.[20]

The Respondents' Position

In her Comment,[21] dated May 30, 2014, Burgos reiterated the explanation she gave to EJ Arcega and the statements contained in her previous affidavits.[22] She also claimed that in no more that two decades of service, she had never been involved in any irregularity and she had served the Judiciary and the public faithfully and honestly; and that her track record would speak for the reason she was appointed the OIC of their branch. She, however, ascribed bad faith and connivance on respondents Santiago and Garcia. Burgos alleged that after reporting the anomaly to Judge Agloro, she conducted her own investigation on the matter. During the course thereof, she learned from one of the administrative officers of the OCC that prior to the raffle of the LRC case to Branch 77, *Garcia* went to the OCC carrying a case record/folder apparently containing copies of the petition and inquired from the OCC whether it would be possible for the same to be raffled to Branch 83.

Burgos further averred that on February 20, 2012, when the OCC refused to receive the entry of judgment, Garcia personally retrieved it and caused its cancellation; and that more than a month later on March 28, 2012 Garcia, without her knowledge, issued and signed a certified true copy of the said entry of judgment, which was thereafter used by Buendia as an attachment to her motion for execution. She also belied Garcia's claim that the latter merely assisted the other stenographer, de Guzman,

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[19] *Id.* at 1-4.

[20] *Id.* at 343-346.

[21] *Id.* at 353-371.

[22] Explanation, dated June 15, 2012, *id.* at 51-52; Supplemental Sworn Statement (including attachments), dated November 12, 2012, *id.* at 372-376.

to prepare the initial order because de Guzman asked for her help. Burgos attached the DTR of de Guzman on June 8, 2011, the date of the initial order, showing de Guzman was on leave and she could not have asked for Garcia's help.

Burgos also dismissed Santiago's explanations as mere flimsy excuses. Contrary to her claim, what she did was not the usual practice in the office. According to Burgos, in receiving case records from the OCC 's Raffle Section, the standard procedure was for the clerk-in-charge or the receiving clerk to sign in the logbook carried by the OCC personnel to evidence the actual receipt of the records. After receipt of the records, the details of the case folders would be entered in the clerk-in-charge's logbook. With the LRC case, however, Santiago never bothered to comply with the usual practice. Moreover, Burgos noted that it was Santiago who brought the entry of judgment to the OCC.

Fajardo, in her Comment,[23] dated May 30, 2014, narrated how she accidentally discovered that the LRC case was raffled to Branch 77, while compiling their copies of the raffle sheets. She also stated that she told OIC Burgos what she found out; that she asked Santiago about the matter; and that she explained to EJ Arcega why she did not file any affidavit during the investigation because she was trying to avoid conflict with Garcia who is not her friend.

In their separate comments,[24] both dated June 25, 2014 Santiago and Garcia merely reiterated their allegations in their previous affidavits without rebutting, or offering any explanation to, the points raised by Burgos and Fajardo.

On November 25, 2014, the Manifestation with Notice of Death[25] of respondent Fajardo was filed by her widower, Reynaldo L. Fajardo, praying for the dismissal of the case against her on account of her death. On June 25, 2015, her widower filed the Omnibus Motion[26] reiterating the prayer for the dismissal of the case against her.

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[23] *Id.* at 390-393.

[24] *Id.* at 404-405, 406-410.

[25] *Id.* at 411-412.

[26] *Id.* at 417-420.

The OCA Recommendation

On July 28, 2016, the OCA made the following recommendation:

a) the administrative complaint be **RE-DOCKETED** as a regular administrative matter against the respondents;

b) the administrative complaint against respondent Court Interpreter Leslie Burgos, Branch 83, RTC, Malolos City, Bulacan, be **DISMISSED** for insufficiency of evidence;

c) in view of the death of respondent Clerk III Julieta Fajardo, same court, the administrative complaint against her be **DISMISSED**;

d) respondent Clerk III Annaliza Santiago, same court, be found **GUILTY** of Simple Neglect of Duty and be **REPRIMANDED**, with a **STERN WARNING** that a repetition of such or any similar act shall be dealt with more severely by the Court; and

e) respondent Court Stenographer Marissa M. Garcia, same court, be found **GUILTY** of grave misconduct, serious dishonesty and conduct prejudicial to the best interest of service and be meted the penalty of **DISMISSAL** from the service. Accordingly, her retirement and other benefits may be forfeited except accrued leave credits, and be perpetually disqualified from re-employment in any government agency or instrumentality, including any government-owned and controlled corporation or government financial institution.[27]

The OCA opined that the evidence gathered against Santiago was insufficient to establish a link between her and Garcia's scheme because her acts were done in accordance with her usual daily routine in the office. Nevertheless, the OCA concluded

[27] *Id.* at 441.

that Santiago was aware of Garcia's misconduct but, for whatever reason, she chose to seal her lips and conceal the latter's wrongdoing.

As to Garcia, the OCA was convinced that she played an indispensable role in ensuring the success of the nefarious scheme. It observed that before the actual raffle, Garcia inquired with the OCC whether it was possible for the LRC petition to be raffled to Branch 83; that she participated in the subject case, having prepared practically all the orders in the said case; that she railroaded the disposition of the LRC case by issuing an entry of judgment therefor and, thus, usurping the function of Burgos as OIC of Branch 83; and that she personally retrieved the entry of judgment and had it cancelled, when the OCC refused to register the same.

The Court concurs with the findings and recommendation of the OCA subject to certain modifications.

The Court's Ruling

The Court agrees that there is a dearth of evidence to hold Burgos administratively liable. Indeed, no participation, whatsoever, relating to the subject scheme could be attributed to her. On the contrary, Burgos participated, not in the realization, but in the investigation and prosecution of those responsible for the devious scheme. The records would also show that Burgos came to know of the misdeed only after Fajardo had reported the same to her. Thus, the Court concurs with the conclusion of the OCA that Burgos could not be made administratively liable as she could not have prevented the devious scheme by any amount of diligence.

As regards Fajardo, jurisprudence is settled that the death of a respondent does not preclude a finding of administrative liability, subject to certain exception.[28] In the case of *Gonzales v. Escalona*[29] (*Gonzales*), the Court wrote:

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[28] *Office of the Court Administrator v. Judge Ismael L. Salubre, Jr.*, 720 Phil. 23 (2013).

[29] 587 Phil. 448 (2008).

While his death intervened after the completion of the investigation, it has been settled that the Court is not ousted of its jurisdiction over an administrative matter by the mere fact that the respondent public official ceases to hold office during the pendency of the respondent's case; jurisdiction once acquired, continues to exist until the final resolution of the case.[30]

The above rule, however, admits of exceptions. In *Gonzales,* citing the case of *Limliman vs. Judge Ulat-Marrero*,[31] the Court held that the death of the respondent necessitated the dismissal of the administrative case upon a consideration of any of the following factors: *first*, if the respondent's right to due process was not observed; *second*, the presence of exceptional circumstances in the case on the grounds of equitable and humanitarian reasons; and *third*, the kind of penalty imposed.

In the case against Fajardo, none of the aforesaid exceptions exists. As borne by the records, Fajardo's right to due process was not violated as she was given the opportunity to answer the charges against her. In fact, Fajardo was able to file her comment before the OCA. Neither could equitable or humanitarian reasons be sufficient ground for the dismissal of the present case. Respondent's demise, alone, could not be considered sufficient ground to justify the dismissal of the administrative case on the ground of equitable or humanitarian reason. Thus, the case against Fajardo could not be dismissed merely on account of her death.

Nevertheless, the Court is convinced that the case against Fajardo must be dismissed for want of evidence against her. Just like in the case of Burgos, there was lack of evidence to show that Fajardo was involved in this anomaly. In fact, it was her actions which led to the discovery of the irregularity. If not for her discovery, this Court would not have the opportunity to mete the appropriate penalties for the persons responsible for this reprehensible scheme. The administrative charge against Fajardo must perforce be dismissed.

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[30] *Id.* at 462.

[31] 443 Phil. 732 (2003).

The Court likewise concurs with the recommendation of the OCA with respect to Garcia, but modifies its findings in the case of Santiago. The Court is convinced that Santiago is also administratively liable for grave misconduct, serious dishonesty, and conduct prejudicial to the best interest of the service.

Dishonesty is defined as a disposition to lie, cheat, deceive or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray.[32]

Misconduct, on the other hand, is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer.[33] The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law, or to disregard established rules, which must be established by substantial evidence.[34]

Conduct prejudicial to the best interest of the service refers to acts or omissions that violate the norm of public accountability and diminish — or tend to diminish — the people's faith in the Judiciary.[35] Understandably, dishonesty and grave misconduct constitute conduct prejudicial to the best interest of the service.[36]

In this case, the record is replete with evidence pointing not only to Garcia but also to Santiago as the persons responsible for the subject misdeed.

First, with respect to Garcia, testimonial and documentary evidence reveals her unwarranted interest in the LRC case. Garcia

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[32] *Judge Rojas, Jr. v. Mina*, 688 Phil. 241, 249 (2012).

[33] *Office of the Clerk of Court v. Viesca*, A.M. No. P-12-3092, April 14, 2015, 755 SCRA 385, 396.

[34] *In Re: Administrative Charge of Misconduct Relative to the Alleged Use of Prohibited Drugs ("Shabu") of Reynard B. Castor*, 719 Phil. 96, 100 (2013).

[35] *Consolacion v. Gambito*, 690 Phil. 44, 55 (2012).

[36] *Supra*, note 33.

performed numerous acts which led to no other conclusion than that she was instrumental and complicit in making sure that the petition would be granted. Garcia first approached the OCC and tried to persuade them to have the LRC case assigned to Branch 83. Her request was denied as there was a process of raffling off the cases. This, however, did not stop Garcia from pursuing her objective. When the LRC case mysteriously appeared in Branch 83, it was Garcia who practically prepared all the orders relating to the said case. More importantly, it was Garcia who prepared the draft of the November 4, 2011 Order which granted the petition.

Moreover, apart from preparing the draft of the subject order, Garcia surreptitiously issued an entry of judgment for the same on February 20, 2012. Garcia claimed that she only issued the subject entry of judgment to prevent the disruption of service because Burgos was absent on that day. It must be noted that it was the function of Burgos, as OIC, to prepare and sign the entry of judgment. Regrettably for Garcia, Burgos was able to successfully rebut her claim by attaching her DTR for February 20, 2012 to prove that she was present on the said date.

Likewise, aside from failing to inform Burgos of the said entry of judgment, Garcia notified neither the latter nor Judge Agloro of the OCC's refusal to receive the entry of judgment.

Finally, as to Santiago, the Court disagrees with the OCA that her acts were done in accordance with her usual daily routine. Contrary to the OCA findings, Santiago's acts, relating to the present anomaly, could not be considered as constituting simple neglect of duty because they were not committed due to carelessness and indifference, but as a result of a willful violation of the established rules. In fact, her participation was an essential part of the scheme, without which, no semblance of legitimacy could have attached to the proceedings before Branch 83 regarding the LRC case.

As stated by Burgos, the standard procedure in the trial court was for the clerk-in-charge to receive the case records raffled to their branch from the OCC personnel and to sign in the logbook

carried by the latter to evidence receipt of the records. A similar procedure was explained by the OCC staff when they attested that the record of the LRC case was delivered to and received by Branch 77.

Santiago could not claim simple negligence for failing to comply with the said procedure. It must be recalled that Fajardo confronted Santiago regarding the irregularity but the latter responded by pointing to Garcia with her lips. Santiago never denied this assertion. Her response to Fajardo's inquiry only shows that she was aware of the misdeed.

Furthermore, Santiago also failed to inform Burgos and Judge Agloro of the OCC 's refusal to register the entry of judgment for the order in the LRC case. As borne by the OCC records, it was Santiago who brought the said entry of judgment to the OCC. It was also Santiago who was asked by the OCC personnel why she furnished the OCC an entry of judgment for the order in the LRC case when it was officially raffled off to Branch 77. The incident was witnessed by Fajardo and was never refuted by Santiago.

In sum, the totality of the evidence shows that **Garcia and Santiago connived** to guarantee that the LRC petition would be acted on favorably. Clearly, they were united in their efforts to ensure the realization of their scheme without being found out. Despite the positive evidence and allegations hurled against them, Garcia and Santiago chose to simply deny their complicity without addressing the actions attributed to them. Verily, their responsibility and culpability with regard to the misdeed were established by substantial evidence. Their respective participation in this misdeed and their continuous feigning of innocence, constitute gross misconduct, serious dishonesty, and conduct prejudicial to the best interest of the service.

Under Section 46, Rule 10 of the Revised Rules of Administrative Cases in the Civil Service, Grave Misconduct and Serious Dishonesty are grave offenses which merit the penalty of dismissal from service even for the first offense. Such penalty shall carry with it the cancellation of civil service

eligibility, forfeiture of retirement and other benefits, and perpetual disqualification from re-employment in any government agency or instrumentality, including any government-owned and controlled corporation or government financial institution.[37]

WHEREFORE, the complaints against respondents Leslie J. Burgos, Court Interpreter, and Julieta Fajardo, Clerk III, both of Branch 83, Regional Trial Court of Malolos City, Bulacan, are **DISMISSED** for lack of merit.

Respondents Marissa M. Garcia, Court Stenographer, and Annaliza P. Santiago, Clerk III, both of Branch 83, Regional Trial Court of Malolos City, Bulacan, are found **GUILTY** of Grave Misconduct, Dishonesty, and Conduct Prejudicial to the Best Interest of the Service and are, thus, **DISMISSED** from the service with forfeiture of all their retirement and other benefits, except accrued leave credits, with prejudice to re-employment in any government office, including government-owned and controlled corporations.

SO ORDERED.

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

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[37] Revised Rules of Administrative Cases in Civil Service, Rule 10, Section 52.

EN BANC

[G.R. No. 190431. January 31, 2017]

BAYAN MUNA PARTY-LIST REPRESENTATIVE SATUR C. OCAMPO, GABRIELA WOMEN'S PARTY-LIST REPRESENTATIVE LIZA L. MAZA, BAYAN MUNA PARTY-LIST REPRESENTATIVE TEODORO A. CASIÑO, ANAKPAWIS PARTY-LIST REPRESENTATIVE JOEL B. MAGLUNSOD, PAGKAKAISA NG MGA SAMAHAN NG TSUPER AT OPERATOR NATIONWIDE (PISTON), represented by its SECRETARY GENERAL GEORGE F. SAN MATEO, *petitioners,*

AUTOMOBILE ASSOCIATION OF THE PHILIPPINES, GLICERIO M. MANZANO, JR., RAUL M. CONSUNJI, and LYN C. BRONTE, *petitioners-in-intervention, vs.* **LEANDRO R. MENDOZA, SECRETARY OF DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS; ARTURO C. LOMIBAO, CHIEF OF THE LAND TRANSPORTATION OFFICE, and STRADCOM CORPORATION,** *respondents.*

FEDERATION OF JEEPNEY OPERATORS and DRIVERS ASSOCIATION OF THE PHILIPPINES (FEJODAP) represented by ZENAIDA "MARANAN" DE CASTRO, ALLIANCE OF TRANSPORT OPERATORS and DRIVERS ASSOCIATIONS OF THE PHILIPPINES (ALTODAP) represented by MELENCIO "BOY" VARGAS, LAND TRANSPORTATION ORGANIZATION OF THE PHILIPPINES (LTOP) represented by ORLANDO MARQUEZ, NTU-TRANSPORTER represented by ALEJO SAYASA, PASANG-MASDA NATIONWIDE, INC., represented by ROBERTO "OBET" MARTIN, ALLIANCE OF CONCERNED TRANSPORT ORGANIZATIONS

(ACTO) represented by EFREN DE LUNA, *oppositors-intervenors.*

SYLLABUS

1. CIVIL LAW; CONTRACTS; GOVERNMENT CONTRACT; THE SUBJECT RADIO FREQUENCY IDENTIFICATION PROJECT MEMORANDUM OF AGREEMENT (RFID MOA) IS NOT A "MERE ENHANCEMENT" BUT A SUBSTANTIAL AMENDMENT OF THE BUILD-OWN-OPERATE AGREEMENT (BOO AGREEMENT).— [T]he terms of the RFID MOA may **not** be subsumed under the scope of the BOO Agreement so as to be merely an enhancement of the latter. Instead, there are significant amendments to the BOO Agreement implemented by the RFID MOA, among which are the following: ***1. Workflow*** Section 2.10 of Annex "A" of the BOO Agreement provides for the workflow of motor vehicle registration. This workflow does not take into account the implementation of the RFID Project. In the Business Process Specification therefor submitted by Stradcom to the DOTC/LTO, the new workflow for new motor vehicle registration and renewal of registration includes considerable additions to the existing workflow. ***2. Hardware Requirements*** Section 2.14 of Annex "A" of the BOO Agreement specifies the hardware requirements of the system to be supplied by Stradcom. Among these requirements are servers, workstations, notebook computers, printers and plotters, document imaging system, data backup system, hardware resources mapping, and hardware networking strategy. Undoubtedly, the addition of the RFID System will significantly modify the hardware requirements provided under the BOO Agreement. Under the RFID MOA, Stradcom shall provide all the necessary hardware and network equipment necessary for the implementation, operation, and maintenance of the RFID System. In the Business Process Specification for the RFID Project, the hardware includes passive RFID Tags, Handheld/Mobile RFID Readers, Fixed Readers with antenna, and middleware. Notably, these additional pieces of hardware are completely new and different from the existing ones already included under the BOO Agreement. In no way can these be considered as mere enhancements of the BOO Agreement. ***3. Project Cost*** Under Annex "A" of the BOO Agreement, the initial development of the LTO IT Project is

estimated at US $44,543,017. Clearly, the RFID Project as proposed in the RFID MOA will result in significant additional project cost, considering the proposed new hardware requirements, plus training costs and other incidental expenses. ***4. Obligations of the Parties*** Even a brief perusal of the RFID MOA will show that under its terms, the parties have obligated themselves to perform additional functions that are not within the scope of, nor are mere enhancements of, their obligations under the BOO Agreement. x x x [T]he additions introduced by the RFID MOA are those that were not offered in the original bid and entailed changes in the original cost.

2. POLITICAL LAW; ADMINISTRATIVE LAW; BUILD OPERATE TRANSFER (BOT) LAW (RA 6954 AS AMENDED BY RA 7718); THE RFID PROJECT DOES NOT QUALIFY AS AN ALLOWABLE CONTRACT VARIATION OF THE BOO AGREEMENT.— As a general rule, for contracts executed under the BOT Law, the government agency and the project proponent shall execute the draft contract as approved. However, certain contract variations are allowed, as long as they comply with the applicable law at the time the RFID MOA was entered into. x x x In this case, however, the RFID MOA is not an allowable contract variation, involving as it does an increase in the agreed fees, tolls, and charges to be exacted upon the public. As previously stated, the RFID Project will entail an additional charge of ₱350 for every motor vehicle. This charge was not contemplated in the original contract and is not an increase allowed under the formula provided in Article 14 of the BOO Agreement. Further, as already discussed, there is a fundamental change in the contractual arrangement between the parties. It cannot be said either that this contract variation is necessary due to an unforeseeable event beyond the control of the parties.

3. ID.; ID.; ID.; IMPORTANCE OF PUBLIC BIDDING; EXPLAINED; THE RFID MOA IS VOID FOR FAILURE TO UNDERGO COMPETITIVE PUBLIC BIDDING.— Section 5 of the BOT Law provides that upon the approval of a project, a notice must be made inviting all prospective project proponents to a competitive public bidding. The public bidding must be conducted under a two-envelope/two-stage system: the first envelope to contain the technical proposal and the second

one to contain the financial proposal. In this case, it is patently admitted by DOTC/LTO that no public bidding was conducted on the RFID Project, which was presented by Stradcom as a proposal that would enhance the existing LTO IT Project. Neither does this case fall under the exception to the rule on public bidding. The requirement of a public bidding is not an idle ceremony. Public bidding is the policy and medium adhered to in government procurement and construction contracts. It is the accepted method for arriving at a fair and reasonable price and ensures that overpricing, favoritism and other anomalous practices are eliminated or minimized. Public biddings are intended to minimize occasions for corruption and temptations to abuse discretion on the part of government authorities when awarding contracts. The RFID MOA must, thus, be struck down by this Court for failure to comply with the rules on public bidding. There is no guarantee that the RFID fee that will be charged to the public is a fair and reasonable price, as it has not undergone public bidding. Likewise, there is no guarantee that the public will be receiving maximum benefits and quality services, especially from the additional hardware, such as the RFID tags and readers. These are to be procured by Stradcom from its two suppliers, which have not been identified and are not even parties to the RFID MOA. On the other hand, Stradcom, which has been awarded the exclusive right to develop and operate the RFID system without having undergone competitive public bidding, stands to earn considerable amounts of revenue from the contract. In fact, in just three months, the period when the RFID Project was implemented prior to the issuance of the *Status Quo Ante* Order by this Court, the LTO had already generated ₱29,894,200 in RFID Fees. Clearly, the evils sought to be avoided by the requirement of competitive public bidding are evident in this case.

APPEARANCES OF COUNSEL

National Union of Peoples' Lawyers for petitioners.

De Guzman San Diego Mejia & Hernandez Law Offices for petitioners-in-intervention.

Malcolm Law for oppositor-intervenors.

DOTC Legal Department for respondent Department of Transportation and Communications.

Desierto Ammuyutan Purisima & Desierto for respondent STRADCOM Corporation.

The Solicitor General for public respondents.

D E C I S I O N

SERENO, *C.J.*:

This is a Petition for Certiorari and Prohibition under Rule 65 with application for temporary restraining order and/or preliminary injunction filed on 16 December 2009 by four party-list representatives and taxpayers (with petitioners Ocampo and Maza also suing as motor vehicle owners) and the Pagkakaisa ng mga Samahan ng Tsuper at Operator Nationwide (PISTON). The Petition seeks to annul and set aside the Radio Frequency Identification (RFID) Project as implemented by Department of Transportation and Communications (DOTC) Circular No. 2009-06, Land Transportation Office (LTO) Memorandum Circular No. ACL-2009-1199, as well as the pertinent Memorandum of Agreement (RFID MOA) dated 16 June 2009 entered into between DOTC, LTO and Stradcom Corporation (Stradcom).

STATEMENT OF THE FACTS AND OF THE CASE

Background Facts

On 15 December 1997, DOTC/LTO awarded to Stradcom a contract for the construction and operation of an information technology structure called the LTO IT Project Build-Own-Operate Agreement (BOO Agreement), making Stradcom the exclusive information technology provider of DOTC/LTO.

The LTO IT Project is a long-term strategic plan to modernize the land transportation systems. It covers the development of a System Integrated Information Technology Solution Infrastructure, which will interconnect LTO's district offices nationwide, enable online transaction processing and integrate its mission critical business processes.[1]

[1] Request for Proposal of the BOO Agreement; *rollo*, p. 458.

On 26 September 2007, Stradcom presented to the LTO the Radio Frequency Identification (RFID) Project as an enhancement to the current motor vehicle registration system.[2]

Basically, RFID technology is an automatic identification technology whereby digital data encoded in an RFID tag or "smart label" are captured by a reader using radio waves. Put simply, RFID is similar to bar code technology, but uses radio waves to capture data from tags, rather than optically scanning the bar codes on a label.

In RFID technology, information is sent to and read from RFID tags by a reader using radio waves. In passive systems, an RFID Reader transmits an energy field that "wakes up" the tag and provides the power for the tag to respond to the reader.[3] Data collected from tags are then passed through communication interfaces (cable or wireless) to host computer systems in the same manner that data scanned from bar code labels are captured and passed to computer systems for interpretation, storage, and action.

Generally, RFID systems comprise three main components: (1) the RFID Tag, or transponder, which is located on the object to be identified and is the data carrier in the RFID system; (2) the RFID Reader or transceiver, which may be able to both read data from and write data to a transponder; and (3) the data processing subsystem which utilizes the data obtained from the transceiver in some useful manner.[4]

On 6 May 2009, the DOTC issued Circular No. 2009-06[5] entitled Rules and Regulations on the Implementation of the Radio Frequency Identification Tag for All Motor Vehicles Required to be Registered under the Land Transportation and Traffic Code, as Amended (DOTC RFID Rules). The DOTC

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[2] *Id.* at 381.

[3] *Jerry Banks, et al.*, *RFID Applied*, New Jersey: John Wiley and Sons, Inc. (2007), pp. 8-9.

[4] Stradcom's Comment on the Petition, *rollo*, p. 268.

[5] *Id.* at 64-66.

RFID Rules state that the RFID Project covers the "enhancement of the LTO IT Project's systems, particularly its Motor Vehicle Registration System and Law Enforcement and Traffic Adjudication System," as well as the integration of RFID technology into the Private Emission Testing Center (PETC) system. These rules required all motor vehicles to have an RFID tag "as a prerequisite to registration or re-registration."[6] It also provided that after 1 August 2009, no motor vehicle shall be permitted registration without first having an RFID tag, for which a fee of ₱350 shall be collected. In case of damage to or destruction of the RFID tag, a new one shall be attached upon payment of the same fee. RFID readers shall be deployed to LTO District and Extension Offices, PETCs, and motor vehicle inspection centers.

On 16 June 2009, the RFID Memorandum of Agreement (RFID MOA)[7] was entered into between DOTC/LTO and Stradcom. The RFID MOA provided that fees due to Stradcom shall be collected and deposited by the LTO in a government depository bank account designated by and in the name of Stradcom.[8] Of the total amount of ₱350 to be collected for each RFID tag, the base amount exclusive of VAT was ₱312.50.

This ₱312.50[9] was broken down as follows: ₱20.43 shall be given to DOTC/LTO,[10] ₱259.14 shall be due to Stradcom,[11] and ₱32.73 for each RFID Tag payment shall go to the IT Training Fund to assist the DOTC/LTO in improving its service to the public; and this fund "shall be deposited in a bank account under the sole control" of Stradcom.[12]

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[6] DOTC Department Circular No. 2009-06, *id*. at 65.

[7] *Id*. at 82-92.

[8] RFID MOA, Art. III, Sec. 3.1.f.

[9] Notably, the total of ₱20.43, ₱259.14 and ₱32.73 is ₱312.30, and not ₱312.50. It is not provided in the RFID MOA where the remaining ₱0.30 will be remitted.

[10] RFID MOA, Art. IV, Sec. 4.2.

[11] RFID MOA, Art. IV, Sec. 4.3.

[12] RFID MOA, Art. V, Sec. 5.1.

On 7 August 2009, the LTO issued Memorandum Circular No. ACL-2009-1199,[13] entitled "Implementing Rules and Regulations for the Radio Frequency Identification Tag for all Motor Vehicles Required to be registered Under the Land Transportation and Traffic Code, as Amended" (LTO RFID IRR). The LTO RFID IRR provided that the commencement date of RFID tagging sha11 be 1 October 2009. It also provided that the RFID Tag, which has a shelf life of up to 10 years, is composed of two portions: (1) Write Once, which would contain the Unique ID (UID) number only and could not be changed during the life of the RFID tag; and (2) Write Many, which may save certain information that would be made available to authorized personnel with the use of the RFID Reader.[14]

The information which may be saved in the RFID Tag includes the following: (1) motor vehicle file number, (2) engine number, (3) chassis number, (4) plate number, (5) motor vehicle type, (6) color, (7) make, (8) series, (9) year model, (10) body type, (11) motor vehicle classification, (12) franchise, (13) route, (14) owner's name, (15) last registration date, (16) alarms (settled and unsettled), and (17) other data deemed necessary.[15]

In a letter dated 7 August 2009,[16] entitled "Undertaking for the RFID Project" and addressed to the LTO, Stradcom additionally undertook to (1) provide a performance bond of 1% of the RFID fee[17] for every day of delay in the RFID tagging of a motor vehicle resulting from the unavailability of stock or inventory of the RFID Tag; (2) submit to the LTO a regular month-end inventory report of RFID Tags and Readers; (3) continuously maintain and/or source at least two suppliers of RFID tags and readers; and (4) mutually agree with DOTC/ LTO to a just revenue share that may be due to the government

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[13] *Rollo*, pp. 67-81.

[14] LTO RFID IRR, Section 5.1.

[15] *Rollo*, pp. 74-75.

[16] *Id*. at 97-98.

[17] The 1% is computed against the RFID Fee of ₱350.

in the event the database of the RFID system and/or the LTO IT project is used by third parties in consideration of a fee.

Because of various stakeholders' concerns and requests, on 30 September 2009, the LTO issued Memorandum Circular No. ACL-2009-1220 deferring the mandatory implementation of the RFID Project to 4 January 2010.

The Present Petition

On 16 December 2009, the present Petition was filed with this Court on the following grounds:

I.

THE DOTC/LTO IN IMPLEMENTING THE RFID PROJECT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION AND VIOLATED REPUBLIC ACT 9184 AND REPUBLIC ACT NO. 6957.

II.

THE ASSAILED EXECUTIVE ISSUANCES ARE UNCONSTITUTIONAL AS THE SAME WERE ISSUED IN USURPATION OF THE LEGISLATIVE POWER OF CONGRESS DUE TO THE ABSENCE OF A LAW PROVIDING FOR THE INSTALLATION OF RADIO FREQUENCY IDENTIFICATION TAG ON ALL MOTOR VEHICLES AS A PRE-REQUISITE FOR THE REGISTRATION OR RE-REGISTRATION THEREOF.

III.

THE ASSAILED EXECUTIVE ISSUANCES ARE UNCONSTITUTIONAL AS THE SAME FAIL TO PRESENT COMPELLING INTEREST OR INTERESTS AND ARE ABSENT OF SUFFICIENT SAFEGUARDS AND WELL-DEFINED STANDARDS TO PREVENT IMPERMISSIBLE INTRUSIONS ON THE RIGHT TO PRIVACY.

Essentially, petitioners claim that, ***first***, in implementing the RFID Project, the DOTC/LTO committed grave abuse of discretion amounting to lack or excess of jurisdiction and violated Republic Act No. (R.A.) 9184, or the Government Procurement Reform Act; and R.A. 6954, as amended by R.A. 7718, or the

Build Operate Transfer (BOT) Law. The RFID Project was subject to competitive public bidding, which it failed to undergo. Neither did it undergo any of the processes required by the Government Procurement Reform Act for alternative methods of procurement.

The RFID Project is distinct from the existing BOO Agreement between DOTC/LTO and Stradcom. Hence, DOTC/LTO cannot justify the implementation of the RFID Project on the basis thereof. The RFID Project is not part of the BOO Agreement; otherwise, the Project would have already been included in the negotiation concluded in 1998 between LTO and Stradcom. The RFID Project also entailed new or additional costs that needed the approval of the National Economic and Development Authority (NEDA), as required under NEDA Circular No. 01-2007 and as reiterated in NEDA Circular No. 01-2008.[18]

Second, the assailed executive issuances are unconstitutional for having been issued in usurpation of the legislative power of Congress. The circulars cite R.A. 4136 or the Land Transportation and Traffic Code (LTTC) as the source of their authority. Section 4 of the LTTC gives the Commissioner the power "to issue rules and regulations not in conflict with the provisions of this Act, prescribing the procedure for xxx the registration and re-registration of motor vehicles xxx." However, the circulars added a registration and re-registration requirement which is not present in the LTTC. Thus, the imposition of a mandatory installation of the RFID tag as a pre-requisite for registration is beyond the authority vested by the LTTC to the DOTC and the LTO.

Third, the assailed executive issuances are unconstitutional, as they neither present compelling interest nor contain sufficient safeguards and well-defined standards to prevent impermissible

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[18] Entitled "Guidelines for the Evaluation of New or Increased Fees Proposed by Departments, Bureaus, Commissions, Agencies, Offices, and Instrumentalities of the National Government Including Government Owned and/or Controlled Corporations Requiring Prior NEDA Board Clearance Under Memorandum Circular No. 137, Series of 2007," *rollo*, pp. 185-189.

intrusions on the right to privacy. There is a potential for the misuse of the data contained in the RFID tag, especially because DOTC/LTO or Stradcom may open the use of the database to third persons in consideration of a fee.

Petitioners pray that an order be issued nullifying the RFID Project; declaring the DOTC RFID Rules, LTO RFID IRR and the RFID MOA as null and void; and prohibiting and enjoining public respondents from the implementation of the RFID Project.

Petitioners also sought the issuance of a TRO and/or a Preliminary Injunction to restrain respondents from implementing the RFID Project.

On 8 January 2010, Stradcom filed a Motion for Leave to File Opposition to Petitioners' Application for Temporary Restraining Order. In its Opposition, it alleged that it was the BOT Law, and not the Government Procurement Reform Act, that would apply to the RFID Project. Bidding was not required, because it was merely an enhancement or an increase in scope of the existing LTO project, the BOO Agreement. Only a "change order" was needed to implement it, together with an "impact study" investigating the price, timetable, statement of work, specifications and relevant obligations under the original contract. This is provided for under the Information Technology and Electronic Commerce Council (ITECC) Guidelines on the Preparation, Review and Approval, and Implementation of Information and Communications Technology (ICT) Projects Proposed for Financing under R.A. 6957, as amended by R.A. 7718 (ITECC Guidelines). The Change Request Form for the RFID Project was submitted to the Joint Change Control Board (JCCB) and Joint Finance Committee of the LTO, which recommended its approval.[19]

Stradcom alleges that NEDA Circular No. 01-2008 applies only to fees and charges imposed by government agencies to recover the cost of services they have rendered. The said NEDA

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[19] Per LTO Joint Change Control Board (JCCB) and Joint Finance Committee (JFC) Resolution No. LTO-IT 2008-001 dated 10 November 2008; *rollo*, pp. 182-184.

circular does not apply, since the RFID services will be provided, not by government, but by Stradcom.

Stradcom argues that there is limited information to be stored in the RFID Project, even less than the proposed ID system in *Kilusang Mayo Uno v. The Director General*,[20] which National ID System had been upheld by this Court. The RFID system will contain only information that is already publicly available; and the only difference from the National ID System would be that, with the use of an RFID Reader, the authorized user does not have to physically go to the LTO to request the said information. The RFID reader can only retrieve data from a tagged vehicle within a 10-meter radius. The limited scope and application of the RFID Project is consistent with the LTO's continuing authority under the LTTC to examine and inspect motor vehicles in determining compliance with registration laws. The Project also serves a sufficiently compelling state interest by contributing to the overall efficiency of the existing motor vehicle registration system. Finally, the RFID Project falls well within the legislatively delegated rule-making power of the DOTC, since the DOTC/LTO has authority to issue validating tags and stickers under Section 17 of the LTTC.

On 11 January 2010, several transport groups, led by the Alliance of Concerned Transport Organizations (ACTO) represented by Efren de Luna,[21] filed an Opposition-in-

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[20] G.R. Nos. 166798 and 167930, 19 April 2006, 487 SCRA 623. In this case, the Court rejected the assertion that a uniform ID system would violate the right to privacy after it had evaluated the following factors: (1) preexisting public availability of the information; (2) limited scope of the information obtained; (3) presence of safeguards to protect the confidentiality of the information; and (4) accomplishing the public policy objective of efficient performance of governmental functions and services.

[21] The transport groups include the Federation of Jeepney Operators and Drivers Association of the Philippines (FEJODAP) represented by Zenaida de Castro; Alliance of Transport Operators and Drivers Association of the Philippines (ALTODAP) represented by Melencio Vargas; Land Transportation Organization of the Philippines (LTOP) represented by Orlando Marquez; NTU-Transporter represented by Alejo Sayasa; and Pasang-Masda Nationwide, Inc. represented by Roberto Martin.

Intervention alleging that the RFID Project would realize efficient and paperless transactions and assist traffic law enforcers in apprehending *colorum* operators and *colorum* vehicles on the road. It would help in the automation of transactions between the LTO and the Land Transportation Franchising Regulatory Board (LTFRB). Motor vehicle owners would be compelled to physically bring their vehicles for smoke emission testing, eliminating "no show" and "under the table" deals. The RFID tag cost is the only possible injury to petitioners; and this injury is not sufficiently grave and irreparable to warrant the Court's issuance of a writ of preliminary injunction, as it is in fact subject to pecuniary estimation.

In its 12 January 2010 Resolution (*Status Quo Ante* Order),[22] the Court, among others, enjoined the parties to "observe the *status quo* prevailing prior to the implementation" of the RFID Project, "so as not to render the present petition moot and academic and in order to prevent serious damage as a result of the implementation of the said circulars."[23]

On 27 January 2010, Oppositors-Intervenors ACTO, et al. filed a Motion for Reconsideration[24] of the *Status Quo Ante* Order. On 29 January 2010, respondent Stradcom also filed its Motion for Reconsideration[25] thereof.

On 2 February 2010, the Court issued a Resolution[26] denying the said motions for lack of merit.

Stradcom's Comment on the Petition

On 25 January 2010, respondent Stradcom filed its Comment on the Petition. It claims that, ***first,*** petitioner PISTON has no juridical personality to sue because, as early as 29 September 2003, the Securities and Exchange Commission (SEC) had

[22] *Rollo*, pp. 192-299.

[23] *Id*. at 197.

[24] *Id*. at 220-241.

[25] *Id*. at 241-A-241-H.

[26] *Id*. at 242-243.

revoked PISTON's Certificate of Registration for failure to comply with reportorial requirements.

Second, the RFID system is a mere enhancement of the Motor Vehicle Registration System (MVRS), Revenue Collection System (RCS) and Law Enforcement and Traffic Adjudication System (LETAS), which are core applications of the original LTO IT Project. Thus, there is no need for a separate bidding and NEDA approval. The RFID Project only needed a "change order" request, pursuant to the NEDA Board-approved ITECC Guidelines.

Further, the BOO Agreement and its variation are governed by the BOT Law and its implementing rules and regulations, as provided under Section 7(c) of Executive Order No. (E.O.) 109-A[27] dated 18 September 2003, contrary to petitioners' assertion that it is R.A. 9184 that should apply.

Third, the questioned circulars are an exercise of a valid delegation of rule-making power by the legislature. E.O. 125-A[28] dated 13 April 1987, which was issued by then President Corazon Aquino in the exercise of her legislative power, enumerated the powers and functions of the DOTC, including the following:

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[27] E.O. 109-A, Sec. 7(c), provides:

SECTION 7. Governing Law for Government Contracts. — xxx

c. BOT Contracts. Contracts undertaken through Build Operate and Transfer (BOT) schemes and other variations shall be governed by Republic Act No. 6957, as amended by Republic Act No. 7718, and its Implementing Rules and Regulations.

EO No. 109-A amended EO No. 109 dated 27 May 2002 and prescribed the rules and procedures for the review and approval of all government contracts to conform with R.A. 9184. EO No. 109-A was later repealed by EO No. 423 dated 30 April 2005 entitled "Repealing Executive Order No. 109-A dated September 18, 2003 Prescribing the Rules and Procedures on the Review and Approval of All Government Contracts to Conform with Republic Act No. 9184, otherwise known as The Government Procurement Reform Act." Nevertheless, the provisions pertinent to this case remain basically unchanged.

[28] This E.O. amended E.O. 125 and is entitled "Amending Executive Order No. 125, entitled 'Reorganizing the Ministry of Transportation and Communications, Defining Its Powers and Functions and for other Purposes.'"

Sec. 1. Sections 5 xxx are hereby amended to read as follows:
x x x x x x x x x

(m) Establish and prescribe rules and regulations for the inspection and registration of air and land transportation facilities, such as motor vehicles, trimobiles, railways and aircrafts;

x x x x x x x x x

(o) Establish and prescribe the corresponding rules and regulations for the enforcement of laws governing land transportation, air transportation and postal services, including the penalties for violations thereof, and for the deputation of appropriate law enforcement agencies in pursuance thereof;

LTO Chief Arturo Lomibao, who signed the assailed LTO Memorandum Circular, was empowered to issue the questioned LTO Memorandum Circular, as he then occupied the position of Assistant Secretary. Under Section 11, Chapter 2, Book IV of E.O. 292 (Administrative Code of 1987), the Assistant Secretary shall perform such duties as may be provided by law or assigned by the Secretary. In turn, the promulgation of implementing rules and regulations of the RFID Project was assigned by the DOTC Secretary to LTO Chief Lomibao under the RFID MOA. The LTFRB director or his deputies had previously been tasked, "(f)or purposes of renewal of registration of motor vehicles, [to] ... issue validating tags and stickers indicating the year of registry" under Section 17 (previously Section 13) of LTTC. RFID tags have basically the same function as that of renewal stickers, so the DOTC/LTO had authority to issue the questioned circulars implementing the RFID program. Section 17 of the LTTC sets forth the policy to be executed by the delegate, namely, the Director of the LTO and his deputies, and provides a sufficient standard by giving adequate guidelines or limitations in the law to map out the boundaries of the delegate's authority.

Fourth, the questioned circulars and MOA do not violate petitioners' right to privacy. RFID tags have limited range and memory, and they access only publicly available registration information. The limited scope and application of the RFID

project are consistent with the LTO's continuing authority under the LTTC to examine and inspect motor vehicles in determining compliance with registration rules.

The OSG's Comment

On 11 February 2010, the Office of the Solicitor General (OSG) filed its Comment on the Petition, alleging as follows:

First, the DOTC/LTO, in implementing the RFID Project, committed grave abuse of discretion amounting to lack or excess of jurisdiction and violated the Government Procurement Reform Act and the BOT Law.

As an enhancement of the BOO Agreement previously entered into by DOTC/LTO and Stradcom, the RFID Project is not one of the allowed contract variations under the BOT Law's IRR, which dispenses with NEDA approval and public bidding. The RFID MOA increases not only the scope and technology of the MVRS under the BOO Agreement, but also the fee that Stradcom may collect thereunder. However, the fees due to Stradcom have been previously fixed in the BOO Agreement.[29]

While Section 12.11 of the 2006 Implementing Rules and Regulations (IRR) of the BOT Law allow contract variations, Section 2.7 thereof also explicitly requires prior approval from the approving board.[30] The ITECC Guidelines, which LTO/

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[29] BOO Agreement, Sec. 11.1, provides:

Sec. 11.1 The DOTC/LTO shall pay the CONTRACTOR in Philippine currency in a local bank within 30 calendar days from receipt of billing, based on the number of motor vehicle registration and the number of driver's licensing transaction handled, the inspection report and other documents which may be required by DOTC/LTO and the Commission on Audit. There shall be no more than two billings a month. Upon final payment under this Agreement, the CONTRACTOR shall issue a certificate releasing DOTC/LTO from any further obligation under this Contract.

[30] Sec. 2.7 provides:

Section 2.7 — APPROVAL OF PRIORITY PROJECTS

The approval of projects proposed under this Act shall be in accordance with the following:

a. National Projects - The projects must be part of the Agency's development programs, and shall be approved as follows:

DOTC followed in respect of the Change Order, are merely supplementary to the existing BOT Law's IRR. The lTECC Guidelines themselves acknowledge this in Section 1.2.1 thereof.[31] These guidelines also recognize the applicability of the BOT Law and the latter's IRR in case of conflict or inconsistency.[32] Thus, the requirement of prior approval for any contract variation prevails.

Second, despite the grave abuse of discretion by the DOTC/ LTO in implementing the RFID Project, the assailed executive issuances are not by themselves unconstitutional, as these were issued pursuant to delegated quasi-legislative powers under the (1) Administrative Code of 1987, particularly found in Book IV, Title XV, Chapter 1, Sections 2 and 3(12); and (2) the LTTC, particularly Chapter I, Article III, Section 4. The DOTC is empowered to establish transportation and communications programs, and those powers have been so delegated for the good and welfare of the people. The questioned circulars complied with the requirements of publication and hearing.

Third, the assailed executive issuances are not unconstitutional and do not constitute a violation of petitioners' right to privacy.

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i. projects costing up to PhP300 million, shall be submitted to ICC for approval;

ii. projects costing more than PhP300 million, shall be submitted to the NEDA Board for approval upon the recommendation of ICC; and

iii. regardless of amount, negotiated projects shall be submitted to the NEDA Board for approval upon recommendation by the ICC. xxx

[31] Sec. 1.2.1 of the ITECC Guidelines provides:

1.2.1 Supplement existing implementing rules and regulations on the BOT Law and Investment Coordination Committee (ICC) Guidelines to further assist national government agencies (NGAs) and local government units (LGUs) in pursuing private sector participated (PSP) ICT Projects under the BOT Law.

[32] The ITECC Guidelines provide:

14. *Conflict Between the Provisions of the Guidelines and the BOT Law IRR*

In case of inconsistency or conflict in interpretation between the provisions of these additional guidelines and the BOT Law and its IRR, the provisions of the BOT Law and its IRR shall prevail.

Eight days after filing its Comment, the OSG, in its Manifestation dated 19 February 2010, attached the 20 January 2010 letter of the NEDA[33] addressed to DOTC Secretary Leandro Mendoza. The letter concerned the DOTC's 28 October 2009 request for acknowledgment and confirmation that the RFID Project did not require NEDA approval. This DOTC request was answered by NEDA in the affirmative.

NEDA observed that the RFID Project is merely a technology enhancement of the original LTO IT Project, particularly the MVRS. In part, the NEDA letter also stated:

> Under Section 10.10 of the *Guidelines on the Preparation, Review and Approval, and Implementation of Information and Communications Technology (ICT) Projects Proposed for Financing Under Republic Act (RA) No. 6957, as amended by RA 7718, otherwise known as the "Build-Operate-Transfer (BOT) Law,*" change in the project cost which would entail an increase or decrease of more than 20% shall require approval by the ICC. Further, the implementing agencies shall ensure that all proposed changes in the project, other than those requiring ICC approval, are reported to the ICC for its information.
>
> Based on the documents submitted by your office, the total change order cost for the RFID Project is PhP182.27 Million, or approximately fourteen percent (14%) of the original cost (PhP1.39 Billion) of the LTO IT Project approved by the ICC. Thus, it is within the twenty percent (20%) threshold under said Section 10.10 of the ICC Guidelines. Accordingly, the RFID Project change order does not require ICC approval but the same should be reported to the ICC tor its information.
>
> The NEDA Secretariat shall be referring the RFID Project change order to the ICC for its information.
>
> As to the fees sought to be imposed by virtue of the RFID Project Change Order, said fees are not within the coverage of MC No. 137, s. 2007, and NEDA Circular 01-2008 for the following reasons:
>
> a) The tagging fee under the RFID Project is governed by the LTO IT Project BOO Agreement. x x x

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[33] Signed by acting Secretary for Socio-Economic Planning and NEDA Director-General Augusto Santos, *rollo*, pp. 552-558.

b) MC No. 137, s. 2007 as implemented by the NEDA Circular No. 01-2008 are applicable only to fees aimed at recovering full administrative cost of services rendered by departments, bureaus, commissions, agencies, offices and instrumentalities of the national government, including GOCCs, and not to those imposed by private proponents in projects implemented under the BOT Law (i.e. LTO IT BOO Project) intended to recover total investments.[34]

Nonetheless, and we find this point quite important in this case, the NEDA Secretariat also expressed the following "concerns/ comments/suggestions" regarding the RFID Project:

Duplication in Scope and Objective

a) DOTC/LTO should ensure that the RFID Project does not have any duplication in scope and objective with any similar projects like the Universal Motor Vehicle Identification Card (UMVIC) project, which also aims to enhance LTO's MVRS, considering that the public would ultimately be bearing the cost of any such projects. xxx

Acceptability and Public Interest

b) While it is noted that the RFID Project entails an additional fee (i.e. one-time tagging fee) of PhP350.00 for motor vehicle owners, the reasonableness or lack thereof should be established and made public, including and more importantly the results of the public consultation conducted, which is constitutionally mandated and which may be taken as indicators of social acceptability of the Project and as measures of safeguarding public interest.

Security and Privacy

c) x x x [I]t is crucial for the integrity of the RFID system that data protection be also the center of interest and concern along with the information security of motor vehicle owners. The DOTC/LTO, therefore, has to impose security measures to guard public interet and privacy.

d) x x x [T]he IRR for the RFID Tag does not contain provisions addressing threat situations from the perspective of the "passive party" or the vehicle owner. The owner of the

[34] *Id.* at 552-553.

registered owner has no control over the security of data stored on the tags, whereby, privacy can he threatened by the "active party" or the authorized personnel who has complete control of the data/information. x x x

e) Further, said IRR does not impose sanctions to "third parties" who may attack the RFID system in order to gain unauthorized access to data, xxx. Likewise, other security attacks such as jamming transmitters to prevent communication between readers and tags as well as other ways to impair the correct functioning of the RFID system should be taken into account.

f) xxx Section 5.1 of the said IRR provides that an RFID tag is composed of two parts: (a) Write Once; and (b) Read and Write Many. While modification of data is intrinsically impossible on the *Write Once* portion of the tag, it is opined that unauthorized modification of the data encoded in the *Read and Write Many* portion of the tag is possible, thus, appropriate measures should be taken in order to ensure security and mitigate such risk.

Technology Efficiency

g) xxx DOTC/LTO should undertake a comprehensive technology assessment on the use of RFID technology, propose possible counter-strategies, and make implementation policy considerations to mitigate such risks.

h) The operational efficiency of the RFID technology should also be clearly established. x x x

Data Consistency

i) It is indicated that the RFID System will be connected to the MVRS through an RFID utility integrator. The LTO should ensure that the MVRS database and the RFID System have a capability of real-time updating so that the data will be consistent at any point [in] time.

Upgrade

j) The proponent should ensure that the maintenance of the system such as ICT infrastructures/facilities, equipment, and software are all covered of (*sic*) upgrading provisions due to the fast obsolescence of ICT equipment and emerging new technologies.

Interconnecting concerned agencies

k) The Project aims to help on law enforcement (e.g., anti¬-carnapping, overspeeding vehicles, and anti-colorum) but the project proposal does not contain details/procedures on how the RFID will attain such objective. It is suggested that the Project be connected to the existing systems of concerned agencies (e.g. Philippine National Police, Metro Manila Development Authority, Land Transportation and Franchising Regulatory Board) so that the Project will be fully utilized and realize this objective.

Comparison of rates/cost

l) xxx [A] comparative rates/costs of the tag of other institutions/ agencies of the same nature as the RFID tags should be presented as reference in the justification of such cost.[35]

On 23 February 2010, this Court noted the OSG's Comment and, in view of the partly adverse position of the OSG, required the DOTC to file a separate Comment.

On 2 March 2010, this Court noted the OSG's Manifestation.

AAP, et al.'s Intervention

On 10 March 2010, the Automobile Association of the Philippines (AAP) represented by its president, Augusto Lagman, Glicerio Manzano, Jr., Raul Consunji, and Lyn Bronte filed an Entry of Appearance with Urgent Motion for Leave to Intervene and Admit Attached Petition for Intervention. Manzano alleged therein that, as a motor vehicle owner, he stood to be directly injured by the implementation of the RFID project; Consunji and Bronte claimed that they had already suffered injury as a consequence of the implementation of the RFID Project, since they were compelled to pay ₱350 for the renewal of the registration of their respective motor vehicles. AAP is allegedly the largest association of private motor vehicle owners in the country and has the standing to file the present Petition.

AAP stated that the issuance and implementation by the LTO of the LTO RFID IRR was an *ultra vires* exercise of the latter's

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[35] *Id.* at 553-556.

rule-making power, which was limited to the issuance of rules and regulations on the procedure for the registration and re-registration of motor vehicles. The circular unduly infringed on motor vehicle owners' right to property and privacy without due process of law. The circular also violated Presidential Memorandum Circular No. 137 dated 30 July 2007[36] and the BOT Law.

AAP noted that the receipt issued by the LTO upon registration of a motor vehicle reflected no separate RFID fee.[37] Instead, the RFID fee was apparently included in the "computerization fee." Since the project imposes a fee, it is in effect a deprivation of a property right. The Project also impinges on the right to privacy, as there appear to be no safeguards to prevent the abuse and misuse of the system.

The phrase "other data deemed necessary" in the circular, following the list of data contained in the RFID Tag, is a "catch-all" item. Allegedly, this phrase virtually removes any limits on what information could be stored in the RFID tag, increasing the possibility of violation of the right to privacy. The circular also fails to "delimit the persons who, the instances when, and the purposes for which these information can be accessed." The objectives of the memorandum circular, particularly in Section 1.2,[38] are couched in an open-ended enumeration of

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[36] Presidential Memorandum Circular No. 137 is entitled "Enjoining All Heads of Departments, Bureaus, Commission, Agencies, Offices and Instrumentalities of the National Government, Including Government Owned and/or Controlled Corporations, to Seek Prior Clearance from the National Economic and Development Authority Board before Authorizing the Imposition of New Fees or Increases in Existing Fees." The Circular directed the heads of all departments, bureaus, commissions, agencies, offices and instrumentalities of the national government, including GOCCs, to seek NEDA Board clearance before authorizing the imposition of new fees or increases in existing fees. NEDA Circular No. 01-2008 was issued pursuant to Presidential Memorandum Circular No. 137.

[37] See *rollo*, pp. 647-648.

[38] Sec. 1.2 provides:

1.2 OBJECTIVES

the purposes for which the information accessed through the RFID system may be used.

The AAP also alleges that the circular is defective, because it merely provides that RFID readers shall be capable of reading specific RFID tags through radio frequency up to a "specified distance."[39] The distance is subject to adjustment to "comply with business rules."[40] By failing to specify the capacity of the readers to track down the tags, the RFID system also poses a threat to a person's liberty of abode and travel, as the government may track down the person's movement.

AAP's Entry of Appearance with Urgent Motion for Leave to Intervene and Admit Attached Petition for Intervention was noted by this Court, which then required the parties to comment thereon.

The DOTC/LTO's Comment on the Petition

In their joint Comment dated 6 April 2010, the DOTC/LTO addressed the NEDA comments on the RFID Project:[41]

The Comment presented a tabular comparison differentiating the Universal Motor Vehicle Identification Card (UMVIC) Project[42] and the RFID Project in terms of legal basis, functionality, technology, and implementation. This comparison

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The RFID Project involves the development, integration, deployment, and maintenance of RFID technology to enhance the motor vehicle registration process of LTO, emission testing and other LTO concerns such as vehicle identification, anti-carnapping, anti-*colorum* and law enforcement and traffic adjudication. (*Rollo*, p. 68)

[39] LTO RFID IRR, Secs. 5.2.1 and 5.2.2.

[40] LTO RFID IRR, Sec. 5.2.2.

[41] *Rollo*, pp. 661-668.

[42] The UMVIC Project involves the establishment of a Smart Card Production Facility that would replace LTO's paper-based motor vehicle certificates of registration (CRs) into electronic Secure Smart Card formats. The Project aims to enhance LTO's motor vehicle registration through the use of the UMVIC as proof of ownership and authority to operate a motor vehicle in the country. (*Rollo*, p. 553)

was to address the concern of NEDA that the implementation of both projects may result in a duplication of their scope, objectives, and services.

The Comment addressed the acceptability and public interest concerns by stating that public consultations on the RFID Project attended by major transport groups were held on 11 February 2009 in Cebu City; 17 February 2009 in Metro Manila; and 29 September 2009 at the Bulwagang Romeo F. Edu, LTO, East Avenue, Diliman, Quezon City. Some transport leaders even sent LTO endorsement letters for the RFID.

On the concerns regarding security and privacy, the DOTC/LTO explained that, with respect to data protection and security measures, when unauthorized persons obtain access to and use of the RFID Reader, they can read only the unique RFID number (much like the plate number of a vehicle), which would not have much use for them without access to the LTO IT system database. Access to the LTO IT system database is filtered through many layers of security.

The DOTC/LTO explained that the LTO IT system is, in turn, protected by a firewall. Access control is defined at the application system layer. Access to the database is confined only to authorized users and applications. In case of any security compromise, access by any user or application can easily be revoked centrally. Where there is a read failure in situations such as when jamming devices are used, the processing switches back to vehicle identification by using other physical identifiers like the plate number. Anti-jamming devices must be deployed across the country to significantly impact the operational efficiency envisioned. No other data shall be stored in the read-and-write portion of the RFID tag. Additional vehicle data shall be accessed via a request to the back-end database, which is protected by extensive access controls.

On the concern regarding technology efficiency, the DOTC/LTO said that Stradcom can continually work with DOTC/LTO to assess the project in the light of technology developments and formulate policies to mitigate risks in the use of RFID.

On the observed need to ensure operational efficiency, RFID readers have their own battery power and can read tags even during brownouts or electrical interruptions. Meanwhile, the Systems Management Data Center is supported by redundant Universal Power Source facilities, as well as redundant generator units, to ensure continual operation despite electrical interruptions.

On the concern regarding data consistency, DOTC/LTO alleges that storing the vehicle data only in the back-end database ensures consistency in data. Apart from the necessity of the physical presence of the vehicle at the LTO site during registration, there are other data maintenance transactions that are being undertaken to avoid any data integrity issue. Infrastructure upgrade of the IT system is required at least every five years under the BOO Agreement.

On the recommendation to interconnect several government agencies with the RFID System, DOTC/LTO alleges that government agencies such as LTFRB, Metropolitan Manila Development Authority (MMDA) and the Philippine National Police (PNP) may be allowed access to this facility "subject to the necessary review and approval."[43]

On the need to compare rates/costs, DOTC/LTO states that the one-time fee of ₱350, inclusive of Value-Added Tax (VAT), covers the cost of not only the tag (warranted to last for 10 years), but also the cost of infrastructure, yearly operating costs, other direct costs, and even the government's revenue share. In comparison, the ePass for toll fees in the South Luzon Expressway costs ₱2,700 with a ₱400 prepaid toll and a battery shelf life of three to five years, while the EC tag for the North Luzon Expressway costs ₱1,500.

Stradcom's Comment on the Intervention and Reply

On 26 April 2010, Stradcom filed its Comment[44] on the Petition-in-Intervention of AAP, alleging that the latter has failed

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[43] *Id.* at 668.

[44] *Id.* at 680-692.

to satisfy a requirement for intervention in this case, because it has no direct and immediate interest in the outcome. The members of AAP are the ones who stand to be directly affected by the decision in this case, and there is no showing that the AAP is the one that would shoulder the cost of the RFID payments of its members.

In its Reply (attached to its Motion for Leave to File Reply to OSG's Comment dated 1 February 2010), Stradcom alleges that Section 12.11 of the BOT IRR[45] is an enumeration of alternative conditions or circumstances, any of which would allow contract variation. The use of the disjunctive "or" signifies the dissociation and independence of one thing from the others enumerated. Thus, as long as there is no fundamental change in the original contract, or there is no additional government undertaking, a contract may be allowed even if there is an increase in the fees to be charged to facility users (i.e., motor vehicle owners).

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[45] BOT IRR (2006), Sec. 12.11, provides:

SECTION 12.11 - CONTRACT VARIATION

Subject to the prior approval by the Approving Body, upon recommendation by the Agency/LGU, a contract variation may be allowed by the Agency/LGU, Provided, that:

a. Except as may be allowed under a parametric formula in the contract itself, there is no increase in the agreed fees, tolls and charges or a decrease in the Agency/LGU's revenue or profit share derived from the project; or

b. There is no reduction in the scope of works or performance standards, or fundamental change in the contractual arrangement nor extension in the contract term, except in cases of breach on the part of the Agency/LGU of its obligations under the contract; or

c. No additional Government undertaking, or increase in the financial exposure of the Government under the project; or

d. Such is necessary due to an unforeseeable event beyond the control of the parties.

Under no circumstances shall a Project Proponent proceed to commence a proposed contract variation unless approved by the Approving Body. Failure to secure approval of the Approving Body shall render the contract variation void.

Stradcom argues that the RFID MOA does not vary specific provisions in the BOO Agreement of the LTO IT Project. Also, the RFID Project is consistent with the objectives of the LTO IT Project and can exist well within the latter's scope.

Stradcom alleges that NEDA approval is not required for the contract revision under Section 12.11, and that the word "Approving Body" is not defined in the BOT Law. Rather, the phrase refers to the entity authorized to approve projects proposed under the said statute — which is the original contractual arrangement — and does not refer to contract variations. Otherwise, an absurd situation would arise, in which every contractual variation would be subject to public bidding, since Section 5 of the BOT Law requires that projects approved be subject to public bidding. As it stands, the IRR of the BOT Law does not specify which entity will approve contract variations. Instead, it provides that the Approving Body may prescribe detailed guidelines and procedures for the approval of projects, as well as the requirements to be submitted in support thereof. One of these guidelines adopted is the ITECC Guidelines. Paragraph 10.11 of the ITECC Guidelines provides that change orders shall be subject to the final approval of the head of the agency — in this case, the LTO.

On 6 September 2010, Stradcom filed a Motion for Clarification Re: *Status Quo Ante* Order.[46] On 23 September 2010, it filed a Supplement to its Motion for Clarification.

On 11 January 2011, this Court issued a Resolution,[47] stating that the *Status Quo Ante* Order does not contemplate the refund of the RFID fees already paid for by motor vehicle owners during the pendency of the present case.

THE COURT'S RULING

We find the Petition to be partly meritorious.

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[46] *Rollo*, pp. 764-769.

[47] *Id.* at 791-A-791-C.

PROCEDURAL ISSUE

In its Comment, Stradcom raises the lack of personality of PISTON to file the Petition, considering that its Certificate of Registration with the SEC has already been revoked as early as 2003.[48] On this score, Stradcom raises a valid point. Upon the revocation of its registration, PISTON no longer existed for all legal intents and purposes. Section 4, Rule 8 of the Rules of Court states that the facts showing the capacity of a party to sue must be averred. No such fact was provided in the case at bar.

Hence, for failing to show that it is a juridical entity, endowed by law with the capacity to bring suits in its own name, PISTON is devoid of any legal capacity to institute this action.

With respect to petitioner-in-intervention AAP, Stradcom claims that it does not have the requisite legal personality to intervene, as it does not allege any injury to the organization. Rather, the injury, if any, would be to its members who would be required to pay the RFID fee. Stradcom claims that absent any allegation that it is AAP that will shoulder the costs of the RFID for the latter's members, AAP cannot institute the present suit.

The 1997 Rules of Civil Procedure requires that every action must be prosecuted or defended in the name of the real party-in-interest, i.e., the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit.[49] However, despite its lack of interest, an association has the legal personality to file a suit and represent its members if the outcome of the case will affect their vital interests. Similarly, an organization has the standing to assert the concern of its constituents.[50]

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[48] SEC Certificate of Corporate Filing/Information dated 11 January 2010; *id*. at 285.

[49] *Navarro v. Escobido*, 621 Phil. 1 (2009).

[50] *Purok Bagong Silang Association, Inc. v. Yuipco*, 523 Phil. 51 (2006), citing *Executive Secretary v. Court of Appeals*, 473 Phil. 27 (2004).

In view thereof, we rule that AAP has the standing to file the instant suit.

In any case, even if petitioners and petitioners-in-intervention were not sufficiently clothed with legal standing, in view of the transcendental importance to the nation of the issues raised in this Petition and in the succeeding pleadings, the Court may relax the standing requirements and allow a suit to prosper even when there is no direct injury to the party claiming the right of judicial review.[51]

SUBSTANTIVE ISSUES

A. The RFID MOA is a separate and distinct contract from the BOO Agreement.

Contrary to the allegations of Stradcom, the RFID MOA is a not a "mere enhancement," but a substantial amendment of the BOO Agreement. The terms of the RFID MOA are beyond the scope of the BOO Agreement.

In both ordinary and legal parlance, to "enhance" means to make greater in value or attractiveness. In an unqualified sense, the word also means to increase and comprehends any increase in value.[52] However, to enhance something, such as a contract or a project, entails an increase or improvement of already existing components. It does not contemplate the addition of new components which result in an amendment or a modification of the basic terms of the contract.

Under the BOO Agreement, the parties specifically defined the scope of work to be provided to DOTC/LTO by Stradcom as the contractor. This scope is defined under Article 2 of

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[51] *Lim v. Executive Secretary*, 430 Phil. 555 (2002).

[52] *Black's Law Dictionary*, Sixth Ed., p. 529.

the BOO Agreement,[53] which in turn refers to Annex "A" thereof.[54] Section 2.6[55] of Annex "A" provides:

2.6 SCOPE
Specifically, the LTO IT Project encompasses the following:
➔ construction / customization of the following major applications:
- motor vehicle registration
- drivers licensing
- law enforcement and adjudication
- revenue collection
- transport planning
- franchising of public utility vehicles
- government and private sector information sharing

➔ establishment of the LTO Data Warehouse which includes the following databases:
- Motor Vehicle Registry DB
- Drivers' Licenses DB
- Public Utility Franchise DB
- Law Enforcement and Tranic Adjudication DB
- GIS Transport Planning DB
- Financial DB
- Administrative DB

➔ Interconnection in the Information Highway to support the networking requirements of the system to cover the following offices:

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[53] BOO Agreement, Art. 2, Sec. 2.1, provides:

ARTICLE 2

SCOPE OF WORK

Sec. 2.1. DESIGN, CONSTRUCTION, OPERATION AND MAINTENANCE OF INFORMATION TECHNOLOGY SYSTEM. CONTRACTOR shall cause and be responsible for the design, installation, adaptation, customization, completion, testing and commissioning, operation, and maintenance of the entire information system that is constructed and installed in accordance with this Agreement and is capable of operating in accordance with the Operating Parameters. The details and the scope of the Project to be undertaken including all preliminary specifications are set out in further detail in ANNEX "A" (Project Scope and Specifications). xxx (*Rollo*, p. 421)

[54] Annex "A" of the BOO Agreement is the Approved DOTC/LTO Request for Proposal, *rollo*, pp. 446-517.

[55] *Id*. at 459-460.

- Central Office in Quezon City;
- 15 Regional Offices;
- 214 District and Field Offices;
- Mobile Law Enforcement Units of LTO, MMDA, and PNP-TMC
- All Facilities of other LTO service contractors; and
- DOTC Proper, other governmental agencies and the private sector.

➔ supply, delivery, testing and installation of appropriate computing products and other resources relative to the implementation of the project on an open client/server environment such as:

- hardware
- software
- networking products
- special devices and other peripherals

➔ Provision of the following IT services:

- Project Management
- Site Environment Planning and Preparation
- Total Systems Installation and Integration
- Telecommunications Services
- Business Process Reengineering
- Education and Training
- Facilities Management and Maintenance Support
- Systems Operations
- Information Systems Security

➔ Key Performance Indices (KPI):

	Present	Target
1. Vehicle Registration	4-8 hrs	1 hr
2. License Issuance		
- *New/Changes*	6mos	5 days
- *Renewal*	3 mos	1 day
3. Traffic Violation Adjudication	8 hrs	1 hr
4. Information Query	3-15 days	15 mins
5.Tracking of Carnapped Vehicles	10%	80%

On the other hand, the RFID System, as provided under Article I, Section 1.1 of the RFID MOA, involves the following components:

a. Integration of the RFID System into MV Registration (for new vehicle) and Renewal (for old vehicle) processes;

b. Integration of the RFID System into the PETC as well as Motor Vehicle Inspection Station ("MVIS") processes;

c. Deployment of RFID tags into motor vehicles nationwide;

d. Deployment of RFID readers to district offices of LTO and PETCs as well as MVIS; and,

e. Integration of the RFID System in the PETC IT Provider's IT System and in the MVIS' IT System.[56]

Clearly, the terms of the RFID MOA may **not** be subsumed under the scope of the BOO Agreement so as to be merely an enhancement of the latter. Instead, there are significant amendments to the BOO Agreement implemented by the RFID MOA, among which are the following:

1. Workflow

Section 2.10 of Annex "A" of the BOO Agreement provides for the workflow of motor vehicle registration.[57] This workflow does not take into account the implementation of the RFID Project. In the Business Process Specification therefor submitted by Stradcom to the DOTC/LTO,[58] the new workflow for new motor vehicle registration[59] and renewal of registration[60] includes considerable additions to the existing workflow.

2. Hardware Requirement

Section 2.14 of Annex "A" of the BOO Agreement specifies the hardware requirements of the system to be supplied by Stradcom. Among these requirements are servers, workstations, notebook computers, printers and plotters, document imaging system, data backup system, hardware resources mapping, and hardware networking strategy.[61]

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[56] *Id*. at 84.

[57] *Id*. at 464.

[58] *Id*. at 328-349.

[59] *Id*. at 338.

[60] *Id*. at 342, 345.

[61] *Id*. at 474-478.

Undoubtedly, the addition of the RFID System will significantly modify the hardware requirements provided under the BOO Agreement. Under the RFID MOA, Stradcom shall provide all the necessary hardware and network equipment necessary for the implementation, operation, and maintenance of the RFID System.[62] In the Business Process Specification for the RFID Project, the hardware includes passive RFID Tags, Handheld/Mobile RFID Readers, Fixed Readers with antenna, and middleware.[63] Notably, these additional pieces of hardware are completely new and different from the existing ones already included under the BOO Agreement. In no way can these be considered as mere enhancements of the BOO Agreement.

3. Project Cost

Under Annex "A" of the BOO Agreement, the initial development of the LTO IT Project is estimated at US $44,543,017.[64] Clearly, the RFID Project as proposed in the RFID MOA will result in significant additional project cost, considering the proposed new hardware requirements, plus training costs and other incidental expenses.

4. Obligations of the Parties

Even a brief perusal of the RFID MOA will show that under its terms, the parties have obligated themselves to perform additional functions that are not within the scope of, nor are mere enhancements of, their obligations under the BOO Agreement.[65]

Pertinently, the BOO Agreement itself states what may be considered as an enhancement of the contract, such as the improvement of the **existing** hardware and workflow already provided therein. Section 3.2.2.10 of Annex "A" of the BOO

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[62] RFID MOA, Sec. 3.2, par. b.

[63] *Id*. at 332-334.

[64] The cost in pesos was pegged at ₱1,158,118,442, at a conversion rate of ₱26 to US$1.00, *id*. at 498.

[65] *Id.* at 85-86.

Agreement specifically provides that any changes in or amendment to the contract must refer only to those components already included in the original bid:

3.2.2.10 Execution of Contract

x x x x x x x x x

Right to Vary

If during the time of delivery/installation of any of the computer hardware/equipment a newer version of the same computer hardware/equipment/software becomes available in the market, LTO reserves the right to ask for a change in the model of any of the computer hardware/equipment to be supplied **without any change in the cost. Such variations will only be undertaken on the basis of the equipment/products tendered and not for anything that was not offered in the original bid**.[66] (Emphasis supplied.)

To reiterate, the additions introduced by the RFID MOA are those that were not offered in the original bid and entailed changes in the original cost. Thus, from the terms of the BOO Agreement itself, these are not allowable variations.

Under the IRR of the BOT Law, the RFID Project does not qualify as an allowable contract variation of the BOO Agreement.

As a general rule, for contracts executed under the BOT Law, the government agency and the project proponent shall execute the draft contract as approved.[67] However, certain contract variations are allowed, as long as they comply with the applicable law at the time the RFID MOA was entered into. Section 12.11 of the 2006 IRR of the BOT Law provides:

SECTION 12.11 - CONTRACT VARIATION

Subject to the prior approval by the Approving Body, upon recommendation by the Agency/LGU, a contract variation may be allowed by the Agency/LGU, Provided, that:

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[66] *Id.* at 511-512.

[67] 2006 IRR of the BOT Law, Rule 12, Sec. 12.1.

a. Except as may be allowed under a parametric formula in the contract itself, there is no increase in the agreed fees, tolls and charges or a decrease in the Agency/LGU's revenue or profit share derived from the project; or

b. There is no reduction in the scope of works or performance standards, or fundamental change in the contractual arrangement nor extension in the contract term, except in cases of breach on the part of the Agency/LGU of its obligations under the contract; or

c. No additional Government Undertaking, or increase in the financial exposure of the Government under the project; or

d. Such is necessary due to an unforeseeable event beyond the control of the parties.

Under no circumstances shall a Project Proponent proceed to commence a proposed contract variation unless approved by the Approving Body. Failure to secure approval of the Approving Body shall render the contract variation void.

In this case, however, the RFID MOA is not an allowable contract variation, involving as it does an increase in the agreed fees, tolls, and charges to be exacted upon the public. As previously stated, the RFID Project will entail an additional charge of ₱350 for every motor vehicle. This charge was not contemplated in the original contract and is not an increase allowed under the formula provided in Article 14 of the BOO Agreement.[68] Further, as already discussed, there is a fundamental change in the contractual arrangement between the parties. It cannot be said either that this contract variation is necessary due to an unforeseeable event beyond the control of the parties.

To be a valid change order under the ITECC Guidelines, the RFID MOA must also comply with the BOT Law.

[68] Article 14 provides for the Prices for IT-Based Services and Price Adjustment Procedure. Section 14.2 provides that, effective every first day of the year after the implementation of the prices for the IT-based services as shown in Section 14.1, the prices per type of IT-based services rendered by Stradcom shall automatically be adjusted in accordance with an automatic price adjustment formula provided therein. *Rollo*, pp. 431-433.

Stradcom claims that the RFID Project, as implemented through the RFID MOA, complied with the procedure set forth in the ITECC Guidelines for a change order.

The ITECC Guidelines was adopted by the NEDA in 2003 and aims to speed up the use and application of Information and Communications Technology (ICT) to enhance overall governance by further encouraging wider and more active private sector participation in the development and implementation of government ICT projects pursuant to the BOT Law.[69] As such, it only serves to supplement existing implementing rules and regulations on the BOT Law.

Section 10.11 of the ITECC Guidelines provides:

> 10.11 *Change Order Procedure*. **Where the agency or the project proponent sec the need for any change in scope and cost of the project, including changes in the system hardware, software, system interfaces, inputs, outputs, functionality or in the way the ICT project is implemented as described in the contract,** provided it is not subject to the approval of the ICC in accordance with Section. 10.10 hereof, the implementing agency or **the project proponent may at any time request and recommend such change and propose an amendment to the contract** in accordance with the following procedures: x x x

While Stradcom claims that it strictly followed the change order procedure, still, such procedure provided by the ITECC Guidelines may not be interpreted in such a way that would contravene the provisions of the BOT Law and public policy. In fact, among the general guiding principles of the ITECC Guidelines is the encouragement of healthy competition and a level playing field among qualified private sector proponents.[70] ICT shall be used not only as an instrument to promote greater transparency and efficiency in government operations, but also to help reduce if not eliminate graft and corruption in government transactions.[71]

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[69] ITECC Guidelines, Sec. 1.1.

[70] ITECC Guidelines, Sec. 2.2.

[71] ITECC Guidelines, Sec. 2.3.

As will be discussed below, to allow the RFID MOA upon a mere "change order," and without the benefit of competitive public bidding, would create an unequal playing field and would not alleviate corruption in government transactions.

The increase in fees imposed by the DOTC/ LTO does not need NEDA approval.

Petitioners claim that since the RFID Project would entail additional expenses to owners of motor vehicles, the DOTC and LTO should have first obtained NEDA's approval, pursuant to NEDA Circular No. 01-2008. On the other hand, Stradcom claims that as a mere enhancement of the BOO Agreement, the Project did not require NEDA approval.

We note that NEDA Circular No. 01-2008 has since been amended by NEDA Circular No. 01-2010, issued on 11 August 2010. Section 2.2 of NEDA Circular No. 01-2008, which provides the exceptions to the NEDA approval requirement, has been amended to include those fees imposed in projects under the BOT Law, which are intended to recover total investment. Notably, Circular No. 01-2010 provides that the amendment shall have retroactive effect. Thus, a properly implemented RFID Project under the BOT Law would fall under this category.

It thus appears that if the only change contemplated is the increase in fees, then this factor alone would not cause the need for NEDA approval.

In conclusion, while the RFID Project may possibly be considered as an enhancement of the existing LTO IT Project, requiring as it does an integration into the existing motor vehicle registration system and other database and information technology systems, the RFID MOA is not an allowable "enhancement" or variation of the existing BOO Agreement.

B. The RFID MOA is void for failure to undergo competitive public bidding.

As a separate project, the RFID Project should have undergone public bidding.

Section 5 of the BOT Law provides that upon the approval of a project, a notice must be made inviting all prospective project proponents to a competitive public bidding. The public bidding must be conducted under a two-envelope/two-stage system: the first envelope to contain the technical proposal and the second one to contain the financial proposal.

In this case, it is patently admitted by DOTC/LTO that no public bidding was conducted on the RFID Project, which was presented byStradcom as a proposal that would enhance the existing LTO IT Project.[72]

Neither does this case fall under the exception to the rule on public bidding.[73]

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[72] Second Whereas Clause, DOTC RFID Rules, *rollo*, p. 64; Second Whereas Clause, LTO RFID IRR, *id*. at 67; Fourth Whereas Clause, RFID MOA, *id*. at 82.

[73] Section 5-A of R.A. No. 6957, as amended by R.A. No. 7718, states:

SEC. 5-A. Direct Negotiation of Contracts. - Direct negotiation shall be resorted to when there is only one complying bidder left as defined hereunder:

(a) If, after advertisement, only one contractor applies for pre-qualification and it meets the prequalification requirements, after which it is required to submit a bid/proposal which is subsequently found by the agency/local government unit (LGU) to be complying.

(b) If, after advertisement, more than one contractor applied for pre-qualification but only one meets the pre-qualification requirements, after which it submits bid/proposal which is found by the agency/LGU to be complying.

(c) If, after pre-qualification of more than one contractor, only one submits a bid which is found by the agency/LGU to be complying.

(d) If, after pre-qualification, more than one contractor submit bids but only one is found by the agency/LGU to be complying: Provided, That any of the disqualified prospective bidder may appeal the decision of the implementing agency's/LGU's Pre-qualification Bids and Awards Committee within fifteen (15) working days to the head of the agency, in case of national projects; to the Department of the Interior and Local Government (DILG), in case of local projects from the date the disqualification was made known to the disqualified bidder: Provided, furthermore. That the implementing agency concerned or DILG should act on the appeal within forty-five (45) working days from receipt thereof.

The requirement of a public bidding is not an idle ceremony. Public bidding is the policy and medium adhered to in government procurement and construction contracts. It is the accepted method for arriving at a fair and reasonable price and ensures that overpricing, favoritism and other anomalous practices are eliminated or minimized. Public biddings are intended to minimize occasions for corruption and temptations to abuse discretion on the part of government authorities when awarding contracts.[74]

The RFID MOA must, thus, be struck down by this Court for failure to comply with the rules on public bidding. There is no guarantee that the RFID fee that will be charged to the public is a fair and reasonable price, as it has not undergone public bidding. Likewise, there is no guarantee that the public will be receiving maximum benefits and quality services, especially from the additional hardware, such as the RFID tags and readers. These are to be procured by Stradcom from its two suppliers,[75] which have not been identified and are not even parties to the RFID MOA. On the other hand, Stradcom, which has been awarded the exclusive right to develop and operate the RFID system without having undergone competitive public bidding, stands to earn considerable amounts of revenue from the contract. In fact, in just three months, the period when the RFID Project was implemented prior to the issuance of the *Status Quo Ante* Order by this Court, the LTO had already generated ₱29,894,200 in RFID Fees.[76] Clearly, the evils sought to be avoided by the requirement of competitive public bidding are evident in this case.

As a substantial amendment to the BOO Agreement, there is a violation of public policy and the BOT Law for failure to

[74] *Manila International Airport Authority v. Olongapo Maintenance Services, Inc.,* 567 Phil. 255 (2008).

[75] See Stradcom Letter dated 7 August 2009, Annex "F" of the Petition; *rollo*, pp. 97-98.

[76] Commission on Audit (COA) Audit Observation Memorandum No. 10-010-101 dated 8 March 2010, Annex "2" of Stradcom's Motion for Clarification; *id*. at 771-775.

execute the contract as contained in the original bid.

Even if one were to follow Stradcom's argument that the RFID MOA is not separate from the BOO Agreement, still, its case would not prosper. The RFID MOA is not so much a "mere enhancement" of the BOO Agreement as it is a substantial amendment thereof.

It goes without saying that any contract awarded as a result of competitive public bidding must be executed faithfully by the parties. We stressed the importance of such adherence to the original contract in *Agan v. PIATCO*,[77] from which we quote:

> Again, we brightline the principle that in public bidding, bids are submitted in accord with the prescribed terms, conditions and parameters laid down by government and pursuant to the requirements of the project bidded upon. In light of these parameters, bidders formulate competing proposals which are evaluated to determine the bid most favorable to the government. **Once the contract based on the bid most favorable to the government is awarded, all that is left to be done by the parties is to execute the necessary agreements and implement them. There can be no substantial or material change to the parameters of the project**, including the essential terms and conditions of the contract bidded upon, after the contract award. **If there were changes and the contracts end up unfavorable to government, the public bidding becomes a mockery and the modified contracts must be struck down.** (Emphases supplied.)

Former Chief Justice Artemio Panganiban, in his Separate Opinion in the main Decision in *Agan*,[78] explained that the substantial amendment of a contract previously bid out, without any public bidding and after the bidding process has been concluded, is violative of the public policy on public biddings and the spirit and intent of the BOT Law. The very rationale for public bidding is totally subverted by the amendment of the contract for which the bidding has already been concluded. Competitive bidding aims to obtain the best deal possible by

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[77] 465 Phil. 545, 553 (2004).

[78] 450 Phil. 744 (2003).

fostering transparency and preventing favoritism, collusion and fraud in the awarding of contracts. That is the reason why procedural rules pertaining to public bidding demand strict observance.

Indeed, while the contract in *Agan* was amended after public bidding but prior to its execution, there is no reason why the principle therein should not be applicable where the contract is amended during its execution as in this case.

In fact, not only is the public potentially injured by the failure to conduct a public bidding, but so too are other possible project proponents. As held in *Information Technology Foundation of the Philippines- v. COMELEC*,[79] the essence of public bidding is, after all, an opportunity for fair competition and a fair basis for the precise comparison of bids. In common parlance, public bidding aims to "level the playing field," which means that each bidder must bid under the same conditions; and be subject to the same guidelines, requirements and limitations. The purpose is for the best offer or lowest bid to be determined, all other things being equal. Thus, to permit a variance between the conditions under which the bid is won and those under which the awarded contract is complied with is contrary to the very concept of public bidding.

As to the second and third issues raised by petitioners assailing the constitutionality of the DOTC/LTO issuances for being issued in usurpation of Congress' legislative powers, and for violating the right to privacy, it is unnecessary to rule on the same considering the foregoing discussion declaring the RFID MOA null and void for failure to undergo competitive public bidding.

WHEREFORE, the Petition is **PARTIALLY GRANTED**. The Radio Frequency Identification Memorandum of Agreement dated 16 June 2009, entered into by respondents Stradcom Corporation and the Department of Transportation and Communication/Land Transportation Office, is hereby declared null and void.

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[79] 464 Phil. 173 (2004).

The RFID fees collected during the implementation of the RFID Project prior to the issuance of this Court's *Status Quo Ante* Order are likewise ordered refunded to the payors thereof.

SO ORDERED.

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

EN BANC

[G.R. No. 212376. January 31, 2017]

MADAG BUISAN, *et al.*, namely: HADJI MUSA MANALAG, HADJI SUKOR MAMADRA, H. SALAM TUMAGANTANG, SUGRA SUKOR BUISAN, MONAURA TUMAGANTAING, NOJA TUMAGANTANG, SULTAN BUISAN, PAULO TUMAGANTANG, DAKUNDAY MANALAG, KINGI BUISAN, BUGOY PANANGBUAN, TUMBA TUMAGANTANG, MAMALO ELI, MALIGA ATOGAN, PAGUIAL SALDINA, EBRAHIM TAGURAK, HADJI ESMAEL KASAN, OTAP GANDAWALI, TWAN IT SALAM, EDEL SABAL, GUIMA H. SALAM, KATUNTONG H. SALAM, THONY IBAD, BANGKALING BANTAS, ALON KIKI, DAMDAEN TUMAGANTANG, MAMASALIDO KIKI, ROSTAN TUMAGANTANG, MONTASER DAMDAMEN, MODSOL TANDIAN, RAHMAN SUKOR, SUKARNO H. SUKOR, KUNGAS PAYAG, JIMIE BUISAN, MADAODAO KEDTUNGEN, TUTIN MANALAG, DATU ALI MANALAG, TUGAYA MANALAG, SAGANDINGAN MANALAG,

SAUIATRA MANALAG, KAUTIN MANALAG, PANTAS DALANDAS,ULAD BANTAS, PALANO BUISAN, PANIANG BUISAN, INDASIA BUISAN, MAKAKWA BUISAN, SULTAN BUISAN, MANTIKAN BUISAN, ABULKARIM TUMAGANTANG, SAKMAG MANALAG, DEMALANES BUISAN, MANALAG PAKAMAMA, MALAMBONG PANDIAN, ABDULKARIM TUMAGANTANG, GUIANDAL OPAO, KUSIN PUWI, H. SULAIMAN UNAK, PABLO ALQUESAR, SAGIBA GABAO, TABUAN LUAY, POTENCIANO NAVARRO, KUSIN PENEL, MALAMON TALIB, MALIGA BIDA, MOKAMAD KUDALIS, CEDULA PAGABANGAN, SALILAGUIA LENANDANG, ENGKEL ALILAYA, MANGATOG SUDANG, MANAGKING MANGATONG, SEVERINO FERNANDEZ, JOSEAS GOTOKANO, MALYOD LAWADI, MANSALGAN UDAY, SANDATO DALANDAS, BANTAS DALANDAS, MAMANTAL DALANDAS, MAKALIPUAS MAKALILAY, BINGKONG BUISAN, FARIDA SUMAGKA, NUNET YUSOP, KADIGIA SABAL, NANANGGA TAYA, MAMA BANGKALING, CORRY DAMO, BUKA LATIP, MADAODAO KADTUNGAN, KOMINIE ADAM, BANGKALING BANTAS, RONIE EDZAKAL, KEDOPAO BUTO, SARIP EDZEMBAGA, TUTEN MANALAG, ABAS LATIP, MAKALIPUAS MAKALILAY, DAGENDENGAN ZUMBAGA, PAGUIAL LUBALANG, JIMMY BUISAN, KADIL SUKOR, JAKIRI LOZANO, MANUEL MAKATIMBEL, AISA BANSUAN, TATO BUISAN, HARON ABO, MAMAAN LAMADA, THING GUIAMILON, TATO SUMAGKA, NORALYN KAHAR, MOKAGI ANTAS, KINGI BUISAN, ZAINUDEN PANAYAMAN, PIAGA MANALAG, SAGIATRA MANALAG, SAILA LATIP, PINKI KADTUNGAN, ALI KADTUNGAN, NANDING TAYA, INDAY BUISAN, KINTOL KADTUNGAN,

MALAWINIE EDZAKAL, MINGUTIN AMAL, BUGLI MANALAG, MANGAPANG SADINA, KURANUNGAN SADINA, SANGUTIN LUBALANG, DAUD H. LATIP, REY PALAMAN, MONTANER KID, BAKATED KADTUNGAN, GUIAMATULA DIMAGIL, ALON H. LATIP, SULTAN BUISAN, HADJI MUSA MANALAG, MANTO BANTAS, ABAS L. LATIP RODIEL KID, DATU BUTO ALI, ODIN TIAGO, ABDUL ANTA, EMBIT BUKA, LAGA KID, ULAMA DALUS, SUWAILA DAMDAMIN, TALILISAN PALEMBA, LANTOKA PATOG, MAKATEGKA BANGKONG, BEMBI KUDO, MOGAWAN GINANTE, PATANG BALODTO, EUSEBIO QUIJANO, FAISAN TAYA, LAGA KAHAR, ESMAEL KID, TAYA PALAMAN, NORJANA BUISAN, TONTONGAN MANALAG, SAMIER MANGULI, SINUMAGAD BANSUAN, BHING HARON, NENENG BUISAN, DIDO KID, ZALDI AGIONG, ROWENA MANALAG, NASSER MAMALANGKAP, TANOSI ZUMBAGA, GUIDAT DANDALANAN, FATIMA KID, KIMAMA KATIMPO, ALON GUIANDAL, MAMALUBA AKOD, AIN SUKOR and NORIA DALANDAS, all represented by BAI ANNIE C. MONTAWAL, *petitioners, vs.* **COMMISSION ON AUDIT and DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; CERTIFICATION AGAINST FORUM SHOPPING; THERE IS FAILURE TO COMPLY WITH THE REQUIREMENT WHERE THE CERTIFICATION WAS NEITHER SIGNED BY THE PETITIONERS NOR THEIR COUNSEL BUT BY ONE WHO IS NOT EVEN A PETITIONER.— In the present case, the certification against forum shopping was signed by Montawal, the mayor of the Municipality of Montawal, Maguindanao. Her bare statement that she was the petitioners' duly constituted attorney-in-fact in filing the petition before the COA can hardly

constitute as compliance with the rules. She did not even append a Special Power of Attorney executed by the affected landowners. Montawal's legal capacity to sue on behalf of the petitioners is questionable, considering that her authority to represent the claimants was even assailed by the petitioners, when they filed with the COA a Motion to Dismiss the Petition filed therein by Montawal. In the case of natural persons, the rule requires the parties themselves to sign the certification against forum shopping. The reason for such requirement is that the petitioner himself knows better than anyone else whether a separate case has been filed or pending which involves substantially the same issues. In this case, the certification against forum shopping in the filing of this petition was neither signed by the petitioners nor their counsel, but by the mayor of their town who is not even one of the petitioners in this case. Evidently, the petitioners failed to comply with the certification against forum shopping requirement absent any compelling reason as to warrant an exception based on the circumstances of the case.

2. POLITICAL LAW; CONSTITUTIONAL LAW; DOCTRINE OF NON-SUABILITY OF THE STATE; EXPLAINED; THE DOCTRINE CLOTHES THE DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS (DPWH) FROM BEING HELD RESPONSIBLE FOR ALLEGED DAMAGES IT PERFORMED IN RELATION TO ITS MANDATED DUTY.— The fundamental law of the land provides that the State cannot be sued without its consent. It is a fundamental postulate of constitutionalism flowing from the juristic concept of sovereignty that the State, as well as its government, is immune from suit unless it gives its consent. The rule, in any case, is not absolute for it does not say that the State may not be sued under any circumstances. The doctrine only conveys that "the state may not be sued without its consent;" its clear import then is that the State may at times be sued. Suits filed against government agencies may either be against incorporated or unincorporated agencies. In case of incorporated agencies, its suability depends upon whether its own organic act specifically provides that it can sue and be sued in Court. As the State's engineering and construction arm, the DPWH exercises governmental functions that effectively insulate it from any suit, much less from any monetary liability. The construction

of the Project which was for the purpose of minimizing the perennial problem of flood in the area of Tunggol, Montawal, Maguindanao, is well within the powers and functions of the DPWH as mandated by the Administrative Code of 1997. Hence, the Doctrine of Non-Suability clothes the DPWH from being held responsible for alleged damages it performed in consonance with its mandated duty. Nowhere does it appear in the petition that the State has given its consent, expressly or impliedly, to be sued before the courts. The failure to allege the existence of the State's consent to be sued in the complaint is a fatal defect, and on this basis alone, should cause the dismissal of the complaint.

3. CIVIL LAW; CIVIL CODE; PRESCRIPTION AND LACHES; BARRED PETITIONERS' CAUSE OF ACTION IN CASE AT BAR.— [W]hile it may be argued that the petitioners have a cause of action against the DPWH, the same has already prescribed in view of Article 1146 of the Civil Code, viz.: ART. 1146. The following actions must be instituted within four years: (1) Upon an injury to the rights of the plaintiff; (2) **Upon a quasi-delict.** Undeniably, the petitioners' money claims which were only filed with the DPWH in 2004 or even in 2001 had already prescribed. x x x On the other hand, "[l]aches has been defined as the failure or neglect, for an unreasonable and unexplained length of time, to do that which, by exercising due diligence could or should have been done earlier." In the case at bar, laches has set in as the elements thereof are present. Firstly, the premature opening by the DPWH of the Project allegedly causing flash floods, and damaging the petitioners' properties took place in 1989 or even in 1992. Secondly, the petitioners took 15 years to assert their rights when they formally filed a complaint in 2004 against the DPWH. Thirdly, as the petitioners failed to file a formal suit for their claims before the COA, there is an apparent lack of notice that would give the DPWH the opportunity to defend itself.

4. POLITICAL LAW; CONSTITUTIONAL LAW; COMMISSION ON AUDIT (COA); DID NOT ABUSE ITS DISCRETION WHEN IT DENIED PETITIONERS' CLAIMS FOR DAMAGES AGAINST DPWH.— Absent any showing that COA capriciously, arbitrarily or whimsically exercised its discretion that would tantamount to evasion of a positive duty

or a virtual refusal to perform the duty or to act at all in contemplation of law resulting to the prejudice of the rights of the claimants, the Court believes that COA did not abuse, much less gravely, its discretion in denying the claims of the petitioners. Thus, the Court finds no grave abuse of discretion on the part of COA in denying the petitioners' money claims for failure to present substantial evidence to prove that their properties were damaged by floods due to the premature opening of the Project of the DPWH. Without a doubt, the inconsistencies and discrepancies in the evidence presented by the petitioners backed by the findings of COA lead only to one inescapable conclusion: that there is no substantial evidence to prove the petitioners' claims that would render the DPWH or the State liable for the amount claimed.

APPEARANCES OF COUNSEL

Ismael M. Guro for petitioners.
The Solicitor General for respondents.

D E C I S I O N

REYES, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] under Rule 64, in relation to Rule 65, of the Rules of Court assailing the Decision[2] dated November 20, 2012 of the Commission on Audit (COA) in COA CP Case No. 2010-089, which denied the money claims of Madag Buisan (Buisan), et al. (petitioners) against the Department of Public Works and Highways (DPWH) in the amount of ₱122,051,850.00 for lack of merit, and the Resolution[3] dated February 14, 2014 denying the motion for reconsideration.

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[1] *Rollo*, pp. 12-27.

[2] Rendered by Chairperson Ma. Gracia M. Pulido Tan, Commissioners Juanito G. Espino, Jr. and Heidi L. Mendoza; *id*. at 28-35.

[3] *Id*. at 36.

The Antecedents

In 1989, the DPWH undertook the construction of the Liguasan Cut-off Channel (Project) in Tunggol, Pagalungan, Maguindanao, to minimize the perennial problem of flooding in the area. In April 2001, the DPWH received various claims from land owners for damages allegedly caused to their properties, crops and improvements by the premature opening of the Project. Hence, the Regional Director (RD), DPWH Regional Office (R.O.) No. XII, Cotabato City, investigated the claims.[4]

The DPWH R.O. No. XII and the Technical Working Group (TWG) recommended in 2004 to pay just compensation to the claimants. The TWG, however, noted that since the event occurred in 1989, it could not account physically the actual quantity of the damaged crops and properties. In 2006, an *ad hoc* committee was created to determine the legality and propriety of the claims. However, due to the considerable lapse of time and the insufficiency of evidence, no final resolution was made by the DPWH. The claims were forwarded to the RD of the DPWH R.O. No. XII to be returned to the claimants, as such are considered to be under the jurisdiction of the COA pursuant to Rule VIII of the 2009 Revised Rules of Procedure of the COA.[5]

On April 14, 2010, the petitioners, represented by Mayor Bai Annie C. Montawal (Montawal), filed a petition with the COA,[6] praying that the DPWH be ordered to pay the petitioners the sum of ₱122,051,850.00 as compensation for their damaged crops, properties and improvements. On September 16, 2010, Buisan filed a Motion to Dismiss the Petition alleging that Montawal was not authorized to represent them. In fact, Buisan and the other claimants filed a separate petition with the COA based on that same money claim.[7]

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[4] *Id*. at 28.

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

[6] *Id*. at 37-42.

[7] *Id*. at 29.

In its Answer, the DPWH averred that the petitioners failed to establish that they are the owners of crops and properties allegedly damaged, and that the damage was caused by the construction of the Project. Moreover, the DPWH asserted that the petitioners' cause of action had already prescribed.[8]

In its Decision[9] dated November 20, 2012, the COA denied the money claims of the petitioners, to wit:

> **WHEREFORE**, premises considered, this Commission **DENIES** the herein Petition for money claim for lack of merit.[10]

The COA held that for the petitioners' failure to file their money claims within a reasonable time, they are deemed to have committed laches. Furthermore, the petitioners' cause of action had already prescribed in view of Article 1146 of the Civil Code.[11]

The petitioners filed a motion for reconsideration, but the same was denied by the COA for lack of merit.[12]

Issue

WHETHER THE COA GRAVELY ABUSED ITS DISCRETION IN FINDING THAT THE PETITIONERS' CLAIM WAS BARRED BY LACHES AND PRESCRIPTION.

Ruling of the Court

The Court denies the petition.

The petition failed to comply with the rules on certification against forum shopping.

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[8] *Id*. at 29-30.

[9] *Id*. at 28-35.

[10] *Id*. at 34.

[11] *Id*. at 33.

[12] *Id.* at 36.

Section 5 of Rule 64 of the Rules of Court requires, among others, that in a petition for review of judgments and final orders or resolutions of COA, the petition should be verified and contain a sworn certification against forum shopping as provided in the fourth paragraph of Section 3, Rule 46, *viz.*:

> SEC. 3. *Contents and filing of petition; effect of non-compliance with requirements.* — x x x.
>
> x x x x x x x x x
>
> The petitioner shall also submit together with the petition a sworn certification that he has not theretofore commenced any other action involving the same issues in the Supreme Court, the Court of Appeals or different divisions thereof, or any other tribunal or agency; if there is such other action or proceeding, he must state the status of the same; and if he should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or different divisions thereof, or any other tribunal or agency, he undertakes to promptly inform the aforesaid courts and other tribunal or agency thereof within five (5) days therefrom.
>
> x x x x x x x x x
>
> **The failure of the petitioner to comply any of the requirements shall be sufficient ground for the dismissal of the petition.** (Emphasis ours)

In the present case, the certification against forum shopping was signed by Montawal, the mayor of the Municipality of Montawal, Maguindanao.[13] Her bare statement that she was the petitioners' duly constituted attorney-in-fact in filing the petition before the COA can hardly constitute as compliance with the rules. She did not even append a Special Power of Attorney executed by the affected landowners. Montawal's legal capacity to sue on behalf of the petitioners is questionable, considering that her authority to represent the claimants was even assailed by the petitioners, when they filed with the COA a Motion to Dismiss the Petition filed therein by Montawal.[14]

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

[14] *Id*. at 29.

In the case of natural persons, the rule requires the parties themselves to sign the certification against forum shopping. The reason for such requirement is that the petitioner himself knows better than anyone else whether a separate case has been filed or pending which involves substantially the same issues.[15] In this case, the certification against forum shopping in the filing of this petition was neither signed by the petitioners nor their counsel, but by the mayor of their town who is not even one of the petitioners in this case. Evidently, the petitioners failed to comply with the certification against forum shopping requirement absent any compelling reason as to warrant an exception based on the circumstances of the case.[16]

The Doctrine of Non-Suability of State insulates the DPWH, a governmental entity, from claims of damages.

The fundamental law of the land provides that the State cannot be sued without its consent.[17] It is a fundamental postulate of constitutionalism flowing from the juristic concept of sovereignty that the State, as well as its government, is immune from suit unless it gives its consent. The rule, in any case, is not absolute for it does not say that the State may not be sued under any circumstances. The doctrine only conveys that "the state may not be sued without its consent;" its clear import then is that the State may at times be sued.[18] Suits filed against government agencies may either be against incorporated or unincorporated agencies. In case of incorporated agencies, its suability depends upon whether its own organic act specifically provides that it can sue and be sued in Court.[19]

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[15] *Fuentebella v. Castro*, 526 Phil. 668, 675 (2006).

[16] *Altres, et al. v. Empleo, et al.*, 594 Phil. 246, 261-262 (2008).

[17] 1987 CONSTITUTION, Article XVI, Section 3.

[18] *Department of Agriculture v. NLRC*, 298 Phil. 491, 498 (1993).

[19] *German Agency for Technical Cooperation, et al. v. Hon. Court of Appeals, et al.*, 603 Phil. 150, 166 (2009).

As the State's engineering and construction arm, the DPWH exercises governmental functions that effectively insulate it from any suit, much less from any monetary liability. The construction of the Project which was for the purpose of minimizing the perennial problem of flood in the area of Tunggol, Montawal, Maguindanao, is well within the powers and functions of the DPWH as mandated by the Administrative Code of 1997.

Hence, the Doctrine of Non-Suability clothes the DPWH from being held responsible for alleged damages it performed in consonance with its mandated duty. Nowhere does it appear in the petition that the State has given its consent, expressly or impliedly, to be sued before the courts. The failure to allege the existence of the State's consent to be sued in the complaint is a fatal defect, and on this basis alone, should cause the dismissal of the complaint.[20]

The petitioners' cause of action has been barred by prescription and laches.

The COA denied the petition primarily on the ground that the petitioners filed their money claims only on 2014, or 15 years after their cause of action arose in 1989. The petitioners' assertion that the cause of action arose in 1992 is self-serving as no pieces of evidence was presented or even attached as supporting documents in their petition to prove their claim. Worse, the petitioners could not even pinpoint the exact moment of time of the destruction of their properties.[21]

The petitioners' statement that there were already heavy rains since 1989 that caused flooding in the area negates their previous claim that the cause of action arose in 1992. If in fact there were already heavy rains since 1989, then it can also be argued that prior to 1992, their properties were already damaged by the floods and that would be the reckoning point of their cause of action. This further establishes that their cause of action has already prescribed.

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[20] *Republic v. Feliciano*, 232 Phil. 391, 396 (1987).

[21] *Rollo*, p. 23.

Thus, while it may be argued that the petitioners have a cause of action against the DPWH, the same has already prescribed in view of Article 1146 of the Civil Code *viz.*:

ART. 1146. The following actions must be instituted within four years:

(1) Upon an injury to the rights of the plaintiff;
(2) Upon a quasi-delict. (Emphasis ours)

Undeniably, the petitioners' money claims which were only filed with the DPWH in 2004 or even in 2001 had already prescribed. As correctly pointed out by the Office of the Solicitor General, "[i]t will be the height of injustice for respondent DPWH to be confronted with stale claims, where verification on the plausibility of the allegations remains difficult, either because the condition of the alleged inundation of crops has changed, or the physical impossibility of accounting for the lost and damaged crops due to the considerable lapse of time."[22]

On the other hand, "[l]aches has been defined as the failure or neglect, for an unreasonable and unexplained length of time, to do that which, by exercising due diligence could or should have been done earlier."[23]

In the case at bar, laches has set in as the elements[24] thereof are present. Firstly, the premature opening by the DPWH of the Project allegedly causing flash floods, and damaging the petitioners' properties took place in 1989 or even in 1992. Secondly, the petitioners took 15 years to assert their rights when they formally filed a complaint in 2004 against the DPWH. Thirdly, as the petitioners failed to file a formal suit for their claims before the COA, there is an apparent lack of notice that would give the DPWH the opportunity to defend itself.

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[22] See COA and DPWH's Comment, pp. 235-256, at 250.

[23] *Akang v. Municipality of Isulan, Sultan Kudarat Province*, 712 Phil. 420, 439 (2013).

[24] *Republic v. Marjens Investment Corporation*, G.R. No. 156205, November 12, 2014, 739 SCRA 676, 689.

Under Commonwealth Act No. 327,[25] as amended by Section 26 of Presidential Decree No. 1445,[26] which were the applicable laws at the time the cause of action arose, the COA has primary jurisdiction over money claims against government agencies and instrumentalities. Moreover, Rule II, Section 1(b) of the 2009 Revised Rules of Procedure of the COA[27] specifically enumerated those matters falling under COA's exclusive jurisdiction, which include "money claims due from or owing to any government agency." Rule VIII, Section 1(a) further provides that COA shall have original jurisdiction over money claims against the Government, among others. Therefore, the petitioners' money claims have prescribed and are barred by laches for their failure to timely file the petition with the COA.

COA did not abuse its discretion in denying the petitioners' claims for damages against the DPWH.

Even if the Court sets aside the technical and procedural issues in the interest of substantive justice, the instant petition must be denied. The COA is endowed with enough latitude to determine, prevent, and disallow irregular, unnecessary, excessive, extravagant or unconscionable expenditures of government funds. It is tasked to be vigilant and conscientious in safeguarding the proper use of the government's and, ultimately, the people's property. The exercise of its general audit power is among the constitutional mechanisms that gives life to the check and balance system inherent in our form of government.[28]

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[25] AN ACT FIXING THE TIME WITHIN WHICH THE AUDITOR GENERAL SHALL RENDER HIS DECISIONS AND PRESCRIBING THE MANNER OF APPEAL THEREFROM. Approved on June 18, 1938.

[26] ORDAINING AND INSTITUTING A GOVERNMENT AUDITING CODE OF THE PHILIPPINES. Approved on June 11, 1978.

[27] Approved September 15, 2009.

[28] *Espinas v. Commission on Audit*, G.R. No. 198271, April 1, 2014, 720 SCRA 302, citing *Delos Santos, et al. v. Commission on Audit*, 716 Phil. 322, 332 (2013).

In denying the petitioners' money claims against the DPWH, the COA did not abuse the exercise of its discretion as its denial was grounded on facts and circumstances that would warrant such denial arising from the following observations:

> In her 5th Indorsement dated July 22, 2011, the ATL, DPWH, Cotabato 2nd Engineering District, interposed no objection to the claims for payment for damaged crops allegedly caused by the construction of the [Project] but made significant observations, among others, to wit:
>
> x x x x x x x x x
>
> 3. That the names of claimants and other details in the attached List of Claims for Crop Damages Affected by the Overflow of the Diversion Cut-Off Channel in Tunggol, Pagalungan, Maguindanao, (Annexes C-1 to C-12) submitted by the IROW Task Force, DPWH Central Office amounting to ₱122,049,550.00, were based on and the same with that of the following three (3) reports:
>
> 3.1) Undated and Unsigned List of Improvements Affected by the Overflow of the Diversion Cut-Off Channel in Tunggol, Pagalungan, Maguindanao amounting to ₱122,049,550.00 (Annex "D" to Annex "D-4") with sub-heading, "NOTE: BASE[D] ON THE ATTACHED AFFIDAVIT AND APPROVED DATA FROM ARMM" (Original List)
>
> x x x x x x x x x
>
> 4. That in the above-mentioned paragraph (3.1), the **claimants/owners declared their lots as either cornland, riceland, lowland or marshyland as opposed to their claim for crop damages for coconut trees, mango trees, coffee, jackfruits and banana** under paragraphs (3.2) and (3.3) and Annexes "C-1" to "C-12", mentioned below.
>
> 5. That [in the] analysis of all lists with regards to the population density of plant and fruit trees, it was computed that population density was only about 2-3 per square meter. This means that the distance of every fruit tree trunk/clump to each other is only about 2-3 meters, hence, in order for the fruit trees to be fruit bearing, it would

appear that their branches would already be interlocking with each other. (Schedule 1)

6. That in view of the above, **the total number of fruit trees per lot indicated in the lists were determined to be only estimates and not the actual number/quantity of fruit trees allegedly damaged**.

7. That **review of the lists of claimants disclosed that there are instances that two (2) or more claimants are owners of the same lot number**. (Schedule 2)

8. That [in the] tracing [of] the affected lots in the parcellary map, **there were lots which we believe the flooding of which should not be attributed to the construction of the Cut-Off Channel but to the original and existing course of the river. Moreover, said lots are not on the downstream of the project** (Lots # 61, 73, 74, 75, 76, 78, 297, 291, 289, 288, 287, 286, 284, 281, 282, 279, 280, 276, 273, 274, 271, 270, 265, 263, 301, 302, 303, 304, 305, 306, 307, 308, 309, 379, 377, 380, and 378). The construction of the Cut-Off Channel was actually a relief to the upstream which [do not] experience perennial flooding, but sadly a disaster to the downstream portion. (See attached parcellary Map).

x x x x x x x x x

9. That **there are listed lots which are not in the parcellary map**. (Lot # 386, 1440, 1441, 1442, 1443 and 1444).

10. That **all undated DECLARATION OF REAL PROPERTY submitted by the owners/claimants in support of [their] claims for crop damages were all signed by Municipal Assessor Babai M. Bangkulit of Datu Montawal, Maguindanao, which we believe were issued only on April 12, 2007, the same date the Statements of Tax Delinquency were signed by the aforementioned Municipal Assessor**.

11. That [in the] tracing [of] the lots on the parcellary map, **majority of the lots are located on the side of the Municipality of Pagalungan, Maguindanao, and not in the Municipality of Datu Montawal, Maguindanao**. (See attached Parcellary Map).

x x x x x x x x x

13. That **not a single copy of land title was submitted by the claimants to prove that they are the legal owners and rightful claimants to the alleged crop damages** therein.

x x x x x x x x x

Finally, the then Cluster Director, Cluster D-Economic Services, National Government Sector (NGS), this Commission, in her 8th Indorsement dated December 15, 2011, stated that **taking into account the fact that DPWH undertook the construction of the [Project] in the discharge of its governmental function, it cannot be held liable**. In support of her position, she cited the decision of the Supreme Court in the case of *Torio vs. Fontanilla*, G.R. No. L-29993 dated October 23, 1978, citing *Palafox, et al. vs. Province of Ilocos Norte, et al.*, 102 Phil 1186 (1958).

After observing that **there are conflicting claims between the petitioners and that it is a primary consideration that a claim must be instituted by the proper party in interest otherwise the same will fail**, the then Cluster Director, Cluster D, NGS, **this Commission, recommended the dismissal of the Petition**, subject to the final determination by the Commission Proper.[29] (Emphasis ours)

Absent any showing that COA capriciously, arbitrarily or whimsically exercised its discretion that would tantamount to evasion of a positive duty or a virtual refusal to perform the duty or to act at all in contemplation of law resulting to the prejudice of the rights of the claimants, the Court believes that COA did not abuse, much less gravely, its discretion in denying the claims of the petitioners.

Thus, the Court finds no grave abuse of discretion on the part of COA in denying the petitioners' money claims for failure to present substantial evidence to prove that their properties were damaged by floods due to the premature opening of the Project of the DPWH. Without a doubt, the inconsistencies and discrepancies in the evidence presented by the petitioners backed

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[29] *Rollo*, pp. 30-32.

by the findings of COA lead only to one inescapable conclusion: that there is no substantial evidence to prove the petitioners' claims that would render the DPWH or the State liable for the amount claimed.

In the absence of grave abuse of discretion, the factual findings of COA, which are undoubtedly supported by the evidence on record, must be accorded great respect and finality. COA, as the duly authorized agency to adjudicate money claims against government agencies and instrumentalities has acquired special knowledge and expertise in handling matters falling under its specialized jurisdiction.[30]

Finally, it is the general policy of the Court to sustain the decision of administrative authorities, especially one that was constitutionally created like herein respondent COA, not only on the basis of the doctrine of separation of powers, but also of their presumed expertise in the laws they are entrusted to enforce. It is, in fact, an oft-repeated rule that findings of administrative agencies are accorded not only respect but also finality when the decision and order are not tainted with unfairness or arbitrariness that would amount to grave abuse of discretion.[31]

WHEREFORE, the petition is **DISMISSED**. The Decision dated November 20, 2012 and Resolution dated February 14, 2014 of the Commission on Audit in COA CP Case No. 2010-089 are hereby **AFFIRMED**.

SO ORDERED.

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

Jardeleza, J., no part, prior OSG action.

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[30] *Daraga Press, Inc. v. Commission on Audit and Department of Education-Autonomous Region in Muslim Mindanao*, G.R. No. 201042, June 16, 2015.

[31] *Yap v. Commission on Audit*, 633 Phil. 174, 195 (2010).

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ATTACHMENT

Preliminary attachment — A writ of preliminary attachment is a provisional remedy issued upon the order of the court where an action is pending; through the writ, the property or properties of the defendant may be levied upon and held thereafter by the sheriff as security for the satisfaction of whatever judgment might be secured by the attaching creditor against the defendant. (Security Bank Corp. vs. Great Wall Commercial Press Co., Inc., G.R. No. 219345, Jan. 30, 2017) p. 565

— A writ of preliminary attachment may be issued in an action against a party who has been guilty of a fraud in contracting the debt or incurring the obligation upon which the action is brought; the fraud that justified the issuance of a writ of preliminary attachment then was only fraud committed in contracting an obligation (*dolo casuante*); the fraud committed in the performance of the obligation (*dolo incidente*) was included as a ground for the issuance of a writ of preliminary attachment. (*Id.*)

— Circumstances of the fraud committed by respondents in the performance of their obligation undoubtedly support the issuance of a writ of preliminary attachment. (*Id.*)

— For a writ of preliminary attachment to issue, the applicant must sufficiently show the factual circumstances of the alleged fraud; the fraudulent intent cannot be inferred from the debtor's mere non-payment of the debt or failure to comply with his obligation. (*Id.*)

— Violation of the trust receipt agreements warrants the issuance of the writ of preliminary attachment. (*Id.*)

ATTORNEYS

Code of Professional Responsibility — As a local public official, it was incumbent upon him to secure the proper authority from the Secretary of the DILG not only for his first term, but also his second and third; his failure to do so rendered him liable for unauthorized practice of his

Stockholders' or members' meeting –– The term "meeting" applies to every duly convened assembly either of stockholders, members, directors, trustees, or managers for any legal purpose, or the transaction of business of a common interest; a stockholders' or members' meeting must comply with the following requisites to be valid: 1. The meeting must be held on the date fixed in the By--Laws or in accordance with law; 2. Prior written notice of such meeting must be sent to all stockholders/members of record; 3. It must be called by the proper party; 4. It must be held at the proper place; and 5. Quorum and voting requirements must be met. (Lim *vs.* Moldex Land, Inc., G.R. No. 206038, Jan. 25, 2017) p. 341

COURT PERSONNEL

Conduct of –– Court employees are expected to be well-mannered, civil and considerate in their actuations, both in their relations with co-workers and the transacting public. (Judge Barcena *vs.* Clerk of Court II Abadilla, A.M. No. P-16-3564[Formerly OCA IPI No. 10-3503-P], Jan. 24, 2017) p. 21

–– Fighting or misunderstanding is a disgraceful sight reflecting adversely on the good image of the Judiciary; it displays a cavalier attitude towards the seriousness and dignity with which court business should be treated. (*Id.*)

Grave misconduct –– Grave misconduct is punishable by dismissal from service in the first instance; the penalty of dismissal shall carry with it cancellation of eligibility, forfeiture of retirement benefits, perpetual disqualification from holding public office and being barred from taking civil service examinations. (Tolentino *vs.* Sheriff IV Umali, A.M. No. P-16-3615[Formerly A.M. No. 15-8-249-RTC], Jan. 24, 2017) p. 40

Liability of –– Falsification of a DTR by a court personnel is a grave offense; the act of falsifying an official document is in itself grave because of its possible deleterious effects

DUE PROCESS

Procedural due process — Defects in procedural due process may be cured when the party has been afforded the opportunity to appeal or to seek reconsideration of the action or ruling complained of. (Nestle Phils., Inc. *vs.* Puedan, Jr., G.R. No. 220617, Jan. 30, 2017) p. 583

EMPLOYER-EMPLOYEE RELATIONSHIP

Elements — To prove the element of an employer employee relationship, *viz*.: (l) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the power of control. (Valencia *vs.* Classique Vinyl Products Corp., G.R. No. 206390, Jan. 30, 2017) p. 492

EMPLOYMENT, TERMINATION OF

Doctrine of strained relations — Under the doctrine of strained relations, the payment of separation pay is considered an acceptable alternative to reinstatement when the latter option is no longer desirable or viable; reinstatement is no longer viable where, among others, the relations between the employer and the employee have been so severely strained, that it is not in the best interest of the parties, nor is it advisable or practical to order reinstatement, or where the employee decides not to be reinstated. (TPG Corp. [Formerly the Professional Group Plans, Inc.] *vs.* Pinas, G.R. No. 189714, Jan. 25, 2017) p. 222

Loss of trust and confidence — Dismissal of rank-and-file personnel for loss of trust and confidence, requires proof of involvement in the alleged events in question and that mere uncorroborated assertions and accusations by the employer will not be sufficient; but as regards a managerial employee, the mere existence of a basis for believing that such employee has breached the trust of his employer would suffice for his dismissal, albeit the evidence must be substantial and must establish clearly and convincingly the facts on which the loss of confidence

Void judgments — A void judgment is a lawless thing, which can be treated as an outlaw and slain at sight, or ignored wherever and whenever it exhibits its head; a void judgment creates no rights and imposes no duties; any act performed pursuant to it and any claim emanating from it has no legal effect. (Imperial *vs.* Hon. Armes, G.R. No. 178842, Jan. 30, 2017) p. 439

— A void judgment is not entitled to the respect accorded to a valid judgment, but may be entirely disregarded or declared inoperative by any tribunal in which effect is sought to be given to it; it has no legal or binding effect or efficacy for any purpose or at any place. (*Id.*)

— Rule 47 of the Rules of Court states that an action for the annulment of judgment may be filed before the CA to annul a void judgment of regional trial courts even after it has become final and executory; if the ground invoked is lack of jurisdiction, as pertaining to both lack of jurisdiction over the subject matter and over the person, the action for the annulment of the judgment may be filed at any time for as long as estoppel has not yet set in. (*Id.*)

LABOR CODE

Labor-only contracting — Where the agreement reveals that the relationship of the petitioner and alleged contractor is that of a seller and a buyer/re-seller and such agreement does not operate to control or fix methodology on how the latter should do its business as a distributor of petitioner's products, labor-only contracting is negated. (Nestle Phils., Inc. *vs.* Puedan, Jr., G.R. No. 220617, Jan. 30, 2017) p. 583

LABOR RELATIONS

Labor-only contracting — Generally, the presumption is that the contractor is a labor-only [contractor] unless such contractor overcomes the burden of proving that it has the substantial capital, investment, tools and the like; the contractor is considered merely an agent of the principal employer and the latter is responsible to the

PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION-STANDARD EMPLOYMENT CONTRACT (POEA-SEC)

Disability benefits — Claimants for disability benefits must first discharge the burden of proving, with substantial evidence, that their ailment was acquired during the term of their contract; they must show that they experienced health problems while at sea, the circumstances under which they developed the illness, as well as the symptoms associated with it. (Scanmar Maritime Services, Inc. *vs.* De Leon, G.R. No. 199977, Jan. 25, 2017) p. 279

–– The three-day rule must be observed by all those claiming disability benefits, including seafarers who disembarked upon the completion of the contract. (*Id.*)

–– Under Sec. 20 (B) thereof, these are the requirements for compensability: (1) the seafarer must have submitted to a mandatory post-employment medical examination within three working days upon return; (2) the injury must have existed during the term of the seafarer's employment contract; and (3) the injury must be work-related. (*Id.*)

POSSESSION

Proof of –– Although tax declarations or realty tax payment of property are not conclusive evidence of ownership, they are good indicia of possession in the concept of owner, for no one in his right mind would be paying taxes for a property that is not in his actual or constructive possession; they constitute evidence of great weight in support of the claim of title of ownership by prescription when considered with the actual possession of the property by the applicant. (Caldito *vs.* Obado, G.R. No. 181596, Jan. 30, 2017) p. 478

PRESCRIPTION

Acquisitive prescription — Respondents have been in possession of the entire lot in the concept of an owner for almost 42 years; this period of time is sufficient to vest

SECURITIES AND EXCHANGE COMMISSION

Jurisdiction — In order for the SEC to take cognizance of a case, the controversy must pertain to any of the following relationships: (1) between the corporation, partnership or association and the public; (2) between the corporation, partnership or association and the state in so far as its franchise, permit or license to operate is concerned; (3) between the corporation, partnership or association and its stockholders, partners, members or officers; and (4) among the stockholders, partners or associates themselves. (Imperial *vs.* Hon. Armes, G.R. No. 178842, Jan. 30, 2017) p. 439

— The better policy in determining which body has jurisdiction over a case would be to consider not only the status or relationship of the parties but also the nature of the question that is the subject of their controversy; this is the controversy test; the controversy test requires that the dispute among the parties be intrinsically connected with the regulation of the corporation, partnership or association; if the nature of the controversy involves matters that are purely civil in character, necessarily, the case does not involve an intra-corporate controversy. (*Id.*)

— The law vests quasi-judicial powers to administrative bodies over matters that require their particular competence and specialized expertise. (*Id.*)

— Under P.D. No. 902-A, the SEC exercised jurisdiction over intra-corporate controversies precisely because it is a highly-specialized administrative body in specialized corporate matters; where the controversy does not call for the use of any technical expertise, but the application of general laws, the case is cognizable by the ordinary courts. (*Id.*)

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