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OF THE

PHILIPPINES

FROM

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

FIRST DIVISION

[A.C. No. 5819. February 1, 2017]

HEIRS OF SIXTO L. TAN, SR., represented by RECTO A. TAN, *complainants, vs.* **ATTY. NESTOR B. BELTRAN,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY; NEGLECT OF ENTRUSTED LEGAL MATTER; SHALL RENDER THE LAWYER LIABLE.— In *Reontoy v. Ibadlit*, we ruled that failure of the counsel to appeal within the prescribed period constitutes negligence and malpractice. The Court elucidated that per Rule 18.03, Canon 18 of the Code of Professional Responsibility, "a lawyer shall not neglect a legal matter entrusted to him and his negligence in connection therewith shall render him liable." In the case at bar, respondent similarly admits that he failed to timely file the Petition for Review before the SOJ. As a result of his delayed action, his clients lost the criminal case. Straightforwardly, this Court sanctions him for belatedly filing an appeal.

2. ID.; ATTORNEYS; CASE OF *MERCADO v. COMMISSION ON HIGHER EDUCATION* ON THE EFFECT OF WITHDRAWAL OF COUNSEL WITH THE CONFORMITY OF THE CLIENT.— Respondent argues that he was no longer bound to inform complainants of the RTC Order requiring the payment of full docket fees, given that he

had already moved to withdraw as counsel with the conformity of the latter. We find that argument unjustified. *Mercado v. Commission on Higher Education* is instructive on the effect of the withdrawal of counsel with the conformity of the client: As a rule, the withdrawal of a counsel from a case made *with* the written conformity of the client takes effect once the same is filed with the court. The leading case of *Arambulo v. Court of Appeals* laid out the rule that, in general, such kind of a withdrawal does not require any further action or approval from the court in order to be effective. In contrast, the norm with respect to withdrawals of counsels *without* the written conformity of the client is that they only take effect after their approval by the court. The rule that the withdrawal of a counsel *with* the written conformity of the client is immediately effective once filed in court, however, is **not** absolute. *When the counsel's impending withdrawal with the written conformity of the client would leave the latter with no legal representation in the case*, it is an accepted practice for courts to **order the deferment of the effectivity** of such withdrawal until such time that it becomes certain that service of court processes and other papers to the party-client would not thereby be compromised – either by the due substitution of the withdrawing counsel in the case or by the express assurance of the party-client that he now undertakes to himself receive serviceable processes and other papers. Adoption by courts of such a practice in that particular context, while neither mandatory nor sanctioned by a specific provision of the Rules of Court, is nevertheless justified as part of their inherent power to see to it that the potency of judicial processes and judgment are preserved.

3. ID.; ID.; IN ADMINISTRATIVE CASES AGAINST LAWYERS, THE QUANTUM OF PROOF REQUIRED IS PREPONDERANCE OF EVIDENCE.— In administrative cases against lawyers, the quantum of proof required is preponderance of evidence. Preponderance of evidence means that the evidence adduced by one side is, as a whole, superior to or has greater weight than that of the other. Complainants have the burden to discharge that required quantum of proof. x x x General allegations will not meet the evidentiary standard of preponderance of evidence.

RESOLUTION

SERENO, *C.J.*:

Before this Court is an administrative complaint against respondent, Atty. Nestor B. Beltran. His derelictions allegedly consisted of his belated filing of an appeal in a criminal case and failure to relay a court directive for the payment of docket fees in a civil case to his clients – complainants Heirs of Sixto L. Tan, Sr. represented by Recto A. Tan. The latter also accused him of unduly receiving ₱200,000 as payment for legal services.

FACTS OF THE CASE

After agreeing to pay attorney's fees of ₱200,000, complainants engaged the services of respondent counsel for the filing of cases to recover their commercial properties valued at approximately ₱30 million.

On July 2001, complainants filed a criminal action for falsification of public documents and use of falsified documents against Spouses Melanio and Nancy Fernando and Sixto Tan, Jr. Docketed as I.S. No. 2001-037,[1] this case was dismissed by the provincial prosecutor of Albay.

Respondent was notified of the order of dismissal on 18 October 2001.[2] On 6 November 2001, he filed an appeal via a Petition for Review before the Secretary of the Department of Justice (SOJ). It was, however, filed beyond the 15-day reglementary period to perfect an appeal.[3] Consequently, in his Resolution promulgated on 5 March 2002,[4] the SOJ dismissed the belated Petition for Review. Respondent no longer filed a motion for reconsideration to remedy the ruling.

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

[2] *Id*. at 4.

[3] *Id*.

[4] *Id*. at 3-4.

On 11 September 2001, complainants instituted a related civil suit to annul the sale of their commercial properties before the Regional Trial Court (RTC) of Naga City, docketed as Civil Case No. 2001-0329.[5] After being given ₱7,000 by his clients, respondent tasked his secretary to pay the docket fees computed at ₱1,722.

Unfortunately, the Clerk of Court erred in the assessment of the docket fees. To correct the error, the RTC required the payment of additional docket fees through an Order dated 20 May 2002,[6] which respondent received on 29 May 2002.[7] However, two weeks earlier, on 13 May 2002, he had moved to withdraw as counsel with the conformity of his clients.[8] No separate copy of the Order dated 20 May 2002 was sent to any of the complainants.[9]

The balance of the docket fees remained unpaid. Subsequently, the RTC dismissed the civil case, citing the nonpayment of docket fees as one of its bases.[10]

Aggrieved by their defeat, complainants wrote this Court a letter-complaint[11] asking that disciplinary actions be meted out to respondent. They likewise contended that he had unduly received ₱200,000 as attorney's fees, despite his failure to render effective legal services for them.

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[5] *Id*. at 101-107.

[6] *Id*. at 137-141; the RTC Order dated 20 May 2002 was penned by Judge Novelita Villegas-Llaguno, Branch 22, Naga City.

[7] *Id*. at 152; RTC Order dated 20 June 2002, p. 2.

[8] *Id*. at 248; Motion to Withdraw as Counsel for Plaintiffs dated 13 May 2002.

[9] *Id*. at 141; RTC Order dated 20 May 2002, p. 5.

[10] *Id*.

[11] *Id*. at 1-2, 16-20, 87-100; letter filed on 23 August 2002, Reply to Comment filed on 29 January 2003, Memorandum filed on 16 July 2003.

Respondent claimed[12] that he could no longer move for the reconsideration of the SOJ's dismissal of his belated Petition for Review as he had only learned of the dismissal after the period to file a motion for reconsideration had lapsed. He argued that while he prepared the Petition for Review, his clients themselves, through Nilo Tan and Recto Tan, signed and filed the same. Thus, he imputed to complainants the belated filing of the appeal.

As for the dismissal of the civil action for nonpayment of docket fees, respondent disclaimed any fault on his part, since he had already withdrawn as counsel in that case.

Anent his receipt of ₱200,000 as attorney's fees, respondent denied collecting that amount. He only admitted that he had received ₱30,000 to cover expenses for "the preparation of the complaints, docket fee, affidavits, and other papers needed for the filing of the said cases."[13] He did not deny his receipt of ₱7,000 for fees and other sundry expenses, of which ₱1,722 had already been paid to the Clerk of Court for docket fees. In any event, Atty. Beltran argued that ₱200,000 as attorney's fees was inadequate, considering that the property under dispute was worth ₱30 million.

FINDINGS OF THE IBP

In a Resolution dated 12 March 2003,[14] this Court referred the administrative case to the Integrated Bar of the Philippines (IBP) for investigation, report, and recommendation.

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[12] *Id.* at 7-16, 56-60, 160-172, 255-263; Comment filed on 7 January 2003, Rejoinder to Reply to Comment with Notice of Change of Address filed on 5 March 2003, Memorandum for the Respondent filed on 4 August 2003, Comment on the Memorandum for the Complainant filed on 18 August 2003.

[13] *Id.* at 9; Comment filed on 7 January 2003, p. 3.

[14] *Id.* at 27.

The Investigating Commissioner of the IBP, in a Report dated 24 July 2006,[15] found respondent guilty of neglect in handling the criminal case and recommended his suspension from the practice of law for three months. The gist of the report reads:[16]

> The Respondent admits that the Petition for Review in this case was not filed. This key detail leads the Commissioner to conclude that **the Respondent was negligent in failing to seasonably file the Petition for Review in I.S. No. 2001-037.**
>
> The Respondent's bare defense is that he allegedly left the filing of this petition to the Complainants, who filed it out of time. Even assuming this is true, the Respondent cannot disclaim negligence, being the lawyer and knowing that the case related to the Complainants' claims on properties the Respondent himself states are worth about PHP30 million. x x x.
>
> Some of the Respondent's pleadings instead focus to the Motion for Reconsideration regarding the late Petition for Review's dismissal, which the Respondent explains by stating that the Complainants informed him of this when the period to file a Motion for Reconsideration had already lapsed. Even assuming this is true, it is irrelevant since it is clear that the Petition for Review itself was not seasonably filed. x x x. (Emphasis in the original)

With respect to dismissal of the civil case, the Investigating Commissioner cleared respondent of any liability. The former gave credence to the fact that by the time respondent received the directive of the RTC requiring the payment of the balance of the docket fees, the latter had already filed his withdrawal from the case.

Finally, as regards the factual claim of complainants that they paid respondent attorney's fees amounting to ₱200,000, the Investigating Commissioner determined that their allegation was unfounded, as none of them produced receipts evidencing payment. At most, what the Investigating Commissioner found was that respondent only admitted to receiving ₱30,000 for

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[15] *Id*. at 311-326.

[16] *Id*. at 320-321.

expenses, aside from ₱5,278.[17] The former recommended that respondent be ordered to restitute these sums to complainants.

In its Resolution dated 1 February 2007,[18] the Board of Governors of the IBP resolved to fully dismiss the administrative case against respondent without any explanation. Neither party has filed a motion for reconsideration or petition for review thereafter.[19]

ISSUES OF THE CASE

I. Whether respondent neglected legal matters entrusted to him when he belatedly filed an appeal before the SOJ, resulting in the dismissal of I.S. No. 2001-037

II. Whether respondent is guilty of violation of the Code of Professional Responsibility and other ethical standards for failing to inform complainants of the RTC Order to pay the balance of the docket fees in Civil Case No. 2001-0329

III. Whether respondent unduly received ₱200,000 as attorney's fees

RULING OF THE COURT

We set aside the unsubstantiated recommendation of the IBP Board of Governors. Its resolutions are only recommendatory and always subject to this Court's review.[20]

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[17] This amount represented the balance between the ₱7,000 he received from complainants for the payment of docket fees and the ₱1,722 he actually paid as docket fees to the Clerk of Court.

[18] *Rollo,* p. 310.

[19] *Id*. at 331; Report for Agenda of the Office of the Bar Confidant dated 10 August 2015.

[20] *Spouses Williams v. Enriquez*, A.C. No. 7329, 27 November 2013, 710 SCRA 620, 629.

Respondent filed a belated appeal before the SOJ.

In *Reontoy v. Ibadlit*,[21] we ruled that failure of the counsel to appeal within the prescribed period constitutes negligence and malpractice. The Court elucidated that per Rule 18.03, Canon 18 of the Code of Professional Responsibility, "a lawyer shall not neglect a legal matter entrusted to him and his negligence in connection therewith shall render him liable."

In the case at bar, respondent similarly admits that he failed to timely file the Petition for Review before the SOJ. As a result of his delayed action, his clients lost the criminal case. Straightforwardly, this Court sanctions him for belatedly filing an appeal.

The excuse forwarded by respondent – that he delegated the filing of the Petition for Review to complainants – will not exculpate him from administrative liability. As correctly explained by the Investigating Commissioner of the IBP, respondent cannot disclaim negligence, since he was the lawyer tasked to pursue the legal remedies available to his clients.

Lawyers are expected to be acquainted with the rudiments of law and legal procedure. A client who deals with counsel has the right to expect not just a good amount of professional learning and competence, but also a wholehearted fealty to the client's cause.[22] Thus, we find that passing the blame to persons not trained in remedial law is not just wrong; it is reflective of the want of care on the part of lawyers handling the legal matters entrusted to them by their clients.[23]

After surveying related jurisprudence,[24] the Investigating Commissioner recommended the suspension of respondent from

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[21] 349 Phil. 1 (1998).

[22] *Fernandez v. Novero, Jr.,* 441 Phil. 506 (2002).

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

[24] *Francisco v. Portugal,* 519 Phil. 547 (2006); *Heirs of Ballesteros, Sr. v. Apiag,* 508 Phil. 113 (2005); *Dizon v. Laurente,* 507 Phil. 572 (2005);

the practice of law for three months given his infraction of filing a belated appeal before the SOJ. Yet, without explanation, the Board of Governors resolved to ignore the recommendation of the Investigating Commissioner.

Accordingly, this Court will not adopt an unsubstantiated resolution of the Board of Governors, especially when jurisprudence shows that we have penalized lawyers for filing belated motions and pleadings. In the resolution of this Court in *Reontoy*,[25] we suspended the counsel therein from the practice of law for two months, given that his belated filing of an appeal caused his client to lose the case. In *Fernandez v. Novero, Jr.,*[26] we likewise suspended the respondent counsel for a month after he filed a motion for reconsideration outside the reglementary period. In *Barbuco v. Beltran,*[27] this Court imposed a six-month suspension on the lawyer, who had belatedly filed a pleading, among other derelictions. We stressed in that case that the failure to file a brief within the reglementary period certainly constituted inexcusable negligence, more so if the delay of 43 days resulted in the dismissal of the appeal.

Respondent failed to inform complainants of the RTC Order requiring the payment of full docket fees.

Respondent argues that he was no longer bound to inform complainants of the RTC Order requiring the payment of full docket fees, given that he had already moved to withdraw as counsel with the conformity of the latter. We find that argument unjustified.

Ferrer v. Tebelin, 500 Phil. 1 (2005); and *Consolidated Farms Inc. v. Alpon, Jr.,* 493 Phil. 16 (2005).

[25] 362 Phil. 219 (1999).

[26] *Supra* note 22.

[27] 479 Phil. 692 (2004).

Mercado v. Commission on Higher Education[28] is instructive on the effect of the withdrawal of counsel with the conformity of the client:

> As a rule, the withdrawal of a counsel from a case made *with* the written conformity of the client takes effect once the same is filed with the court. The leading case of *Arambulo v. Court of Appeals* laid out the rule that, in general, such kind of a withdrawal does not require any further action or approval from the court in order to be effective. In contrast, the norm with respect to withdrawals of counsels *without* the written conformity of the client is that they only take effect after their approval by the court.
>
> The rule that the withdrawal of a counsel *with* the written conformity of the client is immediately effective once filed in court, however, is **not** absolute. *When the counsel's impending withdrawal with the written conformity of the client would leave the latter with no legal representation in the case*, it is an accepted practice for courts to **order the deferment of the effectivity** of such withdrawal until such time that it becomes certain that service of court processes and other papers to the party-client would not thereby be compromised — either by the due substitution of the withdrawing counsel in the case or by the express assurance of the party-client that he now undertakes to himself receive serviceable processes and other papers. Adoption by courts of such a practice in that particular context, while neither mandatory nor sanctioned by a specific provision of the Rules of Court, is nevertheless justified as part of their inherent power to see to it that the potency of judicial processes and judgment are preserved. (Emphasis in the original)

On 29 May 2002, when respondent herein received the RTC Order dated 20 May 2002, complainants still had no new counsel on record. Therefore, Atty. Beltran should have acted with prudence by informing his previous clients that he had received the directive of the court requiring the payment of docket fees. After all, lawyers are officers of the court. Like the court itself, respondent is an instrument for advancing the ends of justice

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[28] 699 Phil. 419 (2012).

and his cooperation with the court is due whenever justice may be imperiled if cooperation is withheld.[29]

The appropriate penalty for an errant lawyer depends on the exercise of sound judicial discretion based on the surrounding facts.[30] In this case, we consider the fact that not only did respondent file a belated appeal before the SOJ, but he also failed to act with prudence by failing to inform complainants of the RTC Order dated 20 May 2002.

However, we cannot put the blame solely on Atty. Beltran for the nonpayment of the docket fees in the civil case. Although not discussed by the Investigating Commissioner, the records reveal that even if complainants' new counsel learned about the ruling on 30 May 2002, the former still failed to pay the additional docket fees.[31]

Taking into consideration the attendant circumstances herein vis-à-vis the aforementioned administrative cases decided by this Court, we deem it proper to impose on Atty. Beltran a two-month suspension from the practice of law for belatedly filing an appeal before the SOJ. We also admonish him to exercise greater care and diligence in the performance of his duty to administer justice.

Complainants failed to prove that respondent received ₱200,000 as attorney's fees.

In administrative cases against lawyers, the quantum of proof required is preponderance of evidence.[32] Preponderance of

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[29] *In re: Cunanan*, 94 Phil. 534 (1954) citing the *Opinion of the Justices to the Senate Supreme Judicial Courts of Massachusetts,* 180 N.E. 725, 727 (1932).

[30] *Tiburdo v. Puno*, A.C. No. 10677, 18 April 2016.

[31] *Rollo*, pp. 152-153; RTC Order dated 20 June 2002, pp. 2-3.

[32] *Sultan v. Macabanding*, A.C. No. 7919, 8 October 2014, 737 SCRA 530.

evidence means that the evidence adduced by one side is, as a whole, superior to or has greater weight than that of the other.[33]

Complainants have the burden to discharge that required quantum of proof.[34] Here, as accurately assessed by the Investigating Commissioner, the records do not bear any receipt proving Atty. Beltran's collection of ₱200,000 as attorney's fees.

Complainants venture to argue that these sums were paid to respondent without receipts. However, that bare argument has no other supporting evidence – object, documentary, or testimonial. Even during the hearing of this case before the IBP, when confronted with particular questions regarding the sums paid to respondent, complainants could not answer when and where they gave installment payments to Atty. Beltran.[35]

General allegations will not meet the evidentiary standard of preponderance of evidence.[36] Hence, we adopt the factual finding of the Investigating Commissioner that complainants failed to prove their claim of payment to respondent of ₱200,000 as attorney's fees.

As a final point, the Court must clarify that the resolution of this case should not include a directive for the return of the ₱35,278 as the Investigating Commissioner recommended.

The Investigating Commissioner did not explain the recommendation for the restitution of that sum. Moreover, complainants do not contest that respondent received this sum for fees and other sundry expenses. Neither do the records show that they demanded the return of this amount from respondent. In consideration of these facts, the proper corrective action is to order the accounting of the full sum of ₱35,278.

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[33] *De Jesus v. Risos-Vidal,* 730 Phil. 47 (2014).

[34] *Bucad v. Frias*, A.C. No. 11068, 6 April 2016.

[35] *Rollo*, pp. 285-288; TSN, 26 June 2003, pp. 20-23.

[36] See *Union Motor Corp. v. Court of Appeals*, 414 Phil. 33 (2001).

WHEREFORE, in view of the foregoing, respondent Atty. Nestor B. Beltran is **SUSPENDED FOR TWO MONTHS** from the practice of law with a warning that a repetition of the same or similar acts shall be dealt with more severely. He is **ADMONISHED** to exercise greater care and diligence in the performance of his duties. He is also **ORDERED TO ACCOUNT** for the ₱35,278 he received from his clients, with the obligation to return the entire amount, or so much thereof remaining, to complainants.

This Decision shall take effect immediately upon receipt by Atty. Nestor B. Beltran of a copy of this Decision. He shall inform this Court and the Office of the Bar Confidant in writing of the date he received a copy of this Decision. Copies of this Decision shall be furnished the Office of the Bar Confidant, to be appended to respondent's personal record, and the Integrated Bar of the Philippines. The Office of the Court Administrator is directed to circulate copies of this Decision to all courts concerned.

SO ORDERED.

Leonardo-de Castro, del Castillo, Perlas-Bernabe, and *Caguioa, JJ.,* concur.

SECOND DIVISION

[G.R. No. 188146. February 1, 2017]

PILIPINAS SHELL PETROLEUM CORPORATION, *petitioner, vs.* **ROYAL FERRY SERVICES, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; A CASE IS MOOT AND ACADEMIC WHEN IT CEASES

TO PRESENT A JUSTICIABLE CONTROVERSY BECAUSE OF SUPERVENING EVENTS SO THAT A DECLARATION WOULD BE OF NO PRACTICAL USE OR VALUE.— A case is moot and academic when it ceases to present a justiciable controversy because of supervening events so that a declaration would be of no practical use or value. As respondent has failed to establish that petitioner has abandoned its claim against it, petitioner continues to have an interest in the insolvency proceeding.

2. ID.; PROCEDURE IN THE COURT OF APPEALS; GROUNDS FOR DISMISSAL OF APPEAL; THE COURT OF APPEALS HAS DISCRETION TO DISMISS AN APPEAL BASED ON THE ENUMERATED GROUNDS.— The Court of Appeals committed no reversible error in deciding to rule on the merits. The term "may" in Rule 50, Section 1 of the Rules of Court means that the Court of Appeals has discretion to dismiss an appeal based on the enumerated grounds. The Court of Appeals exercised its discretion when it decided that the interest of justice would be better served by overlooking the pleading's technical defects. Time and again, this Court has declared that dismissal on purely technical grounds is frowned upon. It is judicial policy to determine a case based on the merits so that the parties have full opportunity to ventilate their cause and defenses. The Court of Appeals did not err in taking cognizance of the appeal.

3. ID.; JURISDICTION; DISTINGUISHED FROM VENUE.— In *City of Lapu-Lapu v. Phil. Economic Zone Authority*: On the one hand, jurisdiction is "the power to hear and determine cases of the general class to which the proceedings in question belong." Jurisdiction is a matter of substantive law. Thus, an action may be filed only with the court or tribunal where the Constitution or a statute says it can be brought. Objections to jurisdiction cannot be waived and may be brought at any stage of the proceedings, even on appeal. When a case is filed with a court which has no jurisdiction over the action, the court shall *motu proprio* dismiss the case. On the other hand, venue is "the place of trial or geographical location in which an action or proceeding should be brought." In civil cases, venue is a matter of procedural law. A party's objections to venue must be brought at the earliest opportunity either in a motion to dismiss or in the answer; otherwise the objection shall be deemed waived.

When the venue of a civil action is improperly laid, the court cannot *motu proprio* dismiss the case. Wrong venue is merely a procedural infirmity, not a jurisdictional impediment. Jurisdiction is a matter of substantive law, while venue is a matter of procedural law.

4. COMMERCIAL LAW; INSOLVENCY LAW; PROPER VENUE FOR A PETITION FOR VOLUNTARY INSOLVENCY IS THE REGIONAL TRIAL COURT OF THE PROVINCE OR CITY WHERE THE INSOLVENT DEBTOR HAS RESIDED IN FOR SIX (6) MONTHS BEFORE THE FILING OF THE PETITION; FOR A CORPORATION, RESIDENCE REFERS TO ACTUAL LOCATION OF THE PRINCIPAL OFFICE.— Jurisdiction is conferred by law, and the Insolvency Law vests jurisdiction in the Court of First Instance—now the Regional Trial Court. x x x Section 14 of the Insolvency Law specifies that the proper venue for a petition for voluntary insolvency is the Regional Trial Court of the province or city where the insolvent debtor has resided in for six (6) months before the filing of the petition. x x x The law places a premium on the place of residence before a petition is filed since venue is a matter of procedure that looks at the convenience of litigants. In insolvency proceedings, this Court needs to control the property of the insolvent corporation. x x x To determine the venue of an insolvency proceeding, the residence of a corporation should be the actual place where its principal office has been located for six (6) months before the filing of the petition. If there is a conflict between the place stated in the articles of incorporation and the physical location of the corporation's main office, the actual place of business should control.

APPEARANCES OF COUNSEL

Angara Abello Concepcion Regala & Cruz for petitioner.

Ortega Del Castillo Bacorro Odulio Calma & Carbonell for respondent.

D E C I S I O N

LEONEN, *J.*:

The venue for a petition for voluntary insolvency proceeding under the Insolvency Law is the Court of First Instance of the

province or city where the insolvent debtor resides. A corporation is considered a resident of the place where its principal office is located as stated in its Articles of Incorporation. However, when it is uncontroverted that the insolvent corporation abandoned the old principal office, the corporation is considered a resident of the city where its actual principal office is currently found.

This resolves a Petition for Review on Certiorari[1] assailing the Court of Appeals' January 30, 2009 Decision[2] and May 26, 2009 Resolution[3] in CA-G.R. CV No. 88320, which reinstated the Order[4] that declared Royal Ferry Services Inc. insolvent made by the Regional Trial Court of Manila, Branch 24 (Regional Trial Court).

Royal Ferry Services Inc. (Royal Ferry) is a corporation duly organized and existing under Philippine law.[5] According to its Articles of Incorporation, Royal Ferry's principal place of business is located at 2521 A. Bonifacio Street, Bangkal, Makati City.[6] However, it currently holds office at Room 203, BF Condominium Building, Andres Soriano corner Solano Streets, Intramuros, Manila.[7]

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[1] Under Rule 45 of the 1997 Civil Rules of Procedure.

[2] *Rollo*, pp. 78-92. The Decision was penned by Associate Justice Marlene Gonzales-Sison and concurred in by Associate Justices Josefina Guevara-Salonga (Chair) and Isaias P. Dicdican of the Ninth Division, Court of Appeals, Manila.

[3] *Id*. at 94-95. The Resolution was penned by Associate Justice Marlene Gonzales-Sison and concurred in by Associate Justices Josefina Guevara-Salonga(Chair) and Isaias P. Dicdican of the Ninth Division, Court of Appeals, Manila.

[4] *Id*. at 209-210. The Order was issued by Judge Antonio M. Eugenio, Jr. of Branch 24, Regional Trial Court, Manila.

[5] *Id*. at 16.

[6] *Id*. at 112.

[7] *Id*. at 79.

On August 28, 2005, Royal Ferry filed a verified Petition for Voluntary Insolvency before the Regional Trial Court of Manila.[8] It alleged that in 2000, it suffered serious business losses that led to heavy debts.[9] Efforts to revive the company's finances failed, and almost all assets were either foreclosed or sold to satisfy the liabilities incurred.[10] Royal Ferry ceased its operations on February 28, 2002.[11] In a special meeting on August 25, 2005, its Board of Directors approved and authorized the filing of a petition for voluntary insolvency in court.[12]

The Regional Trial Court declared Royal Ferry insolvent in its Order[13] dated December 19, 2005, the relevant portion of which reads:

> Finding the petition sufficient in form and substance and pursuant to the provisions of Act No. 1956, petitioner Royal Ferry Services, Inc., is hereby declared insolvent.
>
> The Court hereby further directs and orders:
>
> 1. The Branch Sheriff to take possession of, and safely keep until the appointment, of an Assignee all the deeds, vouchers, books of accounts, papers, notes, bills and securities of the petitioner and all its real and personal properties, estates and effects not exempt from execution;
>
> 2. All persons and entities owing money to petitioner are hereby forbidden to make payment for its accounts or to deliver or transfer any property to petitioner except to the duly elected Assignee;
>
> 3. All civil proceedings against petitioner are deemed stayed;
>
> 4. For purposes of electing an Assignee, a meeting of all creditors of the petitioner is hereby set on February 24, 2006 at 8:30 a.m.

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[8] *Id*.

[9] *Id*.

[10] *Id*.

[11] *Id*. at 104.

[12] *Id*. at 79.

[13] *Id*. at 140-141. The Order was issued by Judge Antonio M. Eugenio, Jr. of Branch 24, Regional Trial Court, Manila.

before this Court, at Room 435, Fourth Floor, Manila City Hall Building.

Let this Order be published in a newspaper of general circulation in the Philippines, once a week for three (3) consecutive weeks, and copies thereof be furnished all creditors listed in the schedule of creditors at the expense of petitioner.

SO ORDERED.[14]

On December 23, 2005, Pilipinas Shell Petroleum Corporation (Pilipinas Shell) filed before the Regional Trial Court of Manila a Formal Notice of Claim[15] and a Motion to Dismiss.[16] In the Notice of Claim, Pilipinas Shell asserted that Royal Ferry owed them the amount of ₱2,769,387.67.[17] In its Motion to Dismiss, Pilipinas Shell alleged that the Petition was filed in the wrong venue.[18] It argued that the Insolvency Law provides that a petition for insolvency should be filed before the court with territorial jurisdiction over the corporation's residence.[19] Since Royal Ferry's Articles of Incorporation stated that the corporation's principal office is located at 2521 A. Bonifacio St., Bangkal, Makati City, the Petition should have been filed before the

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[14] *Id*. at 140-141.

[15] *Id*. at 142-150.

[16] *Id*. at 183-190.

[17] *Id*. at 143.

[18] *Id*. at 183.

[19] Act No. 1956 (1909), Sec.14 provides:

Section 14. Application. — An insolvent debtor, owing debts exceeding in amount the sum of one thousand pesos, may apply to be discharged from his debts and liabilities by petition to the Court of First Instance of the province or city in which he has resided for six months next preceding the filing of such petition. In his petition he shall set forth his place of residence, the period of his residence therein immediately prior to filing said petition, his inability to pay all his debts in full, his willingness to surrender all his property, estate, and effects not exempt from execution for the benefit of his creditors, and an application to be adjudged an insolvent. He shall annex to his petition a schedule and inventory in the form hereinafter provided. The filing of such petition shall be an act of insolvency.

Regional Trial Court of Makati and not before the Regional Trial Court of Manila.[20]

On January 30, 2006, the Regional Trial Court of Manila issued the Order[21] denying Pilipinas Shell's Motion to Dismiss for lack of merit. It found Royal Ferry to have sufficiently shown full compliance with the requirements of the Insolvency Law on venue and that it had abandoned its Makati office and moved to Manila. The Regional Trial Court also noted that when the Branch Sherriff confiscated Royal Ferry's books and personal assets, the properties were taken from a Manila address, at Room 203, BF Condominium Building, Andres Soriano corner Solano Streets, Intramuros, Manila.

Pilipinas Shell moved for reconsideration on February 24, 2006.[22]

In the Order[23] dated June 15, 2006, the Regional Trial Court reconsidered the denial of Pilipinas Shell's Motion to Dismiss. It held that a corporation cannot change its place of business without amending its Articles of Incorporation.[24] Without the amendment, Royal Ferry's transfer did not produce any legal effect on its residence.[25] The Regional Trial Court granted the dismissal of the Petition for Voluntary Insolvency. The dispositive portion of the Order reads:

> Accordingly, the Order of this court dated January 30, 2006 denying the claimant-movant's motion to dismiss is hereby reconsidered. The Motion to Dismiss is granted. The Petition for Voluntary Insolvency is hereby ordered DISMISSED.

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[20] *Rollo,* pp. 184-185.

[21] *Id*. at 209-210.

[22] *Id*. at 211-217.

[23] *Id*. at 252-253. The Order was issued by Judge Antonio M. Eugenio, Jr. of Branch 24, Regional Trial Court, Manila.

[24] *Id*. at 253.

[25] *Id*.

SO ORDERED.[26]

Aggrieved, Royal Ferry filed a Notice of Appeal[27] on October 26, 2006. On November 7, 2006, the Regional Trial Court forwarded the records of the case to the Court of Appeals.[28]

In the Decision[29] dated January 30, 2009, the Court of Appeals reinstated the insolvency proceedings. The dispositive portion of the Decision reads:

WHEREFORE, premises considered, the instant appeal is ***GRANTED***. Accordingly, the following Orders of the Regional Trial Court of Manila (Branch 24) in Civil Case No. 05-113384 are ***SET ASIDE*****:** 1) Order dated 15 June 2006, which granted Pilipinas Shell's "*Motion to Dismiss the Petition for Voluntary Insolvency*;" and 2) Order dated 16 October 2006, which denied Royal Ferry's Motion for Reconsideration. On the other hand, the Orders of the trial court dated 5 September 2005 and 19 December 2005, granting an adjudication of insolvency in favor of Royal Ferry are ***REINSTATED***.

SO ORDERED.[30] (Emphasis in the original)

The Court of Appeals held that the Motion to Dismiss failed to comply with Section 81[31] of the Insolvency Law, which required the written consent of all creditors before a petition

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[26] *Id*.

[27] *Id*. at 282.

[28] *Id*. at 285.

[29] *Id*. at 78-92.

[30] *Id*. at 91.

[31] Act No. 1956 (1909), Sec.81 provides:

Section 81. If no creditor files written objections, the court may, upon the application of the debtor, if it be a voluntary petition, or of the petitioning creditors, if a creditor's petition, dismiss the petition and the discontinue the proceedings at any time before the appointment of an assignee, upon giving not less than two nor more than eight weeks' notice to the creditors, in the same manner that notice of the time and place of election of an assignee is given: Provided, however, That by written consent of all creditors filed in the court the proceedings may be dismissed at any time. After the appointment of an assignee, no dismissal shall be made without the consent of all parties interested in or affected thereby.

for insolvency can be dismissed. It overturned the grant of the Motion to Dismiss since Pilipinas Shell failed to secure the written consent of all the creditors of Royal Ferry.

On the alleged jurisdictional defects of Royal Ferry's Petition for Voluntary Insolvency, the Court of Appeals found that "the [Manila Regional Trial Court] has jurisdiction over the instant case, and therefore, has the authority to render a decision on it."[32] It likewise found that Manila was the proper venue for the case because "the cities of Makati and Manila are part of one region, or even a province, city or municipality, if Section 51 of the Corporation Code of the Philippines is taken by analogy."[33] The Court of Appeals stated that Section 82[34] of the Insolvency Law dictates that an order granting an adjudication of insolvency is appealable only to the Supreme Court.[35]

Pilipinas Shell moved for reconsideration, but the Motion was denied on May 26, 2009.[36] Hence, this Petition was filed on July 20, 2009.

Petitioner contended that the Court of Appeals should not have taken cognizance of respondent Royal Ferry's appeal because it "failed to comply with Section 13, paragraphs (a),

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[32] *Rollo*, p. 89.

[33] *Id. See* CORP. CODE, *Sec. 51, which provides:*

Section 51. Place and Time of Meetings of Stockholders or Members. — Stockholders' or members' meetings, whether regular or special, shall be held in the city or municipality where the principal office of the corporation is located, and if practicable in the principal office of the corporation: Provided, That Metro Manila shall, for the purposes of this section, be considered a city or municipality.

[34] Act No. 1956 (1909), Sec. 82 provides:

Section 82. An appeal may be taken to the Supreme Court in the following cases:

1. From an order granting or refusing an adjudication of insolvency and, in the latter case, from the order fixing the amount of costs, expenses, damages, and attorney's fees allowed the debtor.

[35] *Rollo*, p. 91.

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

(c), (d), (e), (f), and (h), Rule 44 of the Rules of Court."[37] Petitioner claimed that the Court of Appeals erred when it held that the "petition for voluntary insolvency [was filed] in the proper venue since the cities of Makati and Manila are part of one region[.]"[38] According to petitioner, there was no reason to consider Makati and Manila as part of one region or province for the purpose of determining venue.[39]

Moreover, petitioner argued that since respondent's Articles of Incorporation stated that its principal office was located at 2521 A. Bonifacio St., Bangkal, Makati City,[40] the Petition for Voluntary Insolvency should have been filed in Makati, not in Manila. Petitioner cited *Hyatt Elevators and Escalators Corporation v. Goldstar Elevators Phils., Inc.*,[41] where this Court held that a corporation's residence was the place where its principal office was located as stated in its Articles of Incorporation.[42] Thus, the address in respondent's Articles of Incorporation should control the venue.

Finally, petitioner claimed that Section 81 of the Insolvency Law is inapplicable to this case as it contemplated a situation where the trial court had jurisdiction over the case.[43] Petitioner reiterated that because the venue was improperly laid, the trial court could not issue a final order declaring respondent insolvent.

In its Comment,[44] respondent averred that jurisdiction over the subject was determined by the allegations in the pleading.[45]

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[37] *Id*. at 29.

[38] *Id*. at 49.

[39] *Id*. at 50.

[40] *Id*. at 21.

[41] 510 Phil.467 (2005) [Per *J*. Panganiban, Third Division].

[42] *Rollo,* p. 50.

[43] *Id*. at 62.

[44] *Id*. at 448-476.

[45] *Id*. at 458.

Respondent argued that because it stated in its Petition that it held office in Manila, the Regional Trial Court of Manila had jurisdiction over the case.[46] It further asserted that the fiction of a corporation's residence must give way to fact.

On April 29, 2016, respondent moved to dismiss the case.[47] Respondent stated that it entered into a Compromise Agreement[48] with petitioner, which resulted in the Court of Appeals' judgment based on the compromise agreement.[49] It argued that the Judgment, promulgated in a related case docketed as CA-G.R. CV No. 102522,[50] made the present Petition moot and academic.[51] In CA-G.R. CV No. 102522, the Court of Appeals deemed the stipulations of the Compromise Agreement valid and not contrary to law, morals, good customs, public order, or public policy.[52] The dispositive portion of the Judgment reads:

> **WHEREFORE**, the foregoing premises considered, the Compromise Agreement is hereby **APPROVED** and judgment is hereby rendered in accordance therewith. The parties are hereby enjoined to comply with and abide by the said terms and conditions thereof. By virtue of such approval, this case is now deemed **CLOSED** and **TERMINATED**.
>
> **SO ORDERED**.[53] (Emphasis in the original)

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[46] *Id.* at 459.

[47] *Id.* at 525-530.

[48] *Id.* at 531-536.

[49] *Id.* at 542-548. The Judgment was penned by Associate Justice Socorro B. Inting and concurred in by Associate Justices Remedios Salazar-Fernando and Priscilla Baltazar-Padilla of the Second Division, Court of Appeals, Manila.

[50] CA-G.R. CV No. 102522 was entitled *Pilipinas Shell Petroleum Corporation v. Royal Ferry Services Inc., Antonino R. Gascon, Jr., and Jonathan D. Gascon.*

[51] *Rollo,* p. 526.

[52] *Id.* at 547.

[53] *Id.* at 548.

On September 23, 2016, petitioner filed a Comment[54] to respondent's Motion to Dismiss. It claimed that the Compromise Agreement was only between Pilipinas Shell, and Antonino R. Gascon, Jr., and Jonathan D. Gascon (the Gascons).[55] Respondent was not a party to the agreement.[56] Petitioner argued that it had agreed to waive any action against respondent's officers, directors, employees, stockholders, and successors-in-interest, but that it did not agree to waive its claim against respondent.[57]

On October 25, 2016, respondent filed a Reply[58] stating that petitioner was held solidarily liable with the Gascons in CA-G.R. CV No. 102522. Thus, when petitioner "released the Gascons, two (2) of the solidary debtors, of all their obligations",[59] petitioner effectively extinguished the entire obligation under Article 1215[60] of the Civil Code.

The issues for resolution are:

First, whether this Petition is moot and academic in light of the Compromise Agreement dated August 4, 2015;

Second, whether the Court of Appeals erred in taking cognizance of Royal Ferry's appeal despite its violation of Rule 44, Section 13 of the Rules of Court; and

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

[55] *Id*. at 555-556.

[56] *Id*.

[57] *Id*. at 556.

[58] *Id*. at 566-573.

[59] *Id*. at 568.

[60] CIVIL CODE, Art. 1215 provides:

Article 1215. Novation, compensation, confusion or remission of the debt, made by any of the solidary creditors or with any of the solidary debtors, shall extinguish the obligation, without prejudice to the provisions of Article 1219.

The creditor who may have executed any of these acts, as well as he who collects the debt, shall be liable to the others for the share in the obligation corresponding to them.

Lastly, whether the Petition for Insolvency was properly filed.

I

Respondent argues that the Petition is moot and academic in light of the Compromise Agreement. It alleges that petitioner has abandoned its claim against respondent and, consequently, lost its status as respondent's creditor. Thus, petitioner has no more interest in the case and can no longer question the insolvency proceeding.[61]

For its part, petitioner contends that it has waived only its claims against "[respondent's] Antonino R. Gascon, Jr. and Jonathan D. Gascon and its other officers, directors, employees, stockholders, successors-in-interest and did **not** waive or abandon any of its claims against [respondent]."[62] (Emphasis in the original).

Petitioner has not abandoned its claim against respondent. Paragraphs 4 and 5 of the Compromise Agreement provide:

> 4. The FIRST PARTY waives any further action of whatsoever nature, whether past, present or contingent, in connection with the causes of action against the SECOND PARTY and THIRD PARTY alleged in its complaint in Civil Case No. 05-773, entitled "*Pilipinas Shell Petroleum Corporation vs. Royal Ferry Services, Inc., Antonino R. Gascon, Jr. and Jonathan D. Gascon,*" already partially resolved by the Regional Trial Court of Makati, Branch 141 in its Partial Decision dated 20 May 2013 and Order dated 3 December 2013;
>
> 5. Should the Supreme Court of the Philippines rule in favor of the FIRST PARTY in "*Pilipinas Shell Petroleum Corporation vs. Royal Ferry Services, Inc.*" (G.R. No. 188146), or otherwise reinstate the Orders dated 15 June 2006 and 16 October 2006 of the Regional Trial Court of Manila, Branch 24, dismissing the Petition for Voluntary Insolvency filed by Royal Ferry Services, Inc., the FIRST PARTY agrees not to hold the officers, directors, employees, stockholders, successors-in-interest of Royal Ferry Services, Inc., the SECOND

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[61] *Rollo*, p. 526.

[62] *Id.* at 557.

PARTY, the THIRD PARTY, and the heirs and assigns of the foregoing personally liable for the obligations of Royal Ferry Services, Inc. to the FIRST PARTY, and, instead, abandon completely all causes of action against said officers, directors, employees, stockholders, successors-in-interest of Royal Ferry Services, Inc., the SECOND PARTY, the THIRD PARTY, and their heirs and assigns.[63]

The Compromise Agreement was between petitioner and the Gascons. Contrary to its claim, respondent was not a party to the agreement. Nowhere in the Compromise Agreement did petitioner agree to waive its claim against respondent.

In CA-G.R. CV No. 102522, petitioner held the Gascons solidarily liable with respondent for the same debt that petitioner was claiming in these proceedings. It is on this basis that respondent now asserts that it is a solidary debtor with the Gascons and can, thus, acquire the benefit stipulated in Article 1215[64] of the Civil Code.

Respondent did not present any other proof of this alleged solidary liability. In CA-G.R. CV No. 102522, one of petitioner's contentions was whether the corporate veil should be pierced to make the Gascons liable for respondent's liabilities. Before the Court of Appeals could rule on the matter, however, the Compromise Agreement had been executed and the case was closed.

A case is moot and academic when it ceases to present a justiciable controversy because of supervening events so that a declaration would be of no practical use or value.[65] As

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[63] *Id*. at 546-547.

[64] CIVIL CODE, Art. 1215 provides:

Article 1215. Novation, compensation, confusion or remission of the debt, made by any of the solidary creditors or with any of the solidary debtors, shall extinguish the obligation, without prejudice to the provisions of Article 1219.

The creditor who may have executed any of these acts, as well as he who collects the debt, shall be liable to the others for the share in the obligation corresponding to them.

[65] *Deutsche Bank AG v. Court of Appeals*, 683 Phil. 80, 88 (2012) [Per J. Mendoza, Third Division].

respondent has failed to establish that petitioner has abandoned its claim against it, petitioner continues to have an interest in the insolvency proceeding.

II

On the issue of the formal defects of respondent's appeal, we uphold the Court of Appeals Decision to rule on the merits of the case.

Petitioner alleges that respondent's Appellant's Brief has failed to comply with Rule 44, Section 13, paragraphs (a), (c), (d), (e), (f), and (h) of the Rules of Court:

> (a) First, the Appellant's Brief is bereft of page references to the record in its "Statements of Facts and of the Case" and its discussion supporting its assignment of errors, in violation of Section 13 (c), (d) and (f) of Rule 44.
>
> (b) Second, the Appellant's Brief failed to include a statement of the issues of fact or law to be submitted to [the Court of Appeals] for judgment, in violation of Section 13(e), Rule 44.
>
> (c) Third, the Appellant's Brief does not contain the page of the report on which the citation of authorities is found, in violation of Section 13(f), Rule 44.
>
> (d) Fourth, the table of cases is not alphabetically arranged, in violation of Section 13(a), Rule 44.
>
> (e) Fifth, the Appellants Brief does not contain, as an appendix, a copy of the judgment or final order appealed from, in violation of Section 13(h), Rule 44.[66]

On the other hand, respondent argues that it has substantially complied with the requirements under the law.[67] It claims that the absence of page references to the record in its "Statements of Facts and of the Case" has not automatically resulted in the dismissal of the appeal.[68] Further, as the records of this case

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[66] *Rollo*, pp. 28-29.

[67] *Id.* at 450.

[68] *Id.*

are not voluminous, the Court of Appeals was not inconvenienced by the lapse.[69]

Respondent likewise claims that although the Appellant's Brief did not specifically contain the phrase "statement of issues," the three errors in issue were identifiable through a reading of the Brief.[70] It claims that its failure to append a copy of the trial court Order has been mooted because the Court of Appeals has issued the Resolution requiring them to submit copies of the assailed Order.[71] Lastly, respondent argues that it only cited five (5) cases in the Brief. Hence, a citation of authorities was unnecessary.[72]

The Court of Appeals committed no reversible error in deciding to rule on the merits. The term "may" in Rule 50, Section 1[73]

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[69] *Id.* at 451.

[70] *Id.* at 452.

[71] *Id.*

[72] *Id.* at 453.

[73] RULES OF COURT, Rule 50, Sec. 1 provides:

Section 1. Grounds for dismissal of appeal.— An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:

(a) Failure of the record on appeal to show on its face that the appeal was taken within the period fixed by these Rules;

(b) Failure to file the notice of appeal or the record on appeal within the period prescribed by these Rules;

(c) Failure of the appellant to pay the docket and other lawful fees as provided in Section 5, Rule 40 and Section 4 of Rule 41;

(d) Unauthorized alterations, omissions or additions in the approved record on appeal as provided in Section 4 of Rule 44;

(e) Failure of the appellant to serve and file the required number of copies of his brief or memorandum within the time provided by these Rules;

(f) Absence of specific assignment of errors in the appellant's brief, or of page references to the record as required in Section 13, paragraphs (a), (c), (d) and (f) of Rule 44;

of the Rules of Court means that the Court of Appeals has discretion to dismiss an appeal based on the enumerated grounds. The Court of Appeals exercised its discretion when it decided that the interest of justice would be better served by overlooking the pleading's technical defects. Time and again, this Court has declared that dismissal on purely technical grounds is frowned upon.[74] It is judicial policy to determine a case based on the merits so that the parties have full opportunity to ventilate their cause and defenses.[75] The Court of Appeals did not err in taking cognizance of the appeal.

III

The Petition for Insolvency was properly filed before the Regional Trial Court of Manila.

The first insolvency law, Republic Act No. 1956, was entitled "An Act Providing for the Suspension of Payments, the Relief of Insolvent Debtors, the Protection of Creditors, and the Punishment of Fraudulent Debtors (Insolvency Law)." It was derived from the Insolvency Act of California (1895), with few provisions taken from the United States Bankruptcy Act of 1898.[76] With the enactment of Republic Act No. 10142, otherwise known as the Financial Rehabilitation and Insolvency Act of

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(g) Failure of the appellant to take the necessary steps for the correction or completion of the record within the time limited by the court in its order;

(h) Failure of the appellant to appear at the preliminary conference under Rule 48 or to comply with orders, circulars, or directives of the court without justifiable cause; and

(i) The fact that the order or judgment appealed from is not appealable.

[74] *Yap v. Court of Appeals*,200 Phil. 509 (1982) [Per *J*. Melencio-Herrera, First Division].

[75] *Bunsay v. Civil Service Commission*, 556 Phil. 720, 728 (2007) [Per *J*. Austria-Martinez, Third Division].

[76] *See Metropolitan Bank and Trust Company v. S.F. Naguiat Enterprises, Inc.*, G.R. No. 178407, March 18, 2015<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/march2015/178407.pdf> [Per *J*. Leonen, Second Division].

2010 (FRIA), the Insolvency Law was expressly repealed on July 18, 2010. The FRIA is currently the special law that governs insolvency. However, because the relevant proceedings in this case took place before the enactment of the FRIA, the case needs to be resolved under the provisions of the Insolvency Law.

Insolvency proceedings are defined as the statutory procedures by which a debtor obtains financial relief and undergoes judicially supervised reorganization or liquidation of its assets for the benefit of its creditors.[77]

Respondent argues that the Regional Trial Court of Manila obtained jurisdiction because in its Petition for Voluntary Insolvency, respondent alleged that its principal office was then found in Manila. On the other hand, petitioner argues that filing the petition before the Regional Trial Court of Manila was a patent jurisdictional defect as the Regional Trial Court of Manila did not have territorial jurisdiction over respondent's residence.[78]

Petitioner confuses the concepts of jurisdiction and venue. In *City of Lapu-Lapu v. Phil. Economic Zone Authority*:[79]

> On the one hand, jurisdiction is "the power to hear and determine cases of the general class to which the proceedings in question belong." Jurisdiction is a matter of substantive law. Thus, an action may be filed only with the court or tribunal where the Constitution or a statute says it can be brought. Objections to jurisdiction cannot be waived and may be brought at any stage of the proceedings, even on appeal. When a case is filed with a court which has no jurisdiction over the action, the court shall *motu proprio* dismiss the case.
>
> On the other hand, venue is "the place of trial or geographical location in which an action or proceeding should be brought." In

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[77] 2 STEPHANIE V. GOMEZ-SOMERA, CREDIT TRANSACTIONS; NOTES AND CASES 737 (2015).

[78] *Rollo*, p. 41.

[79] G..R. Nos. 184203 & 187583, November 26, 2014<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/november2014/184203.pdf> [Per *J.* Leonen, Second Division].

civil cases, venue is a matter of procedural law. A party's objections to venue must be brought at the earliest opportunity either in a motion to dismiss or in the answer; otherwise the objection shall be deemed waived. When the venue of a civil action is improperly laid, the court cannot *motu proprio* dismiss the case.[80] (Citations omitted)

Wrong venue is merely a procedural infirmity, not a jurisdictional impediment.[81] Jurisdiction is a matter of substantive law, while venue is a matter of procedural law.[82] Jurisdiction is conferred by law, and the Insolvency Law vests jurisdiction in the Court of First Instance—now the Regional Trial Court.

Jurisdiction is acquired based on the allegations in the complaint.[83] The relevant portion of respondent's Petition for Voluntary Insolvency reads:

> Petitioner was incorporated on 18 October 1996 with principal place of business in 2521 A. Bonifacio Street, Bangkal, Makati City. At present and during the past six months, [Royal Ferry] has held office in Rm. 203 BF Condo Building, Andres Soriano cor. Solano St., Intramuros, Manila, within the jurisdiction of the Honorable Court, where its books of accounts and most of its remaining assets are kept.[84]

Section 14 of the Insolvency Law specifies that the proper venue for a petition for voluntary insolvency is the Regional Trial Court of the province or city where the insolvent debtor has resided in for six (6) months before the filing of the petition.[85]

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

[81] *Gumabon v. Larin*, 422 Phil. 222, 228 (2001) [Per *J*. Vitug, Third Division].

[82] *City of Lapu-Lapu v. Phil. Economic Zone Authority*, G.R. No. 184203 & 187583, November 26, 2014<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/november2014/184203.pdf>26 [Per *J*. Leonen, Second Division].

[83] *Bernardo, Sr. v. Court of Appeals*, 331 Phil. 962, 975 (1996) [Per *J*. Davide, Third Division].

[84] *Rollo*, p. 103.

[85] Act No. 1956 (1909), Sec.14.

In this case, the issue of which court is the proper venue for respondent's Petition for Voluntary Insolvency comes from the confusion on an insolvent corporation's residence.

Petitioner contends that the residence of a corporation depends on what is stated in its articles of incorporation, regardless of whether the corporation physically moved to a different location. On the other hand, respondent posits that the fiction of a corporation's residence must give way to uncontroverted facts.

In *Young Auto Supply Co. v. Court of Appeals:*[86]

> A corporation has no residence in the same sense in which this term is applied to a natural person. But for practical purposes, a corporation is in a metaphysical sense a resident of the place where its principal office is located as stated in the articles of incorporation... The Corporation Code precisely requires each corporation to specify in its articles of incorporation the "place where the principal office of the corporation is to be located which must be within the Philippines"... The purpose of this requirement is to fix the residence of a corporation in a definite place, instead of allowing it to be ambulatory.[87]

Young Auto Supply dealt with the venue of a corporation's personal action by applying the provisions of the Rules of Court. Nonetheless, the Rules of Court also provides for when its provisions on venue do not apply. Rule 4, Section 4 provides:

> RULE 4
> *Venue of Actions*
>
> . . . . . .
>
> SECTION 4. *When Rule not applicable*. — This Rule shall not apply.
>
> (a) In those cases where a specific rule or law provides otherwise; or

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[86] G.R. No. 104175, June 25, 1993, 223 SCRA 670 [Per *J*. Quiason, First Division].

[87] *Id*. at 674.

(b) Where the parties have validly agreed in writing before the filing of the action on the exclusive venue thereof.

As there is a specific law that covers the rules on venue, the Rules of Court do not apply.

The old Insolvency Law provides that in determining the venue for insolvency proceedings, the insolvent corporation should be considered a resident of the place where its actual place of business is located six (6) months before the filing of the petition:

Sec. 14. Application. — An insolvent debtor, owing debts exceeding in amount the sum of one thousand pesos, may apply to be discharged from his debts and liabilities by petition to the Court of First Instance of province or city *in which he has resided for six months next preceding the filing of such petition*. In his petition he shall set forth his place of residence, the period of his residence therein immediately prior to filing said petition, his inability to pay all his debts in full, his willingness to surrender all his property, estate, and effects not exempt from execution for the benefit of his creditors, and an application to be adjudged an insolvent. He shall annex to his petition a schedule and inventory in the form herein-after provided. The filing of such petition shall be an act of insolvency. (Emphasis supplied)[88]

The law places a premium on the place of residence before a petition is filed since venue is a matter of procedure that looks at the convenience of litigants.[89] In insolvency proceedings, this Court needs to control the property of the insolvent corporation. In *Metropolitan Bank and Trust Company v. S.F. Naguiat Enterprises, Inc.*:[90]

Conformably, it is the policy of Act No. 1956 to place all the assets and liabilities of the insolvent debtor completely within the

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[88] Act No. 1956 (1909), Sec.14.

[89] *Gumabon v. Larin*, 422 Phil.222, 229 (2001) [Per *J.* Vitug, Third Division].

[90] G.R. No. 178407, March 18, 2015<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/march2015/178407.pdf> [Per *J.* Leonen, Second Division].

jurisdiction and control of the insolvency court without the intervention of any other court in the insolvent debtor's concerns or in the administration of the estate. It was considered to be of prime importance that the insolvency proceedings follow their course as speedily as possible in order that a discharge, if the insolvent debtor is entitled to it, should be decreed without unreasonable delay. "Proceedings of [this] nature cannot proceed properly or with due dispatch unless they are controlled absolutely by the court having charge thereof."[91] (Citations omitted)

To determine the venue of an insolvency proceeding, the residence of a corporation should be the actual place where its principal office has been located for six (6) months before the filing of the petition. If there is a conflict between the place stated in the articles of incorporation and the physical location of the corporation's main office, the actual place of business should control.

Requiring a corporation to go back to a place it has abandoned just to file a case is the very definition of inconvenience. There is no reason why an insolvent corporation should be forced to exert whatever meager resources it has to litigate in a city it has already left.

In any case, the creditors deal with the corporation's agents, officers, and employees in the actual place of business. To compel a corporation to litigate in a city it has already abandoned would create more confusion.

Moreover, the six (6)-month qualification of the law's requirement of residence shows intent to find the most accurate location of the debtor's activities. If the address in a corporation's articles of incorporation is proven to be no longer accurate, then legal fiction should give way to fact.

Petitioner cites *Hyatt Elevators and Escalators Corp. v. Goldstar Elevators Phils. Inc.*,[92] where this Court ruled that a

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[91] *Id*. at 11.

[92] 510 Phil.467 (2005) [Per *J*. Panganiban, Third Division].

corporation's articles of incorporation is the controlling document that determines the venue of a corporation's action.[93] Thus, abandoning the principal office does not affect the venue of the corporation's personal action if the corporation's articles of incorporation were not previously amended to reflect this change.

Two glaring differences between this case and *Hyatt* make the latter inapplicable. First, *Hyatt* found inconclusive the allegation that the petitioner corporation relocated to a different city.[94] Here, the Regional Trial Court found that respondent had sufficiently shown that it had been a resident of Manila for six (6) months before it filed its Petition for Voluntary Insolvency.[95] Second, and more importantly, *Hyatt* involves a complaint for unfair trade practices and damages—a personal action governed by the Civil Code and the Rules of Court.[96] This case, however, involves insolvency, a special proceeding governed by a special law that specifically qualifies the residence of the petitioner.

IV

We cannot sustain the ruling of the Court of Appeals that the "petition for voluntary insolvency [was filed] in the proper venue since the cities of Makati and Manila are part of one region[.]"[97] This is untenable. Section 14 of Batas Pambansa Blg. 129 provides several judges to preside over the different branches assigned to Manila and Makati. Thus, the two venues are distinct:

(d) One hundred seventy-two Regional Trial Judges shall be commissioned for the National Capital Judicial Region. There shall be:

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[93] *Id.* at 476.

[94] *Id.*

[95] *Rollo*, p. 209.

[96] *Hyatt Elevators and Escalators Corp. v. Goldstar Elevators Phils. Inc.*, 510 Phil. 467, 474 (2005) [Per *J.* Panganiban, Third Division].

[97] *Rollo*, p. 49.

> *Eighty-two branches (Branches I to LXXXII) for the city of Manila, with seats thereat;*
>
> Twenty-five branches (Branches LXXXIII to CVII) for Quezon City, with seats thereat;
>
> Twelve branches (Branches CVIII to CXIX) for Pasay City, with seats thereat;
>
> Twelve branches (Branches CXX to CXXXI) for Caloocan City, with seats thereat;
>
> Thirty-nine branches (Branches CXXXII to CLXX) for the municipalities of Navotas, Malabon, San Juan, Mandaluyong, Makati, Pasig, Pateros, Taguig, Marikina, Parañaque, Las Piñas, and Muntinlupa, *Branches CXXXII to CL with seats at Makati*, Branches CLI to CLXVIII at Pasig, and Branches CLXIX and CLXX at Malabon; and
>
> Two branches (Branches CLXXI and CLXXII) for the municipality of Valenzuela, with seats thereat. (Emphasis supplied)

Despite being in the same region, Makati and Manila are treated as two distinct venues. To deem them as interchangeable venues for being in the same region has no basis in law.

Respondent is a resident of Manila. The law should be read to lay the venue of the insolvency proceeding in the actual location of the debtor's activities. If it is uncontroverted that respondent's address in its Articles of Incorporation is no longer accurate, legal fiction should give way to fact. Thus, the Petition was correctly filed before the Regional Trial Court of Manila.

WHEREFORE, the Petition for Review on Certiorari is **DENIED**. The assailed Decision dated January 30, 2009 and the Resolution dated May 26, 2009 of the Court of Appeals in CA-G.R. CV No. 88320 are **AFFIRMED**.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 188996. February 1, 2017]

SERI SOMBOONSAKDIKUL, *petitioner, vs.* **ORLANE S.A.,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; FINDINGS OF ADMINISTRATIVE AGENCIES, GENERALLY RESPECTED; EXCEPTIONS; WHEN THERE IS ABSOLUTELY NO EVIDENCE IN SUPPORT THEREOF.—** While it is an established rule in administrative law that the courts of justice should respect the findings of fact of administrative agencies, the courts may not be bound by such findings of fact when there is absolutely no evidence in support thereof or such evidence is clearly, manifestly and patently insubstantial; and when there is a clear showing that the administrative agency acted arbitrarily or with grave abuse of discretion or in a capricious and whimsical manner, such that its action may amount to an excess or lack of jurisdiction. Moreover, when there is a showing that the findings or conclusions, drawn from the same pieces of evidence, were arrived at arbitrarily or in disregard of the evidence on record, they may be reviewed by the courts. Such is the case here.

2. **COMMERCIAL LAW; INTELLECTUAL PROPERTY CODE OF THE PHILIPPINES (RA 8293); TRADEMARK; REGISTRABILITY; WHEN A MARK CANNOT BE REGISTERED.—** A trademark is defined under Section 121.1 of RA 8293 as any visible sign capable of distinguishing the goods. It is susceptible to registration if it is crafted fancifully or arbitrarily and is capable of identifying and distinguishing the goods of one manufacturer or seller from those of another. Thus, the mark must be distinctive. The registrability of a trademark is governed by Section 123 of RA 8293. Section 123.1 provides: Section 123. Registrability. – 123.1 A mark cannot be registered if it: x x x d. Is identical with a registered mark belonging to a different proprietor or a mark with an earlier filing or priority date, in respect of: i. The same goods or services,

or ii. Closely related goods or services, or iii. If it nearly resembles such a mark as to be likely to deceive or cause confusion; e. Is identical with, or confusingly similar to, or constitutes a translation of a mark which is considered by the competent authority of the Philippines to be well-known internationally and in the Philippines, whether or not it is registered here, as being already the mark of a person other than the applicant for registration, and used for identical or similar goods or services: Provided, That in determining whether a mark is well-known, account shall be taken of the knowledge of the relevant sector of the public, rather than of the public at large, including knowledge in the Philippines which has been obtained as a result of the promotion of the mark.

3. ID.; ID.; ID.; ID.; ID.; LIKELIHOOD OF CONFUSION; REQUIREMENTS LAID DOWN IN THE CASE OF *MIGHTY CORPORATION v. E & J GALLO WINERY;* THE MOST ESSENTIAL REQUIREMENT IS THE EXISTENCE OF RESEMBLANCE BETWEEN THE TRADEMARKS (COLORABLE IMITATION).— In *Mighty Corporation v. E. & J. Gallo Winery*, we laid down the requirements for a finding of likelihood of confusion, thus: There are two types of confusion in trademark infringement. The first is "confusion of goods" when an otherwise prudent purchaser is induced to purchase one product in the belief that he is purchasing another, in which case defendant's goods are then bought as the plaintiffs and its poor quality reflects badly on the plaintiffs reputation. The other is "confusion of business" wherein the goods of the parties are different but the defendant's product can reasonably (though mistakenly) be assumed to originate from the plaintiff, thus deceiving the public into believing that there is some connection between the plaintiff and defendant which, in fact, does not exist. **In determining the likelihood of confusion, the Court must consider: [a] the resemblance between the trademarks; [b] the similarity of the goods to which the trademarks are attached; [c] the likely effect on the purchaser and [d] the registrant's express or implied consent and other fair and equitable considerations.** While *Mighty Corporation* enumerates four requirements, the most essential requirement, to our mind, for the determination of likelihood of confusion is the existence of resemblance between the trademarks, *i.e.*, colorable imitation. Absent any finding of its existence, there

can be no likelihood of confusion. Thus we held: x x x Whether a trademark causes confusion and is likely to deceive the public hinges on "colorable imitation" which has been defined as "such similarity in form, content, words, sound, meaning, special arrangement or general appearance of the trademark or trade name in their overall presentation or in their essential and substantive and distinctive parts as would likely mislead or confuse persons in the ordinary course of purchasing the genuine article."

4. **ID.; ID.; ID.; ID.; ID.; COLORABLE IMITATION; DETERMINED BY THE DOMINANCY TEST OR HOLISTIC TEST.—** In determining colorable imitation, we have used either the dominancy test or the holistic or totality test. The dominancy test considers the similarity of the prevalent or dominant features of the competing trademarks that might cause confusion, mistake, and deception in the mind of the purchasing public. More consideration is given on the aural and visual impressions created by the marks on the buyers of goods, giving little weight to factors like process, quality, sales outlets, and market segments. On the other hand, the holistic test considers the entirety of the marks as applied to the products, including the labels and packaging, in determining confusing similarity. The focus is not only on the predominant words but also on the other features appearing on the labels.

5. **ID.; ID.; ID.; ID.; ID.; ID.; DOMINANCY TEST; WHAT ARE USUALLY TAKEN INTO ACCOUNT ARE SIGNS, COLOR, DESIGN, PECULIAR SHAPE OR NAME, OR SOME SPECIAL, EASILY REMEMBERED EARMARKS OF THE BRAND THAT READILY ATTRACTS AND CATCHES THE ATTENTION OF THE ORDINARY CONSUMER.—** While there are no set rules as what constitutes a dominant feature with respect to trademarks applied for registration, usually, what are taken into account are signs, color, design, peculiar shape or name, or some special, easily remembered earmarks of the brand that readily attracts and catches the attention of the ordinary consumer. In *UFC Philippines, Inc.*, what we considered as the dominant feature of the mark is the first word/figure that catches the eyes or that part which appears prominently to the eyes and ears.

APPEARANCES OF COUNSEL

Angara Abello Concepcion Regala & Cruz for petitioner.
Saludo Agpalo Fernandez Aquino & Taleon for respondent.

D E C I S I O N

JARDELEZA, *J.*:

Assailed in this petition is the Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 105229 dated July 14, 2009 which affirmed the decision of the Director General of the Intellectual Property Office (IPO) denying the application for the mark "LOLANE."

Facts

On September 23, 2003, petitioner Seri Somboonsakdikul (petitioner) filed an application for registration[2] of the mark LOLANE with the IPO for goods[3] classified under Class 3 (personal care products) of the International Classification of Goods and Services for the Purposes of the Registration of Marks

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[1] *Rollo*, pp. 43-60. Penned by Associate Justice Portia-Aliño Hormachuelos with Associate Justices Magdangal M. De Leon and Myrna Dimaranan Vidal, concurring.

[2] CA *rollo*, pp. 263-265. The application was docketed as Application No. 4-2003-0008858 and published for opposition in the December 17, 2004 issue of the IPO's electronic gazette, *id.* at 45.

[3] Hair decolorants; soaps; shampoos; hair colorants; hair dyes; hair lotion; hair waving preparations; hair straightener cream; hair sprays; hair mousse; hair gel; hair conditioner; henna color wax; pomades for cosmetic purpose; color treatment; active mud for hair and scalp; skin whitening cream; cleansing cream; cleansing lotion; cream rinse; pearl cream, eye cream, skin cream, skin milk, skin lotion, cold cream, moisture cream, moisture milk, moisture lotion, cleansing foam, cleansing milk; mineral water (for cosmetic purposes); mask powder (for cosmetic purposes); mask cream (for cosmetic purposes); roll-on; whitening roll-on; deodorants for personal use; facial massaging cream; facial massaging powder, Declaration of Actual Use, *id.* at 195.

(International Classification of Goods).[4] Orlane S.A. (respondent) filed an opposition to petitioner's application, on the ground that the mark LOLANE was similar to ORLANE in presentation, general appearance and pronunciation, and thus would amount to an infringement of its mark.[5] Respondent alleged that: (1) it was the rightful owner of the ORLANE mark which was first used in 1948; (2) the mark was earlier registered in the Philippines on July 26, 1967 under Registration No. 129961 for the following goods:[6]

> x x x perfumes, toilet water, face powders, lotions, essential oils, cosmetics, lotions for the hair, dentrifices, eyebrow pencils, make-up creams, cosmetics & toilet preparations under Registration No. 12996.[7]

and (3) on September 5, 2003, it filed another application for use of the trademark on its additional products:

> x x x toilet waters; revitalizing waters, perfumes, deodorants and body deodorants, anti-perspiration toiletries; men and women perfume products for face care and body care; face, eye, lips, nail, hand make-up products and make-up removal products, towels impregnated with cosmetic lotions; tanning and instant tanning sunproducts, sunprotection products, (not for medical use), after-suncosmetic products; cosmetic products; slimming cosmetic aids; toiletries; lotions, shampoos and hair care products; shave and after shave products, shaving and hair removing products; essential oils; toothpastes; toiletry, cosmetic and shaving kits for travel, filled or fitted vanity-cases[.][8]

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[4] World Intellectual Property Organization, International Classification of Goods and Services for the Purposes of the Registration of Marks, (Nice Classification), Part II, With List of Goods and Services in Class Order, Eight Edition, 2001. Class 3 provides:

> *Class 3* Bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparations; soaps; perfumery, essential oils, cosmetics, hair lotions; dentifrices

[5] *Rollo*, pp. 44-45.

[6] *Id.* at 45.

[7] CA *rollo*, p. 86.

[8] *Id*. Respondent alleged in its comment before the CA that its goods fell under Class 3 of the International Classification of Goods, CA *rollo*, p. 606.

Respondent adds that by promotion, worldwide registration, widespread and high standard use, the mark had acquired distinction, goodwill, superior quality image and reputation and was now well-known.[9] Imputing bad faith on the petitioner, respondent claimed that LOLANE's first usage was only on August 19, 2003.[10]

In his answer,[11] petitioner denied that the LOLANE mark was confusingly similar to the mark ORLANE. He averred that he was the lawful owner of the mark LOLANE which he has used for various personal care products sold worldwide. He alleged that the first worldwide use of the mark was in Vietnam on July 4, 1995. Petitioner also alleged that he had continuously marketed and advertised Class 3 products bearing LOLANE mark in the Philippines and in different parts of the world and that as a result, the public had come to associate the mark with him as provider of quality personal care products.[12]

Petitioner maintained that the marks were distinct and not confusingly similar either under the dominancy test or the holistic test. The mark ORLANE was in plain block upper case letters while the mark LOLANE was printed in stylized word with the second letter L and the letter A co-joined. Furthermore, the similarity in one syllable would not automatically result in confusion even if used in the same class of goods since his products always appear with Thai characters while those of ORLANE always had the name Paris on it. The two marks are also pronounced differently. Also, even if the two marks contained the word LANE it would not make them confusingly similar since the IPO had previously allowed the co-existence of trademarks containing the syllable "joy" or "book" and that he also had existing registrations and pending applications for registration in other countries.[13]

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[9] *Rollo*, pp. 44-45.

[10] *Id.* at 45.

[11] CA *rollo*, pp. 179-193.

[12] *Id.* at 184-186.

[13] *Id.* at 187-189.

The Bureau of Legal Affairs (BLA) rejected petitioner's application in a Decision[14] dated February 27, 2007, finding that respondent's application was filed, and its mark registered, much earlier.[15] The BLA ruled that there was likelihood of confusion based on the following observations: (1) ORLANE and LOLANE both consisted of six letters with the same last four letters – LANE; (2) both were used as label for similar products; (3) both marks were in two syllables and that there was only a slight difference in the first syllable; and (4) both marks had the same last syllable so that if these marks were read aloud, a sound of strong similarity would be produced and such would likely deceive or cause confusion to the public as to the two trademarks.[16]

Petitioner filed a motion for reconsideration but this was denied by the Director of the BLA on May 7, 2007.[17] The BLA ruled that the law did not require the marks to be so identical as to produce actual error or mistake as the likelihood of confusion was enough. The BLA also found that the dominant feature in both marks was the word LANE; and that the marks had a strong visual and aural resemblance that could cause confusion to the buying public. This resemblance was amplified by the relatedness of the goods.[18]

On appeal, the Director General of the IPO affirmed the Decision of the BLA Director. Despite the difference in the first syllable, there was a strong visual and aural resemblance since the marks had the same last four letters, *i.e.*, LANE, and such word is pronounced in this jurisdiction as in "pedestrian lane."[19] Also, the mark ORLANE is a fanciful mark invented

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[14] *Id.* at 463-468.

[15] CA *rollo*, pp. 463-468.

[16] *Rollo*, p. 46.

[17] CA *rollo*, pp. 479-482.

[18] *Id.* at 481.

[19] *Id.* at 37.

by the owner for the sole purpose of functioning as a trademark and is highly distinctive. Thus, the fact that two or more entities would accidentally adopt an identical or similar fanciful mark was too good to be true especially when they dealt with the same goods or services.[20] The Director General also noted that foreign judgments invoked by petitioner for the grant of its application are not judicial precedents.[21]

Thus, petitioner filed a petition for review[22] before the CA arguing that there is no confusing similarity between the two marks. Petitioner maintained that LANE is not the dominant feature of the mark and that the dominancy test did not apply since the trademarks are only plain word marks and the dominancy test presupposes that the marks involved are composite marks.[23] Petitioner pointed out that the IPO had previously allowed the mark GIN LANE under Registration No. 4-2004-006914 which also involved products under Class 3.[24] While petitioner admitted that foreign judgments are not judicial precedents, he argued that the IPO failed to recognize relevant foreign judgments, *i.e.*, the Australian Registrar of Trademarks and the IPO of Singapore which ruled that there was no confusing similarity between the marks LOLANE and ORLANE.[25] Lastly, the Director General should have deferred to the findings of the Trademark Examiner who made a substantive examination of the application for trademark registration, and who is an expert in the field and is in the best position to determine whether there already exists a registered mark or mark for registration. Since petitioner's application for registration of the mark LOLANE proceeded to allowance and publication without any adverse citation of a prior

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[20] *Id.* at 38.

[21] *Id.* at 34-35.

[22] *Id.* at 60-82.

[23] *Id.* at 67-68.

[24] *Id.* at 80.

[25] *Id.* at 74-78.

confusingly similar mark, this meant that the Trademark Examiner was of the view that LOLANE was not confusingly similar to ORLANE.[26]

The CA Ruling

The CA denied the petition and held that there exists colorable imitation of respondent's mark by LOLANE.[27]

The CA accorded due respect to the Decision of the Director General and ruled that there was substantial evidence to support the IPO's findings of fact. Applying the dominancy test, the CA ruled that LOLANE's mark is confusingly or deceptively similar to ORLANE. There are predominantly striking similarities in the two marks including LANE, with only a slight difference in the first letters, thus the two marks would likely cause confusion to the eyes of the public. The similarity is highlighted when the two marks are pronounced considering that both are one word consisting of two syllables. The CA ruled that when pronounced, the two marks produce similar sounds.[28] The CA did not heed petitioner's contention that since the mark ORLANE is of French origin, the same is pronounced as "OR-LAN." Filipinos would invariably pronounce it as "OR-LEYN."[29] The CA also noted that the trademark ORLANE is a fanciful name and petitioner was not able to explain why he chose the word LOLANE as trademark for his personal care products. Thus, the only logical conclusion is that he would want to benefit from the established reputation and goodwill of the ORLANE mark.[30]

The CA rejected petitioner's assertion that his products' cheaper price and low-income market eliminates the likelihood

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

[27] *Rollo*, p. 52.

[28] *Id.* at 53-54.

[29] *Id.* at 54.

[30] *Id.* at 54-55.

of confusion. Low-income groups, and even those who usually purchased ORLANE products despite the higher cost, may be led to believe that LOLANE products are low-end personal care products also marketed by respondent.[31]

The CA upheld the applicability of the dominancy test in this case. According to the CA, the dominancy test is already recognized and incorporated in Section 155.1 of Republic Act No. 8293 (RA 8293), otherwise known as the Intellectual Property Code of the Philippines.[32] Citing *McDonald's Corporation v. MacJoy Fastfood Corporation,*[33] the CA ruled that the dominancy test is also preferred over the holistic test. This is because the latter relies only on the visual comparison between two trademarks, whereas the dominancy test relies not only on the visual, but also on their aural and connotative comparisons, and their overall impressions created.[34] Nonetheless, the CA stated that there is nothing in this jurisdiction dictating that the dominancy test is applicable for composite marks.[35]

The CA was not swayed by the alleged favorable judgment by the IPO in the GIN LANE application, ruling that in trademark cases, jurisprudential precedents should be applied only to a case if they are specifically in point.[36] It also did not consider the ruling of the IPOs in Australia, South Africa, Thailand and Singapore which found no confusing similarity between the marks LOLANE and ORLANE, stating that foreign judgments do not constitute judicial precedent in this jurisdiction.[37]

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[31] *Id.* at 55.

[32] An Act Prescribing the Intellectual Property Code and Establishing the Intellectual Property Office, Providing for its Powers and Functions, and for Other Purposes (1997).

[33] G.R. No. 166115, February 2, 2007, 514 SCRA 95.

[34] *Rollo*, p. 56.

[35] *Id.* at 55.

[36] *Id.* at 57.

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

Finally, the CA did not give merit to petitioner's contention that the Director General should have deferred to the findings of the Trademark Examiner. According to the CA, the proceedings before the Trademark Examiner are *ex-parte,*[38] and his findings are merely *prima facie.* Whatever his decision may be is still subject to review and/or appeal.[39]

The Petition[40]

Petitioner maintains that the CA erred in its interpretation of the dominancy test, when it ruled that the dominant feature of the contending marks is the suffix "LANE."[41] The CA failed to consider that in determining the dominant portion of a mark, significant weight must be given to whether the buyer would be more likely to remember and use one part of a mark as indicating the origin of the goods.[42] Thus, that part which will likely make the most impression on the ordinary viewer will be treated as the dominant portion of conflicting marks and given greater weight in the comparison.[43]

Petitioner argues that both LOLANE and ORLANE are plain word marks which are devoid of features that will likely make the most impression on the ordinary viewer. If at all, the very word marks themselves, LOLANE and ORLANE are each to be regarded as dominant features.[44] Moreover, the suffix LANE is a weak mark, being "in common use by many other sellers in the market."[45] Thus, LANE is also used in the marks

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[38] *Id.* at 58, citing Rule 600 of the Rules and Regulations on Trademarks, Service Marks, Tradenames and Marked or Stamped Containers.

[39] *Id.* at 58-59, citing Rule 1102 of the Rules and Regulations on Trademarks, Service Marks, Tradenames and Marked or Stamped Containers and Sections. 7.1 and 10.1 of RA 8293.

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

[41] *Id.* at 21.

[42] *Id.* at 21-22.

[43] *Id.* at 22.

[44] *Id.*

[45] *Id.* Citation omitted.

SHELLANE and GIN LANE, the latter covering goods under Class 3. Moreover, the two marks are aurally different since respondent's products originate from France and is read as "OR-LAN" and not "OR-LEYN."[46]

Petitioner also claims that the CA completely disregarded the holistic test, thus ignoring the dissimilarity of context between LOLANE and ORLANE. Assuming that the two marks produce similar sounds when pronounced, the differences in marks in their entirety as they appear in their respective product labels should still be the controlling factor in determining confusing similarity.[47]

Besides, there has been no explicit declaration abandoning the holistic test.[48] Thus, petitioner urges us to go beyond the similarities in spelling and instead consider how the marks appear in their respective labels, the dissimilarities in the size and shape of the containers, their color, words appearing thereon and the general appearance,[49] hence: (1) the commonality of the marks ORLANE and LOLANE starts from and ends with the four-letter similarity—LANE and nothing else;[50] (2) ORLANE uses "safe" or conventional colors while LOLANE uses loud or psychedelic colors and designs with Thai characters;[51] and (3) ORLANE uses the term "Paris," indicating the source of origin of its products.[52]

Petitioner likewise claims that consumers will be more careful in their choice because the goods in question are directly related to personal hygiene and have direct effects on their well-being,

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[46] *Rollo*, pp. 22-23.

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

[48] *Id.* at 24.

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

[50] *Id.* at 26.

[51] *Id.* at 29.

[52] *Id.*

health and safety.[53] Moreover, with the huge price difference between ORLANE and LOLANE products, relevant purchasers are less likely to be confused.[54]

Finally, petitioner notes that respondent has neither validly proven nor presented sufficient evidence that the mark ORLANE is in actual commercial use in the Philippines. Respondent failed to allege in any of its pleadings submitted to the IPO's BLA and the IPO Director General the names of local outlets that products bearing the mark ORLANE are being marketed or sold to the general consuming public.[55]

Respondent's Comment[56]

Respondent reiterates the decisions of the CA and the IPO.[57] It maintains that ORLANE is entitled to protection under RA 8293 since it is registered with the IPO with proof of actual use.[58] Respondent posits that it has established in the world[59] and in the Philippines an image and reputation for manufacturing and selling quality beauty products. Its products have been sold in the market for 61 years and have been used in the Philippines since 1972.[60] Thus, to allow petitioner's application would unduly prejudice respondent's right over its registered trademark.[61]

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[53] *Rollo*, p. 30.

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

[55] *Id.* at 34.

[56] *Id.* at 63-80.

[57] *Id.* at 66-74.

[58] *Id.* at 67.

[59] In its comment, respondent claimed that as early as 1946, it sought registration of its mark in countries such as Canada, Russia, India, Indonesia, Korea, Singapore, Taiwan, Thailand, Australia, and through the Madrid Protocol, Algeria, Germany, Austria, Benelux, Bosnia, Egypt, Macedonia, Hungary, Italy, Liechtenstein, Morocco, Monaco, Korea, Romania, San Marino, Switzerland, Vietnam, Yugoslavia, Bulgaria, Poland, Portugal and Spain, *id.* at 76.

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

[61] *Id.* at 76.

Lastly, respondent argues that decisions of administrative agencies such as the IPO shall not be disturbed by the courts, absent any showing that the former have acted without or in excess of their jurisdiction, or with grave abuse of discretion.[62]

Issue

We resolve the issue of whether there is confusing similarity between ORLANE and LOLANE which would bar the registration of LOLANE before the IPO.

Our Ruling

We find that the CA erred when it affirmed the Decision of the IPO.

While it is an established rule in administrative law that the courts of justice should respect the findings of fact of administrative agencies, the courts may not be bound by such findings of fact when there is absolutely no evidence in support thereof or such evidence is clearly, manifestly and patently insubstantial; and when there is a clear showing that the administrative agency acted arbitrarily or with grave abuse of discretion or in a capricious and whimsical manner, such that its action may amount to an excess or lack of jurisdiction.[63] Moreover, when there is a showing that the findings or conclusions, drawn from the same pieces of evidence, were arrived at arbitrarily or in disregard of the evidence on record, they may be reviewed by the courts.[64] Such is the case here.

There is no colorable imitation between the marks LOLANE and ORLANE which would lead to any likelihood of confusion to the ordinary purchasers.

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[62] *Id.* at 77.

[63] *Office of the Ombudsman v. Capulong,* G.R. No. 201643, March 12, 2014, 719 SCRA 209, 218.

[64] *Leus v. St. Scholastica's College Westgrove,* G.R. No. 187226, January 28, 2015, 748 SCRA 378, 397.

A trademark is defined under Section 121.1 of RA 8293 as any visible sign capable of distinguishing the goods. It is susceptible to registration if it is crafted fancifully or arbitrarily and is capable of identifying and distinguishing the goods of one manufacturer or seller from those of another.[65] Thus, the mark must be distinctive.[66] The registrability of a trademark is governed by Section 123 of RA 8293. Section 123.1 provides:

Section 123. Registrability. –

123.1. A mark cannot be registered if it:

x x x x x x x x x

d. Is identical with a registered mark belonging to a different proprietor or a mark with an earlier filing or priority date, in respect of:

i. The same goods or services, or
ii. Closely related goods or services, or
iii. If it nearly resembles such a mark as to be likely to deceive or cause confusion;

e. Is identical with, or confusingly similar to, or constitutes a translation of a mark which is considered by the competent authority of the Philippines to be well-known internationally and in the Philippines, whether or not it is registered here, as being already the mark of a person other than the applicant for registration, and used for identical or similar goods or services: Provided, That in determining whether a mark is well-known, account shall be taken of the knowledge of the relevant sector of the public, rather than of the public at large, including knowledge in the Philippines which has been obtained as a result of the promotion of the mark;

x x x x x x x x x

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[65] *Great White Shark Enterprises, Inc. v. Caralde, Jr.,* G.R. No. 192294, November 21, 2012, 686 SCRA 201, 207.

[66] *Id*., citing *McDonald's Corporation v. L.C. Big Mak Burger, Inc*., G.R. No. 143993, August 18, 2004, 437 SCRA 10, 26.

In *Mighty Corporation v. E. & J. Gallo Winery,*[67] we laid down the requirements for a finding of likelihood of confusion, thus:

> There are two types of confusion in trademark infringement. The first is "confusion of goods" when an otherwise prudent purchaser is induced to purchase one product in the belief that he is purchasing another, in which case defendant's goods are then bought as the plaintiff's and its poor quality reflects badly on the plaintiff's reputation. The other is "confusion of business" wherein the goods of the parties are different but the defendant's product can reasonably (though mistakenly) be assumed to originate from the plaintiff, thus deceiving the public into believing that there is some connection between the plaintiff and defendant which, in fact, does not exist.
>
> **In determining the likelihood of confusion, the Court must consider: [a] the resemblance between the trademarks; [b] the similarity of the goods to which the trademarks are attached; [c] the likely effect on the purchaser and [d] the registrant's express or implied consent and other fair and equitable considerations.** (Citations omitted, emphasis supplied.)[68]

While *Mighty Corporation* enumerates four requirements, the most essential requirement, to our mind, for the determination of likelihood of confusion is the existence of resemblance between the trademarks, *i.e.*, colorable imitation. Absent any finding of its existence, there can be no likelihood of confusion. Thus we held:

> Whether a trademark causes confusion and is likely to deceive the public hinges on "colorable imitation" which has been defined

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[67] G.R. No. 154342, July 14, 2004, 434 SCRA 473.

[68] *Id.* at 504. We note that while in *Mighty Corporation*, likelihood of confusion was discussed in relation to trademark infringement, the concept is similarly applicable to an application for trademark registration under Section 123.1(d). Thus, in *Great White Shark Enterprises, Inc. v. Caralde, Jr., supra* note 65, which originated from a trademark application case, we discussed the dominancy test and holistic test as modes of determining similarity or likelihood of confusion and consequently, determining whether a mark is capable of registration under Section 123.1(d).

as "such similarity in form, content, words, sound, meaning, special arrangement or general appearance of the trademark or trade name in their overall presentation or in their essential and substantive and distinctive parts as would likely mislead or confuse persons in the ordinary course of purchasing the genuine article." (Citations omitted.)[69]

We had the same view in *Emerald Garment Manufacturing Corporation v. Court of Appeals,*[70] where we stated:

Proceeding to the task at hand, **the essential element of infringement is colorable imitation.** This term has been defined as "such a close or ingenious imitation as to be calculated to deceive ordinary purchasers, or such resemblance of the infringing mark to the original as to deceive an ordinary purchaser giving such attention as a purchaser usually gives, and to cause him to purchase the one supposing it to be the other."

Colorable imitation does not mean such similitude as amounts to identity. Nor does it require that all the details be literally copied. x x x (Citation omitted, emphasis supplied.)[71]

In determining colorable imitation, we have used either the dominancy test or the holistic or totality test. The dominancy test considers the similarity of the prevalent or dominant features of the competing trademarks that might cause confusion, mistake, and deception in the mind of the purchasing public. More consideration is given on the aural and visual impressions created by the marks on the buyers of goods, giving little weight to factors like process, quality, sales outlets, and market segments.[72]

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[69] *Supra* note 67 at 506.

[70] G.R. No. 100098, December 29, 1995, 251 SCRA 600.

[71] *Id.* at 614.

[72] *Skechers, U.S.A., Inc. v. Inter Pacific Industrial Trading Corp.*, G.R. No. 164321, March 28, 2011, 646 SCRA 448, 455-456, citing *Prosource International, Inc. v. Horphag Research Management SA*, G.R. No. 180073, November 25, 2009, 605 SCRA 523, 531; *McDonald's Corporation v. MacJoy Fastfood Corporation*, *supra* note 33 at 106; and *McDonald's Corporation v. L.C. Big Mak Burger, Inc.*, G.R. No. 143993, August 18, 2004, 437 SCRA 10, 32.

On the other hand, the holistic test considers the entirety of the marks as applied to the products, including the labels and packaging, in determining confusing similarity. The focus is not only on the predominant words but also on the other features appearing on the labels.[73]

The CA's use of the dominancy test is in accord with our more recent ruling in *UFC Philippines, Inc. (now merged with Nutria-Asia, Inc. as the surviving entity) v. Barrio Fiesta Manufacturing Corporation*.[74] In *UFC Philippines, Inc.*, we relied on our declarations in *McDonald's Corporation v. L.C. Big Mak Burger, Inc.,*[75] *Co Tiong Sa v. Director of Patents,*[76] and *Societe Des Produits Nestle, S.A. v. Court of Appeals*[77] that the dominancy test is more in line with the basic rule in trademarks that confusing similarity is determined by the aural, visual and connotative and overall impressions created by the marks. Thus, based on the dominancy test, we ruled that there is no confusing similarity between "PAPA BOY & DEVICE" mark, and "PAPA KETSARAP" and "PAPA BANANA CATSUP."

While there are no set rules as what constitutes a dominant feature with respect to trademarks applied for registration, usually, what are taken into account are signs, color, design, peculiar shape or name, or some special, easily remembered earmarks of the brand that readily attracts and catches the attention of the ordinary consumer.[78] In *UFC Philippines, Inc.,* what we considered as the dominant feature of the mark is the

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[73] *Skechers, U.S.A., Inc. v. Inter Pacific Industrial Trading Corp.*, *supra* at 456; *Philip Morris, Inc. v. Fortune Tobacco Corporation*, G.R. No. 158589, June 27, 2006, 493 SCRA 333, 357.

[74] G.R. No. 198889, January 20, 2016, 781 SCRA 424.

[75] G.R. No. 143993, August 18, 2004, 437 SCRA 10.

[76] 95 Phil. 1 (1954).

[77] G.R. No. 112012, April 4, 2001, 356 SCRA 207.

[78] *Dermaline, Inc. v. Myra Pharmaceuticals, Inc.,* G.R. No. 190065, August 16, 2010, 628 SCRA 356, 367.

first word/figure that catches the eyes or that part which appears prominently to the eyes and ears.[79]

However, while we agree with the CA's use of the dominancy test, we arrive at a different conclusion. Based on the distinct visual and aural differences between LOLANE and ORLANE, we find that there is no confusing similarity between the two marks.

The suffix LANE is not the dominant feature of petitioner's mark. Neither can it be considered as the dominant feature of ORLANE which would make the two marks confusingly similar.

First, an examination of the appearance of the marks would show that there are noticeable differences in the way they are written or printed as shown below:[80]

As correctly argued by petitioner in his answer before the BLA, there are visual differences between LOLANE and ORLANE since the mark ORLANE is in plain block upper case letters while the mark LOLANE was rendered in stylized word with the second letter L and the letter A co-joined.[81]

Second, as to the aural aspect of the marks, LOLANE and ORLANE do not sound alike. *Etepha v. Director of Patents, et al.*[82] finds application in this case. In *Etepha*, we ruled that there is no confusing similarity between PERTUSSIN and ATUSSIN. The Court considered among other factors the aural differences between the two marks as follows:

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[79] *Supra* note 74 at 471.

[80] CA *rollo*, p. 36.

[81] *Rollo*, p. 45.

[82] G.R. No. L-20635, March 31, 1966, 16 SCRA 495.

5. As we take up Pertussin and Atussin once again, we cannot escape notice of the fact that the two words do not sound alike—when pronounced. There is not much phonetic similarity between the two. **The Solicitor General well-observed that in Pertussin the pronunciation of the prefix "Per," whether correct or incorrect, includes a combination of three letters *P*, *e* and *r*; whereas, in Atussin the whole starts with the single letter *A* added to suffix "tussin". Appeals to the ear are dissimilar.** And this, because in a word combination, the part that comes first is the *most pronounced*. An expositor of the applicable rule here is the decision in the Syrocol-Cheracol controversy. There, the ruling is that trademark Syrocol (a cough medicine preparation) is not confusedly similar to trademark *Cheracol* (also a cough medicine preparation). Reason: the two words "do not look or sound enough alike to justify a holding of trademark infringement", and the "only similarity is in the last syllable, and that is not uncommon in names given drug compounds." (Citation omitted, emphasis supplied.)[83]

Similar to *Etepha*, appeals to the ear in pronouncing ORLANE and LOLANE are dissimilar. The first syllables of each mark, *i.e.*, OR and LO do not sound alike, while the proper pronunciation of the last syllable LANE—"LEYN" for LOLANE and "LAN" for ORLANE, being of French origin, also differ. We take exception to the generalizing statement of the Director General, which was affirmed by the CA, that Filipinos would invariably pronounce ORLANE as "ORLEYN." This is another finding of fact which has no basis, and thus, justifies our reversal of the decisions of the IPO Director General and the CA. While there is possible aural similarity when certain sectors of the market would pronounce ORLANE as "ORLEYN," it is not also impossible that some would also be aware of the proper pronunciation—especially since, as respondent claims, its trademark ORLANE has been sold in the market for more than 60 years and in the Philippines, for more than 40 years.[84]

Respondent failed to show proof that the suffix LANE has registered in the mind of consumers that such suffix is exclusively

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[83] *Id.* at 501.

[84] *Rollo*, pp. 74-75.

or even predominantly associated with ORLANE products. Notably and as correctly argued by petitioner, the IPO previously allowed the registration of the mark GIN LANE for goods also falling under Class 3, *i.e.*, perfume, cologne, skin care preparations, hair care preparations and toiletries.[85]

We are mindful that in the earlier cases of *Mighty Corporation* and *Emerald,* despite a finding that there is no colorable imitation, we still discussed the nature of the goods using the trademark and whether the goods are identical, similar, competing or related. We need not belabor a similar discussion here considering that the essential element in determining likelihood of confusion, *i.e.*, colorable imitation by LOLANE of the mark ORLANE, is absent in this case. Resemblance between the marks is a separate requirement from, and must not be confused with, the requirement of a similarity of the goods to which the trademarks are attached. In *Great White Shark Enterprises, Inc v. Caralde, Jr.,*[86] after we ruled that there was no confusing similarity between Great White Shark's "GREG NORMAN LOGO" and Caralde's "SHARK & LOGO" mark due to the visual and aural dissimilarities between the two marks, we deemed it unnecessary to resolve whether Great White Shark's mark has gained recognition as a well-known mark.

Finding that LOLANE is not a colorable imitation of ORLANE due to distinct visual and aural differences using the dominancy test, we no longer find it necessary to discuss the contentions of the petitioner as to the appearance of the marks together with the packaging, nature of the goods represented by the marks and the price difference, as well as the applicability of foreign judgments. We rule that the mark LOLANE is entitled to registration.

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[85] *Id*. at 22. The mark GIN LANE for goods under Class 3 was registered on January 15, 2007 but was eventually removed from register for non-use. See the Philippine Trademark Database, <http://www.wipo.int/branddb/ph/en/>.

[86] *Supra* note 65.

WHEREFORE, the petition is **GRANTED**. The Decision of the Court of Appeals dated July 14, 2009 is **REVERSED** and **SET ASIDE**. Petitioner's application of the mark LOLANE for goods classified under Class 3 of the International Classification of Goods is **GRANTED**.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Bersamin, Reyes,* and *Caguioa,*[*] *JJ.,* concur.

SECOND DIVISION

[G.R. No. 193068. February 1, 2017]

DEVELOPMENT BANK OF THE PHILIPPINES, *petitioner, vs.* **STA. INES MELALE FOREST PRODUCTS CORPORATION, RODOLFO CUENCA, MANUEL TINIO, CUENCA INVESTMENT CORPORATION and UNIVERSAL HOLDINGS CORPORATION,** *respondents.*

[G.R. No. 193099. February 1, 2017]

NATIONAL DEVELOPMENT CORPORATION, *petitioner, vs.* **STA. INES MELALE FOREST PRODUCTS CORPORATION, RODOLFO M. CUENCA, MANUEL I. TINIO, CUENCA INVESTMENT CORPORATION and UNIVERSAL HOLDINGS CORPORATION,** *respondents.*

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[*] Designated as Fifth Member of the Third Division per Special Order No. 2417 dated January 4, 2017.

SYLLABUS

1. CIVIL LAW; CONTRACTS; WHEN THE TERMS OF A CONTRACT ARE CLEAR AND LEAVE NO DOUBT UPON THE INTENTION OF THE CONTRACTING PARTIES, THE LITERAL MEANING OF ITS STIPULATIONS SHALL CONTROL.— When the "terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control." *Bautista v. Court of Appeals* instructs that where the language of a contract is plain and unambiguous, the contract must be taken at its face value, x x x The law is categorical that "various stipulations of a contract shall be interpreted together, attributing to the doubtful ones that sense which may result from all of them taken jointly." *Fernandez v. Court of Appeals* further emphasizes that "[t]he important task in contract interpretation is always the ascertainment of the intention of the contracting parties and that task is of course to be discharged by looking to the words they used to project that intention in their contract, *all* the words not just a particular word or two, and words *in context* not words standing alone."

2. ID.; OBLIGATIONS AND CONTRACTS; KINDS OF OBLIGATIONS; OBLIGATIONS WITH A PERIOD; WHEN THE DEBTOR LOSES THE RIGHT TO MAKE USE OF THE PERIOD.— The due execution of the share purchase agreement is further bolstered by Article 1198(4) of the Civil Code, which states that the debtor loses the right to make use of the period when a condition is violated, making the obligation immediately demandable: Article 1198. The debtor shall lose every right to make use of the period: (1) When after the obligation has been contracted, he becomes insolvent, unless he gives a guaranty or security for the debt; (2) When he does not furnish to the creditor the guaranties or securities which he has promised; (3) When by his own acts he has impaired said guaranties or securities after their establishment, and when through a fortuitous event they disappear, unless he immediately gives new ones equally satisfactory; *(4) When the debtor violates any undertaking, in consideration of which the creditor agreed to the period;* (5) When the debtor attempts to abscond.

3. ID.; ID.; EXTINGUISHMENT OF OBLIGATIONS; NOVATION; REQUIRES EXPRESS CONSENT OF THE

CREDITOR TO THE SUBSTITUTION OF THE DEBTOR.— Novation is a mode of extinguishing an obligation by "[c]hanging [its] object or principal conditions[,] [substituting the person of the debtor [or] [s]ubrogating a third person in the rights of the creditor." While novation, "which consists in substituting a new debtor in the place of the original one may be made even without the knowledge or against the will of the latter, [it must be with] the consent of the creditor." *Testate Estate of Mota v. Serra* instructs that for novation to have legal effect, the creditor must expressly consent to the substitution of the new debtor: x x x Novation is never presumed. The *animus novandi*, whether partial or total, "must appear by express agreement of the parties, or by their acts which are too clear and unequivocal to be mistaken."

4. COMMERCIAL LAW; CORPORATION CODE; CORPORATION; CORPORATE POWERS; DELEGATED POWER TO BIND A CORPORATION MUST BE AUTHORIZED.— The general rule is that, "[i]n the absence of an authority from the board of directors, no person, not even the officers of the corporation, can validly bind the corporation." A corporation is a juridical person, separate and distinct from its stockholders and members, having "powers, attributes and properties expressly authorized by law or incident to its existence." Section 23 of the Corporation Code provides that "the corporate powers of all corporations . . . shall be exercised, all business conducted and all property of such corporations [shall] be controlled and held by the board of directors[.]" *People's Aircargo and Warehousing Co. Inc. v. Court of Appeals* explains that under Section 23 of the Corporation Code, the power and responsibility to bind a corporation can be delegated to its officers, committees, or agents. Such delegated authority is derived from law, corporate bylaws, or authorization from the board.

5. CIVIL LAW; DAMAGES; FORBEARANCE OF MONEY, DEFINED; SIX PERCENT (6 %) AND TWELVE PERCENT (12 %) INTEREST RATES, IMPOSED; CASE AT BAR.— *Estores v. Spouses Supangan* defined forbearance as an arrangement other than a loan where a person agrees to the temporary use of his money, goods, or credits subject to the fulfillment of certain conditions. x x x On May 16, 2013, the Monetary Board of the Bangko Sentral ng Pilipinas issued

> Resolution No. 796, which revised the interest rate to be imposed for the loan or forbearance of any money, goods, or credits. This was implemented by Bangko Sentral ng Pilipinas Circular No. 799, Series of 2013, x x x [Thus,] *Nacar v. Gallery Frames, et al.* then modified the guidelines laid down in *Eastern Shipping Lines* to embody Bangko Sentral ng Pilipinas Circular No. 799, x x x Applying these guidelines, the Court of Appeals' ruling must be modified to reflect the ruling in *Nacar*. The award of the advances made by Sta. Ines, Cuenca, Tinio, Cuenca Investment, and Universal Holdings in Galleon's favor and payment for their shares of stocks in Galleon shall earn an interest rate of 12% per annum from the date of filing of this case on April 22, 1985 until June 30, 2013. After June 30, 2013, these amounts shall earn interest at six percent (6%) per annum until the Decision becomes final and executory. An interest of six percent (6%) per annum shall be imposed on such amounts from the finality of the Decision until its satisfaction.

APPEARANCES OF COUNSEL

Office of the Legal Counsel, DBP for petitioner Development Bank of the Philippines.

Cruz Marcelo And Tenefrancia for respondent Cuenca *et al.*

Jose M. Jose for Sta. Ines Melale Forest Products Corp.

Apolonio S. Mayuga for Sta. Ines Melale Forest Products Corp.

Office of the Government Corporate Counsel for petitioner National Development Corporation.

D E C I S I O N

LEONEN, *J.*:

A condition shall be deemed fulfilled when the obligor voluntarily prevents its fulfilment and a debtor loses the right to make use of the period when a condition is violated, making the obligation immediately demandable.[1]

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[1] CIVIL CODE, Arts. 1186 and 1198(4).

This resolves the consolidated Petitions for Review filed by the Development Bank of the Philippines (DBP)[2] and the National Development Corporation (NDC)[3] assailing the Court of Appeals Decision[4] dated March 24, 2010 and Court of Appeals Resolution[5] dated July 21, 2010, which affirmed with modifications the Decision[6] dated September 16, 2003 of Branch 137, Regional Trial Court of Makati City.[7]

Sometime in 1977, National Galleon Shipping Corporation (Galleon), "formerly known as Galleon Shipping Corporation, was organized to operate a liner service between the Philippines and its . . . trading partners."[8] Galleon's major stockholders were respondents Sta. Ines Melale Forest Products Corporation (Sta. Ines), Cuenca Investment Corporation (Cuenca Investment), Universal Holdings Corporation (Universal Holdings), Galleon's President Rodolfo M. Cuenca (Cuenca), Manuel I. Tinio (Tinio), and the Philippine National Construction Corporation (PNCC).[9]

Galleon experienced financial difficulties and had to take out several loans from different sources such as foreign financial

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[2] *Rollo* (G.R. No. 193068), pp. 56-113.

[3] *Rollo* (G.R. No. 193099), pp. 52-82.

[4] *Rollo* (G.R. No. 193068), pp. 9-39, and *rollo* (G.R. No. 193099), pp. 7-45. The Decision, docketed as CA-G.R. CV No. 85385, was penned by Associate Justice Isaias Dicdican and concurred in by Presiding Justice Andres B. Reyes, Jr. (Chair) and Associate Justice Priscilla J. Baltazar-Padilla, of the First Division.

[5] *Rollo* (G.R. No. 193068), pp. 49-50, and *rollo* (G.R. No. 193099), pp. 47-48. The Resolution was penned by Associate Justice Isaias Dicdican and concurred in by Presiding Justice Andres B. Reyes, Jr. (Chair) and Associate Justice Priscilla J. Baltazar-Padilla, of the Former First Division.

[6] *Rollo* (G.R. No. 193068), pp. 157-169. The Decision, docketed as Civil Case No. 10387, was penned by Judge Santiago Javier Ranada.

[7] *Rollo* (G.R. No. 193068), pp. 9-10 and 45-46, Court of Appeals Decision, and *rollo* (G.R. No. 193099), pp. 7-8 and 43-44, Court of Appeals Decision.

[8] *Rollo* (G.R. No. 193068), p. 158, Regional Trial Court Decision.

[9] *Id*.

institutions, its shareholders (Sta. Ines, Cuenca Investment, Universal Holdings, Cuenca, and Tinio), and other entities "with whom it had ongoing commercial relationships."[10]

DBP guaranteed Galleon's foreign loans.[11] In return, Galleon and its stockholders Sta. Ines, Cuenca Investment, Universal Holdings, Cuenca, and Tinio, executed a Deed of Undertaking[12] on October 10, 1979 and obligated themselves to guarantee DBP's potential liabilities.[13]

To secure DBP's guarantee, Galleon undertook to secure a first mortgage on its five new vessels and two second-hand vessels.[14] However, despite the loans extended to it, "[Galleon's] financial condition did not improve."[15]

Cuenca, as Galleon's president, wrote to the members of the Cabinet Standing Committee "for the consideration of a policy decision to support a liner service."[16] Cuenca also wrote then President Ferdinand Marcos and asked for assistance.[17]

On July 21, 1981, President Marcos issued Letter of Instructions No. 1155[18] addressed to the NDC, DBP, and the Maritime Industry Authority. Letter of Instructions No. 1155 reads:

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[10] *Id*. at 159.

[11] *Id*.

[12] *Rollo* (G.R. No. 193099), pp. 204-209.

[13] *Id*. at 205-206.

[14] *Id*. at 205.

[15] *Rollo* (G.R. No. 193068), p. 159, Regional Trial Court Decision.

[16] *Id*.

[17] *Id*.

[18] *Rollo* (G.R. No. 193099), pp. 430-431.

TO : Development Bank of the Philippines
National Development Company
Maritime Industry Authority

DIRECTING A REHABILITATION PLAN FOR GALLEON SHIPPING CORPORATION

WHEREAS, Galleon Shipping Corporation is presently in a distressed state in view of the unfavorable developments in the liner shipping business;

WHEREAS, the exposure of the Philippine government financial institutions is substantial;

WHEREAS, it is a policy of government to provide a reliable liner service between the Philippines and its major trading partners;

WHEREAS, it is a policy to have a Philippine national flag liner service to compete with other heavily subsidized national shipping companies of other countries;

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, do hereby direct the following:

1. NDC shall acquire 100% of the shareholdings of Galleon Shipping Corporation from its present owners for the amount of ₱46.7 million which is the amount originally contributed by the present shareholders, payable after five years with no interest cost.
2. NDC to immediately infuse ₱30 million into Galleon Shipping Corporation in lieu of its previously approved subscription to Philippine National Lines. In addition, NDC is to provide additional equity to Galleon as may be required.
3. DBP to advance for a period of three years from date hereof both the principal and the interest on Galleon's obligations falling due and to convert such advances into 12% preferred shares in Galleon Shipping Corporation.
4. DBP and NDC to negotiate a restructuring of loans extended by foreign creditors of Galleon.
5. MARINA to provide assistance to Galleon by mandating a rational liner shipping schedule considering existing freight volume and to immediately negotiate a bilateral agreement with the United States in accordance with UNCTAD resolutions.

These instructions are to take effect immediately.[19]

On August 10, 1981,[20] pursuant to Letter of Instructions No. 1155, Galleon's stockholders, represented by Cuenca, and NDC, through its then Chairman of the Board of Directors, Roberto V. Ongpin (Ongpin) entered into a Memorandum of Agreement,[21] where NDC and Galleon undertook to prepare and sign a share purchase agreement covering 100% of Galleon's equity for ₱46,740,755.00.[22] The purchase price was to be paid after five years from the execution of the share purchase agreement.[23] The share purchase agreement also provided for the release of Sta. Ines, Cuenca, Tinio and Construction Development Corporation of the Philippines from the personal counter-guarantees they issued in DBP's favor under the Deed of Undertaking.[24]

The Memorandum of Agreement reads:

KNOW ALL MEN BY THESE PRESENTS:

This Memorandum of Agreement made and entered into this ____ day of August, 1981, at Makati, Metro Manila, Philippines, by and between the stockholders of Galleon Shipping Corporation listed in Annex A hereof, represented herein by their duly authorized attorney-in-fact, Mr. Rodolfo M. Cuenca (hereinafter called "Sellers") and National Development Company, represented herein by its Chairman of the Board, Hon. Minister Roberto V. Ongpin (hereinafter called "Buyer").

W I T N E S S E T H : That –

WHEREAS, Sellers and Buyer desire to implement immediately Letter of Instructions No. 1155, dated July 21, 1981, which directs

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[19] *Id*.

[20] *Rollo* (G.R. No. 193068), p. 160, Regional Trial Court Decision.

[21] *Rollo* (G.R. No. 193099), pp. 187-190.

[22] *Id*. at 187-188.

[23] *Id*. at 188.

[24] *Id*. at 189.

that Buyer acquire 100% of the shareholdings of Galleon Shipping Corporation ("GSC") from Sellers who are the present owners.

WHEREAS, Sellers have consented to allow Buyer to assume actual control over the management and operations of GSC prior to the execution of a formal share purchase agreement and the transfer of all the shareholdings of Sellers to Buyer.

NOW, THEREFORE, the parties agree as follows:

1. Within seven (7) days after the signing hereof, Sellers shall take all steps necessary to cause five (5) persons designated by Buyer to be elected directors of GSC, it being understood that Sellers shall retain the remaining two (2) seats in the GSC board subject to the condition hereafter stated in clause 7(b).

2. The new board to be created pursuant to clause 1 above shall elect Antonio L. Carpio as Chairman and Chief Executive Officer and Rodolfo M. Cuenca as President. All other officers will be nominated and appointed by Buyer.

3. As soon as possible, but not more than 60 days after the signing hereof, the parties shall endeavor to prepare and sign a share purchase agreement covering 100% of the shareholdings of Sellers in GSC to be transferred to Buyer, i.e. 10,000,000 fully paid common shares of the par value of ₱1.00 per share and subscription of an additional 100,000,000 common shares of the par value of ₱1.00 per share of which ₱36,740,755.00 has been paid, but not yet issued.

4. Sellers hereby warrant that ₱46,740,755[.00] had been actually paid to Galleon Shipping Corporation, which amount represents payment of Sellers for 46,740,755 common shares of said Corporation. This warranty shall be verified by Buyer, the results of which will determine the final purchase price to be paid to Sellers.

The purchase price directed by LOI 1155 to be paid to Sellers shall be paid after five (5) years from date of the share purchase agreement with no interest cost to buyer.

5. As security for the payment of the aforementioned purchase price, Buyer shall issue to each of the GSC stockholders listed in Annex A a negotiable promissory note in the amount corresponding to the respective paid-up capital in GSC of each of such stockholders and with maturity on the date of the fifth annual anniversary of the share purchase agreement.

6. Notwithstanding the provisions of clauses 4 and 5 above, upon the signing of the share purchase agreement, it is understood that Sellers shall deliver to Buyer all the stock certificates covering 10,000,000 common shares of GSC, and duly and validly endorsed for transfer, free from any and all liens and encumbrances whatsoever. It is likewise understood that Buyer shall at that time acquire all the subscription rights to 100,000,000 common shares of which ₱36,740,755.00 has been paid by Sellers, and shall assume the obligation to pay the unpaid portion of such subscription.

7. The stock purchase agreement to be prepared and signed by the parties within sixty (60) days from date hereof shall contain, among other things:

(a) standard warranties of seller including, but not limited to, warranties pertaining to the accuracy of financial and other statements of GSC; disclosure of liabilities; payment of all taxes, duties, licenses and fees; non-encumbrance of corporate assets; valid contracts with third parties, etc. including an indemnity clause covering any breach thereof.

(b) provisions that Buyer shall retain 2 representatives of Sellers in the board of GSC only for as long as Sellers have not been paid, or have not negotiated or discounted any of the promissory notes referred to in clause 5 above.

(c) provisions whereby Construction Development Corporation of the Philippines, Sta. Ines Melale Forest Products Corporation, Mr. Rodolfo M. Cuenca and Mr. Manuel I. Tinio shall be released from counter-guarantees they have issued in favor of DBP and other financial institutions in connection with GSC's various credit accommodations.

(d) provisions for arbitration as a means of settling disputes and differences of opinion regarding the stock purchase agreement.

8. Sellers hereby make a special warranty that:

(a) any and all liabilities and obligations as disclosed in the financial statements of Galleon Shipping Corporation are valid, regular, normal and incurred in the ordinary course of business of Galleon Shipping Corporation, and Buyer will verify this warranty and conduct an audit of Galleon Shipping Corporation as of March 31 and July 31, 1981; liabilities that do not fall under the above definition are to be for the account of the Seller; and

(b) from July 31, 1981 to the date of the election of Buyers' representatives to the Board of GSC, GSC has not and shall not enter into any contract and has not and shall not incur any liability except what is normal and usual in the ordinary course of shipping business.

9. Valid and duly authorized liabilities of GSC which are the subject of a meritorious lawsuit, or which have been arranged and guaranteed by Mr. Rodolfo M. Cuenca, may be considered by Buyer for priority in the repayment of accounts, provided that, upon review, the Buyer shall determine these to be legitimate and were validly incurred in the ordinary course of GSC's principal business.

IN WITNESS HEREOF, the parties have signed this Memorandum of Agreement this ___ day of August 1981, in Makati, Metro Manila.

STOCKHOLDERS OF
GALLEON SHIPPING CORPORATION

By:

(signed)
RODOLFO M. CUENCA

NATIONAL DEVELOPMENT COMPANY

By:

(signed)
ROBERTO V. ONGPIN[25]

Acting as Galleon's guarantor, DBP paid off Galleon's debts to its foreign bank creditor and, on January 25, 1982, pursuant to the Deed of Undertaking, Galleon executed a mortgage contract[26] over seven of its vessels in favor of DBP.

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[25] *Id*. at 187-190, Memorandum of Agreement.

[26] *Id*. at 432.

NDC took over Galleon's operations "even prior to the signing of a share purchase agreement."[27] However, despite NDC's takeover, the share purchase agreement was never formally executed.[28]

On February 10, 1982, or barely seven months from the issuance of Letter of Instructions No. 1155, President Marcos issued Letter of Instructions No. 1195,[29] which reads:

TO : Development Bank of the Philippines
National Development Company

RE : Galleon Shipping Corporation

WHEREAS, NDC has assumed management of Galleon's operations pursuant to LOI No. 1155;

WHEREAS, the original terms under which Galleon acquired or leased the vessels were such that Galleon would be unable to pay from its cash flows the resulting debt service burden;

WHEREAS, in such a situation the financial exposure of the Government will continue to increase and therefore the appropriate steps must be taken to limit and protect the Government's exposure;

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, do hereby direct the following:

1) The DBP and the NDC shall take immediate steps, including foreclosure of Galleon vessels and other assets, as may be deemed necessary to limit and protect the Government's exposure;

2) NDC shall discharge such maritime liens as it may deem necessary to allow the foreclosed vessels to engage in the international shipping business;

3) Any provision of LOI No. 1155 inconsistent with this Letter of Instructions is hereby rescinded.

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[27] *Rollo* (G.R. No. 193068), p. 161, Regional Trial Court Decision.

[28] *Id*.

[29] *Rollo* (G.R. No. 193099), p. 537.

These instructions are to take effect immediately.[30]

On April 22, 1985, respondents Sta. Ines, Cuenca, Tinio, Cuenca Investment and Universal Holdings filed a Complaint with Application for the Issuance of a Temporary Restraining Order or Writ of Preliminary Injunction.[31] The Complaint was amended several times to implead new parties and to include new claims/counterclaims.[32]

In their Complaint, Sta. Ines, Cuenca, Tinio, Cuenca Investment, and Universal Holdings alleged that NDC, "without paying a single centavo, took over the complete, total, and absolute ownership, management, control, and operation of defendant [Galleon] and all its assets, even prior to the formality of signing a share purchase agreement, which was held in abeyance because the defendant NDC was verifying and confirming the amounts paid by plaintiffs to Galleon, and certain liabilities of Galleon to plaintiffs[.]"[33]

Sta. Ines, Cuenca, Tinio, Cuenca Investment, and Universal Holdings also alleged that NDC tried to delay "the formal signing of the share purchase agreement in order to interrupt the running of the 5-year period to pay . . . the purchase of the shares in the amount of ₱46,740,755[.00] and the execution of the negotiable promissory notes to secure payment[.]"[34]

As for DBP, Sta. Ines, Cuenca, Tinio, Cuenca Investment, and Universal Holdings claimed that "DBP can no longer go after [them] for any deficiency judgment [since] NDC had been subrogated [in their place] as borrower[s], hence the Deed of Undertaking between [Sta. Ines, Cuenca Investment, Universal

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[30] *Id*.

[31] *Id*. at 89, Court of Appeals Decision.

[32] *Id*. at 126-143, Fourth Amended Complaint with Application for Temporary Restraining Order and/or Preliminary Injunction.

[33] *Id*. at 131, Fourth Amended Complaint with Application for Temporary Restraining Order and/or Preliminary Injunction.

[34] *Id*. at 132.

Holdings, Cuenca, and Tinio and DBP] had been extinguished and novated[.]"[35]

Meanwhile, on December 8, 1986, Proclamation No. 50 created the Asset Privatization Trust.[36] The Asset Privatization Trust was tasked to "take title to and possession of, conserve, provisionally manage and dispose of, assets which have been identified for privatization or disposition and transferred to the TI-List for [that] purpose."[37]

Under Administrative Order No. 14 issued by then President Corazon C. Aquino, certain assets of DBP, which included Galleon's loan accounts, "were identified for transfer to the National Government."[38]

On February 27, 1987, a Deed of Transfer was executed providing for the transfer of the Galleon loan account from DBP to the National Government.[39] The Asset Privatization Trust was "constituted as [the National Government's] trustee over the transferred accounts and assets[.]"[40]

On September 16, 2003, the Regional Trial Court upheld the validity of Letter of Instructions No. 1155 and the Memorandum of Agreement executed by NDC and Galleon's stockholders, pursuant to Letter of Instructions No. 1155.[41]

The Regional Trial Court also held that Letter of Instructions No. 1195 did not supersede or impliedly repeal Letter of Instructions No. 1155, and assuming that it did impliedly repeal Letter of Instructions No. 1155, it would be void and unconstitutional for violating the non-impairment clause.[42]

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[35] *Id.* at 133.

[36] *Id.* at 90, Court of Appeals Decision.

[37] *Id.*

[38] *Id.*

[39] *Id.*

[40] *Id.*

[41] *Rollo* (G.R. No. 193068), pp. 163-164, Regional Trial Court Decision.

[42] *Id.*

As regards NDC's argument that Sta. Ines, Cuenca, Tinio, Cuenca Investment, and Universal Holdings had no basis to compel it to pay Galleon's shares of stocks because no share purchase agreement was executed, the Regional Trial Court held that the NDC was in estoppel since it prevented the execution of the share purchase agreement and had admitted to being Galleon's owner.[43]

The Regional Trial Court also ruled that Sta. Ines, Cuenca, Tinio, Cuenca Investment, and Universal Holdings' liability to DBP under the Deed of Undertaking had been extinguished due to novation, with NDC replacing them and PNCC as debtors.[44] The dispositive of the Regional Trial Court's Decision reads:

> WHEREFORE, judgment is hereby rendered (1) ordering defendants National Development Corporation and National Galleon Shipping Corporation, jointly and severally, to pay plaintiffs Sta. Ines Melale Forest Products Corporation, Rodolfo M. Cuenca, Manuel I. Tinio, Cuenca Investment Corporation and Universal Holdings Corporation, the amounts of ₱15,150,000.00 and US$2.3 million, representing the amount of advances made by plaintiffs in behalf of defendant Galleon, plus legal interest at the rate of 6% per annum from the date of filing of this case on 22 April 1985 up to full payment;
>
> (2) ordering defendants National Development Corporation and National Galleon Shipping Corporation, jointly and severally, to pay plaintiffs Sta. Ines Melale Forest Products Corporation, Rodolfo M. Cuenca, Manuel I. Tinio, Cuenca Investment Corporation and Universal Holdings Corporation, the amount of ₱46,740,755.00, representing the price of the shares of stock of plaintiffs and defendant PNCC in defendant Galleon, plus legal interest at the rate of 6% per annum from the date of filing of this case on 22 April 1985 up to full payment;
>
> (3) ordering defendants National Development Corporation and National Galleon Shipping Corporation, jointly and severally, to pay plaintiffs Sta. Ines Melale Forest Products Corporation, Rodolfo M. Cuenca, Manuel I. Tinio, Cuenca Investment Corporation and Universal

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[43] *Id*. at 164.

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

Holdings Corporation, attorney's fees equivalent to 10% of the amount due; and costs of suit; and

(4) ordering defendants National Development Corporation, Development Bank of the Philippines and National Galleon Shipping Corporation, jointly and severally, to pay each plaintiff and defendant Philippine National Construction Corporation, ₱10,000.00 as moral damages; and ₱10,000.00 as exemplary damages.

SO ORDERED.[45]

On February 23, 2003, the Regional Trial Court issued an Order[46] partially reconsidering and modifying the September 16, 2003 Decision by categorically declaring Sta. Ines, Cuenca, Tinio, Cuenca Investment, and Universal Holdings free from liability under the mortgage contract with DBP and the deficiency claim of DBP.[47] The Regional Trial Court also deleted the award of US$2.3 million to Sta. Ines, Cuenca, Tinio, Cuenca Investment, and Universal Holdings since they failed to include the same in their fourth amended complaint.[48] The dispositive portion of the Regional Trial Court Order, as amended, reads:

WHEREFORE, judgment is hereby rendered (1) ordering defendants National Development Corporation and National Galleon Shipping Corporation, jointly and severally, to pay plaintiffs Sta. Ines Melale Forest Products Corporation, Rodolfo M. Cuenca, Manuel I. Tinio, Cuenca Investment Corporation and Universal Holdings Corporation, the amount of ₱15,150,000.00 representing the amount of advances made by plaintiffs in behalf of defendant NGSC, plus legal interest at the rate of 6% per annum from the date of filing of this case on 22 April 1985 up to full payment;

(2) ordering defendants National Development Corporation and National Galleon Shipping Corporation, jointly and severally, to pay plaintiffs Sta. Ines Melale Forest Products Corporation, Rodolfo M. Cuenca, Manuel I. Tinio, Cuenca Investment Corporation and Universal

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

[46] *Id*. at 170-174. The Order was penned by Judge Santiago Javier Ranada of Branch 137, Regional Trial Court of Makati City.

[47] *Id*. at 174.

[48] *Id*. at 173.

Holdings Corporation, the amount of ₱46,740,755.00, representing the price of the shares of stock of plaintiffs and defendant PNCC in defendant NGSC, plus legal interest at the rate of 6% per annum from the date of filing of this case on 22 April 1985 up to full payment;

(3) ordering defendants National Development Corporation and National Galleon Shipping Corporation, jointly and severally, to pay plaintiffs Sta. Ines Melale Forest Products Corporation, Rodolfo M. Cuenca, Manuel I. Tinio, Cuenca Investment Corporation and Universal Holdings Corporation, attorney's fees equivalent to 10% of the amount due; and costs of suit;

(4) ordering defendants National Development Corporation and National Galleon Shipping Corporation, jointly and severally, to pay to each plaintiff and defendant Philippine National Construction Corporation, ₱10,000.00 as moral damages; and ₱10,000.00 as exemplary damages; and

(5) declaring plaintiffs Sta. Ines Melale Forest Products Corporation, Rodolfo M. Cuenca, Manuel I. Tinio, Cuenca Investment Corporation and Universal Holdings Corporation and defendant Philippine National Construction Corporation to be no longer liable to defendants National Development Corporation, Development Bank of the Philippines and Asset Privatization Trust under the deed of undertaking, pledge, mortgages, and other accessory contracts between the parties; and consequently, permanently enjoining defendant DBP or APT from filing a deficiency claim against plaintiffs and defendant PNCC.

SO ORDERED.[49]

On March 9, 2004 and March 16, 2004, DBP and NDC filed their respective notices of appeal to the Court of Appeals.[50]

In its assailed Decision dated March 24, 2010, the Court of Appeals upheld the Regional Trial Court's findings that the Memorandum of Agreement between NDC and Cuenca (representing Sta. Ines, Cuenca, Tinio, Cuenca Investment, and Universal Holdings) was a perfected contract, which bound the parties,[51] thus:

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[49] *Id.* at 173-174.

[50] *Rollo* (G.R. No. 193099), p. 90.

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

Although the Supreme Court ruled in the Poliand case that LOI No. 1155 is a mere administrative issuance and, as such, cannot be a valid source of obligation, the defendant-appellant NDC cannot escape its liabilities to the plaintiffs-appellees considering that the Memorandum of Agreement that it executed with the plaintiffs-appellees created certain rights and obligations between the parties which may be enforced by the parties against each other. The situation in the Poliand case is different because Poliand was not a party to the Memorandum of Agreement.[52]

The Court of Appeals ruled that NDC is estopped from claiming that there was no agreement between it and Cuenca since the agreement had already been partially executed after NDC took over the control and management of Galleon.[53]

The Court of Appeals also rejected NDC's argument that it should not be held liable for the payment of Galleon's shares.[54] The Court of Appeals held that NDC "voluntarily prevented the execution of a share purchase agreement when it reneged on its various obligations under the Memorandum of Agreement."[55]

The Court of Appeals likewise affirmed the Regional Trial Court's ruling that novation took place when NDC agreed to be substituted in place of Sta. Ines, Cuenca, Tinio, Cuenca Investment, and Universal Holdings in the counter-guarantees they issued in favor of DBP.[56]

The Court of Appeals ruled that DBP was privy to the Memorandum of Agreement between NDC and Sta. Ines, Cuenca, Tinio, Cuenca Investment, and Universal Holdings, since Ongpin was concurrently Governor of DBP and chairman of the NDC Board at the time the Memorandum of Agreement was signed.[57]

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[52] *Id.* at 24.

[53] *Id.* at 27.

[54] *Id.* at 28.

[55] *Id.*

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

[57] *Rollo* (G.R. No. 193099), p. 39, Court of Appeals Decision.

The Court of Appeals further held that DBP was no longer the real party-in-interest as the loan accounts of Galleon were transferred to the Asset Privatization Trust.[58]

The *fallo* of the Court of Appeals Decision reads:

WHEREFORE, in view of the foregoing premises, the assailed *D*ecision, as well as, assailed *Order,* appealed from is hereby **AFFIRMED** with **MODIFICATIONS** such that, as modified, the dispositive portion thereof shall now read as follows:

"**WHEREFORE,** judgment is hereby rendered (1) ordering defendants National Development Corporation and National Galleon Shipping Corporation jointly and severally, to pay plaintiffs Sta. Ines Melale Forest Products Corporation, Rodolfo M. Cuenca, Manuel I. Tinio, Cuenca Investment Corporation and Universal Holdings Corporation, the amount of ₱15,150,000.00 representing the amount of advances made by plaintiffs in behalf of defendant NGSC, plus interest at the rate of twelve percent (12%) per annum from the date of filing of this case on 22 April 1985 until instant Decision becomes final and executory, thereafter the said amount shall earn an interest at the rate of twelve (12%) percent per annum from such finality until its satisfaction;

(2) ordering the defendants National Development Corporation and National Galleon Shipping [C]orporation, jointly and severally, to pay plaintiffs Sta. Ines Melale Forest Products Corporation, Rodolfo M. Cuenca, Manuel I. Tinio, Cuenca Investment Corporation and Universal Holdings Corporation, the amount of ₱46,740,755.00, representing the price of the shares of stock of plaintiffs and defendant PNCC in defendant NGSC, plus interest at the rate of twelve percent (12%) per annum from the date of filing of this case on 22 April 1985 until instant *Decision* becomes final and executory, thereafter the said amount shall earn an interest at the rate of twelve percent (12%) per annum from such finality until its satisfaction;

(3) ordering the defendants National Development Corporation and National Galleon Shipping Corporation, jointly

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[58] *Id.* at 40.

and severally, to pay plaintiffs Sta. Ines Melale Forest Products Corporation, Rodolfo M. Cuenca, Manuel I. Tinio, Cuenca Investment Corporation and Universal Holdings Corporation, attorney's fees equivalent to 10% of the amount due; and costs of suit;

(4) ordering the defendants National Development Corporation and National Galleon Shipping Corporation, jointly and severally, to pay to each plaintiffs and defendant Philippine National Construction Corporation, ₱10,000.00 as moral damages; and ₱10,000.00 as exemplary damages; and

(5) declaring plaintiffs Sta. Ines Melale Forest Products Corporation, Rodolfo M. Cuenca, Manuel I. Tinio, Cuenca Investment Corporation and Universal Holdings Corporation and defendant Philippine National Construction Corporation to be no longer liable to defendants National Development Corporation, Development Bank of the Philippines and Asset Privatization Trust under the deed of undertaking, pledge, mortgages, and other accessory contracts between the parties; and consequently, permanently enjoining defendant DBP or APT from filing a deficiency claim against plaintiffs and defendant PNCC.

SO ORDERED.[59] (Emphasis and underscoring in the original)

On September 16, 2010, NDC appealed the Court of Appeals Decision to this Court. In its Petition for Review,[60] NDC maintains that the Memorandum of Agreement does not bind it, since Ongpin was not equipped with authority from the NDC Board to sign the Memorandum of Agreement on NDC's behalf.[61] NDC also denies that it took over the control and management of Galleon or that it "prevented the execution of the [s]hare [p]urchase [a]greement[.]"[62]

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

[60] *Rollo* (G.R. No. 193099), pp. 52-82.

[61] *Id.* at 71-72, Petition for Review.

[62] *Id.* at 72.

NDC asserts that even assuming that the Memorandum of Agreement was binding, what was agreed upon was that the parties shall execute a share purchase agreement within a certain period of time.[63] The Memorandum of Agreement was only a preliminary agreement between Cuenca and Ongpin for NDC's "intended purchase of Galleon's equity[,] pursuant to [Letter of Instructions No.] 1155."[64] The Memorandum of Agreement cannot "be considered as the executing agreement or document for the purchase of the shares."[65]

On September 13, 2010, DBP filed its Petition for Review[66] before this Court. DBP insisted that novation did not take place because: (a) there was no second binding contract designed to replace the Deed of Undertaking; (b) it did not give its consent to the substitution of debtors under the Memorandum of Agreement; and (c) there was no agreement that unequivocally declared novation by substitution of debtors.[67]

The issues raised for the resolution of this Court are as follows:

a) Whether the Memorandum of Agreement obligates NDC to purchase Galleon's shares of stocks and pay the advances made by respondents in Galleon's favor;[68]

b) Whether the Memorandum of Agreement novated the Deed of Undertaking executed between DBP and respondents;[69] and

c) Whether the computation of legal interest should be at the rate of 6% per annum, instead of the 12% per annum pegged by the Court of Appeals.[70]

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

[64] *Id.* at 74.

[65] *Id.*

[66] *Rollo* (G.R. No. 193068), pp. 56-113.

[67] *Id.* at 82-87.

[68] *Rollo* (G.R. No. 193099), p. 73.

[69] *Rollo* (G.R. No. 193068), pp. 80-81.

[70] *Rollo* (G.R. No. 193099), p. 75.

I

When the "terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control."[71]

Bautista v. Court of Appeals[72] instructs that where the language of a contract is plain and unambiguous, the contract must be taken at its face value, thus:

> The rule is that where the language of a contract is plain and unambiguous, its meaning should be determined without reference to extrinsic facts or aids. The intention of the parties must be gathered from that language, and from that language alone. Stated differently, where the language of a written contract is clear and unambiguous, the contract must be taken to mean that which, on its face, it purports to mean, unless some good reason can be assigned to show that the words used should be understood in a different sense. Courts cannot make for the parties better or more equitable agreements than they themselves have been satisfied to make, or rewrite contracts because they operate harshly or inequitably as to one of the parties, or alter them for the benefit of one party and to the detriment of the other, or by construction, relieve one of the parties from terms which he voluntarily consented to, or impose on him those which he did not.[73]

It is not disputed that NDC and respondents Sta. Ines, Cuenca, Tinio, Cuenca Investment, and Universal Holdings executed a Memorandum of Agreement pursuant to the directives of Letter of Instructions No. 1155.

Under the Memorandum of Agreement, NDC, as the Buyer, undertook to:

a) implement Letter of Instructions No. 1155 and acquire 100% of Galleon's shareholdings;

b) assume actual control over Galleon's management and operations prior to the execution of a formal share

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[71] CIVIL CODE, Art. 1370.

[72] 379 Phil. 386 (2000) [Per *J*. Puno, First Division].

[73] *Id*. at 399, *citing* 17 A Am. Jur. 2d 348-349.

purchase agreement and prior to the transfer to NDC of Galleon's shareholdings;

c) designate five persons to sit in Galleon's Board of Directors;

d) pay Galleon's stockholders the share purchase price after five years from the date of the share purchase agreement;

e) issue each Galleon stockholder a negotiable promissory note with maturity on the date of the fifth annual anniversary of the share purchase agreement;

f) verify Galleon's special warranty on its liabilities and obligations by conducting an audit; and

g) consider for priority in the repayment of accounts, Galleon's valid and duly authorized liabilities which are the subject of meritorious lawsuit or which have been arranged and guaranteed by Cuenca.

While respondents, Galleon's stockholders, as the Sellers, undertook to:

a) implement Letter of Instructions No. 1155 by allowing NDC to purchase 100% of their shareholdings;

b) consent for NDC to assume actual control over Galleon's management and operations prior to the execution of a formal share purchase agreement and prior to the transfer to NDC of Galleon's shareholdings;

c) elect NDC's designated five persons to Galleon's Board of Directors;

d) warrant that ₱46,740,755.00 had been actually paid to Galleon, representing payment of 46,740,755 common shares to Galleon;

e) deliver to NDC, upon signing of the share purchase agreement, 10,000,000 common shares of Galleon, duly and validly endorsed for transfer, free from any and all liens and encumbrances whatsoever; and

f) make special warranties under clause 8.

As parties to the Memorandum of Agreement, NDC and respondents jointly undertook to:

a) immediately implement Letter of Instructions No. 1155;

b) endeavor to prepare and sign a share purchase agreement covering 100% of Galleon's shareholdings not more than 60 days after the signing of the Memorandum of Agreement; and

c) incorporate the conditions listed down in clause 7 in the share purchase agreement.

The law is categorical that "various stipulations of a contract shall be interpreted together, attributing to the doubtful ones that sense which may result from all of them taken jointly."[74] *Fernandez v. Court of Appeals*[75] further emphasizes that "[t]he important task in contract interpretation is always the ascertainment of the intention of the contracting parties and that task is of course to be discharged by looking to the words they used to project that intention in their contract, *all* the words not just a particular word or two, and words *in context* not words standing alone."[76]

The Court of Appeals found that the Memorandum of Agreement between NDC and Galleon was a perfected contract for NDC to purchase 100% of Galleon's shareholdings. However, a careful reading of the Memorandum of Agreement shows that what the parties agreed to was the execution of a share purchase agreement to effect the transfer of 100% of Galleon's shareholdings to NDC, as seen in clause 3:

3. As soon as possible, but not more than 60 days after the signing hereof, the parties shall endeavor to prepare and sign a share purchase agreement covering 100% of the shareholdings of Sellers in GSC to be transferred to Buyer, *i.e.* 10,000,000 fully paid common shares

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[74] CIVIL CODE, Art. 1374.

[75] 248 Phil. 805 (1988) [Per *J.* Feliciano, *En Banc*].

[76] *Id*. at 817.

of the par value of ₱1.00 per share and subscription of an additional 100,000,000 common shares of the par value of ₱1.00 per share of which ₱36,740,755.00 has been paid, but not yet issued.

The second paragraph of clause 4 likewise makes the execution of a share purchase agreement a condition before the purchase price can be paid to respondents, since the payment of the purchase price becomes due only after five years from the date of execution of the share purchase agreement:

> 4. Sellers hereby warrant that ₱46,740,755[.00] had been actually paid to Galleon Shipping Corporation, which amount represents payment of Sellers for 46,740,755 common shares of said Corporation. This warranty shall be verified by Buyer, the results of which will determine the final purchase price to be paid to Sellers.
>
> *The purchase price directed by LOI 1155 to be paid to Sellers shall be paid after five (5) years from date of the share purchase agreement with no interest cost to buyer.* (Emphasis supplied)

NDC asserts that the Memorandum of Agreement was only a preliminary agreement between Galleon, represented by Cuenca, and NDC, represented by Ongpin, for the intended purchase of Galleon's equity pursuant to Letter of Instructions No. 1155,[77] thus:

> It merely prescribed the manner, terms and conditions of said purchase. In fact, the [Memorandum of Agreement] provided for a time frame for the execution of the share purchase agreement which is within sixty (60) days from the signing thereof. By no means can it be considered as the executing agreement or document for the purchase of the shares.[78]

NDC's assertion that the Memorandum of Agreement was merely a preliminary agreement that was separate and distinct from the share purchase agreement, finds support in clause 7 of the Memorandum of Agreement, which lists down the terms and conditions to be included in the share purchase agreement as follows:

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[77] *Rollo* (G.R. No. 193099), pp. 73-74, Petition for Review.

[78] *Id.* at 74.

7. The stock purchase agreement to be prepared and signed by the parties within sixty (60) days from date hereof shall contain, among other things:

(a) standard warranties of seller including, but not limited to, warranties pertaining to the accuracy of financial and other statements of GSC; disclosure of liabilities; payment of all taxes, duties, licenses and fees; non-encumbrance of corporate assets; valid contracts with third parties, etc. including an indemnity clause covering any breach thereof.

(b) provisions that Buyer shall retain 2 representatives of Sellers in the board of GSC only for as long as Sellers have not been paid, or have not negotiated or discounted any of the promissory notes referred to in clause 5 above.

(c) provisions whereby Construction Development Corporation of the Philippines, Sta. Ines Melale Forest Products Corporation, Mr. Rodolfo M. Cuenca and Mr. Manuel I. Tinio shall be released from counter-guarantees they have issued in favor of DBP and other financial institutions in connection with GSC's various credit accommodations.

(d) provisions for arbitration as a means of settling disputes and differences of opinion regarding the stock purchase agreement.

Under clause 7 of the Memorandum of Agreement, NDC and respondents agreed to include in the still-to-be-executed share purchase agreement, provisions on: (a) standard warranties, including warranties on the accuracy of Galleon's financials, disclosure of liabilities, etc; (b) the retention of Galleon's representatives in Galleon's board of directors prior to the payment of the share purchase price; (c) the release of respondents from the counter-guarantees they made in favor of DBP and other financial institutions in connection with Galleon's various credit accommodations; and (d) arbitration as a means of settling disputes and differences of opinion regarding the stock purchase agreement.

Taking the provisions of the Memorandum of Agreement as a whole, it is clear that while there was an intention to follow the directives of Letter of Instructions No. 1155, the transfer of shares from respondents to NDC was to be effected only

with the execution of the share purchase agreement, the terms and conditions of which were laid out in the Memorandum of Agreement.

NDC and the respondents undertook to prepare and sign a share purchase agreement over 100% of respondents' shares in Galleon not more than sixty days after the signing of the Memorandum of Agreement:

> 3. As soon as possible, but not more than 60 days after the signing hereof, the parties shall endeavor to prepare and sign a share purchase agreement covering 100% of the shareholdings of Sellers in GSC to be transferred to Buyer, *i.e.* 10,000,000 fully paid common shares of the par value of ₱1.00 per share and subscription of an additional 100,000,000 common shares of the par value of ₱1.00 per share of which ₱36,740,755.00 has been paid, but not yet issued.

The execution of a share purchase agreement was a condition precedent to the transfer of Galleon's shares to NDC. However, the Court of Appeals found that the NDC prevented its execution by deliberately delaying its review of Galleon's financial accounts:

> From the foregoing, it is evident that the period for the payment of the purchase price is entirely dependent on the execution of a share purchase agreement by the parties. The evidence on record, however, show that the *defendant-appellant NDC itself voluntarily prevented the execution of a share purchase agreement when it reneged on its various obligations under the Memorandum of Agreement*. The evidence on record show that the share purchase agreement was not formally executed because then Minister Roberto Ongpin claimed that the accounts of defendant Galleon had to be reviewed and cleared up before the share purchase agreement is signed. While defendant Galleon made its financial records available to defendant-appellant NDC for their review, the latter never made any serious effort to review the financial accounts of the defendant Galleon, hence, effectively preventing the execution of the share purchase agreement. Consequently, the condition for the running of the period for the payment of the purchase price of the shares of stocks in defendant Galleon by the defendant-appellant NDC, *i.e.*, the execution of the Share Purchase Agreement, was deemed fulfilled as it was the defendant-appellant NDC itself which prevented it from happening.

Under Article 1186 of the Civil Code, a "condition shall be deemed fulfilled when the obligor voluntarily prevents its fulfilment." This applies in the instant case.[79] (Emphasis supplied)

The Regional Trial Court likewise found that respondent Cuenca, as Galleon's representative, initiated moves for the preparation and execution of the share purchase agreement and NDC's takeover of Galleon.[80] Nonetheless, despite Cuenca's efforts, the share purchase agreement was never formally executed:

> Assuming that the share purchase agreement was a condition for the effectivity of the Memorandum of Agreement (dated 10 August 1981), said condition is deemed fulfilled by virtue of Art. 1186 of the Civil Code, which provides that "*the condition shall be deemed fulfilled when the obligor voluntarily prevents its fulfillment*." Plaintiff Cuenca, as representative of the former shareholders of defendant Galleon, in order to clear up the accounts preparatory to the execution of the share purchase agreement, created a team to prepare a statement of defendant Galleon's outstanding accounts which statement of account was intended to be included as part of the annexes of the said share purchase agreement. Another team with representatives from both parties, that is, the former stockholders of defendant Galleon and defendant NDC, had to be created for a smoother turnover. However, despite said efforts done by plaintiff Cuenca the share purchase agreement was not formally executed.[81] (Emphasis in the original)

NDC denies that it caused the delay in the execution of the share purchase agreement and argues that it was Cuenca who caused the delay for insisting on the payment first of the advances made in Galleon's favor before executing the share purchase agreement and relinquishing control over Galleon.[82]

NDC's bare denials cannot succeed in light of the preponderance of evidence submitted by respondents.

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[79] *Id.* at 28-29, Court of Appeals Decision.

[80] *Rollo* (G.R. No. 193068), p. 164, Regional Trial Court Decision.

[81] *Id.*

[82] *Rollo* (G.R. No. 193099), pp. 72-73, Petition for Review.

In his Affidavit[83] dated June 17, 1999, Cuenca narrated the preparations the Galleon stockholders undertook for the execution of the share purchase agreement with NDC:

168. Q : What happened to the share purchase agreement referred to in the Memorandum of Agreement dated August 1981 (Exhibit "J")?

A : The share purchase agreement was never drawn up despite persistent attempts by myself to see it prepared and executed. In fact, we continually negotiated with NDC and DBP throughout 1982 and 1983 on the matter.

169. Q : Why was it never executed?

A : Minister Ongpin kept claiming that the accounts had to be cleared up before any formal agreement could be signed.

170. Q : What steps, if any, did the parties take to clear up the accounts preparatory to the signing of the share purchase agreement?

A : During the transition period, prior to the signing of the share purchase agreement, I created a team to prepare a statement of Galleon's outstanding accounts which we intended to include as part of the annexes of the share purchase agreement. Another team with representatives from both parties, i.e., the former stockholders of Galleon and NDC, had to be created for a smoother turn-over. In short, we did all that was possible and required of us under the Memorandum of Agreement. *We negotiated with NDC in good faith for years but NDC kept stonewalling the execution of the share purchase agreement.*[84] (Emphasis supplied)

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[83] *Id.* at 355-401.

[84] *Id.* at 383-384.

On April 26, 1982, Antonio L. Carpio, NDC's General Manager,[85] sent Ongpin a Memorandum,[86] where Carpio acknowledged reviewing Galleon's outstanding accounts submitted by Cuenca.[87] This supports Cuenca's statement that they submitted a statement of Galleon's outstanding accounts for NDC's review, as per Ongpin's request, a fact not denied by NDC.

Upon receiving Galleon's outstanding accounts, NDC and Sta. Ines, Cuenca, Tinio, Cuenca Investment and Universal Holdings should have initiated the execution of the share purchase agreement. However, the share purchase agreement was never executed, through no fault of Galleon's stockholders.

In clause 4 of the Memorandum of Agreement, NDC as the buyer was to verify the warranty of the Galleon shareholders that ₱46,740,755.00 was paid for Galleon's 46,740,755 common shares with par value of ₱1.00 per share. The results of the verification would have determined the final purchase price to be paid to the Galleon shareholders. Nonetheless, despite the verification still to be done, both parties agreed to execute the share purchase agreement as soon as possible but not more than sixty days from the signing of the Memorandum of Agreement.

We uphold the Court of Appeals' finding that the failure to execute the share purchase agreement was brought about by NDC's delay in reviewing the financial accounts submitted by Galleon's stockholders. The Memorandum of Agreement was executed on August 10, 1981, giving the parties no more than sixty days or up to October 9, 1981, to prepare and sign the share purchase agreement. However, it was only on April 26, 1982, or more than eight months after the Memorandum of Agreement was signed, did NDC's General Director submit his recommendation on Galleon's outstanding account. Even then, there was no clear intention to execute a share purchase

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[85] *Id*. at 509.

[86] *Id*. at 881-881-A.

[87] *Id*. at 881.

agreement as compliance with the Memorandum of Agreement. Article 1186 of the Civil Code is categorical that a "condition shall be deemed fulfilled when the obligor voluntarily prevents its fulfilment." Considering NDC's delay, the execution of the share purchase agreement should be considered fulfilled with NDC as the new owner of 100% of Galleon's shares of stocks.

The due execution of the share purchase agreement is further bolstered by Article 1198(4) of the Civil Code, which states that the debtor loses the right to make use of the period when a condition is violated, making the obligation immediately demandable:

> Article 1198. The debtor shall lose every right to make use of the period:
>
> (1) When after the obligation has been contracted, he becomes insolvent, unless he gives a guaranty or security for the debt;
>
> (2) When he does not furnish to the creditor the guaranties or securities which he has promised;
>
> (3) When by his own acts he has impaired said guaranties or securities after their establishment, and when through a fortuitous event they disappear, unless he immediately gives new ones equally satisfactory;
>
> *(4) When the debtor violates any undertaking, in consideration of which the creditor agreed to the period;*
>
> (5) When the debtor attempts to abscond. (Emphasis supplied)

Well-settled is the rule that findings of fact made by a trial court and the Court of Appeals are accorded the highest degree of respect by this Court, and, absent a clear disregard of the evidence before it that can otherwise affect the results of the case, those findings should not be ignored.[88]

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[88] *See Verdejo v. Court of Appeals*, G.R. No. 106018, December 5, 1994, 238 SCRA 781, 784 [Per *J.* Quiason, First Division].

II

The Regional Trial Court found that the advances made by respondents in Galleon's behalf covered legitimate expenses in the ordinary course of business,[89] making NDC liable under clause 9 of the Memorandum of Agreement, which states:

> 9. Valid and duly authorized liabilities of GSC which are the subject of a meritorious lawsuit, or which have been arranged and guaranteed by Mr. Rodolfo M. Cuenca, may be considered by Buyer for priority in the repayment of accounts, provided that, upon review, the Buyer shall determine these to be legitimate and were validly incurred in the ordinary course of GSC's principal business.

NDC's liability for the advances made in Galleon's behalf was upheld by the Court of Appeals, which held that the advances made were valid and authorized liabilities incurred by Galleon in the course of its business, thus:

> In the instant case, the advances being claimed by [respondents] are in the nature of guarantee fees in consideration for the personal undertakings of the [respondents] to secure the potential liabilities of defendant-appellant DBP in favor of defendant Galleon's foreign creditors, advances to cover payments of interest, security and management fees arising out of a mortgage contract, charter line payments, bare boat hire payments, fuel and ship franchise payments, salaries and wages and advertising expenses[.][90]

Ordinary and necessary business expenses are those that are "directly attributable to, the development, management, operation and/or conduct of the trade, business or exercise of a profession[.]"[91]

In Carpio's Memorandum to Ongpin dated April 26, 1982, he recommended that the guarantee fees being claimed by Galleon's stockholders should not be paid. Carpio also

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[89] *Rollo* (G.R. No. 193068), p. 163, Regional Trial Court Decision.

[90] *Rollo* (G.R. No. 193099), p. 32, Court of Appeals Decision.

[91] TAX CODE, Sec. 34.

questioned the ₱1,400,000.00 interest being charged by Sta. Ines from the ₱6,650,000.00 cash advances it made in Galleon's behalf. Carpio likewise questioned the charge of ₱600,000.00 being claimed as Galleon's share for the Construction Development Corporation of the Philippine's basketball team with the Philippine Basketball Association.[92]

We see no reason to disturb the findings of fact made by the trial court and the Court of Appeals considering that the same are duly supported by substantial evidence.

III

Novation is a mode of extinguishing an obligation by "[c]hanging [its] object or principal conditions[,] [s]ubstituting the person of the debtor [or] [s]ubrogating a third person in the rights of the creditor."[93] While novation, "which consists in substituting a new debtor in the place of the original one may be made even without the knowledge or against the will of the latter, [it must be with] the consent of the creditor."[94]

Testate Estate of Mota v. Serra[95] instructs that for novation to have legal effect, the creditor must expressly consent to the substitution of the new debtor:

> It should be noted that in order to give novation its legal effect, the law requires that the creditor should consent to the substitution of a new debtor. This *consent must be given expressly* for the reason that, since novation extinguishes the personality of the first debtor who is to be substituted by new one, it implies on the part of the creditor a waiver of the right that he had before the novation, which waiver must be express under the principle that *renuntiatio non præsumitur*, recognized by the law in declaring that a waiver of right

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[92] *Rollo* (G.R. No. 193099), pp. 881-881-A, National Development Company's Memorandum.

[93] CIVIL CODE, Art. 1291.

[94] CIVIL CODE, Art. 1293.

[95] 47 Phil. 464 (1925) [Per *J.* Villamor, *En Banc*].

may not be performed unless the will to waive is indisputably shown by him who holds the right.[96] (Emphasis supplied)

The Court of Appeals erred when it ruled that DBP was privy to the Memorandum of Agreement since Ongpin was concurrently Governor of DBP and chairman of NDC Board of Directors at the time the Memorandum of Agreement was signed.[97]

The general rule is that, "[i]n the absence of an authority from the board of directors, no person, not even the officers of the corporation, can validly bind the corporation."[98] A corporation is a juridical person, separate and distinct from its stockholders and members, having "powers, attributes and properties expressly authorized by law or incident to its existence."[99]

Section 23[100] of the Corporation Code provides that "the corporate powers of all corporations . . . shall be exercised, all business conducted and all property of such corporations [shall] be controlled and held by the board of directors[.]"

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[96] *Id*. at 469-470.

[97] *Rollo* (G.R. No. 193099), p. 39, Court of Appeals Decision.

[98] *Premium Marble Resources, Inc v. Court of Appeals*, 332 Phil. 10, 20 (1996) [Per *J*. Torres, Jr., Second Division].

[99] CORP. CODE, Sec. 2.

[100] CORP. CODE, Sec. 23 provides:

Sec. 23 The board of directors or trustees.– Unless otherwise provided in this Code, the corporate powers of all corporations formed under this Code shall be exercised, all business conducted and all property of such corporations controlled and held by the board of directors or trustees to be elected from among the holders of stocks, or where there is no stock, from among the members of the corporation, who shall hold office for one (1) year until their successors are elected and qualified.

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.

People's Aircargo and Warehousing Co. Inc. v. Court of Appeals[101] explains that under Section 23 of the Corporation Code, the power and responsibility to bind a corporation can be delegated to its officers, committees, or agents. Such delegated authority is derived from law, corporate bylaws, or authorization from the board:

> Under this provision, the power and the responsibility to decide whether the corporation should enter into a contract that will bind the corporation is lodged in the board, subject to the articles of incorporation, bylaws, or relevant provisions of law. However, just as a natural person may authorize another to do certain acts for and on his behalf, the board of directors may validly delegate some of its functions and powers to officers, committees or agents. *The authority of such individuals to bind the corporation is generally derived from law, corporate bylaws or authorization from the board,* either expressly or impliedly by habit, custom or acquiescence in the general course of business, *viz.*:
>
> > "A corporate officer or agent may represent and bind the corporation in transactions with third persons *to the extent that [the] authority to do so has been conferred upon him*, and this includes powers which have been intentionally conferred, and also such powers as, in the usual course of the particular business, are incidental to, or may be implied from, the powers intentionally conferred, powers added by custom and usage, as usually pertaining to the particular officer or agent, and such apparent powers as the corporation has caused persons dealing with the officer or agent to believe that it has conferred."[102] (Emphasis supplied)

Aside from Ongpin being the concurrent head of DBP and NDC at the time the Memorandum of Agreement was executed, there was no proof presented that Ongpin was duly authorized

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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.

[101] 357 Phil. 850 (1998) [Per *J*. Panganiban, First Division].

[102] *Id*. at 863, *citing Yao Ka Sin Trading v. Court of Appeals*, 285 Phil. 345, 365 (1992) [Per *J*. Davide, Jr., Third Division].

by the DBP to give consent to the substitution by NDC as a co-guarantor of Galleon's debts. Ongpin is not DBP, therefore, it is wrong to assume that DBP impliedly gave its consent to the substitution simply by virtue of the personality of its Governor.

Novation is never presumed. The *animus novandi*, whether partial or total, "must appear by express agreement of the parties, or by their acts which are too clear and unequivocal to be mistaken."[103]

There was no such *animus novandi* in the case at bar between DBP and respondents, thus, respondents have not been discharged as Galleon's co-guarantors under the Deed of Undertaking and they remain liable to DBP.

IV

On the issue of attorney's fees and moral and exemplary damages awarded to Sta. Ines, Cuenca, Tinio, Cuenca Investment, and Universal Holdings, the Court of Appeals upheld the findings of the Regional Trial Court for being just, reasonable, and supported by the evidence on record.[104]

We see no reason to disturb the findings of the lower courts.

However, on the issue of compensatory interest as damages, where the Regional Trial Court imposed an interest rate of six percent (6%) per annum on the advances made and the payment due for the shares of stock,[105] the Court of Appeals modified the Regional Trial Court's ruling insofar as the interest rate to be imposed was concerned.[106] The Court of Appeals ruled that the advances made by Sta. Ines, Cuenca, Tinio, Cuenca Investment, and Universal Holdings and the payment due them

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[103] *Fortune Motors (Phils.) Corporation v. Court of Appeals*, 335 Phil. 315, 329 (1997) [Per *J.* Panganiban, Third Division].

[104] *Rollo* (G.R. No. 193099), p. 41, Court of Appeals Decision.

[105] *Rollo* (G.R. No. 193068), p. 167, Regional Trial Court Decision.

[106] *Rollo* (G.R. No. 193099), pp. 41-43.

for the Galleon shares of stocks were loans or forbearances of money that should earn interest of 12% from the date the case was filed.[107] Furthermore, the Court of Appeals held that these amounts should likewise earn an additional 12% interest per annum from finality until its satisfaction.[108]

Estores v. Spouses Supangan[109] defined forbearance as an arrangement other than a loan where a person agrees to the temporary use of his money, goods, or credits subject to the fulfillment of certain conditions.[110]

In this case, Sta. Ines, Cuenca, Tinio, Cuenca Investment, and Universal Holdings advanced money in Galleon's favor and agreed to turn over management and control of Galleon to NDC even before receiving payment for their shares of stocks. They were deprived of the use of their money in both cases for the periods pending fulfillment of the agreed conditions. When those conditions were not met, they became entitled not only to the return of their advances and payment of their shares of stocks, but also to the compensation for the use of their money and property. The unwarranted withholding of the money, which rightfully pertains to Sta. Ines, Cuenca, Tinio, Cuenca Investment, and Universal Holdings, amounts to forbearance of money.

Sunga-Chan v. Court of Appeals,[111] citing *Eastern Shipping Lines, Inc. v. Court of Appeals,*[112] reiterated the rule on application of interest:

Eastern Shipping Lines, Inc. synthesized the rules on the imposition of interest, if proper, and the applicable rate, as follows: The 12% per annum rate under CB Circular No. 416 shall apply only to loans

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[107] *Id.* at 43.

[108] *Id.*

[109] 686 Phil. 86 (2012) [Per J. Del Castillo, First Division].

[110] *Id.* at 97.

[111] 578 Phil. 262 (2008) [Per J. Velasco, Jr., Second Division].

[112] 304 Phil. 236 (1994) [Per J. Vitug, *En Banc*].

or forbearance of money, goods, or credits, as well as to judgments involving such loan or forbearance of money, goods, or credit, while the 6% per annum under Art. 2209 of the Civil Code applies "when the transaction involves the payment of indemnities in the concept of damage arising from the breach or a delay in the performance of obligations in general," with the application of both rates reckoned "from the time the complaint was filed until the [adjudged] amount is fully paid." In either instance, the reckoning period for the commencement of the running of the legal interest shall be subject to the condition "that the courts are vested with discretion, depending on the equities of each case, on the award of interest."

Otherwise formulated, the norm to be followed in the future on the rates and application thereof is:

I. When an obligation, regardless of its source, is breached, the contravenor can be held liable for damages. The provisions under Title XVIII on "Damages" of the Civil Code govern in determining the measure of recoverable damages.

II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:

    1. When the obligation breached consists in the payment of a sum of money, *i.e.*, a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 12% per annum to be computed from default, *i.e.*, from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.

    . . . . . .

    3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 12% per annum from such finality until its satisfaction, this interim period being

> deemed to be by then an equivalent to a forbearance of credit.[113] (Emphasis supplied, citations omitted)

On May 16, 2013, the Monetary Board of the Bangko Sentral ng Pilipinas issued Resolution No. 796, which revised the interest rate to be imposed for the loan or forbearance of any money, goods, or credits. This was implemented by Bangko Sentral ng Pilipinas Circular No. 799,[114] Series of 2013, which reads:

> The Monetary Board, in its Resolution No. 796 dated 16 May 2013, approved the following revisions governing the rate of interest in the absence of stipulation in loan contracts, thereby amending Section 2 of Circular No. 905, Series of 1982:
>
> Section 1. The rate of interest for the loan or forbearance of any money, goods or credits and the rate allowed in judgments, in the absence of an express contract as to such rate of interest, shall be six percent (6%) per annum.
>
> Section 2. In view of the above, Subsection X305.1 of the Manual of Regulations for Banks and Sections 4305Q.1, 4305S.3 and 4303P.1 of the Manual of Regulations for Non-Bank Financial Institutions are hereby amended accordingly.
>
> This Circular shall take effect on 1 July 2013.

Nacar v. Gallery Frames, et al.[115] then modified the guidelines laid down in *Eastern Shipping Lines* to embody Bangko Sentral ng Pilipinas Circular No. 799, thus:

> I. When an obligation, regardless of its source, *i.e.*, law, contracts, quasi-contracts, delicts or quasi-delicts is breached, the contravenor can be held liable for damages. The provisions under Title XVIII on "Damages" of the Civil Code govern in determining the measure of recoverable damages.

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[113] *Sunga-Chan v. Court of Appeals,* 578 Phil. 262, 276-278 (2008) [Per *J*. Velasco, Jr., Second Division].

[114] The subject of Bangko Sentral ng Pilipinas Circular No. 799 dated June 21, 2013 is the "[r]ate of interest in the absence of stipulation."

[115] 716 Phil. 267 (2013) [Per *J*. Peralta, *En Banc*].

II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:

1. When the obligation is breached, and it consists in the payment of a sum of money, *i.e.*, a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 6% *per annum* to be computed from default, *i.e.*, from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.
2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% *per annum*. No interest, however, shall be adjudged on unliquidated claims or damages, except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code), but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.
3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 6% *per annum* from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.

And, in addition to the above, judgments that have become final and executory prior to July 1, 2013, shall not be disturbed and shall continue to be implemented applying the rate of interest fixed therein.[116]

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[116] *Id.* at 282-283.

Applying these guidelines, the Court of Appeals' ruling must be modified to reflect the ruling in *Nacar*. The award of the advances made by Sta. Ines, Cuenca, Tinio, Cuenca Investment, and Universal Holdings in Galleon's favor and payment for their shares of stocks in Galleon shall earn an interest rate of 12% per annum from the date of filing of this case on April 22, 1985[117] until June 30, 2013. After June 30, 2013, these amounts shall earn interest at six percent (6%) per annum until the Decision becomes final and executory. An interest of six percent (6%) per annum shall be imposed on such amounts from the finality of the Decision until its satisfaction.

Finally, DBP's claims for damages are denied since it failed to support its claims of malicious prosecution and a deliberate act of Sta. Ines, Cuenca, Tinio, Cuenca Investment, and Universal Holdings to cause loss or injury to DBP.

WHEREFORE, the March 24, 2010 Decision and July 21, 2010 Resolution of the Court of Appeals in CA-G.R. CV No. 85385 are **AFFIRMED** with the following **MODIFICATIONS**:

(1) Sta. Ines Melale Forest Products Corporation, Rodolfo M. Cuenca, Manuel I. Tinio, Cuenca Investment Corporation, Universal Holdings Corporation, and the Philippine National Construction Corporation are declared **LIABLE** to the National Development Corporation, the Development Bank of the Philippines, and the Asset Privatization Trust under the deed of undertaking, pledge, mortgages, and other accessory contracts among the parties; and

(2) The award of the advances made by Sta. Ines Melale Forest Products Corporation, Rodolfo M. Cuenca, Manuel L. Tinio, Cuenca Investment Corporation, and Universal Holdings Corporation in Galleon's favour, as well as the award of the payment for their shares of stocks in Galleon, shall earn an interest rate of 12% per annum from the date of the filing of this case on April 22, 1985 until June 30, 2013, after which,

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[117] *Rollo* (G.R. No. 193068), p. 167.

they shall earn interest at the rate of 6% per annum until the Decision becomes final and executory.

These amounts shall earn interest at the rate of 6% per annum from the finality of this Decision until its satisfaction.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 195450. February 1, 2017]

DEVELOPMENT BANK OF THE PHILIPPINES, *petitioner*, *vs.* **HON. EMMANUEL C. CARPIO, in his capacity as Presiding Judge, Regional Trial Court, Branch 16, Davao City, COUNTRY BANKERS INSURANCE CORPORATION, DABAY ABAD, HATAB ABAD, OMAR ABAS, HANAPI ABDULLAH, ROJEA AB ABDULLAH, ABDULLAH ABEDIN, ALEX ABEDIN, *et al.*, represented by their Attorney-in-Fact, MR. MANUEL L. TE,** *respondents*.

SYLLABUS

1. REMEDIAL LAW; TRIAL COURTS; RESIDUAL JURISDICTION; ELUCIDATED.— Residual jurisdiction

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[*] Designated as Fifth Member of the Second Division per Special Order No. 2416-B (REVISED) dated January 4, 2017.

[**] Designated Additional Member in lieu of Associate Justice Antonio T. Carpio per Raffle dated April 20, 2015.

refers to the authority of the trial court to issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal; to approve compromises; to permit appeals by indigent litigants; to order execution pending appeal in accordance with Section 2, Rule 39; and to allow the withdrawal of the appeal, provided these are done prior to the transmittal of the original record or the record on appeal, even if the appeal has already been perfected or despite the approval of the record on appeal or in case of a petition for review under Rule 42, before the CA gives due course to the petition. The "residual jurisdiction" of the trial court is available at a stage in which the court is normally deemed to have lost jurisdiction over the case or the subject matter involved in the appeal. This stage is reached upon the perfection of the appeals by the parties or upon the approval of the records on appeal, but prior to the transmittal of the original records or the records on appeal. In either instance, the trial court still retains its so-called residual jurisdiction to issue protective orders, approve compromises, permit appeals of indigent litigants, order execution pending appeal, and allow the withdrawal of the appeal. From the foregoing, it is clear that before the trial court can be said to have residual jurisdiction over a case, a trial on the merits must have been conducted; the court rendered judgment; and the aggrieved party appealed therefrom.

2. ID.; CIVIL PROCEDURE; MOTION TO DISMISS; DISMISSAL WITH PREJUDICE AND DISMISSAL WITHOUT PREJUDICE; DISTINCTION ELUCIDATED IN THE CASE OF *STRONGWORLD CONSTRUCTION CORPORATION, et al. v. HON. PERELLO, et al.*— In *Strongworld Construction Corporation, et al. v. Hon. Perello, et al.*, the Court elucidated on the difference between a dismissal with prejudice and one without prejudice: We distinguish a dismissal *with* prejudice from a dismissal *without* prejudice. The former disallows and bars the refiling of the complaint; whereas, the same cannot be said of a dismissal without prejudice. Likewise, where the law permits, a dismissal with prejudice is subject to the right of appeal. x x x Section 1, Rule 16 of the 1997 Revised Rules of Civil Procedure enumerates the grounds for which a motion to dismiss x x x Section 5 of the same Rule, recites the effect of a dismissal under Sections 1(f),(h), and (i), thereof, thus: SEC. 5. *Effect of dismissal*. Subject to the right of appeal, an order granting a motion to dismiss based

on paragraphs (f), (h), and (i) of Section 1 hereof shall bar the refiling of the same action or claim. Briefly stated, dismissals that are based on the following grounds, to wit: (1) that the cause of action is barred by a prior judgment or by the statute of limitations; (2) that the claim or demand set forth in the plaintiffs pleading has been paid, waived, abandoned or otherwise extinguished; and (3) that the claim on which the action is founded is unenforceable under the provisions of the statute of frauds, bar the refiling of the same action or claim. Logically, the nature of the dismissal founded on any of the preceding grounds is with prejudice because the dismissal prevents the refiling of the same action or claim. Ergo, dismissals based on the rest of the grounds enumerated are without prejudice because they do not preclude the refiling of the same action. x x x As has been earlier quoted, Section 1(h), Rule 41 of the 1997 Revised Rules of Civil Procedure mandates that no appeal may be taken from an order dismissing an action without prejudice. The same section provides that in such an instant where the final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65.

3. **ID.; ID.; EQUITY CANNOT SUPERSEDE THE RULES OF COURT.—** DBP admits that it filed the application for damages after the order of dismissal had become final and executory. In seeking relief from this Court, however, it invokes equity and argues that a strict application of Section 20, Rule 57 of the Rules of Court would prejudice its right to recover damages arising from the improper attachment of the certificates of title. DBP, however, must be reminded that equity, "which has been aptly described as a 'justice outside legality,' is applied only in the absence of, and never against, statutory law or, as in this case, judicial rules of procedure. The pertinent positive rules being present here, they should preempt and prevail over all abstract arguments based only on equity." As the Court has stated in *Lim Tupas v. CA*, "[e]motional appeals for justice, while they may wring the heart of the Court, cannot justify disregard of the mandate of the law as long as it remains in force.

4. **ID.; PROVISIONAL REMEDIES; REPLEVIN; RECOVERY OF DAMAGES ON REPLEVIN BOND; REQUISITES.—** Section 10, Rule 60 of the Rules of Court provides that in replevin cases, as in receivership and injunction cases, the damages to be awarded to either party upon any bond filed by the other

shall be claimed, ascertained, and granted in accordance with Section 20 of Rule 57 x x x In other words, to recover damages on a replevin bond (or on a bond for preliminary attachment, injunction or receivership), it is necessary (1) that the defendant-claimant has secured a favorable judgment in the main action, meaning that the plaintiff has no cause of action and was not, therefore, entitled to the provisional remedy of replevin; (2) that the application for damages, showing claimant's right thereto and the amount thereof, be filed in the same action before trial or before appeal is perfected or before the judgment becomes executory; (3) that due notice be given to the other party and his surety or sureties, notice to the principal not being sufficient; and (4) that there should be a proper hearing and the award for damages should be included in the final judgment. Likewise, to avoid multiplicity of suits, all incidents arising from the same controversy must be settled in the same court having jurisdiction of the main action. Thus, the application for damages must be filed in the court which took cognizance of the case, with due notice to the other parties.

5. ID.; ID.; AVAILABLE REMEDIES TO RECOVER INDEBTEDNESS.— Available remedies to recover indebtedness in case at bar: *First*, DBP could enforce its guarantee agreement with GFSME. A contract of guaranty gives rise to a subsidiary obligation on the part of the guarantor. A guarantor agrees that the creditor, after proceeding against the principal, may proceed against the guarantor if the principal is unable to pay. Moreover, he contracts to pay if, by the use of due diligence, the debt cannot be made out of the principal debtor. *Further*, it may file an action for damages based on Article 19 of the New Civil Code against respondents for unlawfully taking the certificates of title, which served as security for their loan. x x x *Finally*, nothing precludes DBP from instituting an action for collection of sum of money against respondents. Besides, if the parcels of land covered by the certificates of title, which DBP sought to recover from respondents, were mortgaged to the former, then DBP, as mortgage-creditor, has the option of either filing a personal action for collection of sum of money or instituting a real action to foreclose on the mortgage security. The two remedies are alternative and each remedy is complete by itself. If the mortgagee opts to foreclose the real estate mortgage, he waives the action for the collection of the debt, and *vice versa*.

APPEARANCES OF COUNSEL

DBP Legal Services Group for petitioner.
Velasquez & Associates for respondent CBIC.
Renato B. Pagatpatan for Manuel L. Te, *et al.*

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 July 9, 2008 Decision[1] and the January 21, 2011 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. SP No. 85719, which dismissed the petition for *certiorari* and *mandamus* praying for the annulment of the May 17, 2004 and July 9, 2004 Orders[3] of the Regional Trial Court, Branch 16, Davao City *(RTC),* in Civil Case No. 28,721-01.

The Antecedents

On August 21, 2001, Dabay Abad, Hatab Abad, Omar Abas, Hanapi Abdullah, Rojea Ab Abdullah, Abdullah Abedin, Alex Abedin, *et al.(Abad, et al.),* represented by their attorney-in-fact, Manuel L. Te, filed a complaint for delivery of certificates of title, damages, and attorney's fees against petitioner Development Bank of the Philippines *(DBP)* and Guarantee Fund for Small and Medium Enterprise *(GFSME)* before the RTC.[4]

In their Complaint,[5] Abad*, et al.* prayed, among others, for the issuance of a writ of seizure, pending hearing of the case,

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[1] Penned by Associate Justice Edgardo T. Lloren with Associate Justice Edgardo A. Camello and Associate Justice Jane Aurora C. Lantion, concurring; *rollo*, pp. 18-25.

[2] *Id*. at 27-28.

[3] Penned by Presiding Judge Emmanuel C. Carpio; *id*. at 49-51.

[4] *Id*. at 19.

[5] *Id*. at 53-59.

for delivery of their certificates of title they claimed to be unlawfully detained by DBP and GFSME. They alleged that their certificates of title were submitted to DBP for safekeeping pursuant to the loan agreement they entered into with DBP. The same certificates of title were turned over by DBP to GFSME because of its call on GFSME's guarantee on their loan, which became due and demandable, and pursuant to the guarantee agreement between DBP and GFSME.

As prayed for, the RTC issued the Writ of Seizure[6] on August 24, 2001. The writ was accompanied by Plaintiff's Bond for Manual Delivery of Personal Property[7] issued by Country Bankers Insurance Corporation *(CBIC)*.

On September 5, 2001, DBP filed its Omnibus Motion to Dismiss Complaint and to Quash Writ of Seizure[8] on the ground of improper venue, among others, Abad, *et al.* filed their Opposition[9] and later, their Supplemental Opposition,[10] to which they attached the Delivery Receipt[11] showing that the court sheriff took possession of 228 certificates of title from GFSME.

In its Order,[12] dated September 25, 2001, the RTC granted DBP's omnibus motion and dismissed the case for improper venue.

On December 20, 2001, DBP and GFSME filed their Joint Motion to Order Plaintiffs to Return Titles to Defendants DBP and GFSME.[13] After Abad, *et al.* filed their opposition, the

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[6] *Id.* at 60-61.

[7] *Id.* at 62.

[8] *Id.* at 68-72.

[9] *Id.* at 179-183.

[10] *Id.* at 185-187.

[11] *Id.* at 188-190.

[12] *Id.* at 196-197.

[13] *Id.* at 207-211.

RTC issued the Order,[14] dated January 27, 2003, directing Abad, *et al*. to return the 228 certificates of title.

Abad, *et al.* filed a petition for *certiorari* and prohibition with the Court praying, among others, for the nullification and reversal of the January 27, 2003 Order of the RTC. The Court, however, in its June 9, 2003 Resolution,[15] dismissed the petition.

On September 18, 2003, DBP filed its Motion for Writ of Execution[16] of the January 27, 2003 Order before the RTC. On December 16, 2003, the RTC issued the corresponding Writ of Execution.[17] The Sheriff's Return of Service,[18] however, indicated that Abad, *et al.* failed to deliver the certificates of title.

The Subject Motion against the Bond

Due to the non-delivery of the certificates of title by Abad, *et al.,* DBP filed its *Motion/Application to Call on Plaintiff's Surety Bond*,[19] dated February 3, 2004, praying for the release of the bond issued by CBIC to answer for the damages it sustained as a result of the failure to return the 228 certificates of title.

The RTC Ruling

In its Order, dated May 17, 2004, the RTC denied the subject motion explaining that the resolution of the motion was no longer part of its residual power. It pointed out that although there was indeed an order to return the 228 certificates of title to DBP, it was not made as a result of a trial of the case, but as a consequence of the order of dismissal based on improper venue.

DBP moved for reconsideration. Nevertheless, in its July 9, 2004 Order, the RTC denied the motion.

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[14] *Id*. at 79.

[15] *Id*. at 80-81.

[16] *Id*. at 85-86.

[17] *Id*. at 90.

[18] *Id*. at 91.

[19] *Id*. at 218-222.

Aggrieved, DBP filed a petition for *certiorari* and *mandamus* before the CA.

The CA Ruling

In its July 9, 2008 Decision, the CA dismissed the petition for *certiorari* and *mandamus*. It noted that DBP did not move for reconsideration of the September 25, 2001 Order of dismissal. It considered the RTC decision as final and executory. It added that Section 20, Rule 57 of the Rules of Court provided that the claim for damages against the bond must be filed before trial or before appeal was perfected or before the judgment became executory.[20]

DBP moved for reconsideration, but its motion was denied by the CA in its January 21, 2011 Resolution.

Hence, this petition.

ISSUE

THE COURT OF APPEALS ERRED IN ITS BLIND ADHERENCE TO AND STRICT APPLICATION OF SECTION 20, RULE 57 OF THE 1997 RULES OF CIVIL PROCEDURE.[21]

Petitioner DBP argues that it could not have anticipated that Abad, *et al. (respondents)* would not abide by the writ of execution; hence, prior to such failure of execution, it would be premature to claim for damages against the bond because DBP had not yet suffered any consequential damages with the implementation of the writ of seizure; and that Section 20, Rule 57 of the Rules of Court was not applicable as the damages resulting from the improper issuance of the writ of seizure occurred only after the unjustified refusal of respondents to return the titles despite the order from the RTC.

In its Comment,[22] dated August 11, 2011, respondent CBIC averred that Section 20, Rule 57 of the Rules of Court specified

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

[21] *Id.* at 9.

[22] *Id.* at 264-281.

that an application for damages on account of improper, irregular or excessive attachment must be filed before the trial or before appeal is perfected or before the judgment becomes executory; that the motion to call on plaintiff's surety bond was filed more than two (2) years after the September 25, 2001 Order of the RTC, dismissing the case, became final and executory; that, under Section 10, Rule 60 of the Rules of Court, the surety's liability under the replevin bond should be included in the final judgment; that, there being no judgment as to who, between the plaintiffs and the defendants, was entitled to the possession of the certificates of title, the RTC properly denied the motion to call on plaintiff's surety bond; that, any claim for damages against the bond was only proper with respect to any loss that DBP might have suffered by being compelled to surrender the possession of the certificates of title pending trial of the action; that, in this case, the motion to call on plaintiff's surety bond was filed after the trial was already terminated with the issuance of the order of dismissal; and that, instead of moving to claim for damages, DBP sought to quash the writ of seizure, even though it might already have some basis to claim for damages at that time as could be gleaned from the wordings of their motion to dismiss the complaint, based on, among others, improper venue and inapplicability of replevin as proper remedy.

Respondents, on the other hand, failed to file their comment despite several opportunities granted to them. Thus, their right to file a comment on the petition for review was deemed waived.

In its Consolidated Reply,[23] dated August 15, 2016, DBP asserted that Section 20, Rule 57 of the Rules of Court did not cover a situation where there was an instantaneous dismissal of the case due to improper venue; that the damages resulting from the improper issuance of the writ of seizure occurred only after the unjustified refusal of respondents to return the titles despite order from the RTC; and, that DBP could not resort to the surety prior to recovering the titles from respondents at

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[23] *Id*. at 431-440.

any time during the trial or before the judgment became final and executory.

The Court's Ruling

The petition lacks merit.

The trial court did not reach the residual jurisdiction stage

Residual jurisdiction refers to the authority of the trial court to issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal; to approve compromises; to permit appeals by indigent litigants; to order execution pending appeal in accordance with Section 2, Rule 39; and to allow the withdrawal of the appeal, provided these are done prior to the transmittal of the original record or the record on appeal, even if the appeal has already been perfected or despite the approval of the record on appeal[24] or in case of a petition for review under Rule 42, before the CA gives due course to the petition.[25]

The "residual jurisdiction" of the trial court is available at a stage in which the court is normally deemed to have lost jurisdiction over the case or the subject matter involved in the appeal. This stage is reached upon the perfection of the appeals by the parties or upon the approval of the records on appeal, but prior to the transmittal of the original records or the records on appeal. In either instance, the trial court still retains its so-called residual jurisdiction to issue protective orders, approve compromises, permit appeals of indigent litigants, order execution pending appeal, and allow the withdrawal of the appeal.[26]

From the foregoing, it is clear that before the trial court can be said to have residual jurisdiction over a case, a trial on the

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[24] Section 9, Rule 41 of the Rules of Court.

[25] Section 8, Rule 42 of the Rules of Court.

[26] *Angeles v. Court of Appeals,* G.R. No. 178733, September 15, 2014, 735 SCRA 82, 93.

merits must have been conducted; the court rendered judgment; and the aggrieved party appealed therefrom.

In this case, there was no trial on the merits as the case was dismissed due to improper venue and respondents could not have appealed the order of dismissal as the same was a dismissal, ***without prejudice***. Section 1(h), Rule 41 of the Rules of Civil Procedure states that no appeal may be taken from an order dismissing an action without prejudice. Indeed, there is no residual jurisdiction to speak of where no appeal has even been filed.[27]

In *Strongworld Construction Corporation, et al. v. Hon. Perello, et al.,*[28] the Court elucidated on the difference between a dismissal with prejudice and one without prejudice:

> We distinguish a dismissal *with* prejudice from a dismissal *without* prejudice. The former disallows and bars the refiling of the complaint; whereas, the same cannot be said of a dismissal without prejudice. Likewise, where the law permits, a dismissal with prejudice is subject to the right of appeal.
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> Section 1, Rule 16 of the 1997 Revised Rules of Civil Procedure enumerates the grounds for which a motion to dismiss may be filed, *viz.*:
>
> Section 1. Grounds. Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:
>
> (a) That the court has no jurisdiction over the person of the defending party;
>
> (b) That the court has no jurisdiction over the subject matter of the claim;
>
> (c) That venue is improperly laid;
>
> (d) That the plaintiff has no legal capacity to sue;

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[27] *Fernandez v. Court of Appeals*, 497 Phil. 748, 759 (2005).

[28] 528 Phil. 1080 (2006).

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

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

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

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

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

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

Section 5 of the same Rule, recites the effect of a dismissal under Sections 1(f), (h), and (i), thereof, thus:

SEC. 5. *Effect of dismissal.* Subject to the right of appeal, an order granting a motion to dismiss based on paragraphs (f), (h), and (i) of Section 1 hereof shall bar the refiling of the same action or claim.

Briefly stated, dismissals that are based on the following grounds, to wit: (1) that the cause of action is barred by a prior judgment or by the statute of limitations; (2) that the claim or demand set forth in the plaintiffs pleading has been paid, waived, abandoned or otherwise extinguished; and (3) that the claim on which the action is founded is unenforceable under the provisions of the statute of frauds, bar the refiling of the same action or claim. Logically, the nature of the dismissal founded on any of the preceding grounds is with prejudice because the dismissal prevents the refiling of the same action or claim. Ergo, dismissals based on the rest of the grounds enumerated are without prejudice because they do not preclude the refiling of the same action.

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As has been earlier quoted, Section 1(h), Rule 41 of the 1997 Revised Rules of Civil Procedure mandates that no appeal may be taken from an order dismissing an action without prejudice. The same section provides that in such an instant where the final order is not

appealable, the aggrieved party may file an appropriate special civil action under Rule 65.[29]

Here, the RTC dismissed the replevin case on the ground of improper venue. Such dismissal is one *without prejudice* and does not bar the refiling of the same action; hence, it is not appealable. Clearly, the RTC did not reach, and could not have reached, the residual jurisdiction stage as the case was dismissed due to improper venue, and such order of dismissal could not be the subject of an appeal. Without the perfection of an appeal, let alone the unavailability of the remedy of appeal, the RTC did not acquire residual jurisdiction. Hence, it is erroneous to conclude that the RTC may rule on DBP's application for damages pursuant to its residual powers.

Equity cannot supersede the Rules of Court

DBP admits that it filed the application for damages after the order of dismissal had become final and executory. In seeking relief from this Court, however, it invokes equity and argues that a strict application of Section 20, Rule 57 of the Rules of Court would prejudice its right to recover damages arising from the improper attachment of the certificates of title.

DBP, however, must be reminded that equity, "which has been aptly described as a 'justice outside legality,' is applied only in the absence of, and never against, statutory law or, as in this case, judicial rules of procedure.[30] The pertinent positive rules being present here, they should preempt and prevail over all abstract arguments based only on equity."[31] As the Court has stated in *Lim Tupas v. CA,*[32] "[e]motional appeals for justice, while they may wring the heart of the Court, cannot justify

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[29] *Id.* at 1093-1097.

[30] *Philippine Carpet Manufacturing Corporation v. Tagyamon,* 723 Phil. 562, 572 (2013).

[31] *Id.* at 572.

[32] *Lim Tupas v. Court of Appeals*, 271 Phil. 628, 632-633 (1991).

disregard of the mandate of the law as long as it remains in force. The applicable maxim, which goes back to the ancient days of the Roman jurists — and is now still reverently observed – is *'aequetas nunquam contravenit legis.'*"[33]

Accordingly, the CA did not commit any reversible error when it applied the rules of procedure in resolving the issue at hand.

The application for damages was belatedly filed

Section 10, Rule 60 of the Rules of Court provides that in replevin cases, as in receivership and injunction cases, the damages to be awarded to either party upon any bond filed by the other shall be claimed, ascertained, and granted in accordance with Section 20 of Rule 57 which reads:

> SEC. 20. *Claim for damages on account of illegal attachment.* — If the judgment on the action be in favor of the party against whom attachment was issued, he may recover, upon the bond given or deposit made by the attaching creditor, any damages resulting from the attachment. **Such damages may be awarded only upon application and after proper hearing, and shall be included in the final judgment**. The application must be filed before the trial or before appeal is perfected or before the judgment becomes executory, with due notice to the attaching creditor and his surety or sureties, setting forth the facts showing his right to damages and the amount thereof.
>
> If the judgment of the appellate court be favorable to the party against whom the attachment was issued, he **must claim damages sustained during the pendency of the appeal** by filing an application with notice to the party in whose favor the attachment was issued or his surety or sureties, before the judgment of the appellate court becomes executory. The appellate court may allow the application to be heard and decided by the trial court. [Emphases supplied]

In other words, to recover damages on a replevin bond (or on a bond for preliminary attachment, injunction or receivership),

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[33] *Id.* at 633.

it is necessary (1) that the defendant-claimant has secured a favorable judgment in the main action, meaning that the plaintiff has no cause of action and was not, therefore, entitled to the provisional remedy of replevin; (2) that the application for damages, showing claimant's right thereto and the amount thereof, be filed in the same action before trial or before appeal is perfected or before the judgment becomes executory; (3) that due notice be given to the other party and his surety or sureties, notice to the principal not being sufficient; and (4) that there should be a proper hearing and the award for damages should be included in the final judgment.[34]

Likewise, to avoid multiplicity of suits, all incidents arising from the same controversy must be settled in the same court having jurisdiction of the main action. Thus, the application for damages must be filed in the court which took cognizance of the case, with due notice to the other parties.[35]

In this case, DBP filed the application for damages long after the order of dismissal had become final and executory. It explained that this belated filing was due to its recourse to other remedies, such as the enforcement of the writ of execution. The Court, however, finds this reason to be wanting in persuasiveness. To begin with, the filing of an application for damages does not preclude resort to other remedies. Nowhere in the Rules of Court is it stated that an application for damages bars the filing of a motion for a writ of seizure, a writ of execution or any other applicable remedy. DBP, from the beginning, had already perceived the attachment to be improper; hence, it could have easily filed an application before the judgment became executory.

In *Jao v. Royal Financing Corporation,*[36] the Court precluded the defendant therein from claiming damages against the surety

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[34] *Malayan Insurance Co., Inc. v. Salas,* 179 Phil. 201, 206 (1979).

[35] *Stronghold Insurance Co., Inc. v. Court of Appeals,* 258-A Phil. 690, 699 (1989).

[36] 114 Phil. 1152 (1969).

bond because it failed to file the application for damages before the termination of the case, thus:

> xxx The dismissal of the case filed by the plaintiffs-appellees on July 11, 1959, had become **final and executory** before the defendant-appellee corporation filed its motion for judgment on the bond on September 7, 1959. In the order of the trial court, dismissing the complaint, there appears no pronouncement whatsoever against the surety bond. The appellee-corporation **failed to file its proper application for damages prior to the termination of the case against it.** It is barred to do so now. The prevailing party, if such would be the proper term for the appellee-corporation, having failed to file its application for damages against the bond prior to the entry of final judgment, the bondsman-appellant is relieved of further liability thereunder. [Emphases supplied][37]

Thus, the RTC has indeed no residual jurisdiction on DBP's claim for damages.

Remedies

The Court is not unmindful of the plight of DBP. Its chosen remedy, however, cannot be countenanced as it disregards the Rules of Court and the settled jurisprudence on the matter. Nevertheless, this is not to say that DBP has no other available remedies in order to recover respondents' indebtedness.

First, DBP could enforce its guarantee agreement with GFSME. A contract of guaranty gives rise to a subsidiary obligation on the part of the guarantor.[38] A guarantor agrees that the creditor, after proceeding against the principal, may proceed against the guarantor if the principal is unable to pay. Moreover, he contracts to pay if, by the use of due diligence, the debt cannot be made out of the principal debtor.[39]

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[37] *Id.* at 1157.

[38] *Spouses Ong v. Philippine Commercial International Bank*, 489 Phil. 673, 677 (2005).

[39] *Trade and Investment Development Corporation of the Philippines v. Asia Paces Corporation,* 726 Phil. 555, 566 (2014).

Further, it may file an action for damages based on Article 19 of the New Civil Code against respondents for unlawfully taking the certificates of title, which served as security for their loan. In *Globe Mackay Cable and Radio Corporation v. Court of Appeals,*[40] the Court held:

> This article, known to contain what is commonly referred to as the **principle of abuse of rights**, sets certain standards which must be observed not only in the exercise of one's rights, but also in the performance of one's duties. These standards are the following: to act with justice; to give everyone his due; and to observe honesty and good faith. The law, therefore, recognizes a primordial limitation on all rights; that in their exercise, the norms of human conduct set forth in Article 19 must be observed. A right, though by itself legal because recognized or granted by law as such, may nevertheless become the source of some illegality. When a right is exercised in a manner which does not conform with the norms enshrined in Article 19 and results in damage to another, a legal wrong is thereby committed for which the wrongdoer must be held responsible. But while Article 19 lays down a rule of conduct for the government of human relations and for the maintenance of social order, it does not provide a remedy for its violation. Generally, an action for damages under either Article 20 or Article 21 would be proper.[41] [Emphasis supplied]

Finally, nothing precludes DBP from instituting an action for collection of sum of money against respondents. Besides, if the parcels of land covered by the certificates of title, which DBP sought to recover from respondents, were mortgaged to the former, then DBP, as mortgage-creditor, has the option of either filing a personal action for collection of sum of money or instituting a real action to foreclose on the mortgage security. The two remedies are alternative and each remedy is complete by itself. If the mortgagee opts to foreclose the real estate mortgage, he waives the action for the collection of the debt, and *vice versa*.[42]

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[40] 257 Phil. 783 (1989).

[41] *Id*. at 788-789.

[42] *BPI Family Savings Bank, Inc. v. Vda. De Coscolluela*, 526 Phil. 419, 439 (2006).

WHEREFORE, the petition is **DENIED**. The July 9, 2008 Decision and the January 21, 2011 Resolution of the Court of Appeals, in CA-G.R. SP No. 85719, are **AFFIRMED** *in toto*.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 224583. February 1, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-apellee, vs.* **MICHAEL PALANAY *y* MINISTER,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; QUALIFIED RAPE; ELEMENTS.—** [I]n a conviction for qualified rape, the prosecution must prove all the elements thereof, which are: (1) sexual congress (2) with a woman; (3) done by force, threat, or intimidation without consent; (4) the victim is under eighteen years of age at the time of the rape; and (5) the offender is a parent, ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree of the victim, or the common-law spouse of the parent of the victim.

2. **ID.; ID.; MEDICAL EXAMINATION CONDUCTED AND MEDICAL CERTIFICATE ISSUED, WHILE NOT INDISPENSABLE, ARE VERITABLE CORROBORATIVE PIECES OF EVIDENCE.—** The findings in the medical

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[*] Designated additional member in liue of Associate Justice Antonio T. Carpio per Raffle dated January 9, 2017.

examination of AAA taken after the rape support this allegation. While a medical examination of the victim is not indispensable in the prosecution of a rape case, and no law requires a medical examination for the successful prosecution of the case, the medical examination conducted and the medical certificate issued are veritable corroborative pieces of evidence, which strongly bolster the victim's testimony.

3. ID.; ID.; NOT NEGATED BY FAILURE TO RESIST.— To discredit AAA, Palanay makes much of her failure to offer resistance to his advances to discount the occurence of rape. Suffice to state this assertion is utterly trivial in nature and does not affect the merits of the case. It bears to stress that in rape cases, the law does not impose a burden on the rape victim to prove resistance because it is not an element of rape. Thus, the failure to shout or offer tenacious resistance does not make voluntary the victim's submission to the criminal act of the offender. x x x In cases of qualified rape, moral ascendancy or influence supplants the element of violence or intimidation. Physical resistance need not be established when intimidation is brought to bear on the victim and the latter submits herself out of fear. As this Court held in *People v. Lomaque*, the failure to shout or offer tenuous resistance does not make voluntary the victim's submission to the criminal acts of the accused.

4. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE TRIAL COURT AFFIRMED BY THE COURT OF APPEALS, RESPECTED.— By the distinctive nature of rape cases, conviction usually rests solely on the basis of the testimony of the victim, provided that such testimony is credible, natural, convincing, and consistent with human nature and the normal course of things. Thus, the victim's credibility becomes the primordial consideration in the resolution of rape cases. The evaluation of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court given its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct, and attitude under grilling examination. In this regard, factual findings of the trial court, its calibration of the testimonies of the witnesses, and its conclusions anchored on its findings are accorded by the appellate court high respect, if not conclusive effect, more so when affirmed by the CA.

5. CRIMINAL LAW; RAPE; NO STANDARD FORM OF REACTION FOR A WOMAN WHEN FACING SEXUAL ASSAULT.— Rape victims react differently. Some may offer strong resistance while others may be too intimidated to offer any resistance at all. There is no standard form of reaction for a woman when facing a shocking and horrifying experience such as a sexual assault. The workings of the human mind placed under emotional stress are unpredictable, and people react differently some may shout, some may faint, and some may be shocked into insensibility, while others may openly welcome the intrusion. However, any of these conducts does not impair the credibility of a rape victim.

6. REMEDIAL LAW; EVIDENCE; DENIAL AND ALIBI; FAILS AS AGAINST POSITIVE IDENTIFICATION OF ACCUSED.— Anent Palanay's defenses of denial and alibi, the same deserve scant consideration. It is a time-honored principle in jurisprudence that positive identification prevails over alibi since the latter can easily be fabricated and is inherently unreliable. For the defense of alibi to prosper, the accused must prove that he was somewhere else when the offense was committed and that he was so far away that it was not possible for him to have been physically present at the place of the crime or at its immediate vicinity at the time of its commission. x x x Moreover, Palanay's allegation that the accusation against him was ill-motivated due to a misunderstanding that he had with AAA's mother is useless. In *People v. Arthur Mendoza and Dave Mendoza*, the Court reiterated that it is unlikely for a young girl — or for her family — to impute the crime of rape to no less than a relative and to face social humiliation, if not to vindicate her honor.

7. CRIMINAL LAW; QUALIFIED RAPE; PENALTY AND DAMAGES.— As to relationship of the parties, there is no dispute that Palanay, being the uncle of AAA, is the latter's relative by third degree of consanguinity, x x x In accordance with Article 266-B, the rape is qualified by the relationship of the parties and calls for the application of the death penalty. In view, however, of the passage of Republic Act No. 9346 which suspends the imposition of the death penalty, Palanay shall suffer the penalty of *reclusion perpetua* without eligibility for parole. To conform to Our pronouncement in *People v. Jugueta*, the civil indemnity and moral damages awarded must be increased

from Seventy- Five Thousand Pesos (₱75,000.00) and Thirty Thousand Pesos (₱30,000.00), respectively, to One Hundred Thousand Pesos (₱100,000.00) each. We further order the payment of exemplary damages of One Hundred Thousand Pesos (₱100,000.00) in accordance with Article 2230 of the Civil Code, in view of the qualifying circumstance of relationship, as well as Palanay's moral corruption, perversity, and wickedness in ravishing his own niece. The imposition of exemplary damages is further warranted to deter others from committing similar acts or for correction for the public good. Finally, interest at the rate of 6% per annum is imposed on all damages awarded from the date of finality of judgment until fully paid.

APPEARANCES OF COUNSEL

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

D E C I S I O N

VELASCO, JR., *J.*:

Nature of the Case

For review is the Decision[1] dated October 20, 2015 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 01140-MIN affirming the Decision[2] dated February 22, 2013 of the Regional Trial Court (RTC) of Cagayan de Oro City, Branch 19, in Criminal Case No. 2010-343, finding accused-appellant Michael Palanay y Minister guilty of qualified rape under Article 266-A in relation to Article 266-B of the Revised Penal Code (RPC), as amended by Republic Act No. 8353.[3]

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[1] *Rollo*, pp. 3-9. Penned by Associate Justice Oscar V. Badelles and concurred in by Associate Justices Romulo V. Borja and Pablito A. Perez.

[2] CA *rollo*, pp. 23-30.

[3] Otherwise known as the "Anti-Rape Law of 1997."

In line with our ruling in *People v. Cabalquinto*,[4] the real name of the victim, as well as any information which tends to establish or compromise her identity, shall be withheld. The initials "AAA" shall be used instead to represent her.

Factual Antecedents

On September 3, 2010, accused-appellant was charged with the crime of rape in an Information,[5] the accusatory portion of which reads:

> That on August 31, 2010 at around 1:00 o'clock in the morning, at _____ Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, did then and there willfully, unlawfully, and feloniously have carnal knowledge with his niece, who is a minor offended party, AAA, 16 years old (Date of birth: _____) against her will and consent, to her damage and prejudice.
>
> Contrary to and in violation of Art. 266-A, in relation to Art. 266-B of the Revised Penal Code, as amended by Republic Act 8353, and with the aggravating circumstance that AAA is a relative by consanguinity within the third civil degree and is below 18 years of age.

The facts, culled from the records, are as follows:

Version of the Prosecution

On the evening of August 30, 2010, AAA was sleeping in her room when she was suddenly awakened by someone removing her short pants and panty. She awoke to find accused Palanay, her uncle and brother of her mother, lying beside her and removing his own short pants. Thereafter, he kissed AAA's lips, touched her breasts, and inserted his penis into her vagina. After satisfying his bestial desires, Palanay slept by AAA's side. AAA put her clothes on, went to the comfort room, and cried in silence. By early morning, AAA went to the house of

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[4] G.R. No. 167693, September 19, 2006, 502 SCRA 419.

[5] Records, p. 4.

her elder sister, BBB, and narrated her tragic experience. Upon learning of the incident, BBB went to her elder sister, CCC, to relay what happened to AAA.[6]

BBB corroborated the testimony of AAA. She narrated that, on August 31, 2010 at around 7:00 a.m., she found AAA outside her door sobbing. When asked what caused her troubles, AAA recounted that she was raped by Palanay. Aghast, BBB went to the house of CCC to inform her about what happened to AAA and to plan their next step. CCC blottered the incident and filed a complaint against Palanay for the rape of AAA.[7]

Version of the Defense

Palanay testified that, in the evening of August 31, 2010, he was at his friend's house drinking until 3:00 a.m. the following morning. At around 7:00 a.m., he went to the house of his brother to ask the latter to help him cultivate a land.[8] Palanay testified that the house of AAA is adjacent to the house of his brother, but he did not notice her.

Palanay contended that the charge against him was motivated by the quarrel he had with the mother of AAA.

Ruling of the RTC

After trial, the RTC rendered a Decision finding Palanay guilty beyond reasonable doubt as charged. The dispositive portion of the Decision reads:

> ALL THE FOREGOING CONSIDERED, the Court finds accused [Palanay] GUILTY beyond reasonable doubt of the crime of rape, as charged and for which the court hereby imposes upon him the penalty of reclusion perpetua. He is further adjudged to pay "AAA" civil indemnity in the sum of Seventy Five (₱75,000.00) Pesos without need of proof and moral damages in the sum of Thirty Thousand (₱30,000.00) Pesos only. With costs.

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[6] *Rollo*, p. 4.

[7] *Id*.

[8] TSN, July 2, 2012, p. 42.

SO ORDERED.

In convicting Palanay of the crime charged, the RTC gave more weight and credence to the prosecution's evidence. The trial court observed that AAA was able to positively identify Palanay as the perpetrator of the crime. The commission of the rape was further bolstered by the medical findings of AAA after the rape was committed.[9]

On appeal to the CA, Palanay asserted that AAA's failure to offer serious resistance against his sexual advances cast doubt on his guilt for the crime charged.

Ruling of the Court of Appeals

The CA affirmed the RTC's Decision *in toto*. The *fallo* of the CA's Decision reads:

> WHEREFORE, premises considered, the instant appeal is DENIED. The February 22, 2013 Decision of the Regional Trial Court, Branch 19, Cagayan de Oro City, in Criminal Case No. 2010-343, finding [Palanay] guilty beyond reasonable doubt for the crime of Rape under Article 266-A in relation to Article 266-B of the Revised Penal Code is hereby AFFIRMED.
>
> SO ORDERED.

Aggrieved, Palanay filed the instant appeal.

The sole issue for the resolution of this Court is whether the prosecution has proven the guilt of Palanay for the rape of AAA beyond reasonable doubt.

Our Ruling

We affirm the conviction of Palanay for rape under Article 266-A qualified by relationship in relation to Article 266-B of the RPC, which respectively provide:

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[9] Records, p. 275.

Art. 266-A. Rape; When And How Committed. – Rape is Committed –

1. **By a man who shall have carnal knowledge of a woman under any of the following circumstances**:

a) **Through force, threat or intimidation**;

b) When the offended party is deprived of' reason or is otherwise unconscious;

c) By means of fraudulent machination or grave abuse of authority;

d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present. x x x (Emphasis supplied)

x x x x x x x x x

ART. 266-B. Penalties. – Rape under paragraph 1 of the next preceding article shall be punished by reclusion perpetua.

x x x x x x x x x

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

1) When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.

Hence, in a conviction for qualified rape, the prosecution must prove all the elements thereof, which are: (1) sexual congress (2) with a woman; (3) done by force, threat, or intimidation without consent; (4) the victim is under eighteen years of age at the time of the rape; and (5) the offender is a parent, ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree of the victim, or the common-law spouse of the parent of the victim.

In the present case, all the foregoing elements of qualified rape are present.

AAA categorically asserted that Palanay, her uncle, had carnal knowledge of her. She was steadfast in her testimony that, in the early morning of August 31, 2010, Palanay undressed her and touched her breast against her will. He then forced himself on her and inserted his penis into her vagina. At the time of the incident, AAA was just sixteen (16) years old.

The findings in the medical examination of AAA taken after the rape support this allegation.[10] While a medical examination of the victim is not indispensable in the prosecution of a rape case, and no law requires a medical examination for the successful prosecution of the case, the medical examination conducted and the medical certificate issued are veritable corroborative pieces of evidence, which strongly bolster the victim's testimony.[11] In addition, as found by the trial court, AAA's recollection of what happened after her harrowing experience was sufficiently corroborated by BBB.

To discredit AAA, Palanay makes much of her failure to offer resistance to his advances to discount the occurrence of rape.

Suffice to state this assertion is utterly trivial in nature and does not affect the merits of the case. It bears to stress that in rape cases, the law does not impose a burden on the rape victim to prove resistance because it is not an element of rape.[12] Thus, the failure to shout or offer tenacious resistance does not make voluntary the victim's submission to the criminal act of the offender.[13]

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[10] *Rollo*, p. 9; CA *rollo*, p. 63.

[11] *People v. Alfredo*, G.R. No. 188560, December 15, 2010, citing *People v. Ferrer*, G.R. No. 142662, August 14, 2001, 362 SCRA 778.

[12] *People v. Bacatan*, G.R. No. 203315, September 18, 2013, citing *People v. Baldo*, G.R. No. 175238, February 24, 2009, 580 SCRA 225, 223.

[13] *People v. Dadulla*, G.R. No. 175946, March 23, 2007, 519 SCRA 48, citing *People v. Glodo*, G.R. No. 136085, July 7, 2004, 433 SCRA 535, 543.

In any event, the failure of AAA to resist Palanay's sexual advances due to the amount of intimidation exerted on her was sufficiently explained. In her testimony before the trial court, she recalled:

PROS. VALCONCHA:

Q **You said earlier you did not shout at that time, why is that?**

A **Because I was afraid.**

Q Why were you afraid of the accused?

A Because he is tough.

Q When you said he is tough what do you mean by that?

A He even kicked me.[14] (Emphasis supplied)

COURT:

Some clarificatory questions from the court.

(To the witness)

x x x x x x x x x

Q **You said you are afraid of Ompoc and Michael, you are afraid of them even before this incident on August 31?**

A **Yes, Your Honor.**

Q Why, would they bully you? What would they do that to make you afraid?

A They used to scold me.

Q Always?

A **Michael Palanay used to scold me.**

Q **He only scolded you but he has not beaten you or physically assaulted you?**

A **Sometimes he kicked me.**

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[14] TSN, August 5, 2011, p. 18.

Q Whey they started to scold you when you were still at tender age?

A When I am already grown up.

Q **So, you were <u>intimidated</u> by Ompoc Palanay, how about Michael?**

A **Yes, Your Honor**.[15] (Emphasis and underscoring supplied)

By the distinctive nature of rape cases, conviction usually rests solely on the basis of the testimony of the victim, provided that such testimony is credible, natural, convincing, and consistent with human nature and the normal course of things.[16] Thus, the victim's credibility becomes the primordial consideration in the resolution of rape cases.[17] The evaluation of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court given its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct, and attitude under grilling examination.[18] In this regard, factual findings of the trial court, its calibration of the testimonies of the witnesses, and its conclusions anchored on its findings are accorded by the appellate court high respect, if not conclusive effect, more so when affirmed by the CA.[19]

Applied in this case, the ruling of the trial court as regards the credibility of the prosecution witnesses, and affirmed by the court a quo, must be given weight by this Court. The Court does not see any reason to disturb the RTC and the CA's appreciation of AAA's testimony and find that the prosecution satisfactorily established all the elements of qualified rape.

Rape victims react differently. Some may offer strong resistance while others may be too intimidated to offer any

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[15] *Id.* at 20.

[16] *People v. Ayade*, G.R. No. 188561, January 15, 2010, 610 SCRA 246, citing *People v. Achas*, G.R. No. 185712, August 4, 2009.

[17] *People v. Ocdol*, G.R. No. 200645, August 20, 2014, 733 SCRA 561.

[18] *People v. Abat*, G.R. No. 202704, April 2, 2014, 720 SCRA 557.

[19] *People v. Iroy*, G.R. No. 187743, March 3, 2010, 614 SCRA 245.

resistance at all.[20] There is no standard form of reaction for a woman when facing a shocking and horrifying experience such as a sexual assault. The workings of the human mind placed under emotional stress are unpredictable, and people react differently some may shout, some may faint, and some may be shocked into insensibility, while others may openly welcome the intrusion. However, any of these conducts does not impair the credibility of a rape victim.[21]

In AAA's case, it is evident that she feared Palanay, her uncle, who can be reasonably expected to exercise moral authority over her, even prior to the rape incident. This fear caused her to be immobilized and unable to offer physical resistance to Palanay's advances. The failure to physically resist the attack, however, does not detract from the established fact that a reprehensible act was done to a child-woman by no less than a member of her family. In cases of qualified rape, moral ascendancy or influence supplants the element of violence or intimidation.[22] Physical resistance need not be established when intimidation is brought to bear on the victim and the latter submits herself out of fear. As this Court held in *People v. Lomaque*,[23] the failure to shout or offer tenuous resistance does not make voluntary the victim's submission to the criminal acts of the accused.

Anent Palanay's defenses of denial and alibi, the same deserve scant consideration. It is a time-honored principle in jurisprudence that positive identification prevails over alibi since the latter can easily be fabricated and is inherently unreliable.[24]

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[20] *People v. Penilla*, G.R. No. 189324, March 20, 2013,694 SCRA 141, citing *People v. Madeo*, G.R. No. 176070, 2 October 2009, 602 SCRA 425.

[21] *People v. Ortoa*, G.R. No. 174484, February 23, 2009. (Citations omitted)

[22] *People v. Buclao*, G.R. No. 208173, June 11, 2014.

[23] G.R. No. 189297, June 5, 2013, 697 SCRA 383, citing *People v. Achas*, G.R. No. 185712, August 4, 2009, 595 SCRA 341, 351-352.

[24] *People v. Dadao*, G.R. No. 201860, January 22, 2014, 714 SCRA 524, citing *People v. Ramos*, G.R. No. 190340, July 24, 2013.

For the defense of alibi to prosper, the accused must prove that he was somewhere else when the offense was committed and that he was so far away that it was not possible for him to have been physically present at the place of the crime or at its immediate vicinity at the time of its commission.[25]

The trial court correctly observed that Palanay only testified as to his whereabouts *after* the commission of the rape; he utterly failed to account for his whereabouts on the wee hours of August 31, 2010 when the rape took place. In stark contrast, AAA was able to positively identify Palanay as the person who ravished her. Palanay's alibi and bare denial cannot outweigh AAA's affirmative testimony.

Moreover, Palanay's allegation that the accusation against him was ill-motivated due to a misunderstanding that he had with AAA's mother is useless. In *People v. Arthur Mendoza and Dave Mendoza*,[26] the Court reiterated that it is unlikely for a young girl—or for her family—to impute the crime of rape to no less than a relative and to face social humiliation, if not to vindicate her honor.[27]

As to relationship of the parties, there is no dispute that Palanay, being the uncle of AAA, is the latter's relative by third degree of consanguinity, as this was also among the admitted facts contained in the Pre-Trial Order.[28]

All told, Palanay's conviction for the rape of AAA under Article 266-A stands. In accordance with Article 266-B, the rape is qualified by the relationship of the parties and calls for the application of the death penalty, Palanay being a relative within the third degree of consanguinity of AAA. In view, however, of the passage of Republic Act No. 9346 which

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[25] *People v. Piosang*, G.R. No. 200329, June 5, 2013, 697 SCRA 587.

[26] G.R. No. 145339-42, November 26, 2002.

[27] *Id*.

[28] Records, pp. 31-33.

suspends the imposition of the death penalty, Palanay shall suffer the penalty of *reclusion perpetua* without eligibility for parole.

To conform to Our pronouncement in *People v. Jugueta*,[29] the civil indemnity and moral damages awarded must be increased from Seventy-Five Thousand Pesos (₱75,000.00) and Thirty Thousand Pesos (₱30,000.00), respectively, to One Hundred Thousand Pesos (₱100,000.00) each. We further order the payment of exemplary damages of One Hundred Thousand Pesos (₱100,000.00) in accordance with Article 2230[30] of the Civil Code, in view of the qualifying circumstance of relationship, as well as Palanay's moral corruption, perversity, and wickedness in ravishing his own niece. The imposition of exemplary damages is further warranted to deter others from committing similar acts or for correction for the public good.[31] Finally, interest at the rate of 6% per annum is imposed on all damages awarded from the date of finality of judgment until fully paid.[32]

WHEREFORE, the appeal is **DISMISSED**. The Decision dated October 20, 2015 of the Court of Appeals in CA-G.R. CR-H.C. No. 01140-MIN is hereby **AFFIRMED** with further **MODIFICATION**. As modified, the judgment shall read, as follows:

> WHEREFORE, premises considered, the instant appeal is DENIED. The February 22, 2013 Decision of the Regional Trial Court, Branch 19, Cagayan de Oro City, in Criminal Case No. 2010-343, finding [Palanay] guilty beyond reasonable doubt for the crime of Rape under Article 266-A in relation to Article 266-B of the Revised Penal Code is hereby AFFIRMED with MODIFICATIONS. The civil indemnity

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

[30] Article 2230. In criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party.

[31] *People v. Alfredo*, G.R. No. 188560, December 25, 2010, 638 SCRA 749.

[32] *People v. Pamintuan*, G.R. No. 192239, June 5, 2013, 697 SCRA 470.

and moral damages awarded are increased to One Hundred Thousand Pesos (₱100,000.00) each. In addition, Palanay is further ordered to pay AAA exemplary damages in the amount of One Hundred Thousand Pesos (₱100,000.00). All damages awarded shall earn interest at six percent (6%) per annum from the date of finality of this judgment until fully paid.

SO ORDERED.

Carpio,[*] *Bersamin, Reyes,* and *Caguioa,*[**] *JJ.,* concur.

FIRST DIVISION

[A.C. No. 11165. February 6, 2017]

ORLANDO S. CASTELO, ELENA C. CAMA, OSWALDO CASTELO, JOCELYN LLANILLO, AND BENJAMIN CASTELO, *complainants, vs.* **ATTY. RONALD SEGUNDINO C. CHING**, *respondent.*

SYLLABUS

1. LEGAL ETHICS; NOTARY PUBLIC; FAILURE TO OBSERVE ANY OF THE REQUIREMENTS OF A NOTARIAL ACT UNDER THE 2004 RULES ON NOTARIAL PRACTICE CONSTITUTES GROSS NEGLIGENCE.— Gross negligence on the part of a notary public encompasses the failure to observe any of the requirements of a notarial act under the 2004 Rules on Notarial Practice which would result in putting the rights of a person to his liberty or

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[*] Designated as Fifth Member of the Third Division relative to G.R. No. 224583 per Special Order No. 2417-C dated January 4, 2017.

[**] Designated as additional member per Raffle dated January 15, 2016.

property in jeopardy. This includes, among others, failing to require the presence of the signatories to a notarial instrument and ascertaining their identities through competent evidence thereof, and allowing, knowingly or unknowingly, people, other than the notary public himself, to sign notarial documents, affix the notarial seal therein, and make entries in the notarial register. x x x**.** In this case, Commissioner Robles observed that while Atty. Ching denied having notarized the Deed by showing the discrepancy between his purported signature therein and the specimen signatures he submitted in his Answer, he miserably failed to explain how the Deed ended up in his notarial books. Commissioner Robles concluded that while it would not be fair to conclude that Atty. Ching actually signed the Deed, he was nonetheless grossly negligent for failing to give a satisfactory reason why a supposedly forged Deed was duly recorded in his notarial books.

2. ID.; ID.; FAILURE OF THE NOTARY PUBLIC TO PROPERLY STORE AND SECURE HIS NOTARIAL EQUIPMENT IN ORDER TO PREVENT OTHER PEOPLE FROM NOTARIZING DOCUMENTS BY FORGING HIS SIGNATURE AND AFFIXING HIS NOTARIAL SEAL, AND RECORDING SUCH DOCUMENTS IN HIS NOTARIAL BOOKS, WITHOUT HIS KNOWLEDGE AND CONSENT CONSTITUTE GROSS NEGLIGENCE.— While there may be reasons to give Atty. Ching the benefit of the doubt as to who signed the Deed, the Court does not and cannot lose sight of the fact that Atty. Ching still failed in ensuring that only documents which he had personally signed and sealed with his notarial seal, after satisfying himself with the completeness of the same and the identities of the parties who affixed their signatures therein, would be included in his notarial register. This also means that Atty. Ching failed to properly store and secure his notarial equipment in order to prevent other people from notarizing documents by forging his signature and affixing his notarial seal, and recording such documents in his notarial books, without his knowledge and consent. This is gross negligence.

3. ID.; ID.; ISSUE ON WHETHER THE DEED WHICH WAS NOTARIZED BY UNAUTHORIZED PERSON IS INDEED FORGED SHOULD BE PASSED UPON IN A PROPER CASE, AND NOT IN AN ADMINISTRATIVE OR

DISCIPLINARY PROCEEDING.— Such gross negligence on the part of Atty. Ching in letting another person notarize the Deed had also unduly put the Castelo heirs in jeopardy of losing their property. To make matters worse, the real property subject of the Deed was the residence, nay, the family home of the Castelo heirs, a property that their parents had worked hard for in order to provide them and their children a decent shelter and the primary place where they could bond together as a family **—** a property which had already acquired sentimental value on the part of the Castelo heirs, which no amount of money could ever match. One can just imagine the pain and anguish of losing a home to unscrupulous people who were able to transfer title to such property and file a case in court in order to eject them — all because of the negligence of a notary public in keeping his notarial books and instruments from falling into the wrong hands. This is not to say, however, that the Court has ruled on whether or not the Deed in this case was indeed forged. Such issue is civil, and perhaps criminal, in nature which should be passed upon in a proper case, and not in an administrative or disciplinary proceeding such as this case.

4. ID.; ID.; LIKE THE DUTY TO DEFEND A CLIENT'S CAUSE WITHIN THE BOUNDS OF LAW, A NOTARY PUBLIC HAS THE ADDITIONAL DUTY TO PRESERVE PUBLIC TRUST AND CONFIDENCE IN HIS OFFICE BY OBSERVING EXTRA CARE AND DILIGENCE IN ENSURING THE INTEGRITY OF EVERY DOCUMENT THAT COMES UNDER HIS NOTARIAL SEAL, AND SEEING TO IT THAT ONLY DOCUMENTS THAT HE PERSONALLY INSPECTED AND WHOSE SIGNATORIES HE PERSONALLY IDENTIFIED ARE RECORDED IN HIS NOTARIAL BOOKS.— [T]his case should serve as a reminder for notaries public, as well as for lawyers who are applying for a commission, that the duty to public service and to the administration of public justice is the primary consideration in the practice of law. This duty to public service is made more important when a lawyer is commissioned as a notary public. Like the duty to defend a client's cause within the bounds of law, a notary public has the additional duty to preserve public trust and confidence in his office by observing extra care and diligence in ensuring the integrity of every document that comes under his notarial seal, and seeing

to it that only documents that he personally inspected and whose signatories he personally identified are recorded in his notarial books. In addition, notaries public should properly secure the equipment they use in performing notarial acts, in order for them not to fall into the wrong hands, and be used in acts that would undermine the public's trust and confidence in the office of the notary public.

D E C I S I O N

CAGUIOA, *J.*:

A notarized document is entitled to full faith and credit upon its face. Thus, a notary public should observe utmost care in performing his duties to preserve public confidence in the integrity of notarized documents.[1]

The salient facts, as borne by the records, are:

Sometime in late 2013, Complainants Orlando S. Castelo, Elena C. Cama, Oswaldo Castelo, Jocelyn Llanillo, and Benjamin Castelo (Castelo heirs) received summons from the Metropolitan Trial Court, Branch 22, Manila (MeTC) for an ejectment case[2] filed against them by Leonida Delen and Spouses Nestor Delen and Julibel Delen (the Delens), who alleged that they were the owners of the house and lot located at 2511 A. Sulu Street, Sta. Cruz, Manila (subject property). The subject property was then the residence of the Castelo heirs,[3] and was covered by Transfer Certificate of Title (TCT) No. 291223 of the Registry of Deeds for the City of Manila (RD) in the name of the Delens.[4]

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[1] *Bartolome v. Basilio*, A.C. No. 10783, October 14, 2015, 772 SCRA 213, 223-224.

[2] The Castelo heirs did not indicate the case number, nor the status of the case.

[3] *Rollo,* p. 2.

[4] *Id*. at 3, 6-9. It was stated in the TCT that it was issued in the name of "1) LEONIDA DELEN, widow; and SPOUSES NESTOR DELEN and JULIBEL DELEN."

Upon verifying the authenticity of TCT No. 291223 with the RD, the Castelo heirs discovered that the previous title covering the subject property, TCT No. 240995, which was in the name of the Castelo heirs' parents, Spouses Benjamin Castelo and Perzidia[5] S. Castelo (Spouses Castelo), had been cancelled[6] by virtue of a Deed of Absolute Sale dated March 24, 2010 (Deed).[7] The Deed was purportedly executed by the Spouses Castelo and the Delens, and was notarized by Respondent Atty. Ronald Segundino C. Ching (Atty. Ching), despite the fact that Perzidia S. Castelo died on May 4, 2009,[8] as shown in her Death Certificate.[9] The Castelo heirs also learned that the acknowledgment page of the Deed showed that only community tax certificates had been presented to Atty. Ching, and not valid government-issued identification cards as required by the 2004 Rules on Notarial Practice.[10]

With this discovery, the Castelo heirs filed on June 2, 2014 with the Integrated Bar of the Philippines (IBP) this administrative case against Atty. Ching based on the latter's gross negligence in notarizing the Deed.[11]

Atty. Ching, for his part, denied having notarized the Deed. He countered that he did not know the Spouses Castelo and the Delens, and that the Deed presented by the Castelo heirs had been falsified. Atty. Ching continued that his purported signature in the Deed was forged.[12] To prove the alleged forgery, Atty. Ching presented specimens of his signatures that he used in signing pleadings and notarizing documents.[13]

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[5] Also spelled as "Persidia" in some parts of the records.

[6] *Id*. at 10-13.

[7] *Id*. at 3, 14-16.

[8] *Id*. at 3.

[9] *Id*. at 17-18.

[10] See *id*. at 3.

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

[12] See Answer, *id*. at 22-26.

[13] *Id*. at 27-30, 34, 40-41, 51, 67.

At the scheduled mandatory conference on September 1, 2014,[14] the Castelo heirs and Atty. Ching were present.[15] The Castelo heirs moved for the issuance of an *Ex-Parte* Motion for Issuance of Subpoena Duces Tecum and Ad Testificandum[16] to Atty. Jennifer H. Dela Cruz-Buendia, the Clerk of Court and Ex-Officio Sheriff of the Regional Trial Court (RTC) of Manila, or any of her duly authorized records officers, to appear at the next scheduled mandatory conference with Books No. 16 and 17, Series of 2010 of the Notarial Register (Atty. Ching's notarial books), which allegedly contained the original copy of the Deed. The IBP issued the subpoena,[17] and the mandatory conference was reset to November 13, 2014.[18]

In the November 13, 2014 resetting of the mandatory conference which was the last,[19] Atty. Ching's notarial books were presented.[20] However, Atty. Ching failed to attend the said conference and refute the authenticity of the Deed. Upon verification, the IBP concluded that the copy of the Deed presented by the Castelo heirs in their Complaint was indeed a faithful machine copy of the original contained in Atty. Ching's notarial books.[21] Thereafter, the Castelo heirs submitted their position paper.[22] Atty. Ching, however, failed to submit his.

After due proceedings, Commissioner Eduardo R. Robles (Commissioner Robles) rendered a Report and Recommendation[23] on December 3, 2014, finding that Atty.

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[14] *Id*. at 72.

[15] *Id*. at 78.

[16] *Id*. at 80-81.

[17] *Id*. at 85 and 87.

[18] *Id*. at 86.

[19] See *id*. at 88.

[20] See Order dated November 13, 2014, *id*. at 90-91.

[21] *Id*. at 90.

[22] *Id*. at 92-99.

[23] *Id*. at 118-119.

Ching was grossly negligent in notarizing the Deed.[24] The dispositive portion reads:

> UPON THE FOREGOING, considering the seriousness of the consequences of respondent's gross negligence, it is recommended that respondent's notarial commission be cancelled immediately, and that he be disqualified from ever being commissioned again as notary public.[25]

In its Resolution[26] dated February 21, 2015, the IBP Board of Governors resolved to adopt and approve with modification the said Report and Recommendation, thus:

> RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, **with modification,** the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex "A", for gross negligence in Respondent's notarial service. Hence, Atty. Ronald Segundino C. Ching's notarial commission if presently commissioned is immediately **REVOKED.** Further, he is **PERPETUALLY DISQUALIFIED from being commissioned as Notary Public and SUSPENDED from the practice of law for six (6) months.**[27]

After a judicious examination of the records and submission of the parties, the Court has no compelling reason to diverge from the factual findings of Commissioner Robles and the recommended penalty of the IBP Board of Governors.

Gross negligence on the part of a notary public encompasses the failure to observe any of the requirements of a notarial act under the 2004 Rules on Notarial Practice which would result in putting the rights of a person to his liberty or property in jeopardy. This includes, among others, failing to require the presence of the signatories to a notarial instrument and

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[24] *Id*. at 118.

[25] *Id*. at 119.

[26] *Id*. at 116-117.

[27] *Id*. at 116; emphasis in the original.

ascertaining their identities through competent evidence thereof,[28] and allowing, knowingly or unknowingly, people, other than the notary public himself, to sign notarial documents, affix the notarial seal therein, and make entries in the notarial register.[29]

In *Spouses Santuyo v. Hidalgo,*[30] the Court ruled that Atty. Hidalgo was grossly negligent not only in the supposed notarization of a deed of sale of a parcel of land purchased by the Spouses Santuyo, but also in allowing his office secretaries to make the necessary entries in his notarial registry which was supposed to be done and kept by him alone. This resulted in an ownership dispute between the Spouses Santuyo and a certain Danilo German which led to the filing of a case of *estafa* through falsification of a public document against the Spouses Santuyo, thus:

> After going over the evidence submitted by the parties, complainants did not categorically state that they appeared before respondent to have the deed of sale notarized. Their appearance before him could have bolstered this allegation that respondent signed the document and that it was not a forgery as he claimed. The records show that complainants themselves were not sure if respondent, indeed, signed the document; what they were sure of was the fact that his signature appeared thereon. They had no personal knowledge as well as to who actually affixed the signature of respondent on the deed.
>
> Furthermore, complainants did not refute respondent's contention that he only met complainant Benjamin Santuyo six years after the alleged notarization of the deed of sale. Respondent's assertion was corroborated by one Mrs. Lyn Santy in an affidavit executed on November 17, 2001 wherein she stated that complainant Editha Santuyo had to invite respondent to her house on November 5, 1997 to meet her husband since the two had to be introduced to each other. The meeting between complainant Benjamin Santuyo and respondent was

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[28] See *Sistual, et al. v. Atty. Ogena*, A.C. No. 9807, February 2, 2016; *Dela Cruz-Sillano v. Pangan*, 592 Phil. 219 (2008) and *Dela Cruz v. Zabala*, 485 Phil. 83 (2004).

[29] See *Spouses Santuyo v. Hidalgo*, 489 Phil. 257, 261-262 (2005).

[30] *Id*.

arranged after the latter insisted that Mr. Santuyo personally acknowledge a deed of sale concerning another property that the spouses bought.

In finding respondent negligent in performing his notarial functions, the IBP reasoned out:

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> Considering that the responsibility attached to a notary public is sensitive respondent should have been more discreet and cautious in the execution of his duties as such and should not have wholly entrusted everything to the secretaries; otherwise he should not have been commissioned as notary public.
>
> For having wholly entrusted the preparation and other mechanics of the document for notarization to the secretary there can be a possibility that even the respondent's signature which is the only one left for him to do can be done by the secretary or anybody for that matter as had been the case herein.
>
> As it is respondent had been negligent not only in the supposed notarization but foremost in having allowed the office secretaries to make the necessary entries in his notarial registry which was supposed to be done and kept by him alone; and should not have relied on somebody else.[31]

In this case, Commissioner Robles observed that while Atty. Ching denied having notarized the Deed[32] by showing the discrepancy between his purported signature therein[33] and the specimen signatures[34] he submitted in his Answer, he miserably failed to explain how the Deed ended up in his notarial books. Commissioner Robles concluded that while it would not be fair to conclude that Atty. Ching actually signed the Deed, he was nonetheless grossly negligent for failing to give a satisfactory

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[31] *Id*. at 260-262; footnotes omitted.

[32] *Rollo,* p. 22.

[33] *Id*. at 16.

[34] *Id*. at 27-30, 34, 40-41, 51, 67.

reason why a supposedly forged Deed was duly recorded in his notarial books.[35]

The Court completely agrees with Commissioner Robles' observation. While there may be reasons to give Atty. Ching the benefit of the doubt as to who signed the Deed, the Court does not and cannot lose sight of the fact that Atty. Ching still failed in ensuring that only documents which he had personally signed and sealed with his notarial seal, after satisfying himself with the completeness of the same and the identities of the parties who affixed their signatures therein, would be included in his notarial register. This also means that Atty. Ching failed to properly store and secure his notarial equipment in order to prevent other people from notarizing documents by forging his signature and affixing his notarial seal, and recording such documents in his notarial books, without his knowledge and consent. This is gross negligence.

Such gross negligence on the part of Atty. Ching in letting another person notarize the Deed had also unduly put the Castelo heirs in jeopardy of losing their property. To make matters worse, the real property subject of the Deed was the residence, nay, the family home of the Castelo heirs, a property that their parents had worked hard for in order to provide them and their children a decent shelter and the primary place where they could bond together as a family – a property which had already acquired sentimental value on the part of the Castelo heirs, which no amount of money could ever match. One can just imagine the pain and anguish of losing a home to unscrupulous people who were able to transfer title to such property and file a case in court in order to eject them – all because of the negligence of a notary public in keeping his notarial books and instruments from falling into the wrong hands.

This is not to say, however, that the Court has ruled on whether or not the Deed in this case was indeed forged. Such issue is civil, and perhaps criminal, in nature which should be passed

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[35] *Id*. at 119.

upon in a proper case, and not in an administrative or disciplinary proceeding such as this case.[36]

As for the penalty to be imposed, and taking into account the possible undue deprivation of property on the part of the Castelo heirs as a result of Atty. Ching's gross negligence, the Court agrees with, and hereby adopts, the recommended penalty of the IBP.

As a final note, this case should serve as a reminder for notaries public, as well as for lawyers who are applying for a commission, that the duty to public service and to the administration of public justice is the primary consideration in the practice of law.[37] This duty to public service is made more important when a lawyer is commissioned as a notary public. Like the duty to defend a client's cause within the bounds of law, a notary public has the additional duty to preserve public trust and confidence in his office[38] by observing extra care and diligence in ensuring the integrity of every document that comes under his notarial seal, and seeing to it that only documents that he personally inspected and whose signatories he personally identified are recorded in his notarial books. In addition, notaries public should properly secure the equipment they use in performing notarial acts, in order for them not to fall into the wrong hands, and be used in acts that would undermine the public's trust and confidence in the office of the notary public.

WHEREFORE, Atty. Ronald Segundino C. Ching is found **GUILTY** of gross negligence in the performance of his duties as notary public. His existing notarial commission, if any, is hereby **REVOKED,** and he is also **PERPETUALLY DISQUALIFIED** from being commissioned as a notary public. Moreover, he is hereby **SUSPENDED FROM THE**

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[36] See *Dagala v. Quesada, Jr.*, 722 Phil. 447, 459 (2013).

[37] *Sps. Brunet v. Guaren*, 728 Phil. 546, 548 (2014); *Bengco v. Bernardo*, 687 Phil. 7, 16 (2012); *Khan, Jr. v. Simbillo*, 456 Phil. 560, 565-566 (2003).

[38] See *Bartolome v. Basilio*, *supra* note 1, at 218.

PRACTICE OF LAW FOR SIX (6) MONTHS. He is **STERNLY WARNED** that a repetition of the same or similar act will be dealt with more severely.

Atty. Ching is also **DIRECTED** to inform the Court of the date of his receipt of this Decision to determine the reckoning point of the effectivity of his suspension.

Let a copy of this Decision be made part of Atty. Ching's records in the Office of the Bar Confidant, and copies be furnished the Integrated Bar of the Philippines and the Office of the Court Administrator for circulation to all courts.

SO ORDERED.

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

THIRD DIVISION

[A.M. No. P-15-3315. February 6, 2017]
(Formerly OCA IPI No. 12-3978-P)

SPOUSES RODEL and ELEANOR CAÑOS, *complainants, vs.* **ATTY. LOUISE MARIE THERESE B. ESCOBIDO, Clerk of Court V, Branch 19, Regional Trial Court, Digos City,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CODE OF 1987 (EO 292); PUBLIC EMPLOYEE'S FAILURE TO PAY JUST DEBTS IS A GROUND FOR DISCIPLINARY ACTION; THE PUBLIC EMPLOYEE MAY LIKEWISE BE PENALIZED FOR CONDUCT PREJUDICIAL TO THE BEST INTEREST OF

SERVICE.— Executive Order No. (EO) 292, otherwise known as the Administrative Code of 1987, provides that a public employee's failure to pay just debts is a ground for disciplinary action. Section 22, Rule XIV of the Rules Implementing Book V of EO 292, as modified by Section 46, Rule 10 of the Revised Rules on Administrative Cases in the Civil Service (RRACCS), defines "just debts" as those: (a) claims adjudicated by a court of law; or (b) claims the existence and justness of which are admitted by the debtor. Classified as a light offense, willful failure to pay just debts is punishable by reprimand for the first offense, suspension of one to thirty days for the second offense, and dismissal from the service for the third offense. x x x The Court has ruled that the penalty for willful failure to pay just debts is imposed at a civil servant's actuation unbecoming a public official, thus tarnishing the image of the public office: x x x Public employees may likewise be penalized for conduct prejudicial to the best interest of the service. Acts may constitute conduct prejudicial to the best interest of the service as long as they tarnish the image and integrity of his/her public office. Such violation is classified as a grave offense, punishable by suspension of six months and one day to one year for the first offense and dismissal from the service for the second offense.

2. **ID.; ID.; REVISED RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE (RRACCS); IMPOSITION OF PENALTIES; PUBLIC EMPLOYEE FOUND GUILTY OF TWO OR MORE CHARGES, THE PENALTY TO THE MOST SERIOUS CHARGE WILL BE IMPOSED AND THE REST SHALL BE CONSIDERED AGGRAVATING CISRCUMSTANCES.—** [W]e find the penalty of one year suspension appropriate. In the imposition of penalties, Section 50, Rule 10 of the RRACCS provides that if the respondent is found guilty of two or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge and the rest shall be considered as aggravating circumstances. Thus, the penalty to be imposed should be that of the graver offense of conduct prejudicial to the best interest of the service. The charge of willful failure to pay just debts, being a light offense, shall be considered as an aggravating circumstance.

D E C I S I O N

JARDELEZA, *J.*:

This administrative case stemmed from a letter-complaint[1] filed by complainants, Spouses Rodel and Eleanor Caños (Sps. Caños), against respondent Louise Marie Therese B. Escobido (Escobido), Clerk of Court, Branch 19, Regional Trial Court (RTC), Digos City, before the Office of Court Administrator (OCA) for grave misconduct, gross violation of oath as a public official, and violation of the Code of Professional Responsibility.

The Facts

According to Sps. Caños, they have known Escobido since the latter part of 2009 when she assisted them on the cases they filed before RTC Branch 19. When Escobido learned that Sps. Caños are engaged in selling jewelry and imported goods, she offered to get some items to resell as she used to be in the same business. Since Sps. Caños trusted Escobido as clerk of court and as a lawyer, they agreed to her proposal.[2]

Sometime between January and November 2010, Escobido purchased from Sps. Caños, on credit, various jewelry and imported goods amounting to ₱4,777,945.00. The purchases were covered by Trust Receipt Agreements.[3]

As payment for the goods, Escobido issued postdated checks, some of which were made good during the first ten months. However, the rest of the checks amounting to ₱3,827,299.30 were returned or refused payment by the drawee banks for the reason "ACCOUNT CLOSED."[4]

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[1] *Rollo*, pp. 2-8.

[2] *Id.* at 3.

[3] *Id*.

[4] *Rollo*, p. 4.

Aside from Escobido's purchases on credit, she also borrowed money from Sps. Caños. As payment, she issued postdated checks in the total amount of ₱164,866.10. The checks were likewise dishonored by the drawee banks for the reason "ACCOUNT CLOSED." Escobido never informed Sps. Caños on the status of her bank account until they received the returned checks and asked her on the reason for the dishonor.[5]

On February 15, 2012, Escobido executed an Undertaking[6] and acknowledged only ₱2,545,339.25 as the amount she owed to Sps. Caños.

Sps. Caños made verbal and written demands on Escobido for her to pay her debts.[7] Despite demand,[8] she refused to pay her obligations amounting to ₱3,604,065.40.

Sps. Caños claimed that because of Escobido's large amount of debts, they were forced to pay some of Escobido's account with their suppliers.[9]

Finally, Sps. Caños alleged that Escobido, as clerk of court and as a lawyer, also used her position and profession to intimidate and coerce them from filing cases against her. She allegedly told them that should they decide to file a case against her, she could always find ways to delay the filing of the same as she has friends and batchmates in the City Prosecution Office of Davao City.[10]

In her defense, Escobido claimed that what transpired was a business opportunity she and Sps. Caños took advantage of, but which, unfortunately turned unsuccessful.[11]

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[5] *Id.*

[6] *Rollo*, p. 74.

[7] *Id.* at 5.

[8] *Id.* at 5, 70.

[9] *Id.* at 6.

[10] *Id.*

[11] *Rollo*, p. 82.

She also belied Sps. Caños' allegation that they have known her only in 2009. She claimed she had known Rodel since 1993 when she was still studying law. Rodel became her boyfriend when she was in law school, but their relationship did not last long. In 2009, Escobido met Rodel again as he frequented her office to follow up cases which he filed and were pending before RTC Branches 18 and 19. Rodel even introduced Escobido to his wife. This new friendship paved the way for business transactions and opportunities.[12]

Escobido denied that she offered to get jewelry and other imported items from Sps. Caños. Instead, it was Rodel who persuaded her to help them sell their goods.[13] Under their agreement, Escobido signed trust receipts for imported goods obtained from Sps. Caños. She was allowed a certain period to sell the goods, after which the unsold items were returned to Sps. Caños. She would pay for the total amount of the items sold by issuing checks covering three equal monthly installments.[14]

The business was doing well for months until Sps. Caños introduced the jewelry business to Escobido. Rodel persuaded her that the business is lucrative and that she can get more profits. Sps. Caños proposed that they will give Escobido a "dealer's price," provided that anything she gets from them will be considered sold unless defective. In effect, what Sps. Caños and Escobido entered into was a contract of sale.[15]

In January 2010, Sps. Caños started giving jewelry to be sold, which Escobido received by signing trust receipts. She usually issued checks for the amounts due, payable in eight to ten monthly installments per transaction. At first, she was able to pay her debts until most of her customers started to miss their payments. Escobido allegedly told Rodel about her problem

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[12] *Id.*

[13] *Id.*

[14] *Rollo*, p. 83.

[15] *Id.* at 83-84.

and he merely advised her to be careful next time and gave her an extended period within which to pay. Thus, despite her outstanding balance, Sps. Caños continued to sell her jewelry.[16]

Escobido went on to get more items from Sps. Caños until she decided to stop due to her increasing bad debts. She told them that she would just return whatever jewelry she could get back from her customers who had been remiss in their payments.[17] Sps. Caños refused because the jewelry was already considered sold and they feared that their quality might have already deteriorated.[18] She tried to pay her debts, even borrowing from loan sharks until she could no longer pay.[19]

In November 2010, Escobido recounted that aside from the checks to cover business transactions, she also had to cover the checks she issued for accommodation on behalf of her relatives and friends. Since she could no longer cover all these checks, Escobido allegedly requested Sps. Caños not to deposit her checks and to give her more time to pay them with cash. Thus, contrary to their claims, she did inform them of the status of her bank account.[20] In fact, Sps. Caños made her believe that they understood her situation and assured her of their help in solving her problem.[21]

Escobido likewise denied refusing to pay Sps. Caños. She was paying them even with meager amounts from December 2010 to February 2013. She claimed that she paid Rodel in March 2013 which he did not acknowledge since he gave back her checks.[22]

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[16] *Id.* at 84.

[17] *Id.*

[18] *Rollo*, pp. 84-85.

[19] *Id.* at 85.

[20] *Id.*

[21] *Rollo*, pp. 85-86.

[22] *Id.* at 86.

When Sps. Caños realized that Escobido would never be able to pay them, they agreed to accept the return of some of the jewelry.[23] These were supposed to be deducted from her outstanding accounts. When she asked for the checks covering the returned jewelry, Sps. Caños told her that the checks were still with their suppliers and that they would just sign the acknowledgment receipts in the meantime. However, they failed to give her the said checks.[24]

Escobido further claimed that she executed the Undertaking upon Rodel's initiative and after consultation with her sister, Atty. Genevieve Marie Dolores B. Paulino (Paulino).[25] The amount of ₱2,545,339.25 was arrived at after deducting the value of the jewelry that she returned to Sps. Caños.[26]

On March 14, 2012, however, Rodel gave to Escobido the final letter-demand in the amount of ₱3,604,065.40.[27] She was hesitant to accept and sign the letter-demand because the previous Undertaking indicated a lower amount. She was forced to receive and sign the letter-demand in the midst of family and financial problems.[28]

Escobido also denied the allegation that Sps. Caños did not file a case against her due to lack of funds. They, in fact, filed a complaint against her for estafa and violation of *Batas Pambansa Blg.* (BP) 22.[29] She did not use her position as clerk of court or profession as a lawyer to dissuade them from filing a case against her. She did not boast about her connections in the Office of the City Prosecutor of Davao City.[30]

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[23] *Id.*

[24] *Rollo*, p. 87.

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

[26] *Id.* at 88.

[27] *Id*. at 88, 70.

[28] *Id.* at 88.

[29] *Id.*

[30] *Rollo*, pp. 88-89.

Furthermore, Escobido claimed that Rodel promised to be lenient with her if she would help him with his cases. Escobido's sister, Paulino, agreed to render legal services to Rodel, provided that compensation for such services would be deducted from the amount owed by Escobido. Thus, Escobido asserted that the amount of debt demanded by Sps. Caños is bloated.[31] The amount she owed would be greatly reduced if her payments, the value of the returned jewelry, and the legal services of her sister would be deducted from her total debt.[32]

Finally, Escobido argued that she should not be held liable for any administrative violations attributed to her by Sps. Caños because she never denied her debt. She never refused to pay, but was only unable to do so. She was also not motivated by ill-will against Sps. Caños since her only desire to venture into business with them was to augment her family income.[33]

The Report and Recommendation of the OCA

In a Memorandum[34] dated December 10, 2014, the OCA found that Escobido is guilty of deliberate failure to pay just debts. The OCA noted the more than 100 postdated checks she issued amounting to more than ₱4,000,000.00, which all bounced. The willfulness in not paying her obligation was shown by the several years her debt remained unpaid from November 2010 to May 2013. The measly payments Escobido made served as mere tokens to appease Sps. Caños and did not show a serious intention to clear her debt.[35]

The OCA also noted that two administrative complaints have been previously filed against Escobido for non-payment of debt.[36]

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[31] *Id.* at 89.

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

[33] *Id.* at 91.

[34] *Id.* at 125-133.

[35] *Id*. 129.

[36] *Id.*

The first complaint, docketed as A.M. OCA IPI No. 03-1705-P (*Pham Duc Nhuan v. Louise Marie Therese B. Escobido, Clerk of Court V, RTC, Branch 19, Digos City*), charged Escobido with Conduct Unbecoming a Public Officer and Failure to Pay Just Debts. She allegedly failed to return ₱1,390,000.00, which was given by the complainant as part of a business transaction between them despite repeated demands. As guarantee, Escobido issued a check which was dishonored by the bank. The Court dismissed the complaint for being premature as the complainant has filed a criminal complaint involving the same issue, which was then pending review before the Department of Justice. In March 2014, a criminal case for violation of BP 22, docketed as Criminal Case No. 109,581-B-F-C-2003, with Pham Duc Nhuan as private complainant, was filed against Escobido before Branch 3, Municipal Trial Court in Cities (MTCC), Davao City.[37]

The second complaint, docketed as A.M. No. P-06-2259 [formerly A.M. OCA IPI No. 06-2386-P] (*Fe Lutero Cajegas, et al. v. Louise Marie Therese B. Escobido, Clerk of Court, RTC, Branch 19, Digos City, Davao Oriental*), charged Escobido with non-payment of debts to six persons despite repeated demands. She borrowed money from complainants, who were her former officemates at the Commission on Human Rights, Region XI, Ecoland, Davao City, and issued checks as payment for the loans. When presented to the bank, the checks were dishonored because the accounts against which they were drawn had been closed. In a Resolution dated October 16, 2006, Escobido was reprimanded for willful failure to pay just debts.[38]

Upon review of the three administrative cases, the OCA found that the cases show a disquieting parallelism among them. In these cases, Escobido paid her debts with checks which upon presentment to the drawee banks, were dishonored because the accounts from which payments were drawn had to be closed. It was also found that she indiscriminately opened checking

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[37] *Rollo*, pp. 129-130.

[38] *Id.* at 130.

accounts in different banks, with numerous checkbooks per account to cover the amounts she owed her creditors.[39]

The OCA discovered that three criminal complaints for estafa and violation of BP 22 are pending before Branch 3, MTCC, Davao City. Two of these, Criminal Cases No. 150,071-D-B-C-14 and 150,072-D-B-C-14, were filed by Sps. Caños as private complainants, while Criminal Case No. 109,581-B-F-C-2003 was filed by Pham Duc Nhuan as private complainant.[40]

The OCA also found that Escobido should be held liable for conduct prejudicial to the best interest of the service. Her insidious and repeated acts of issuing worthless checks with considerable amounts involved, her cavalier treatment of the affidavit of undertaking to pay the debt which she claimed she was forced to sign, and her second time to commit the offense of willful failure to pay just debts evince bad faith and a disposition to defraud.[41]

The OCA further noted that the recommendation is without prejudice to the outcome of the pending criminal cases filed against Escobido.[42]

The OCA recommended the following:

(1) the instant administrative complaint be **RE-DOCKETED** as a regular administrative matter against Atty. Louise Marie Therese B. Escobido, Clerk of Court V, Branch 19, Regional Trial Court (RTC), Digos City;

(2) respondent Atty. Lou[i]se Marie Therese B. Escobido be found **GUILTY** of conduct prejudicial to the best interest of the service and willful failure to pay just debts and that she be **SUSPENDED** for a period of one (1) year, with a **STERN WARNING** that the commission of the same or similar acts in the future shall be dealt with more severely; and

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

[40] *Id.* at 131.

[41] *Id.*

[42] *Rollo*, p. 132.

(3) the Presiding Judge and/or the Branch Clerk of Court of Branch 3, Municipal Trial Court in Cities, Davao City be **DIRECTED** to apprise the Court on a quarterly basis, relative to the progress of Criminal Case Nos. 150,071-D-B-C-14; 150,072-D-B-C-14 and 109,581-B-F-C-2003 and to furnish the Court with copies of the decision in said criminal cases.[43]

In a Manifestation[44] dated July 17, 2015, Sps. Caños informed the Court that aside from the three criminal cases filed against Escobido, they have filed another complaint for estafa against her. The case is docketed as Criminal Case No. 27(15) and is pending before Branch 18, RTC, Digos City.

On November 25, 2015, the Clerk of Court of Branch 3, MTCC, Davao City, submitted[45] the Orders of Dismissal[46] of Criminal Cases No. 150,071-D-B-C-14, 150,072-D-B-C-14, and 109,581-B-F-C-2003 filed against Escobido.

The Court's Ruling

The Court agrees with the OCA that Escobido should be held administratively liable for willful failure to pay just debts and conduct prejudicial to the best interest of the service.

Executive Order No. (EO) 292, otherwise known as the Administrative Code of 1987, provides that a public employee's failure to pay just debts is a ground for disciplinary action.[47] Section 22, Rule XIV of the Rules Implementing Book V of EO 292, as modified by Section 46, Rule 10 of the Revised Rules on Administrative Cases in the Civil Service (RRACCS), defines "just debts" as those: (a) claims adjudicated by a court of law; or (b) claims the existence and justness of which are admitted by the debtor.

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[43] *Id.* at 132-133.

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

[45] *Id.* at 157.

[46] *Id.* at 158-159.

[47] Book V, Chapter 7, Sec. 46(b)(22).

Classified as a light offense, willful failure to pay just debts is punishable by reprimand for the first offense, suspension of one to thirty days for the second offense, and dismissal from the service for the third offense.[48]

Record shows that Escobido admitted the existence of her debt to Sps. Caños. First, she admitted in her Comment that she owed sums of money to Sps. Caños, but she is only contesting the amount of the debt. She also executed an Undertaking acknowledging the debt. The record likewise shows that Escobido did not exert any sincere effort to settle her obligation to Sps. Caños. As the OCA correctly observed, Escobido allowed her obligation to remain unpaid from November 2010 to May 2013. The total amount of ₱93,000.00 she paid from December 2010 to February 2013 was indeed paltry as to provide a significant dent on her million-peso obligation.[49] As the OCA also aptly observed, this is not the first instance that she faces a complaint for not paying her debts.

The Court has ruled that the penalty for willful failure to pay just debts is imposed at a civil servant's actuation unbecoming a public official, thus tarnishing the image of the public office:

> In this relation, note that the penalty imposed by law is not directed at respondent's private life, but rather at her actuation unbecoming of a public official. As explained in *In re: Complaint for Failure to Pay Just Debts Against Esther T. Andres*, willful refusal to pay just debts, much like misconduct, equally contemplates the punishment of the errant official in view of the damage done to the image of the Judiciary:
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> > The Court cannot overstress the need for circumspect and proper behavior on the part of court employees. "While it may be just for an individual to incur indebtedness unrestrained by the fact that he is a public officer or employee, caution should be taken to prevent the occurrence of dubious circumstances

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[48] RRACCS, Rule 10, Sec. 46(F)(9).

[49] *Rollo*, p. 129.

> that might inevitably impair the image of the public office." Employees of the court should always keep in mind that the court is regarded by the public with respect. Consequently, the conduct of each court personnel should be circumscribed with the heavy burden of onus and must at all times be characterized by, among other things, uprightness, propriety and decorum. x x x.
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> Also, as instructively held in *Tan v. Sermonia*:
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> > Indeed, when [respondent] backtracked on her promise to pay her debt, such act already constituted a ground for administrative sanction, for any act that would be a bane to the public trust and confidence reposed in the judiciary shall not be countenanced. [Respondent's] unethical conduct has diminished the honor and integrity of her office, stained the image of the judiciary and caused unnecessary interference, directly or indirectly, in the efficient and effective performance of her functions. Certainly, to preserve decency within the judiciary, court personnel must comply with just contractual obligations, act fairly and adhere to high ethical standards. Like all other court personnel, [respondent] is expected to be a paragon of uprightness, fairness and honesty not only in all her official conduct but also in her personal actuations, including business and commercial transactions, so as to avoid becoming her court's albatross of infamy.[50]

Public employees may likewise be penalized for conduct prejudicial to the best interest of the service.[51] Acts may constitute conduct prejudicial to the best interest of the service as long as they tarnish the image and integrity of his/her public office.[52]

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[50] *Tordilla v. Amilano*, A.M. No. P-14-3241, February 4, 2015, 749 SCRA 487, 493-494, citing *In Re: Complaint for Failure to Pay Just Debts Against Esther T. Andres*, A.M. No. 2004-40-SC, March 1, 2005, 452 SCRA 654, 663, and *Tan v. Sermonia*, A.M. No. P-08-2436, August 4, 2009, 595 SCRA 1, 9-10.

[51] EO 292, Book V, Title I, Chapter 7, Sec. 46(b)(27).

[52] *Pia v. Gervacio, Jr.*, G.R. No. 172334, June 5, 2013, 697 SCRA 220, 231, citing *Avenido v. Civil Service Commission*, G.R. No. 177666, April 30, 2008, 553 SCRA 711, 720.

Such violation is classified as a grave offense, punishable by suspension of six months and one day to one year for the first offense and dismissal from the service for the second offense.[53]

We agree with the OCA that Escobido's repeated acts of contracting loans and paying them with worthless checks reflect bad faith on her part. We must note that Escobido, as clerk of court, is not a mere public employee. She is both an employee of the Court and a member of the Bar. Thus, she is expected to meet a high standard of uprightness and propriety. By deliberately failing to meet her contractual obligations, she fell short of such standard.

We likewise agree that Escobido holds a position of trust and confidence with concomitant duties and responsibilities that require from its holder competence, honesty, and integrity so essential for the proper and effective administration of justice. Her actuation, although arising from a private transaction, tarnished the image of the Judiciary.

Finally, we find the penalty of one year suspension appropriate. In the imposition of penalties, Section 50, Rule 10 of the RRACCS provides that if the respondent is found guilty of two or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge and the rest shall be considered as aggravating circumstances. Thus, the penalty to be imposed should be that of the graver offense of conduct prejudicial to the best interest of the service. The charge of willful failure to pay just debts, being a light offense, shall be considered as an aggravating circumstance.

WHEREFORE, respondent Louise Marie Therese B. Escobido, Clerk of Court V, Branch 19, Regional Trial Court, Digos City is adjudged **GUILTY** of willful failure to pay just debts and conduct prejudicial to the best interest of the service, for which she is hereby **SUSPENDED** for a period of **ONE (1) YEAR**. Further, she is **STERNLY WARNED** that commission

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[53] RRACCS, Rule 10, Sec. 46(B)(8).

of the same or similar acts in the future shall be dealt with more severely.

Velasco, Jr. (*Chairperson*), *Bersamin, Reyes,* and *Caguioa,*[*] *JJ.,* concur.

SECOND DIVISION

[G.R. No. 196110. February 6, 2017]

PNCC SKYWAY CORPORATION (PSC), *petitioner, vs.* **THE SECRETARY OF LABOR & EMPLOYMENT, PNCC SKYWAY TRAFFIC MANAGEMENT, and SECURITY DIVISION WORKERS ORGANIZATION,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; QUESTION OF LAW THAT MUST BE RESOLVED IN A CA DECISION ON A RULE 65 PETITION.— In *Montoya v. Transmed Manila Corporation/Mr. Ellena, et al.*, the Court had the occasion to lay down the proper interpretation of the question of law that the Court must resolve in a Rule 45 petition, as in this case, assailing a CA decision on a Rule 65 petition, to wit: x x x In a Rule 45 review, we consider the correctness of the assailed CA decision, in contrast with the review for jurisdictional error that we undertake under Rule 65. Furthermore, Rule 45 limits us to the review of questions of law raised against the assailed CA decision. In ruling for legal correctness, we

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[*] Designated as Fifth Member of the Third Division per Special Order No. 2417 dated January 4, 2017.

have to view the CA decision in the same context that the petition for *certiorari* it ruled upon was presented to it; we have to examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, not on the basis of whether the NLRC decision on the merits of the case was correct. In other words, we have to be keenly aware that the CA undertook a Rule 65 review, not a review on appeal, of the NLRC decision challenged before it. This is the approach that should be basic in a Rule 45 review of a CA ruling in a labor case. In question form, the question to ask is: Did the CA correctly determine whether the NLRC committed grave abuse of discretion in ruling on the case?

2. **LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; CLOSURE OF ESTABLISHMENT AND REDUCTION OF PERSONNEL; PROCEDURAL REQUIREMENTS.—** [U]nder Article 283 (Closure of establishment and reduction of personnel) of the Labor Code, three requirements are necessary for a valid cessation of business operations: (a) service of a written notice to the employees and to the DOLE at least one month before the intended date thereof; (b) the cessation of business must be *bona fide* in character; and (c) payment to the employees of termination pay amounting to one month pay or at least one-half month pay for every year of service, whichever is higher.

3. **ID.; ID.; ID.; ID.; WRITTEN NOTICE TO THE EMPLOYEES AND TO THE DOLE AT LEAST ONE MONTH BEFORE INTENDED DATE THEREOF; PURPOSE.—** The required written notice under Article 283 of the Labor Code is to inform the employees of the specific date of termination or closure of business operations, and must be served upon them at least one (1) month before the date of effectivity to give them sufficient time to make the necessary arrangements. The purpose of this requirement is to give employees time to prepare for the eventual loss of their jobs, as well as to give DOLE the opportunity to ascertain the veracity of the alleged cause of termination. Thus, considering that the notices of termination were given merely three (3) days before the cessation of the PSC's operation, it defeats the very purpose of the required notice and the mandate of Article 283 of the Labor Code. Neither the payment of

employees' salaries for the said one-month period nor the employees' alleged actual knowledge of the ASTOA is sufficient to replace the formal and written notice required by the law.

4. **ID.; ID.; ID.; ID.; VIOLATION THEREOF WARRANTS AWARD OF NOMINAL DAMAGES.—** Indeed, while PSC had an authorized ground to terminate its employees by virtue of the closure of its business, its failure to comply with the proper procedure for termination renders it liable to pay the employees nominal damages for such omission. In *Business Services of the Future Today, Inc. v. Court of Appeals*, which reiterated the ruling in *Agabon v. National Labor Relations Commission*, this Court held that where the dismissal is for an authorized cause, the lack of statutory due process should not nullify the dismissal, or render it illegal, or ineffectual. However, the employer should indemnify the employee, in the form of nominal damages, for the violation of his right to statutory due process.

5. **ID.; ID.; ID.; ID.; ID.; FACTORS TO CONSIDER IN THE DETERMINATION OF THE AMOUNT OF NOMINAL DAMAGES.—** In the determination of the amount of nominal damages which is addressed to the sound discretion of the court, several factors are taken into account: (1) the authorized cause invoked, whether it was a retrenchment or a closure or cessation of operation of the establishment due to serious business losses or financial reverses or otherwise; (2) the number of employees to be awarded; (3) the capacity of the employers to satisfy the awards, taken into account their prevailing financial status as borne by the records; (4) the employer's grant of other termination benefits in favor of the employees; and (5) whether there was a *bona fide* attempt to comply with the notice requirements as opposed to giving no notice at all.

APPEARANCES OF COUNSEL

Office of the Government Corporate Counsel for petitioner.
Victoria Lim Law Offices for private respondent.

D E C I S I O N

PERALTA, *J.*:

This is a Petition for Review on *Certiorari* under Rule 45[1] of the Rules of Court seeking the reversal of the Decision[2] dated July 22, 2010 and Resolution[3] dated March 10, 2011 of the Court of Appeals in CA-G.R. SP No. 111200.

The facts are as follows:

Sometime in March 1977, the Philippine National Construction Corporation (*PNCC*) was awarded by the Toll Regulatory Board (*TRB*) with the franchise of constructing, operating and maintaining the north and south expressways, including the South Metro Manila Skyway (*Skyway*). On December 15, 1998, it created petitioner PNCC Skyway Corporation (*PSC*) for the purpose of taking charge of its traffic safety, maintaining its facilities and collecting toll.

Eight years later, or on July 18, 2007, the Citra Metro Manila Tollway Corporation (*Citra*), a private investor under a build-and-transfer scheme, entered into an agreement with the TRB and the PNCC to transfer the operation of the Skyway from petitioner PSC to the Skyway O & M Corporation (*SOMCO*). The said transfer provided for a five-month transition period from July 2007 until the full turn-over of the Skyway at 10:00 p.m. of December 31, 2007 upon which petitioner PSC will close its operation.

On December 28, 2007, or three (3) days before the full transfer of the operation of the Skyway to SOMCO, petitioner PSC served termination letters to its employees, many of whom were members of private respondent PNCC Skyway Traffic

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[1] *Rollo,* pp. 10-33.

[2] Penned by Associate Justice Garcia, R.R., with Associate Justices Carandang, R.D., and Barrios, M.M, concurring; *rollo,* pp. 40-52.

[3] *Id.* at 54-55.

Management and Security Division Worker's Organization (*Union*). According to the letter, PSC has no choice but to close its operations resulting in the termination of its employees effective January 31, 2008. However, the employees are entitled to receive separation pay amounting to 250% of the basic monthly pay for every year of service, among others things. Petitioner PSC, likewise, served a notice of termination to the Department of Labor and Employment (*DOLE*).

On that same day of December 28, 2007, private respondent Union, immediately upon receipt of the termination letters, filed a Notice of Strike before the DOLE alleging that the closure of the operation of PSC is tantamount to union-busting because it is a means of terminating employees who are members thereof. Furthermore, the notices of termination were served on its employees three (3) days before petitioner PSC ceases its operations, thereby violating the employees' right to due process. As a matter of fact, the employees were no longer allowed to work as of January 1, 2008. Private respondent Union, thus, prayed that petitioner PSC be held guilty of unfair labor practice and illegal dismissal. It, likewise, prayed for the reinstatement of all dismissed employees, along with the award of backwages, moral and exemplary damages, and attorney's fees.

For its defense, PSC denied that the closure of its operation was intended to remove employees who are members of private respondent Union. Instead, it claimed that it was done in good faith and in the exercise of management prerogative, considering that it was anchored on an agreement between the TRB, the PNCC and the private investor Citra. PSC likewise denied that it had violated the right to due process of its employees, considering that the notices of termination were served on December 28, 2007 while the termination was effective only on January 31, 2008. PSC alleged that the Union was guilty of an illegal strike when it started a strike on the same day it filed a notice of strike on December 28, 2007.

On August 29, 2008, public respondent Secretary of Labor and Employment (*SOLE*), in its assailed Decision,[4] found that there was an authorized cause for the closure of the operation of PSC *albeit* it failed to comply with the procedural requirements set forth under Article 283 of the Labor Code. The dispositive portion of the Decision reads, as thus:

> WHEREFORE, premises considered, judgment is hereby rendered:
>
> 1. HOLDING there was lawful cause to terminate the employees and deny their claims for reinstatement as there was valid cessation of PSC's operation.
>
> 2. DISMISSING the charges of unfair labor practice and union-busting for lack of basis.
>
> 3. DISMISSING the charge of illegal strike against the Union and its members for lack of basis.
>
> 4. HOLDING there was failure on the part of the PNCC Skyway Corporation to comply with the procedural notice requirements of Article 283 of the Labor Code.
>
> 5. DENYING the payment of moral and exemplary damages, and attorney's fees for lack of bases.
>
> As it had previously offered, PSC is hereby ORDERED to pay the affected employees their separation pay in the amount of no less than 250% of their respective basic monthly pay per year of service, a gratuity pay of Php40,000 each employee, plus all their remaining benefits like 13th month pay, rice subsidy, cash conversion of vacation and sick leaves, and medical reimbursement.
>
> Likewise, PSC is ordered to pay the amount of Php30,000 as indemnity to each dismissed employee covered by this case, who were not validly notified in writing of their termination on 31 December 2007 pursuant to Article 283 of the Labor Code.
>
> SO ORDERED.

Both PSC and private respondent Union file their respective motions for partial reconsideration but was denied for lack of merit in a Resolution[5] dated August 26, 2009.

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[4] *Id.* at 57-79.

[5] *Id.* at 81-91.

Thus, on October 30, 2009, before the Court of Appeals, PSC filed a Petition for *Certiorari*[6] alleging grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the SOLE when it additionally directed payment of an additional ₱30,000.00 to PSC's former employees pursuant to Article 283 of the Labor Code.

On July 22, 2010, in its disputed Decision,[7] the Court of Appeals dismissed PSC's petition. The appellate court held that the Secretary of Labor was correct in saying that the extension of the employee's employment in paper only and the payment of the employee's salaries for said period cannot substitute for the PSC's failure to comply with the due process requirements. Thus, the SOLE cannot be said to have acted capriciously or whimsically, in the exercise of his official duties.

Petitioner moved for reconsideration, but was denied in a Resolution[8] dated March 10, 2011. Thus, the instant petition for review on *certiorari* under Rule 45 of the Rules of Court raising the following issues:

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN UPHOLDING THE LABOR SECRETARY'S FINDINGS THAT PSC FAILED TO COMPLY WITH THE PROCEDURAL REQUIREMENTS OF ARTICLE 283 OF THE LABOR CODE ON NOTICE.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN UPHOLDING THE LABOR SECRETARY'S FAILURE TO CONSIDER THAT THE EMPLOYEES WERE PAID OF THEIR SALARIES AND BENEFITS FOR THE MONTH OF JANUARY 2008 WHICH IS CONSIDERED AS SUBSTANTIAL COMPLIANCE WITH THE REQUIREMENTS OF ARTICLE 283 OF THE LABOR CODE.

WHETHER THE AGABON AND SERRANO CASES ARE INAPPLICABLE IN THIS CASE.

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[6] *Id.* at 135-149.

[7] *Supra* note 2.

[8] *Supra* note 4.

In essence, the PSC insists that there was substantial compliance with the procedural requirements of Article 283 of the Labor Code considering that the alleged effectivity of the termination was made one (1) month from the notice of termination and that the affected employees were paid for the said month.

The petition lacks merit.

In *Montoya v. Transmed Manila Corporation/Mr. Ellena, et al.,*[9] the Court had the occasion to lay down the proper interpretation of the question of law that the Court must resolve in a Rule 45 petition, as in this case, assailing a CA decision on a Rule 65 petition, to wit:

> x x x In a Rule 45 review, we consider the correctness of the assailed CA decision, in contrast with the review for jurisdictional error that we undertake under Rule 65. Furthermore, Rule 45 limits us to the review of questions of law raised against the assailed CA decision. In ruling for legal correctness, we have to view the CA decision in the same context that the petition for certiorari it ruled upon was presented to it; we have to examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, not on the basis of whether the NLRC decision on the merits of the case was correct. In other words, we have to be keenly aware that the CA undertook a Rule 65 review, not a review on appeal, of the NLRC decision challenged before it. This is the approach that should be basic in a Rule 45 review of a CA ruling in a labor case. In question form, the question to ask is: Did the CA correctly determine whether the NLRC committed grave abuse of discretion in ruling on the case?[10]

Thus, in the instant petition for review, we will examine the CA decision limited to whether it correctly determined the presence or absence of grave abuse of discretion in the SOLE decision before it, not on the basis of whether the SOLE decision on the merits of the case was correct. Moreso, in this case,

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[9] 613 Phil. 696 (2009).

[10] *Montoya v. Transmed Manila Corporation, supra*, at 707.

where the SOLE and the Court of Appeals were unanimous in ruling that PSC's closure or cessation of business operations was due to the amendment of the STOA by CITRA, PNCC and the Republic of the Philippines (*ASTOA*), and not because of any alleged anti-union position. We find no reason to modify such finding. In any case, none of the parties raised the issue of either the legality of the dismissal or the validity of the closure of PSC's operation. Furthermore, it must be emphasized that this Court is not a trier of facts, a rule which applies with greater force in labor cases where the findings of fact of the quasi-judicial agencies are accorded respect and even finality, as long as they are supported by substantial evidence from which an independent evaluation of the facts may be made.

Whether there was grave abuse of discretion on the part of the SOLE

Upon review of the records, we agree with the appellate court's stance that public respondent SOLE committed no grave abuse of discretion in its resolution that while there was an authorized cause for the closure of PSC's operations and the subsequent termination of its employees, it however failed to comply with the procedural requirements set forth under Article 283 of the Labor Code, that is, by serving notices of termination upon the employees and the DOLE at least one (1) month before the intended date thereof. The provision of Article 283 of the Labor Code is instructive on the notice requirement, to *wit*:

Art. 283. *Closure of establishment and reduction of personnel.* The employer may also terminate the employment of any employee due to the installation of labor saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation

of operations of establishment or under taking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (½) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

In sum, under Article 283 of the Labor Code, three requirements are necessary for a valid cessation of business operations: (a) service of a written notice to the employees and to the DOLE at least one month before the intended date thereof; (b) the cessation of business must be *bona fide* in character; and (c) payment to the employees of termination pay amounting to one month pay or at least one-half month pay for every year of service, whichever is higher.

In the instant case, while both the SOLE and the appellate court found the closure of PSC's business operation to be *bona fide*, the required notices were, however, served on the employees and the DOLE only three (3) days before the closure of the company. PSC contends that it had substantially complied with the one (1) month notice requirement since the termination of its employees was made effective only on January 31, 2008, or more than one (1) month after it had given the notice of termination on December 28, 2007. It insists that they have in fact paid the affected employees for the said period covered by the supposed one-month notice. We disagree.

The required written notice under Article 283 of the Labor Code is to inform the employees of the specific date of termination or closure of business operations, and must be served upon them at least one (1) month before the date of effectivity to give them sufficient time to make the necessary arrangements.[11] The purpose of this requirement is to give employees time to prepare for the eventual loss of their jobs, as well as to give DOLE the opportunity to ascertain the veracity of the alleged cause of termination.[12] Thus, considering that the notices of

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[11] *Galaxie Steel Workers Union v. NLRC,* 535 Phil. 675, 685 (2006).

[12] *Mobilia Products, Inc. v. Demecillo, et al.,* 597 Phil. 621, 631 (2009).

termination were given merely three (3) days before the cessation of the PSC's operation, it defeats the very purpose of the required notice and the mandate of Article 283 of the Labor Code. Neither the payment of employees' salaries for the said one-month period[13] nor the employees' alleged actual knowledge of the ASTOA is sufficient to replace the formal and written notice required by the law.

Moreover, as early as July 2007, PSC already had knowledge of the eventual take-over by SOMCO of the Skyway by December 31, 2007. Thus, considering that PSC had ample time of more than five (5) months to serve the notice of termination to its employees, its failure to comply with the notice requirement under Article 283 of the Labor Code is inexcusable.

Whether the PNCC Union is entitled to nominal damages for violation of their right to statutory procedural due process

Indeed, while PSC had an authorized ground to terminate its employees by virtue of the closure of its business, its failure to comply with the proper procedure for termination renders it liable to pay the employees nominal damages for such omission. In *Business Services of the Future Today, Inc. v. Court of Appeals,*[14] which reiterated the ruling in *Agabon v. National Labor Relations Commission,* this Court held that where the dismissal is for an authorized cause, the lack of statutory due process should not nullify the dismissal, or render it illegal, or ineffectual. However, the employer should indemnify the employee, in the form of nominal damages, for the violation of his right to statutory due process. Thus, PSC's violation of their employees' right to statutory procedural due process warrants the payment of indemnity in the form of nominal damages.

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[13] *Id.*

[14] 516 Phil. 351, 359 (2006).

In *Jaka Food Processing Corp. v. Pacot,*[15] we fixed the nominal damages at ₱50,000.00 if the dismissal is due to an authorized cause under Article 283 of the Labor Code, but the employer failed to comply with the notice requirement. The reason is terminations under Article 283 of the Labor Code are initiated by the employer in the exercise of his management prerogative, thus, the sanction should be *stiffer*.

In the determination of the amount of nominal damages which is addressed to the sound discretion of the court, several factors are taken into account: (1) the authorized cause invoked, whether it was a retrenchment or a closure or cessation of operation of the establishment due to serious business losses or financial reverses or otherwise; (2) the number of employees to be awarded; (3) the capacity of the employers to satisfy the awards, taken into account their prevailing financial status as borne by the records; (4) the employer's grant of other termination benefits in favor of the employees; and (5) whether there was a *bona fide* attempt to comply with the notice requirements as opposed to giving no notice at all.[16]

In the instant case, there was an authorized cause for termination considering that it was prompted by the cessation of PSC's operation which was done in good faith and due to circumstances beyond its control. It, likewise, appears that PSC had the intention to give its employees the benefits due them upon their termination as in fact many members of the Union, with the exclusion of some Union officers, have already claimed and accepted their separation pay and benefits.[17] Under the facts and circumstances attendant to the case, this Court finds the amount of ₱30,000.00 in nominal damages sufficient to vindicate each private respondent's right to due process.

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[15] 494 Phil. 115, 122 (2005).

[16] 520 Phil. 522, 527-528 (2006).

[17] *CA rollo,* p. 32.

WHEREFORE, the instant petition is **DENIED**. The Decision dated July 22, 2010 of the Court of Appeals in CA-G.R. SP No. 111200 is hereby **AFFIRMED.** This case is hereby remanded to the DOLE for the purpose of computing the exact amount of award to each respondent pursuant to this Decision.

SO ORDERED.

Carpio (*Chairperson*), *del Castillo,*[*] *Mendoza,* and *Leonen, JJ.,* concur.

THIRD DIVISION

[G.R. No. 200749. Ferbruary 6, 2017]

CECILIO ABENION, CANDELARIO S. CASIMSIMAN, ERNESTO R. OLLEGUE, JIMMY S. SALE, PONCIANO T. TINAMBACAN, DOMINADOR S. SELDURA, ANDRES P. ATCHIVARA, ANTONIO M. CABULANG, TIRSO S. LIMBAGA, RAMON J. LIPER, JUANITO P. GODOY, ANIANO J. DEJESICA, JULITO I. JUNASA, SOFRONIO S. DUMBASE, APOLINAR S. ESTAÑO, BEN S. ARIETA, VICENTE G. RIVAS, GLORIA S. OMOÑA, MARINA L. TABUDLONG, ERNESTO S. PASCUAL, NEMIA S. ROSIL, ROMEL M. RUEDAS, RODOLFO N. ARTUBAL, VICTOR C. HONOR, FRUTO M. PEDRAL, JOVENTINO J. CADELIÑA, CONSTANCIO S. COLE, TITO A. CAPUYAN,

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[*] Associate Justice Francis H. Jardeleza, no part; Associate Justice Mariano C. del Castillo designated Additional Member per Special Order No. 2416-J, dated January 4, 2017.

JUANITO D. LEGASPINO, ALFREDO V. ACAS, CLOTILDO D. ALBASIN, CERILO B. BALANGKIG, ISMAEL M. BAUTISTA, JAGDON D. CASTAÑEDO, PRIMITIVO A. BANGAHO, SR., LEONARDO B. DUMAN-AG, RODRIGO G. PATRIS, SR., LITO B. LABAJO, EUTEMIO C. ESTOSE, RUSTOM T. TIO, BONIFACIO A. PUROL, OSIAS A. ASURIZ, SR., RUDOLFO P. MACALISANG, OSCAR G. MARTINEZ, VICTOR D. SINGSON, JR., ERNESTO F. FATALLO, ARNOLD S. BASTIDA, ALFREDO L. MORALES, BIBIANO M. PANUDA, DEOGENES L. LAORDEN, CONCORDIO D. OCLARIT, VEVENCIO S. BASTIDA, NEMESIO D. OCLARIT, EGLESIO M. OCLARIT, SR., CIPRIANO V. ABAT, ROMEO C. LUMAGOD, HERMINIGILDO P. EXCLAMADO, SILVESTRE D. EDILLON, PONCIANO B. GEROLAGA, LEOPOLDO D. ACEBEDO, EDUARDO B. ARCAMO, BENEDICTO P. DELA CRUZ, and CRISOSTOMO M. DIANA, SR., *petitioners, vs.* **PILIPINAS SHELL PETROLEUM CORPORATION,** *respondent.*

[G.R. No. 208725. February 6, 2017]

CECILIO ABENION, BEN S. ARIETA, ERNESTO F. FATALLO, PONCIANO B. GEROLAGA, EGLESIO M. OCLARIT, NEMESIO D. OCLARIT, RODOLFO D. MACALISANG, FRUTO M. PEDRAL, OSIAS A. ASURIZ, SR., LEONARDO B. DUMAN-AG, VICTOR C. HONOR, PRIMITIVO M. BONGAHON, WILLIAM J. BADE, HERMINIGILDO P. EXCLAMADO, WARLITO E. BORRES, EDITO B. CAYANONG, EXEQUIEL M. LAPE, ANTONIO A. JAROY, BUENAVENTURA A. BONONO, MAXIMO A. JUANILLO, BENEDICTO P. DELA CERNA, WILFREDO J. ESPAÑOLA, MARIANO S. CRISANTO, RICARDO Q. DAVID, REYNALDO O. ICOY, REYNALDO Y. RICO, CRISOSTOMO M. DIANA, LEONILO H. GALAN, ALFREDO V. ACAS,

DIOGENES B. LAORDEN, ROMY A. MANANQUIL, POLICARPIO R. BORJA, GABRIEL B. DIEZ, CONCORDIO D. OCLARIT, VENANCIO S. BASTIDA, ALFREDO L. MORALES, BIBIANO M. PANUDA, CIPRIANO V. ABAT, COMWELL R. LAYAGUIN, MUNDA P. CONOIMON, MAXIMO J. GAGABE, VICTOR D. SINGSON, OSCAR G. MARTINEZ, RODRIGO G. PATRIS, SR., EUTEMIO C. ESTOSE, JETO B. LABAJO, SILVESTRE D. EDILLON, LEOPOLDO D. ACEBEDO, EDUARDO B. ARCAMO, ARNOLD S. BASTIDA and VICENTE G. RIVAS, *petitioners, vs.* **PILIPINAS SHELL PETROLEUM CORPORATION and BANCO DE ORO UNIBANK,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; RULE AGAINST FORUM SHOPPING; WHEN BREACHED.—** In *Philippine Postal Corporation v. Court of Appeals, et al.*, the Court explained settled parameters in determining whether the rule against forum shopping is breached, particularly: Forum shopping consists of filing multiple suits involving the same parties for the same cause of action, either simultaneously or successively, for the purpose of obtaining a favorable judgment. There is forum shopping where there exist: (a) identity of parties, or at least such parties as represent the same interests in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two preceding particulars is such that any judgment *rendered in the pending case, regardless of which party is successful would amount to res judicata*.

2. **ID.; ID.; ID.; NOT PRESENT IN CASE AT BAR AS THE ISSUES INVOLVED AND RELIEFS SOUGHT IN THE PETITION FOR *CERTIORARI* AND THE CHALLENGED APPEAL WERE DIFFERENT.—** Given the nature of the petition for *certiorari* and the challenged appeal, it is evident that the issues involved and reliefs sought by PSPC in the two actions were distinct. Even the RTC orders being challenged in the two cases were different. While the two actions may be

related as they arose from the same prohibition case, the appeal was intended to assail the judgment on the injunction bonds, while the petition for *certiorari* was filed specifically to challenge only the ruling that granted an execution pending appeal. Clearly, a judgment in one action would not necessarily affect the other. A nullification of the ruling to allow an execution pending appeal, for example, would not necessarily negate the right of the petitioners to still eventually claim for damages under the injunction bonds. This is consistent with the Court's ruling in *Manacop v. Equitable PCI Bank*, as it differentiated between the two actions and the implication of the pendency of both on the prohibition against forum shopping. The Court explained: *Certiorari* lies against an order granting execution pending appeal where the same is not founded upon good reasons. The fact that the losing party had also appealed from the judgment does not bar the *certiorari* proceedings, as the appeal could not be an adequate remedy from such premature execution. Additionally, there is no forum-shopping where in one petition a party questions the order granting the motion for execution pending appeal and at the same time questions the decision on the merits in a regular appeal before the appellate court. After all, the merits of the main case are not to be determined in a petition questioning execution pending appeal and vice versa.

3. ID.; ID.; EXECUTION OF JUDGMENTS; WHEN A MATTER OF RIGHT.— It bears emphasis that an execution pending appeal is deemed an exception to the general rule, which allows an execution as a matter of right only in any of the following instances: (a) when the judgment has become final and executory; (b) when the judgment debtor has renounced or waived his right of appeal; (c) when the period for appeal has lapsed without an appeal having been filed; or (d) when, having been filed, the appeal has been resolved and the records of the case have been returned to the court of origin.

4. ID.; ID.; ID.; EXECUTION PENDING APPEAL; REQUISITES.— The Rules of Court allows executions pending appeal under the conditions set forth in Section 2 of Rule 39 thereof, x x x Corollary thereto, jurisprudence provides rules that are generally applied in resolving litigants' pleas for executions pending appeal, specifically: The general rule is that only judgments which have become final and executory may be executed. However, discretionary execution of appealed

judgments may be allowed under Section 2 (a) of Rule 39 of the Revised Rules of Civil Procedure upon concurrence of the following requisites: (a) there must be a motion by the prevailing party with notice to the adverse party; (b) there must be a good reason for execution pending appeal; and (c) the good reason must be stated in a special order. **The yardstick remains the presence or the absence of good reasons consisting of exceptional circumstances of such urgency as to outweigh the injury or damage that the losing party may suffer, should the appealed judgment be reversed later. Since the execution of a judgment pending appeal is an exception to the general rule, the existence of good reasons is essential.**

5. **ID.; ID.; ID.; PROCEDURAL RULES ALLOWS A COURT TO ACT UPON A MOTION FOR EXECUTION PENDING APPEAL WHILE IT RETAINS JURISDICTION OVER THE ACTION.—** Section 2 of Rule 39, allows a court to act upon a motion for execution pending appeal while it retains jurisdiction over the action. In relation to this, Section 9 of Rule 41 of the Rules of Court on appeals from the RTCs provides the rules on the perfection of appeals and loss of jurisdiction, particularly: Sec. 9. *Perfection of appeal; effect thereof.* — A party's appeal by notice of appeal is deemed perfected as to him upon the filing of the notice of appeal in due time. x x x In appeals by notice of appeal, the court loses jurisdiction over the case upon the perfection of the appeals filed in due time and the expiration of the time to appeal of the other parties. x x x In either case, prior to the transmittal of the original record or the record on appeal, the court may issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal, approve compromises, permit appeals of indigent litigants, order execution pending appeal in accordance with Section 2 of Rule 39, and allow withdrawal of the appeal.

6. **ID.; ID.; INTERVENTION; WHO MAY INTERVENE.—** The Court finds it necessary to first resolve the issue on the petitioners' right to intervene in Civil Case No. 09-941, for it is only after their legal interest in the case is established can they be allowed to validly raise the other issues that could support the complaint's dismissal, such as the procedural issues affecting mootness of the case and the alleged forum shopping. On the matter of the petitioners' intervention in Civil Case No. 09-

941, Section 1 of Rule 19 of the Rules of Court applies. This provision identifies the persons who may rightfully intervene in a court action, as it reads: Sec. 1. *Who may intervene.* – A person who has a legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof may, with leave of court, be allowed to intervene in the action. The court shall consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties, and whether or not the intervenor's rights may be fully protected in a separate proceeding. x x x Intervention, as a remedy, is not a right but a matter that is left to the court's discretion. In all cases, legal interest in the matter in litigation is an indispensable requirement among intervenors. As the Court ruled in *Office of the Ombudsman v. Sison*, "[t]he interest, which entitles one to intervene, must involve the matter in litigation and of such direct and immediate character that the intervenor will either gain or lose by the direct legal operation and effect of the judgment."

7. ID. ID.; ACTIONS; MOOT AND ACADEMIC CASES; GENERALLY, COURTS DECLINE JURISDICTION OVER A MOOT AND ACADEMIC CASE OR DISMISS IT ON GROUND OF MOOTNESS.— Circumstances that render a case moot were explained by the Court in *Deutsche Bank AG v. Court of Appeals, et al*., wherein it declared that "[a] moot and academic case is one that ceases to present a justiciable controversy by virtue of supervening events, so that a declaration thereon would be of no practical use or value. Generally, courts decline jurisdiction over such case or dismiss it on ground of mootness."

APPEARANCES OF COUNSEL

Oswaldo A. Macadangdang for petitioners.

Martinez Vergara Gonzales & Serrano Law Offices for respondent BDO Unibank.

Cruz Marcelo & Tenefrancia for respondent Pilipinas Shell Petroleum, Inc.

D E C I S I O N

REYES, *J.*:

This resolves the consolidated petitions for review on *certiorari*, docketed as G.R. No. 200749 and G.R. No. 208725, filed by the petitioners to assail the rulings of the Court of Appeals (CA) in CA-G.R. SP No. 114420 and CA-G.R. SP No. 120638, respectively.

G.R. No. 200749 was filed by its petitioners against Pilipinas Shell Petroleum Corporation (PSPC). Particularly assailed in the petition are the CA Decision[1] dated January 31, 2011 and Resolution[2] dated February 3, 2012 in CA-G.R. SP No. 114420, in relation to the CA's reversal and setting aside of the Order[3] dated June 8, 2010 rendered by the Regional Trial Court (RTC) of Makati City, Branch 62, which granted an **execution pending appeal** against the injunction bonds posted by PSPC in Civil Case No. 09-749.

G.R. No. 208725 was filed by its petitioners against respondents PSPC and Banco de Oro Unibank (BDO) to assail the CA Decision[4] dated August 31, 2012 and Resolution[5] dated August 8, 2013 in CA-G.R. SP No. 120638. The CA reversed *via* the challenged issuances the RTC Makati, Branch 59's Orders dated January 31, 2011,[6] May 27, 2011,[7] July 21,

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[1] Penned by Associate Justice Rosmari D. Carandang, with Associate Justices Ramon R. Garcia and Manuel M. Barrios concurring; *rollo* (G.R. No. 200749), Vol. I, pp. 105-124.

[2] *Id*. at 158-172.

[3] Issued by Judge Selma Palacio Alaras; *rollo* (G.R. No. 200749), Vol. III, pp. 1151-1156.

[4] Penned by Associate Justice Noel G. Tijam, with Associate Justices Romeo F. Barza and Edwin D. Sorongon concurring; *rollo* (G.R. No. 208725), Vol. I, pp. 70-110.

[5] *Id*. at 130-133.

[6] *Id*. at 134.

[7] *Id*. at 135.

2011,[8] October 5, 2011[9] and November 15, 2011[10] in Civil Case No. 09-941. Essentially, the RTC orders allowed the petitioners' **intervention** in the civil case and then eventually ordered the complaint's dismissal.

The Facts

Civil Case No. 09-749 and Civil Case No. 09-941, both instituted by PSPC with the RTC Makati, are offshoots of Civil Case No. 95-45, which is a complaint[11] for damages filed in 1996 with the RTC of Panabo City, Davao Del Norte, Branch 4 by 1,843 plaintiffs[12] (plaintiffs) that included herein petitioners, against Shell Oil Company (Shell Oil), among several other defendants.[13] The defendants in Civil Case No. 95-45 were all foreign corporations that manufactured, sold, distributed, used and/or made available in commerce nematocides against the parasite nematode prevalent in banana plantations. These nematocides contained the chemical *dibromochloropropane* (DBCP). The plaintiffs identified themselves as a group of banana plantation workers who were exposed to DBCP, which caused their sterility and other serious and permanent health injuries.[14]

During the pendency of Civil Case No. 95-45, Shell Oil entered into a compromise agreement[15] with its claimants for a total

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[8] *Id*. at 136-138.

[9] *Id*. at 139-144.

[10] *Id*. at 145.

[11] *Id*. at 224-269.

[12] *Id*. at 238-269.

[13] Other defendants were Dow Chemical Company, Occidental Chemical Corporation, Standard Fruit Company, Chiquita Brands, Inc., Chiquita Brands International, Inc., Del Monte Fresh Produce, N.A. and Del Monte Tropical Fruit Co.

[14] *Rollo* (G.R. No. 208725), Vol. I, pp. 230-231.

[15] Compromise Settlement, Indemnity and Hold Harmless Agreement; *id*. at 270-287.

consideration of US$17 Million, a copy of which was submitted for approval by Shell Oil to RTC Panabo City. The copy submitted to the court did not bear the agreement's exhibits which, according to Shell Oil, indicated the list of 26,328 "worldwide plaintiffs" intended to be covered by the compromise.[16] The agreement, sans the list, was approved by RTC Panabo City in its Omnibus Order dated December 20, 2002.[17] In view of the compromise, the complaint against Shell Oil was dismissed in an Order[18] dated March 24, 2003.

Civil Case No. 95-45 was later transferred to the RTC of Davao City, Branch 14. The plaintiffs again sought recourse from the RTC Davao City, *via* a Motion for Execution (Re: Enforcement of Judgment Based on Compromise Agreement between plaintiffs and Shell Oil), after Shell Oil allegedly failed to fully satisfy its obligations to them under the compromise agreement. For its defense, Shell Oil argued that it had fully complied with the terms of the compromise agreement. The approved compromise and amount stated therein covered 26,328 agricultural workers from across the globe who filed various cases against it and not just the 1,843 plaintiffs in Civil Case No. 95-45. When it resolved the motion, the RTC Davao City ruled in favor of the plaintiffs and thus issued the Order[19] dated July 17, 2009 that directed the issuance of a writ of execution to be enforced against Shell Oil, its subsidiaries, affiliates, controlled and related entities, successors or assigns. The order's dispositive portion reads:

WHEREFORE, and in view of all the foregoing, let Writ of Execution issue based on the Compromise Agreement between the herein plaintiffs and the defendant [Shell Oil] dated March 15, 2007 – to be **ENFORCED** as well, on the defendant [Shell Oil's] subsidiaries, affiliates, controlled and related entities, successors or

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[16] *Id*. at 304.

[17] *Id*. at 288-290.

[18] *Id*. at 288-296.

[19] *Rollo* (G.R. No. 200749), Vol. I, pp. 343-345.

assigns pursuant to the common provision under Clause 28 of the said 1997 Compromise Agreement which are doing business in the Philippines or registered in the Securities and Exchange Commission.

SO ORDERED.[20]

Although not a defendant in Civil Case No. 95-45, PSPC was brought into the case when the plaintiffs filed with the RTC Davao City an *ex parte* motion alleging that PSPC was one of Shell Oil's "subsidiaries, affiliates, controlled and related entities or assigns," in relation to Clause 28 of the compromise agreement, which reads:

28. Affiliates and Successors

This Agreement and the rights, obligations, and covenants contained herein shall inure to the benefit of and be binding upon The Plaintiffs and Settling Defendants and their respective parent corporations, subsidiaries, affiliates, controlled and related entities, successors, and assigns.[21]

Acting on the motion, an Amended Order[22] for the issuance of an alias writ of execution was issued by the RTC Davao City on August 11, 2009. Pursuant thereto, an Alias Writ of Execution[23] addressed to Sheriff Roberto C. Esguerra (Sheriff Esguerra), Sheriff IV of RTC Davao City, was issued on August 12, 2009, citing PSPC as one of the parties against whom the writ of execution may be implemented, to wit:

x x x **WHEREFORE**, and in view of all the foregoing, let Writ of Execution issued based on the Compromise Agreement between the herein plaintiffs and the defendant [SHELL OIL] dated MARCH 15, 2007 – to be **ENFORCED** as well, on subsidiaries, affiliates, controlled and related entities or assigns pursuant to the common provision under clause 28 of the said 1997 Compromise Agreement

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[20] *Id*. at 344.

[21] *Rollo* (G.R. No. 208725), Vol. I, p. 279.

[22] *Rollo* (G.R. No. 200749), Vol. I, pp. 416-420.

[23] *Id*. at 257-260.

which are doing business in the Philippines or registered in the Securities and Exchange Commission, and which subsidiaries or entities as earlier stated, namely: [PSPC], SHELL GAS EASTERN, INC., SHELL GAS TRADING (Asia Pacific), INC., SHELL CHEMICALS PHILIPPINES INC., SHELL RENEWABLES PHILIPPINES CORP., THE SHELL COMPANY OF THE PHILIPPINES, LIMITED and SHELL PHILIPPINES EXPLORATION, B.V. (SPEX) in the total judgment debt of U.S. $17 MILLION, are solidarily liable if in the event the principal defendant [SHELL OIL] shall fail to pay or becomes insolvent.[24] (Emphasis and underscoring in the original)

Sheriff Esguerra sought to implement the alias writ against PSPC and, thus, issued a notice of garnishment[25] to cover the latter's accounts with BDO. Feeling aggrieved, PSPC thereafter filed with the RTC Makati two actions, specifically Civil Case No. 09-749 and Civil Case No. 09-941, on issues pertinent to the issuances and actions of RTC Davao City.

A. Petition for Prohibition against Sheriff Esguerra and the plaintiffs (Civil Case No. 09-749)

PSPC filed with the RTC Makati the petition[26] for prohibition with application for temporary restraining order (TRO) and writ of preliminary injunction (WPI) docketed as Civil Case No. 09-749 against Sheriff Esguerra and the plaintiffs, as it sought to prohibit the sheriff from enforcing the Alias Writ of Execution dated August 12, 2009 and the notice of garnishment that was issued pursuant thereto. PSPC insisted that it was never a party to Civil Case No. 95-45 and the compromise agreement between Shell Oil and the plaintiffs; thus, the enforcement of the alias writ of execution and the garnishment of its bank accounts were a violation of law and settled jurisprudence.

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

[25] *Id*. at 261.

[26] *Id*. at 233-256.

On August 26, 2009, Judge Alberico Umali (Judge Umali) of RTC Makati, Branch 138, granted PSPC's application for TRO.[27] Sheriff Esguerra and the plaintiffs were directed under the TRO to cease and desist from implementing the alias writ of execution and the notice of garnishment against PSPC.[28] PSPC posted an injunction bond issued by Malayan Insurance Company, Inc. (Malayan Insurance) amounting to ₱20 Million.

Judge Umali later inhibited from the case, which led to the petition's re-raffle to RTC Makati, Branch 141 presided by Judge Mary Ann E. Corpus-Mañalac (Judge Mañalac). Pursuant to an Order[29] dated September 16, 2009 issued by Judge Mañalac, a WPI[30] was consequently issued on September 17, 2009. The order barred the garnishment of PSPC's account with BDO until further orders from the court, as it stated:

> WHER[E]FORE, upon posting of an additional bond executed in favor of the respondents in the amount of Twenty Million Pesos (P20 million) to compensate for the damages they may sustain arising from the preliminary injunction should this court decide that the [PSPC] is not entitled thereto, let a preliminary writ of injunction be issued directing the respondents Sheriff Esguerra, Abenion, et al., and/or their duly authorized representatives, agent or person acting in their behalf, to cease and desist from enforcing against [PSPC] the Alias Writ of Execution dated August 12, 2009 and Notices of Garnishment dated August 13, 2009 issued or served on Banco de Oro, Makati City Head Office and BPI-Intramuros Manila, until further orders from this court.
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> SO ORDERED.[31]

PSPC posted the required additional bond, also issued by Malayan Insurance, in the amount of ₱20 Million.[32]

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[27] *Id.* at 501-505.

[28] *Id.* at 506-507.

[29] *Id.* at 511-516.

[30] *Id.* at 517-518.

[31] *Id.* at 516.

[32] *Id.* at 519.

Following the inhibition of the judges who successively handled the case, the petition was eventually re-raffled to the sala of Judge Selma Palacio Alaras (Judge Alaras) of RTC Makati, Branch 62. On October 13, 2009, Judge Alaras issued an Order[33] dismissing PSPC's petition for prohibition and dissolved the injunctive writs that were previously issued. She explained that the remedy of prohibition is allowed only if there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law that is available to a petitioner. In this case, PSPC had simple and more than adequate remedies under Rule 39 of the Rules of Court, as a garnishee who claimed to be a stranger to the suit subject of the attachment.[34]

On October 21, 2009, the plaintiffs filed a Motion to Call on the Bond and/or For Execution against the TRO and Injunction Bond[35] so that they could be allowed to recover on the injunction bonds for damages in the total amount of ₱40 Million. The motion was opposed by PSPC and Malayan Insurance, mainly on the ground that the plaintiffs did not suffer any compensable damage on account of the issuance of the injunctive writs. Furthermore, PSPC cited CA-G.R. SP No. 03101-MIN,[36] which was a petition for *certiorari* filed by Shell Oil with the CA-Mindanao Station, imputing grave abuse of discretion upon the RTC Davao City for its issuance of the writ of execution and alias writ of execution against Shell Oil, its subsidiaries, affiliates, controlled and related entities, successors or assigns. In the said case, the CA had issued a TRO enjoining the implementation of the execution orders that were issued in Civil Case No. 95-45.[37] On October 16, 2009, the CA-Mindanao Station also issued a Resolution[38]

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[33] *Rollo* (G.R. No. 200749), Vol. III, pp. 1476-1480.

[34] *Id.* at 1478.

[35] *Rollo* (G.R. No. 200749), Vol. II, pp. 531-533.

[36] *Shell Oil Company v. Hon. George E. Omelio, as Presiding Judge of the Regional Trial Court of Davao City, Branch 14, Cecilio Abenion, et al.*

[37] *Rollo* (G.R. No. 200749), Vol. II, pp. 540-541.

[38] *Id.* at 520-530.

for the issuance of a WPI that would direct the RTC Davao City to cease and desist from enforcing the challenged writs against the deposits in Philippine banks of Shell Oil, its subsidiaries, affiliates, controlled and related entities, successors or assigns, until further orders from the court.

In an Order[39] dated November 4, 2009, the RTC Makati resolved to grant the motion to call on the bond, but directed the plaintiffs to still submit evidence in support of the prayer for a judgment on the bond as regards their claim of damages, if warranted. It explained in part:

> [PSPC] strongly advocates that [the plaintiffs] cannot go after the surety as it would circumvent the CA injunction issued against [the plaintiffs'] garnishing its accounts. This Court disagrees.
>
> The injunction bond rule assures the enjoined party that it may readily collect damages in the event that it was wrongfully enjoined without further litigation and without regard to the possible insolvency of the applicant, and it provides the plaintiff with notice of the maximum extent of its potential liability. In fact, as may be seen from the document submitted by [PSPC] which purports to be a TRO from the CA effective for the period August 25, 2009 and until October 16, 2009 (the date when the Preliminary Injunction was issued mentioning [PSPC] as included from among those "subsidiaries, affiliates, controlled and related entities, successors or assigns" of [Shell Oil], the lone petitioner in CA-G.R. SP. No. 03101-MIN), contrary to [PSPC's] allegation, it was not included in the sixty (60)[-] day TRO previously issued by the CA. Thus, it is incumbent on the part of the [plaintiffs] to prove by their evidence the material and relevant assertion of facts justifying BDO's compliance with the court[-]issued garnishment even prior to the issuance by the CA of the broadened injunction on October 16, 2009 shielding [PSPC] from execution. The materiality of this justifies whether damage was indeed suffered by [the plaintiffs].
>
> Also, [PSPC] argues that [the plaintiffs] are unentitled to recovery under the bond because there was no adjudication that [PSPC] was not entitled to the writ of injunction. This Court is not persuaded.

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[39] *Rollo* (G.R. No. 200749), Vol. III, pp. 1511-1515.

It is plain that the injunction should not have been entered in the first place and the motion which sought to vacate the said order should have been granted. This must be so if only had the rules prescribed under the pertinent provision on prohibition petition was followed to the letters as what this jurisdiction had opined in its last order. The Florida Supreme Court defines a "wrongfully issued" injunction as an injunction "that should not have been issued" and this precept squarely applies in this case.

Be that as it may, this jurisdiction is mindful that the necessary elements to be established in an application for damages are essentially factual: namely, the fact of damage or injury and the quantifiable amount of damages sustained, the maximum amount limit of which is that mentioned under the bond. Surely, such matters cannot be established on the mere say-so of the applicant, but require evidentiary support. On this point, this Court fully concurs with the observation of the [PSPC]. Thus, the [plaintiffs] are afforded the chance to adduce evidence to establish provable damage/s, if there be any occasioned by reason of the wrongful injunction.[40] (Citations omitted and emphasis ours)

After hearing the parties, the RTC Makati issued the Order[41] dated April 30, 2010 indicating that the bonds posted by Malayan Insurance, totaling ₱40 Million, were to answer for the damages suffered by the plaintiffs as a result of the injunctive writs issued. In this case, the injunction prevented the sheriff from demanding the payment of the RTC Davao City's awards through PSPC's garnished deposit accounts with BDO. Thus, the decretal portion of the order reads:

WHEREFORE, judgment against the bond is hereby made ordering the surety [Malayan Insurance] to pay the [plaintiffs], through their authorized representative/s the sum in full or the total of forty million (Php 40,000,000.00) pesos representing its undertaking under MICO Bond No. 200902369 dated August 27, 2009 and MICO Bond No. 200902601 dated September 17, 2009. Likewise, respondents are awarded one hundred thousand (Php 100,000.00) pesos as and for attorneys' fees chargeable against the aforesaid undertaking.

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[40] *Id.* at 1514-1515.

[41] *Rollo* (G.R. No. 200749), Vol. IV, pp. 1718-1726.

SO ORDERED.[42]

As the Order dated April 30, 2010 already awarded damages to the plaintiffs in the total amount of ₱40 Million, which was declared recoverable from the bonds, the plaintiffs immediately filed on May 4, 2010 a Motion for Execution.[43]

In the meantime, PSPC filed on May 5, 2010 a Notice of Appeal[44] to assail the Order dated April 30, 2010, while Malayan Insurance filed a Motion for Reconsideration (MR)[45] with the RTC Makati.

In view of PSPC's filing of a notice of appeal, the plaintiffs filed on May 7, 2010 a Supplement to Motion for Execution,[46] asking for an execution pending appeal under Section 2 of Rule 39 of the Rules of Court. They cited the advanced age and failing health condition of several plaintiffs; some of them had even died. To support their supplemental motion, the plaintiffs later submitted to the trial court affidavits, medical certificates and certificates of death.[47]

On June 8, 2010, the RTC Makati issued an Order[48] that, *first,* gave due course to PSPC's notice of appeal and *second*, ordered the issuance of a writ of execution under Section 2 of Rule 39 of the Rules of Court on executions pending appeal. The dispositive portion of the order reads:

WHEREFORE, let Writ of Execution **ISSUE** commanding the Sheriff of this Court to satisfy [the plaintiffs] or through their authorized representative/s the total sum of forty million (Php 40,000,000.00) pesos representing Malayan Surety Co., Inc.'s undertaking under

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[42] *Id*. at 1726.

[43] *Id*. at 1743-1746.

[44] *Id*. at 1727-1729.

[45] *Id*. at 1730-1742.

[46] *Id*. at 1747-1748.

[47] *Id*. at 1749-1751.

[48] *Rollo* (G.R. No. 200749), Vol. III, pp. 1151-1156.

MICO Bond No. 200902369 and MICO Bond No. 200902601 dated August 27, 2009 [and] September 17, 2009, respectively.

Send this Order as well as a copy of the Writ of Execution [to] the Office of the Clerk of Court, [RTC Makati], and other stations in the National Capital Judicial Region, the Office of the Court Administrator, Supreme Court of the Philippines and the Insurance Commission for their reference.

Notify both the [PSPC] and the [Malayan Insurance.]

SO ORDERED.[49]

The corresponding Writ of Execution (pending appeal),[50] addressed to Sheriff Rey Magsajo (Sheriff Magsajo), was issued by the RTC Makati on June 9, 2010. Pursuant thereto, Sheriff Magsajo issued a Notice of Demand to Pay[51] upon Malayan Insurance. Deposits of Malayan Insurance in various bank accounts were later garnished.[52]

Feeling aggrieved, PSPC filed on June 15, 2010 with the CA a Petition for *Certiorari* (With Prayer for Issuance of TRO and WPI),[53] docketed as CA-G.R. SP No. 114420, which sought to set aside the RTC Makati's Order dated June 8, 2010 and Writ of Execution dated June 9, 2010. It contended that the RTC Makati committed grave abuse of discretion in issuing the order and writ on the following grounds: *first*, Malayan Insurance's MR of the RTC Makati's Order dated April 30, 2010 was still pending resolution; *second*, the RTC was divested of any jurisdiction to allow an execution pending appeal when PSPC's notice of appeal was perfected; and *third*, the plaintiffs' motion for execution was based on Section 1 of Rule 39 of the

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[49] *Id*. at 1156.

[50] *Id*. at 1157-1158.

[51] *Rollo* (G.R. No. 200749), Vol. IV, p. 1766.

[52] *Id*. at 1767-1771; Notices of Garnishment sent to RCBC Head Office, RCBC Binondo, Security Bank Head Office and all Metro Manila branches, Bank of the Philippine Islands Head Office and all Metro Manila branches, Chinabank Head Office and all Metro Manila branches.

[53] *Rollo* (G.R. No. 200749), Vol. III, pp. 1098-1143.

Rules of Court and was not a motion for execution pending appeal. Even granting that the motion for execution prayed for an execution pending appeal, there were no serious and compelling reasons to support the relief prayed for.

Meanwhile, the RTC Makati issued several orders that still sustained the claim of the plaintiffs and supported an execution of its awards, particularly the Order[54] dated June 15, 2010, Order[55] dated June 16, 2010, and the Order of Delivery of Money[56] issued by Sheriff Magsajo on June 16, 2010 and addressed to Rizal Commercial Banking Corporation.

On June 22, 2010, the CA issued a Resolution[57] for the issuance of TRO against the enforcement of the RTC Makati's Order dated June 8, 2010 and the writ of execution that was issued pursuant thereto. On August 24, 2010, the CA issued another Resolution[58] granting PSPC's application for a WPI.

On January 31, 2011, after an exchange of pleadings between the parties, the CA rendered the Decision[59] granting PSPC's petition. The CA decision provided that an execution pending appeal was unjustified under the circumstances. At the time the RTC Makati issued the order of execution, Malayan Insurance's MR remained unresolved. An execution pending appeal is allowed only when the period to appeal has commenced. The fact that the motion to reconsider was as yet unresolved prevented the running of the period within which a party could appeal from the trial court's decision, and rendered an order allowing execution pending appeal premature.[60] In addition to this, the CA-Mindanao Station, in a WPI issued on October

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[54] *Rollo* (G.R. No. 200749), Vol. IV, pp. 1846-1850.

[55] *Id.* at 1859.

[56] *Id.* at 1860.

[57] *Id.* at 1876-1885.

[58] *Id.* at 2000-2009.

[59] *Rollo* (G.R. No. 200749), Vol. I, pp. 105-124.

[60] *Id.* at 112-114.

16, 2009 in CA-G.R. SP No. 03101-MIN, had expressly enjoined an execution against PSPC under the RTC Davao City judgment. CA-G.R. SP No. 03101-MIN was filed by Shell Oil and PSPC to assail the writ of execution and alias writ of execution previously issued by the RTC Davao City.

Hence, the CA reversed the RTC Makati's Order dated June 8, 2010 and the writ of execution that was issued pursuant thereto. The dispositive portion of the CA Decision dated January 31, 2011 reads:

> **WHEREFORE**, the petition is **GRANTED.** The assailed June 8, 2010 Order and the Writ of Execution issued pursuant thereto are hereby **REVERSED** and **SET ASIDE**.
>
> **SO ORDERED**.[61]

The MR[62] filed by the plaintiffs was denied by the CA in a Resolution[63] dated February 3, 2012, prompting the filing of the present petition for review on *certiorari*[64] docketed as **G.R. No. 200749.** Only 63[65] of the 1,843 plaintiffs are petitioners in this case.

B. Complaint for Injunction against BDO and John Doe (Civil Case No. 09-941)

On October 16, 2009, PSPC also filed with the RTC Makati a Complaint for Injunction with application for TRO and/or WPI,[66] docketed as Civil Case No. 09-941 and raffled to RTC

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[61] *Id*. at 123.

[62] *Id*. at 125-146.

[63] *Id*. at 158-172.

[64] *Id*. at 14-99.

[65] Strictly, only 62 petitioners considering that no Special Power of Attorney executed by Cecilio Abenion, for the purpose of the filing of the petition, forms part of the records.

[66] *Rollo* (G.R. No. 208725), Vol. III, pp. 1209-1227.

Makati, Branch 59, against BDO and John Doe. It sought to prevent BDO from releasing its funds to Sheriff Esguerra and his deputies, Sheriff Villamor Villegas and Sheriff Rommel Ignacio, or any other person who might attempt to withdraw the funds. PSPC insisted that its liability for the claims against Shell Oil had not yet been determined with finality.

On January 11, 2010, the RTC Makati issued a WPI in the case.[67] Some of the plaintiffs[68] in Civil Case No. 95-45 later moved to intervene as John Doe Intervenors, claiming to be the parties who would benefit from the release of the garnished BDO deposits.[69] The intervention was opposed by PSPC and BDO.[70]

In an Order[71] dated January 31, 2011, the RTC Makati granted the motion for intervention. PSPC moved to reconsider,[72] but this was denied by the trial court on May 27, 2011.[73]

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[67] *Rollo* (G.R. No. 208725), Vol. IV, pp. 1567-1579; Order dated January 11, 2010 was issued by Presiding Judge Jenny Lind R. Aldecoa-Delorino.

[68] Domingo Escobar, Wilfredo A. Pombo, Celso T. Tabile, Carlos L. Lapinid, Eddie D. Pulgo, Felix E. Grecia, Juan Valleser, Aniano J. Dejesica, Jr., Antonio Medina, Eleuterio H. Del Rosario, Sr., Ramon Liper, Doroteo Llanza, Dominador E. Prieto, Saturnino O. Becera, Alejandro S. Nabong, Teofilo C. Libre, Juanito P. Godoy, Candelario C. Casimsiman, Carlos P. Ampilan, Carmencito Capuyan, Fortunato V. Amistoso, Fortino L. Berou, Leo C. Molina, Jimmy L. Mangcao, Godofrecio L. Lasquite, Sigfredo M. Cuanan, Johnny F. Peralta, Andres P. Atchivara, Jimmy S. Sale, Julito I. Junasa, Rodrigo O. Pinas, Roel B. Pales, Ruben T. Pales, Jr., Raymundo N. Montero, Romeo C. Pansoy, Segundo S. Polentinos.

[69] *Rollo* (G.R. No. 208725), Vol. IV, pp. 1583-1613.

[70] *Id.* at 1614-1624, 1636-1642.

[71] Issued by Presiding Judge Winlove M. Dumayas; *rollo* (G.R. No. 208725), Vol. I, p. 134.

[72] *Rollo* (G.R. No. 208725), Vol. II, pp. 936-983.

[73] *Rollo* (G.R. No. 208725), Vol. I, p. 135.

Thus, PSPC filed with the CA the petition for *certiorari*[74] docketed as CA-G.R. SP No. 120638. It insisted that the RTC Makati committed grave abuse of discretion, amounting to lack or excess of jurisdiction, in allowing the intervention despite the CA-Mindanao Station's nullification, *via* a Decision dated March 15, 2011 in CA-G.R. SP No. 03101-MIN, of the RTC Davao City's Amended Order dated August 11, 2009 and Alias Writ of Execution upon which the intervention was based.[75]

Subsequent issuances of the RTC Makati prompted PSPC to file a Supplemental Petition to include the following orders as subjects of the petition: (1) the Order[76] dated July 21, 2011 dismissing Civil Case No. 09-941 on the grounds of forum shopping and *res judicata*; (2) the Order[77] dated October 5, 2011 granting John Doe Intervenors' Motion to Call on the Bond and/or for Execution Against Injunction Bond Pending Appeal; and (3) the Order[78] dated November 15, 2011 denying PSPC's MR of the Order dated October 5, 2011.[79]

On August 31, 2012, the CA rendered its Decision[80] granting the petition. The dispositive portion of the CA decision reads:

WHEREFORE, the *Petition* and the *Supplemental Petition* are **GRANTED**. The assailed *Orders*, dated January 31, 2011, May 27, 2011, July 21, 2011, October 5, 2011, and November 15, 2011, all issued by the [RTC] of Makati City, Branch 59 in Civil Case No. 09-941 are hereby **ANNULLED** and **SET ASIDE**.

Consequently, the following are all **DISALLOWED** for utter lack of basis:

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[74] *Id*. at 146-185.

[75] *Id*. at 160-164.

[76] *Id*. at 136-138.

[77] *Id*. at 139-144.

[78] *Id*. at 145.

[79] *Id*. at 78.

[80] *Id*. at 70-110.

1) the intervention of Private Respondents "John Does";
2) the dismissal of Civil Case No. 09-941;
3) the dissolution of the preliminary injunction issued therein(;) and
4) the execution against the bond.

SO ORDERED.[81]

An MR[82] of the CA decision was denied in a Resolution[83] dated August 8, 2013. Hence, the petition for review on *certiorari*[84] docketed as **G.R. No. 208725** still filed by a group of plaintiffs in Civil Case No. 95-45, particularly 51[85] herein petitioners.

The Present Petitions

The petitioners in **G.R. No. 200749** cite the following arguments in support of their petition:

I.

THE CA GRAVELY ERRED IN FAILING TO DISMISS OUTRIGHT THE PETITION FOR *CERTIORARI* OF PSPC DESPITE ITS FAILURE TO FILE AN MR OF THE ASSAILED ORDER DATED JUNE 8, 2010 AND THE WRIT OF EXECUTION DATED JUNE 9, 2010.

II.

THE CA GRAVELY ERRED IN RULING IN FAVOR OF PSPC DESPITE ITS WILLFUL AND DELIBERATE ACT OF FORUM SHOPPING WHICH IS PUNISHABLE BY THE SUMMARY DISMISSAL OF ITS PETITION FOR *CERTIORARI*.

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[81] *Id*. at 109-110.

[82] *Id*. at 111-117.

[83] *Id*. at 130-133.

[84] *Id*. at 15-69.

[85] Strictly, only 50 petitioners considering that no Special Power of Attorney executed by Cecilio Abenion, for the purpose of the filing of the petition, forms part of the records.

III.

THE CA GRAVELY ERRED IN FINDING THAT THE PETITIONERS' INSISTENCE TO IMPLEMENT THE WRIT OF EXECUTION PENDING APPEAL IS ACTUALLY AN ATTEMPT ON THEIR PART TO INDIRECTLY DO WHAT THEY CANNOT DO DIRECTLY IS DEVOID OF LEGAL AND FACTUAL BASIS AS SHOWN IN THE ASSAILED ORDER DATED APRIL 30, 2010.

IV.

THE CA GRAVELY ERRED IN REFUSING OR FAILING TO DISMISS PSPC'S PETITION FOR *CERTIORARI* DESPITE ITS MOOTNESS AND ITS BEING DEVOID OF ANY PRACTICAL LEGAL EFFECT.

V.

THE CA GRAVELY ERRED IN ITS FINDING THAT THE PETITIONERS ALLEGEDLY FAILED TO PROVE WITH REASONABLE DEGREE OF CERTAINTY THE FACT OF DAMAGES SUFFERED BY THEM BY REASON OF THE ISSUANCES OF THE INJUNCTION.

VI.

THE CA GRAVELY ERRED IN FINDING THAT MALAYAN INSURANCE WAS NOT HEARD ON THE MATTER OF ITS SOLIDARY LIABILITY THROUGH THE PROPER AND TIMELY RESOLUTION OF ITS MR BEFORE THE EXECUTION OF JUDGMENT ON THE INJUNCTION BOND.

VII.

THE CA GRAVELY ERRED IN DENYING THE MOTION FOR INHIBITION FILED BY THE PETITIONERS EVEN IF THE *PONENTE* UNMERITORIOUSLY TILTED THE SEALS OF JUSTICE AGAINST THEM BY NOT DISMISSING OUTRIGHT THEIR PETITION FOR *CERTIORARI*.[86]

Based on the foregoing, the petition raises procedural and substantive issues. As to procedure, the petitioners maintain

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[86] *Rollo* (G.R. No. 200749), Vol. I, pp. 42-43.

that the CA should have dismissed CA-G.R. SP No. 114420 on the grounds of forum shopping, mootness and PSPC's failure to file an MR of the RTC Makati's Order dated June 8, 2010 and writ of execution dated June 9, 2010.

As regards the substantive issue on entitlement to the injunction bonds that were posted with the CA, the petitioners insist that they should have been allowed by the appellate court to claim on the bonds pending the appeal, after they have proved their right thereto and the damages they have suffered by reason of the injunctive writs.

PSPC opposes the petition.[87] It insists that the CA ruled correctly in its favor, as it reiterates the grounds that were relied upon by the appellate court in arriving at the challenged decision.

In **G.R. No. 208725,** the petitioners raise the following arguments:

I.

THE CA SERIOUSLY ERRED IN FAILING TO DISMISS PSPC'S PETITION FOR *CERTIORARI* EVEN IF IT HAS BECOME MOOT, ACADEMIC AND DEVOID OF ANY PRACTICAL LEGAL EFFECT.

II.

THE CA GRAVELY ERRED IN RULING THAT THE TRIAL COURT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ALLOWING THE INTERVENTION OF THE PETITIONERS IN CIVIL CASE NO. 09-941 BEFORE THE RTC OF MAKATI, BRANCH 59.

III.

THE CA SERIOUSLY ERRED IN GIVING CREDENCE TO PSPC'S CLAIM THAT THE INTERVENTION OF THE PETITIONERS IS IN DIRECT COLLISION WITH THE RULING OF THE CA SINCE THEY INVOLVED DIFFERENT CLAIMS.

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[87] *Rollo* (G.R. No. 200749), Vol. III, pp. 1022-1093.

IV.

THE CA GRAVELY ERRED WHEN IT RULED THAT THE PETITIONERS HAVE LOST THEIR LEGAL INTEREST IN THE MATTER IN LITIGATION, CONSIDERING THAT ORDERS OF THE DAVAO COURT, UPON WHICH THEY ANCHORED THEIR INTERVENTION IN CIVIL CASE NO. 09-941, HAVE NOT BEEN NULLIFIED BY FINAL JUDGMENT BY A SUPERIOR COURT.

V.

THE CA SERIOUSLY ERRED IN FINDING THAT THE PETITIONERS ARE FULLY PROTECTED IN A SEPARATE PROCEEDING IN WHICH PSPC IS ALSO ASSAILING THE SAME ORDERS OF THE DAVAO COURT, HENCE, THEY HAVE NO PROTECTION IN CIVIL CASE NO. 09-941 AS PSPC IS SIMILARLY SEEKING THE ANNULMENT OF THE ALIAS WRIT OF EXECUTION AND NOTICE OF GARNISHMENT.

VI.

THE CA GRAVELY ERRED IN RULING IN FAVOR OF PSPC DESPITE ITS WILLFUL AND DELIBERATE ACT OF FORUM SHOPPING WHICH IS PUNISHABLE BY THE SUMMARY DISMISSAL OF ITS PETITION FOR *CERTIORARI*.

VII.

THE CA GRAVELY ERRED IN ENTERTAINING THE SUPPLEMENTAL PETITION FILED BY PSPC WHICH IS A WRONG PROCEDURAL RECOURSE AS IT SHOULD HAVE FILED AN APPEAL AFTER THE DISMISSAL OF PSPC'S COMPLAINT IN CIVIL CASE NO. 09-941 PURSUANT TO THE FINAL ORDER DATED JULY 21, 2011 AS A RESULT OF THE DENIAL OF ITS MR AS SHOWN IN THE ORDER DATED NOVEMBER 15, 2011.[88]

From the arguments, the petition also raises procedural and substantive issues. On the issue of procedure, the petitioners again raise the issues of mootness and forum shopping. They also contend that after the RTC Makati dismissed Civil Case No. 09-941, PSPC should have filed an appeal, instead of a

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[88] *Rollo* (G.R. No. 208725), Vol. I, pp. 31-32.

mere supplemental petition for *certiorari.* The substantive issue concerns the petitioners' assertion that they should have been allowed to intervene in Civil Case No. 09-941.

Both the PSPC and BDO seek the dismissal of the petition. In its Comment,[89] BDO insists that the petitioners lack the legal interest to intervene in Civil Case No. 09-941. PSPC, on the other hand, contends that the injunction case it filed against BDO arose from a depositor-depositary relationship, to which the petitioners are not privy. Moreover, PSPC reiterates the fact that the RTC Davao City's Amended Order dated August 11, 2009 and Alias Writ of Execution dated August 12, 2009 have been nullified by the CA-Mindanao Station.[90]

Ruling of the Court

The Court denies the petitions for lack of merit.

G.R. No. 200749

Procedural Issues

Forum shopping is among the procedural issues that are being raised by the petitioners in G.R. No. 200749. They contend that PSPC violated the rule against forum shopping when it resorted to the following remedies to assail the RTC Makati's rulings in Civil Case No. 09-749: *first,* the petition for *certiorari* docketed as CA-G.R. SP No. 114420; and, *second*, the appeal from the RTC Makati's Order dated April 30, 2010.

In *Philippine Postal Corporation v. Court of Appeals, et al.*,[91] the Court explained settled parameters in determining whether the rule against forum shopping is breached, particularly:

> Forum shopping consists of filing multiple suits involving the same parties for the same cause of action, either simultaneously or successively, for the purpose of obtaining a favorable judgment.

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[89] *Rollo* (G.R. No. 208725), Vol. II, pp. 823-834.

[90] *Id.* at 835-885.

[91] 722 Phil. 860 (2013).

There is forum shopping where there exist: (a) identity of parties, or at least such parties as represent the same interests in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two preceding particulars is such that any judgment *rendered in the pending case, regardless of which party is successful would amount to res judicata.*[92] (Italics in the original)

Applying the foregoing, the petitioners' claim of forum shopping necessarily fails.

Given the nature of the petition for *certiorari* and the challenged appeal, it is evident that the issues involved and reliefs sought by PSPC in the two actions were distinct. Even the RTC orders being challenged in the two cases were different. While the two actions may be related as they arose from the same prohibition case, the appeal was intended to assail the judgment on the injunction bonds, while the petition for *certiorari* was filed specifically to challenge only the ruling that granted an execution pending appeal.

Clearly, a judgment in one action would not necessarily affect the other. A nullification of the ruling to allow an execution pending appeal, for example, would not necessarily negate the right of the petitioners to still eventually claim for damages under the injunction bonds. This is consistent with the Court's ruling in *Manacop v. Equitable PCIBank*,[93] as it differentiated between the two actions and the implication of the pendency of both on the prohibition against forum shopping. The Court explained:

Certiorari lies against an order granting execution pending appeal where the same is not founded upon good reasons. The fact that the losing party had also appealed from the judgment does not bar the *certiorari* proceedings, as the appeal could not be an adequate remedy from such premature execution. Additionally, there is no forum-

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[92] *Id*. at 876, citing *Spouses Zosa v. Judge Estrella, et al.,* 593 Phil. 71, 77 (2008).

[93] 505 Phil. 361 (2005).

shopping where in one petition a party questions the order granting the motion for execution pending appeal and at the same time questions the decision on the merits in a regular appeal before the appellate court. After all, the merits of the main case are not to be determined in a petition questioning execution pending appeal and vice versa.[94] (Citation omitted)

Even PSPC's successive filing with the RTC Makati of Civil Case No. 09-941 and Civil Case No. 09-749 cannot validly support the petitioners' plea for dismissal on the ground of forum shopping. It is worthy to note that the issue was not raised by the petitioners in their Comment[95] they filed in CA-G.R. SP No. 114420, but was cited for the first time in their MR of the CA decision that already resolved the main petition.[96] In any case, as will be further discussed by the Court in relation to its ruling in G.R. No. 208725, the petitioners lacked the required legal interest to intervene in Civil Case No. 09-941. This circumstance even prompted the CA to reverse the RTC Makati's dismissal of Civil Case No. 09-941 on the ground of forum shopping because inevitably, their lack of interest barred them from claiming any relief from the said action. The foregoing only signifies that the two actions called for a resolution of distinct issues, especially as there was no identity of parties involved.

The subsequent nullification by the CA of the RTC Makati's rulings in Civil Case No. 09-941, including the finding of forum shopping and consequent order for the dismissal of the case, likewise negates the petitioners' argument that its similar claim of forum shopping should have been sustained in Civil Case No. 09-749, or that the petition docketed as CA-G.R. SP No. 114420 should have been similarly dismissed on the ground of mootness. Even before the finding of forum shopping by the RTC Makati, Branch 59, in Civil Case No.

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[94] *Id*. at 380.

[95] *Rollo* (G.R. No. 200749), Vol. II, pp. 877-902.

[96] *See* also *rollo* (G.R. No. 200749), Vol. I, p. 162.

09-941 was nullified by the CA, the ruling did not necessarily carry with it the dismissal of Civil Case No. 09-749 and actions that arose therefrom, because the disposition thereof should ultimately proceed from the courts handling them.

Anent the PSPC's act of immediately filing with the CA a petition for *certiorari*, instead of first filing an MR to challenge the execution pending appeal, the CA aptly explained that the issue could not have been validly raised for the first time by the petitioners in their MR.[97] The appellate court correctly reasoned in its resolution:

> It is a fundamental rule of procedure that higher courts are precluded from entertaining matters not alleged in the pleadings but ventilated for the first time only in [an MR]. We are, therefore, precluded from entertaining the first argument of private respondents since it is only now in their [MR] that they are questioning [PSPC's] failure to file [an MR].[98] (Citation omitted)

In any case, even granting that the issue was timely raised by the petitioners in their Comment, jurisprudence provides the settled exceptions to the general rule that sets as a condition the filing of an MR before resorting to a special civil action for *certiorari.* Among these exceptions are the following:

(a) where the order is a patent nullity, as where the court *a quo* has no jurisdiction;
(b) where the questions raised in the *certiorari* proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court;
(c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable;
(d) where, under the circumstances, [an MR] would be useless;
(e) where petitioner was deprived of due process and there is extreme urgency for relief;

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[97] *Id*. at 160.

[98] *Id*.

(f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable;
(g) where the proceedings in the lower court are a nullity for lack of due process;
(h) where the proceedings was *ex parte* or in which the petitioner had no opportunity to object; and
(i) where the issue raised is one purely of law or public interest is involved.[99]

PSPC already presented in the CA petition its justification for the failure to first file any MR, contending that a motion to reconsider could not be deemed a plain and speedy remedy to challenge the order for execution pending appeal. Specifically, PSPC explained that its case was covered by the aforequoted exceptions under settled jurisprudence, particularly items (b), (c), (d), (e) and (g).[100]

Given the circumstances, PSPC's immediate filing of the petition for *certiorari* was indeed justified. Considering that the subject of the petition was already an order and writ that permitted an immediate execution of the monetary award, the urgency and necessity for a prompt resolution of its arguments were clear. There is no cogent reason for the Court to disturb the CA's ruling that "the patent nullity of the assailed Order, the uselessness of an MR, the urgent necessity of resolving questions to avoid prejudice caused by delay, deprivation of due process and extreme urgency for relief" justified PSPC's action.[101]

Execution Pending Appeal

The main issue in G.R. No. 200749 concerns the RTC's order that allowed an execution, pending appeal, of the ₱40 Million

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[99] *Cervantes v. Court of Appeals,* 512 Phil. 210, 216-217 (2005), citing *Acance v. Court of Appeals*, 493 Phil. 676, 684 (2005).

[100] *Rollo* (G.R. No. 200749), Vol. I, pp. 177-180.

[101] *Id*. at 160.

award that it granted to the petitioners. It must be emphasized though that the Court's review of the issue precludes a re-examination of the propriety or legality of the ₱40 Million damages that was declared chargeable under the injunction bonds. Considering that an appeal from the order granting the award was filed by PSPC, the merits thereof had to be threshed out in the said appeal.

It bears emphasis that an execution pending appeal is deemed an exception to the general rule, which allows an execution as a matter of right only in any of the following instances: (a) when the judgment has become final and executory; (b) when the judgment debtor has renounced or waived his right of appeal; (c) when the period for appeal has lapsed without an appeal having been filed; or (d) when, having been filed, the appeal has been resolved and the records of the case have been returned to the court of origin.[102]

The Rules of Court allows executions pending appeal under the conditions set forth in Section 2 of Rule 39 thereof, which reads:

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.

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[102] *Florendo, et al. v. Paramount Insurance Corp.*, 624 Phil. 373, 381 (2010).

Corollary thereto, jurisprudence provides rules that are generally applied in resolving litigants' pleas for executions pending appeal, specifically:

> The general rule is that only judgments which have become final and executory may be executed. However, discretionary execution of appealed judgments may be allowed under Section 2 (a) of Rule 39 of the Revised Rules of Civil Procedure upon concurrence of the following requisites: (a) there must be a motion by the prevailing party with notice to the adverse party; (b) there must be a good reason for execution pending appeal; and (c) the good reason must be stated in a special order. **The yardstick remains the presence or the absence of good reasons consisting of exceptional circumstances of such urgency as to outweigh the injury or damage that the losing party may suffer, should the appealed judgment be reversed later. Since the execution of a judgment pending appeal is an exception to the general rule, the existence of good reasons is essential**.[103] (Citations omitted and emphasis ours)

Applying the foregoing principles, the Court sustains the CA's nullification of the RTC Makati's order that granted the petitioners' motion for execution pending appeal.

The Court recaps the incidents prior to the trial court's resolve to grant the challenged execution pending appeal. The RTC Makati dismissed Civil Case No. 09-749 on October 13, 2009. On November 4, 2009, the trial court granted the petitioners' motion to call on the injunction bonds, subject to the presentation of evidence to establish the damages that were suffered by the claimants. Thereafter, in an Order dated April 30, 2010, the trial court declared the petitioners to be entitled to the full amount of ₱40 Million injunction bonds, which prompted the petitioners to immediately file on May 4, 2010 a motion for execution. Malayan Insurance filed an MR on May 19, 2010, while PSPC filed a notice of appeal on May 5, 2010. Given PSPC's appeal, the petitioners opted to file a Supplement to Motion for Execution, so that they could be allowed an execution pending appeal under Section 2 of Rule 39

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[103] *Manacop v. Equitable PCIBank, supra* note 93, at 381.

of the Rules of Court. It was such recourse by the petitioners, and the RTC Makati's grant thereof, that PSPC mainly challenged when it filed with the CA the petition for *certiorari* docketed as CA-G.R. SP No. 114420. Moreover, it argued that Malayan Insurance's MR was still unresolved at the time that the execution pending appeal was granted by the trial court.

It is clear from the antecedents that notwithstanding PSPC's filing of a notice of appeal, the RTC Makati still had the jurisdiction to act upon the motion for execution pending appeal, because the reglementary period for all the parties in the case to file an appeal from the Order dated April 30, 2010 had not yet lapsed. Malayan Insurance, in particular, could not have filed an appeal yet as its MR remained unresolved. This circumstance is material because PSPC argued before the RTC and CA that the trial court had already lost its jurisdiction to act on the petitioners' motion. Section 2 of Rule 39, however, allows a court to act upon a motion for execution pending appeal while it retains jurisdiction over the action. In relation to this, Section 9 of Rule 41 of the Rules of Court on appeals from the RTCs provides the rules on the perfection of appeals and loss of jurisdiction, particularly:

> Sec. 9. *Perfection of appeal; effect thereof.* – A party's appeal by notice of appeal is deemed perfected as to him upon the filing of the notice of appeal in due time.
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> In appeals by notice of appeal, the court loses jurisdiction over the case upon the perfection of the appeals filed in due time and the expiration of the time to appeal of the other parties.
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> In either case, prior to the transmittal of the original record or the record on appeal, the court may issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal, approve compromises, permit appeals of indigent litigants, order execution pending appeal in accordance with Section 2 of Rule 39, and allow withdrawal of the appeal.

As the Court nonetheless still affirms the CA's finding that the RTC Makati committed grave abuse of discretion in allowing execution pending appeal, it underscores the rule that an execution pending appeal must, at all times, be justified by good reasons stated in an order issued by the court. Pertinent thereto, the Court refers to the trial court's own grounds for the subject execution pending appeal, as cited in its Order dated June 8, 2010, to wit:

> [P]rivate respondents advance x x x that execution can be had under Section 2 [of] Rule 39 of the Revised Rules of Court contending that the wrongfulness of the writ and the length of time respondents have been deprived of their money by reason of the wrongful injunction justifies execution pending appeal. To bolster their claim, private respondents submitted affidavits with notarized medical certificates of several of the party respondents attesting to the fact that they are of advanced age and in failing health conditions. They also furnished this Court several death certificates in certified true copies attesting to the fact that some of the private respondents have not seen the fruits of their cause because of their demise.
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> x x x x x x x x x
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> In this case, do good reasons exist to justify the grant of private respondents' motion for execution pending appeal? The answer is in the affirmative.
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> [PSPC] faults the assertion of the private respondents claiming that the persons who submitted their documents may not be representative of all respondents. Suffice to say that generally, the bond goes to the protection of all parties to the injunction suit who are restrained and damaged thereby, and they may enforce it. An injunction bond by its terms payable to the defendants in the suit creates a liability in favor of anyone of the defendants; the remedy is not confined to a liability running to all the defendants jointly. An injunction bond, though running to all the defendants, is an obligation to each one severally.
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> **The Court finds the allegations of the private respondents meritorious. Inasmuch as some of the private respondents have failing health, of advanced age and in fact some of them have died even before the termination of the protracted case or cases that brought the instant case here, the Court is morally convinced that the demands of equity and justice would be best served if**

they will be permitted to enjoy part of the fruits of their cause, even at this juncture.[104] (Citations omitted and emphasis ours)

In now declaring that the execution pending appeal was unsupported by sufficient grounds, the Court restates the rule that the trial court's discretion in allowing execution pending appeal must be strictly construed.[105] Its grant must be firmly grounded on the existence of "good reasons," which consist of compelling circumstances that justify immediate execution lest the judgment becomes illusory. "The circumstances must be superior, outweighing the injury or damages that might result should the losing party secure a reversal of the judgment. Lesser reasons would make of execution pending appeal, instead of an instrument of solicitude and justice, a tool of oppression and inequity."[106]

The sufficiency of "good reasons" depends upon the circumstances of the case and the parties thereto. Conditions that are personal to one party, for example, may be insufficient to justify an execution pending appeal that would affect all parties to the case and the property that is the subject thereof. Thus, in *Florendo, et al. v. Paramount Insurance Corp.*,[107] the Court ruled that the execution pending appeal, which was supposedly justified by the old age and life-threatening ailments of merely one of several parties to the case, was unsupported by special reasons. As the Court sustained the CA's reversal of the execution, it explained:

The Florendos point out that Rosario is already in her old age and suffers from life threatening ailments. But the trial court has allowed execution pending appeal for all of the Florendos, not just for Rosario whose share in the subject lands had not been established. No claim is made that the rest of the Florendos are old and ailing. Consequently, the execution pending appeal was indiscreet and too sweeping. All

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[104] *Rollo* (G.R. No. 200749), Vol. III, pp. 1153-1156.

[105] *Florendo, et al. v. Paramount Insurance Corp.*, *supra* note 102.

[106] *Id*.

[107] 624 Phil. 373 (2010).

the lands could be sold for ₱42 million, the value mentioned in the petition, and distributed to all the Florendos for their enjoyment with no sufficient assurance that they all will and can return such sum in case the CA reverses, as it has in fact done, the RTC decision. Moreover, it is unclear how much of the proceeds of the sale of the lands Rosario needed for her old age.[108]

Similarly, in the instant case, the RTC Makati's order of execution pending appeal was unsupported by sufficient grounds. The trial court solely harped on the health condition of some of the petitioners and the death of some claimants under the compromise agreements. While the private respondents named by PSPC in its petition for prohibition were "Abenion, et al.," referring to "the 1,843 listed plaintiffs in Civil Case No. 95-45,"[109] the RTC sought to justify an execution pending appeal by citing the following circumstances and evidence that affected a mere 23 claimants: (1) the affidavits with notarized medical certificates attesting to the fact of advanced age and failing conditions of only 8 claimants, particularly Andres P. Atchivara, Antonio M. Cabulang, Cecilio G. Flores, Benjamin R. Royo, Jimmy S. Sale, Ponciano T. Tinambacan, Rodrigo M. Serenado and Jose M. Serenado; and (2) the death certificates of 15 claimants, particularly Mario B. Abas, Generoso Y. Alas, Pastor C. Capuyan, Jr., Valentino E. Camporedondo, Leonardo S. Dayot, Virgilio O. Dela Cruz, Jarlen E. Jalalon, Francio L. Mahinay, Lorewto B. Maniquez, Glorioso P. Oclarit, Beddy R. Relux, Wilfredo S. Sabanal, Apolinario R. Villaver, Domingo R. Villaver and Patricio M. Villotes.[110] These grounds on the failing health and death of some claimants were raised by the petitioners to support their Supplement to Motion for Execution, by which they alleged:

3. Consequently, private respondents who are too old and sickly, while others have died, are humbly seeking the execution of the judgment of award for damages recoverable from the temporary

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[108] *Id.* at 381-382.

[109] *Rollo* (G.R. No. 200749), Vol. I, p. 236.

[110] *Rollo* (G.R. No. 200749), Vol. III, p. 1154.

restraining order and injunctive bonds in the total amount of Php 40 million, which is an adjunct to the October 13, 2009 order, pending appeal pursuant to Section 2, Rule 39 of the Rules of Court.

4. As stated above, private respondents are already of advance age and some of them are seriously ill and they may not be able to enjoy the award for damages as per order of April 30, 2010, if they will still wait for the outcome of the appeal.[111]

The execution pending appeal, however, could not be justified by conditions that applied only to a mere few claimants. Jurisprudence precludes an execution pending appeal that is, as in this case, too sweeping and unfounded by the required urgency and compelling reasons that can justify it.

Besides this lack of good reasons to justify the execution pending appeal, the RTC Makati also erred in allowing the execution even when there was a pending MR of its Order dated April 30, 2010. When it explained that it still had the jurisdiction to act upon the motion for execution pending appeal, the trial court itself cited the pendency of Malayan Insurance's MR. Thus, it stated in its Order dated June 8, 2010:

Here, since [Malayan Insurance] is considered a forced party and fall[s] within the class of "other parties" making it, for purpose of appealing to the higher court the final order adjudicating liability on its undertaking, jurisdiction is not lost. This is because, with **the period to appeal pertaining to the surety has not even started to run given that its [MR] is still pending**, the expiration of the period to appeal by such party mentioned in Section 9[,] Rule 41 has not even commenced. In other words, this Court has absolute authority to decide on this question and such other questions until limited by the setting of the residual jurisdiction upon the happening of the condition described therein.[112] (Emphasis ours)

The RTC Makati should have first resolved the MR of Malayan Insurance, especially since the arguments in the motion could still prompt the trial court to recall its prior resolve to declare

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[111] *Rollo* (G.R. No. 200749), Vol. IV, p. 1747.

[112] *Rollo* (G.R. No. 200749), Vol. III, p. 1154.

the injunction bonds liable for the damages awarded to the petitioners. As the Court held in *JP Latex Technology, Inc. v. Ballons Granger Balloons, Inc., et al.*:[113]

> Where there is a pending [MR] of the RTC decision, an order [of] execution pending appeal is improper and premature. The pendency of the [MR] legally precludes execution of the RTC decision because the motion serves as the movant's vehicle to point out the findings and conclusions of the decision which, in his view, are not supported by law or the evidence and, therefore, gives the trial judge the occasion to reverse himself. In the event that the trial judge finds the [MR] meritorious, he can of course reverse the decision.[114] (Citation omitted)

Finally, the RTC erred in ordering the execution pending appeal because the petitioners' recourse against PSPC for the obligations of Shell Oil remained uncertain, even doubtful, at the time the execution pending appeal was allowed. Records confirm that the trial court was appraised of the CA-Mindanao Station's injunctive writs in CA-G.R. SP No. 03101-MIN, which covered RTC Davao City's Order dated August 11, 2009 and Alias Writ of Execution dated August 12, 2009 affecting PSPC. When it finally decided on the merits of CA-G.R. SP No. 03101-MIN, the appellate court even later on ruled against the validity of the RTC Davao City's issuances.

Clearly, the RTC Makati gravely abused its discretion when it allowed an execution pending appeal in favor of the petitioners. The CA only ruled properly when it nullified the trial court's Order dated June 8, 2010 and writ of execution dated June 9, 2010.

G.R. No. 208725

Intervention

The Court finds it necessary to first resolve the issue on the petitioners' right to intervene in Civil Case No. 09-941, for it

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[113] 600 Phil. 600 (2009).

[114] *Id.* at 611.

is only after their legal interest in the case is established can they be allowed to validly raise the other issues that could support the complaint's dismissal, such as the procedural issues affecting mootness of the case and the alleged forum shopping.

On the matter of the petitioners' intervention in Civil Case No. 09-941, Section 1 of Rule 19 of the Rules of Court applies. This provision identifies the persons who may rightfully intervene in a court action, as it reads:

> Sec. 1. *Who may intervene*. – A person who has a legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof may, with leave of court, be allowed to intervene in the action. The court shall consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties, and whether or not the intervenor's rights may be fully protected in a separate proceeding.

The petitioners insist that their interest in the case stems from their standing in Civil Case No. 95-45, being the persons intended to benefit from the RTC Davao City's amended order and alias writ of execution affecting PSPC. The Court, however, disagrees with this assertion, taking into account the nature of the injunction case and the court's rulings in related cases that ultimately determined the liability of PSPC for the petitioners' claims against Shell Oil.

The CA ruled correctly when it declared the petitioners to be wanting of any legal interest in Civil Case No. 09-941. Civil Case No. 09-941 was a complaint for injunction filed by PSPC against BDO and John Doe, as it sought to prevent the bank from releasing its funds to the sheriffs or any other person who might attempt to withdraw from its accounts under Civil Case No. 95-45. It is material that the RTC Davao City's amended order and alias writ of execution in Civil Case No. 95-45 had been nullified by the CA in CA-G.R. SP No. 03101-MIN. This ruling could not be simply disregarded in determining the petitioners' legal interest in Civil Case No. 09-941, especially since the appellate court defined therein the limits of Shell Oil's

obligations under the compromise agreements and the parties that were bound thereby. After finding that Shell Oil had fully satisfied its obligations under the compromise agreement, the CA went on to cite the RTC Davao City's error in declaring affiliates and subsidiaries such as PSPC liable for the obligations of Shell Oil. It explained:

> Corollary thereto is the issue on whether or not the Court a quo acquired jurisdiction over them. The lingering question really is whether or not the act of the public respondent in holding non-parties to the Abenion case and non-parties of the Compromise Agreements like the alleged subsidiaries and affiliates of DOW, OCCIDENTAL, SHELL OIL and DEL MONTE Group in the Philippines constitutes grave abuse of discretion, for being blatant violation of their right to due process. We rule in the affirmative.
>
> Evidently even the Amended Complaint filed before the Panabo Court is only against petitioners SHELL OIL, OCCIDENTAL, DOW and the DEL MONTE Group. Nowhere in the said Amended Complaint are the names of x x x **[PSPC], SHELL GAS EASTERN, INC., THE SHELL COMPANY OF THE PHILIPPINES, LIMITED and SHELL PHILIPPINES EXPLORATION, B.V. (SPEX)** the alleged subsidiaries and/or affiliates of SHELL OIL ever mentioned.
>
> Thus, We disagree with private respondents' [Abenion, et al.] insistence that they actually impleaded the subsidiaries or affiliates of the petitioners in their initiatory Complaint filed with the Panabo Court, as was alleged in the Amended Complaint, thus:
>
> x x x x x x x x x
>
> as the Petitioners were neither impleaded nor named with specificity. No proofs were adduced to show the ties of the subsidiaries with their alleged principal. x x x.
>
> On an important note, jurisprudence tells us that jurisdiction over the person of a party is assumed upon the service of summons in the manner required by law or otherwise by his voluntary appearance. Thus, as a rule if a defendant has not been summoned, the Court acquires no jurisdiction over his person and a personal judgment rendered against such defendant is null and void.
>
> It bears stressing that no man shall be affected by any proceeding to which he is a stranger, and strangers to a case are not bound by judgment rendered by the court. x x x[.]

x x x x x x x x x

Ironically, this complexity stemmed from a harmless provision of the Compromise Agreements (paragraph 28 thereof) thus[:]

> "*This agreement and the rights[,] obligations, and covenants contained, herein shall* ***INURE TO THE BENEFIT*** *and be binding upon the plaintiffs and settling defendants and their respective parent corporation, subsidiaries, affiliates, controlled and related entities, successor and assigns*."

a stipulation ***pour autri*** which could not be made to work against the interest of others, in this case the perceived subsidiaries and affiliates.

Stipulation ***pour autri*** as explained by the Supreme Court in the case of ***Bonifacio Bros., Inc. et al., vs. Mora[,] et al.,*** is a provision in favor of a third person not a party to the contract. x x x[.][115] (Citations omitted and emphasis and italics in the original)

Clearly, the circumstances rendered baseless the petitioners' pursuit against the funds of PSPC, if only to enforce a judgment claim that they had against Shell Oil. In going after PSPC, the petitioners merely relied on the RTC Davao City's Amended Order dated August 11, 2009 and Alias Writ of Execution dated August 12, 2009, which had been annulled and set aside in CA-G.R. SP No. 03101-MIN.

By their arguments, the petitioners in effect seek the Court to still re-examine the correctness of the pronouncements of the CA in CA-G.R. SP No. 03101-MIN. The Court, however, is precluded from doing so because it is not the subject of the present petitions. Moreover, the CA's decision in CA-G.R. SP No. 03101-MIN was already affirmed by the Supreme Court *via* the Minute Resolutions dated October 3, 2012[116] and October 23, 2013[117] in G.R. Nos. 202295-301.

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[115] *Rollo* (G.R. No. 208725), Vol. IV, pp. 1754-1757.

[116] *Rollo* (G.R. No. 200749), Vol. V, pp. 2859-2860.

[117] *Id*. at 2861-2864.

Thus, the CA correctly rejected the petitioners' plea to intervene in PSPC's injunction case against BDO. Intervention, as a remedy, is not a right but a matter that is left to the court's discretion.[118] In all cases, legal interest in the matter in litigation is an indispensable requirement among intervenors. As the Court ruled in *Office of the Ombudsman v. Sison*,[119] "[t]he interest, which entitles one to intervene, must involve the matter in litigation and of such direct and immediate character that the intervenor will either gain or lose by the direct legal operation and effect of the judgment."[120] The herein petitioners failed to establish their interest in the funds of PSPC. The latter was neither their creditor nor one that could be held liable for the obligations of Shell Oil under the subject compromise agreement. The petitioners did not stand to lose by the injunction that was prayed for before the trial court.

Considering their failure to establish their legal interest in Civil Case No. 09-941, the petitioners could not now be allowed to raise the other issues affecting the injunction case, including the alleged procedural infirmities and the petitioners' claim in the injunction bond posted in the case. The Court finds it unnecessary to still discuss the merits of the petitioners' arguments on the said issues. Moreover, it is clear that the eventual finality of the CA ruling to nullify the RTC Davao City's Amended Order dated August 11, 2009 and Alias Writ of Execution dated August 12, 2009 has rendered moot and academic the claims of the petitioners against PSPC and BDO. This applies to both G.R. No. 200749 and G.R. No. 208725, because both disputes merely stemmed from an implementation of the nullified court issuances. The petitioners have lost any remedy against PSPC and necessarily, the latter's funds with BDO, for their claims in Civil Case No. 95-45. Circumstances that render a case moot were explained by the Court in *Deutsche*

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[118] *Ongco v. Dalisay,* 691 Phil. 462, 469 (2012).

[119] 626 Phil. 598 (2010).

[120] *Id*. at 609.

Bank AG v. Court of Appeals, et al.,[121] wherein it declared that "[a] moot and academic case is one that ceases to present a justiciable controversy by virtue of supervening events, so that a declaration thereon would be of no practical use or value. Generally, courts decline jurisdiction over such case or dismiss it on ground of mootness."[122]

WHEREFORE, the petitions for review on *certiorari* docketed as G.R. No. 200749 and G.R. No. 208725 are **DENIED**.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Bersamin, Jardeleza,* and *Caguioa,*[*] *JJ.,* concur.

SECOND DIVISION

[G.R. No. 214064. February 6, 2017]

MIRASOL CASTILLO, *petitioner, vs.* **REPUBLIC OF THE PHILIPPINES and FELIPE IMPAS,** *respondents.*

SYLLABUS

1. CIVIL LAW; FAMILY CODE; MARRIAGE; VOID AND VOIDABLE MARRIAGES; PSYCHOLOGICAL INCAPACITY; MUST BE CHARACTERIZED BY GRAVITY, JURIDICAL ANTECEDENCE AND

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[121] 683 Phil. 80 (2012).

[122] *Id.* at 88.

[*] Designated Fifth Member of the Third Division per Special Order No. 2417 dated January 4, 2017.

INCURABILITY.— Time and again, it was held that "psychological incapacity" has been intended by law to be confined to the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage. Psychological incapacity must be characterized by (a) **gravity**, *i.e.*, it must be grave and serious such that the party would be incapable of carrying out the ordinary duties required in a marriage, (b) **juridical antecedence**, *i.e.*, it must be rooted in the history of the party antedating the marriage, although the overt manifestations may emerge only after the marriage, and (c) **incurability**, *i.e.*, it must be incurable, or even if it were otherwise, the cure would be beyond the means of the party involved.

2. ID.; ID.; ID.; ID.; ID.; CASE OF *REPUBLIC V. COURT OF APPEALS AND MOLINA* ON THE MORE DEFINITIVE GUIDELINES IN THE DISPOSITION OF PSYCHOLOGICAL INCAPACITY CASES.— In the case of *Republic v. Court of Appeals and Molina*, this Court laid down the more definitive guidelines in the disposition of psychological incapacity cases, *viz.*: x x x (1) The burden of proof to show the nullity of the marriage belongs to the plaintiff. Any doubt should be resolved In favor of the existence and continuation of the marriage and against its dissolution and nullity. x x x (2) The *root cause* of the psychological incapacity must be (a) medically or clinically identified, (b) alleged in the complaint, (c) sufficiently proven by experts and (d) clearly explained in the decision. x x x (3) The incapacity must be proven to be existing at "the time of the celebration" of the marriage. x x x (4) Such incapacity must also be shown to be medically or clinically permanent or *incurable*. Such incurability may be absolute or even relative only in regard to the other spouse, not necessarily absolutely against everyone of the same sex. x x x (5) Such illness must be *grave* enough to bring about the disability of the party to assume the essential obligations of marriage. x x x In other words, there is a natal or supervening disabling factor in the person, an adverse integral element in the personality structure that effectively incapacitates the person from really accepting and thereby complying with the obligations essential to marriage. (6) The essential marital obligations must be those embraced by Articles 68 up to 71 of the Family Code as regards the husband and wife as well as Articles 220, 221

and 225 of the same Code in regard to parents and their children. x x x (7) Interpretations given by the National Appellate Matrimonial Tribunal of the Catholic Church in the Philippines, while not controlling or decisive, should be given great respect by our courts. x x x (8) The trial court must order the prosecuting attorney or fiscal and the Solicitor General to appear as counsel for the state. x x x

3. **ID.; ID.; ID.; ID.; ID.; TESTIMONY OF PSYCHOLOGIST; PROBATIVE FORCE LIES IN THE ASSISTANCE THE PSYCHOLOGIST CAN RENDER TO THE COURTS IN SHOWING THE FACTS THAT SERVE AS A BASIS FOR THE CRITERION AND THE REASONS UPON WHICH THE LOGIC OF THE CONCLUSION IS FOUNDED.—** The existence or absence of the psychological incapacity shall be based strictly on the facts of each case and not on *a priori* assumptions, predilections or generalizations. x x x The presentation of any form of medical or psychological evidence to show the psychological incapacity, however, did not mean that the same would have automatically ensured the granting of the petition for declaration of nullity of marriage. It bears repeating that the trial courts, as in all the other cases they try, must always base their judgments not solely on the expert opinions presented by the parties but on the totality of evidence adduced in the course of their proceedings. x x x The presentation of expert proof in cases for declaration of nullity of marriage based on psychological incapacity presupposes a thorough and an in-depth assessment of the parties by the psychologist or expert, for a conclusive diagnosis of a grave, severe and incurable presence of psychological incapacity. The **probative force of the testimony of an expert** does not lie in a mere statement of her theory or opinion, but rather in the **assistance that she can render to the courts in showing the facts that serve as a basis for her criterion and the reasons upon which the logic of her conclusion is founded**. x x x While the examination by a physician of a person in order to declare him psychologically incapacitated is not required, the root cause thereof must still be "medically or clinically identified," and adequately established by evidence. x x x To make conclusions and generalizations on a spouse's psychological condition based on the information fed by only one side, as in the case at bar, is, to the Court's mind, not different from admitting hearsay evidence as proof of the truthfulness of the content of such evidence.

4. ID.; ID.; ID.; ID.; ID.; SEXUAL INFIDELITY; TO CONSTITUTE AS PSYCHOLOGICAL INCAPACITY, THE UNFAITHFULNESS MUST BE ESTABLISHED AS A MANIFESTATION OF A DISORDERED PERSONALITY, COMPLETELY PREVENTING THE SPOUSE FROM DISCHARGING THE ESSENTIAL OBLIGATIONS OF THE MARITAL STATE.— Irreconcilable differences, **sexual infidelity** or perversion, emotional immaturity and irresponsibility and the like, do not by themselves warrant a finding of psychological incapacity under Article 36, as the same may only be due to a person's refusal or unwillingness to assume the essential obligations of marriage. In order for sexual infidelity to constitute as psychological incapacity, the **respondent's unfaithfulness must be established as a manifestation of a disordered personality, completely preventing the respondent from discharging the essential obligations of the marital state**; there must be proof of a natal or supervening disabling factor that effectively incapacitated him from complying with the obligation to be faithful to his spouse. It is indispensable that the evidence must show a link, medical or the like, between the acts that manifest psychological incapacity and the psychological disorder itself.

LEONEN, *J.*, *dissenting opinion*:

1. CIVIL LAW; FAMILY CODE; ARTICLE 36; VOID MARRIAGE; PSYCHOLOGICAL INCAPACITY AS A GROUND FOR NULLITY; COURTS MUST ESSENTIALLY RELY ON EXPERT OPINIONS TO DETERMINE THE PRESENCE THEREOF.— The courts, in determining the presence of psychological incapacity as a ground for annulment, must essentially "rely on the opinions of experts in order to inform themselves on the matter." Courts are "not endowed with expertise in the field of psychology"; resorting to expert opinion enables them to reach an "intelligent and judicious" ruling. x x x Dr. Montefalcon's admission that she evaluated Felipe's psychological condition indirectly from the testimonies of Mirasol and the couple's common friend should not discredit her evaluation as expert testimony. In *Camacho-Reyes v. Reyes-Reyes*, this Court underscored that the lack of examination of the party afflicted with a personality disorder neither discredits a doctor's testimony nor renders his or her

findings as hearsay: x x x Psychological incapacity as a ground for nullity of marriage may be ascertained through the totality of evidence offered. That the respondent should be examined by a physician or psychologist is neither a necessity nor a *conditio sine qua non* for a declaration of nullity.

2. ID.; ID.; ID.; ID.; ID.; COURTS SHOULD CONSTRUE THE PROVISION ON A CASE-TO-CASE BASIS.— The term "psychological incapacity" was not explicitly defined in the Family Code. The Family Code Revision Committee intended not to give examples for fear that it "would limit the applicability of the provision under the principle of *ejusdem generis*." The Committee also decided to accept the provision "with less specificity than expected" for the law to allow "some resiliency in its application." Therefore, each case involving the application of Article 36 must be specifically regarded and ruled on "not on the basis of *a priori* assumptions, predilections or generalizations" but based on its own associated facts. Courts should construe the provision "on a case-to case-basis, guided by experience, the findings of experts and researchers in psychological disciplines, and by decisions of church tribunals."

APPEARANCES OF COUNSEL

Jorico F. Bayaua for petitioner.
Office of the Solicitor General for public respondent.

D E C I S I O N

PERALTA, *J.*:

We resolve the petition for review on *certiorari* filed by petitioner Mirasol Castillo (*Mirasol*) challenging the Decision[1] and Resolution,[2] dated March 10, 2014 and August 28, 2014, respectively, of the Court of Appeals (*CA*), which ruled against

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[1] Penned by Associate Justice Magdangal M. De Leon, with Associate Justices Stephen C. Cruz and Eduardo B. Peralta, Jr., concurring, *rollo,* pp. 27-39.

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

the dissolution and nullity of her marriage under Article 36 of the Family Code.

The facts of the case follow:

As their parents were good friends and business partners, Mirasol and Felipe started as friends then, eventually, became sweethearts. During their courtship, Mirasol discovered that Felipe sustained his affair with his former girlfriend. The couple's relationship turned tumultuous after the revelation. With the intervention of their parents, they reconciled. They got married in Bani, Pangasinan on April 22, 1984 and were blessed with two (2) children born in 1992 and in 2001.[3]

On June 6, 2011, Mirasol filed a Complaint[4] for declaration of nullity of marriage before the Regional Trial Court (*RTC*) of Dasmariñas, Cavite, Branch 90.

Mirasol alleged that at the beginning, their union was harmonious prompting her to believe that the same was made in heaven. However, after thirteen (13) years of marriage, Felipe resumed philandering. Their relatives and friends saw him with different women. One time, she has just arrived from a trip and returned home to surprise her family. But to her consternation, she caught him in a compromising act with another woman. He did not bother to explain or apologize. Tired of her husband's infidelity, she left the conjugal dwelling and stopped any communication with him.[5] Felipe's irresponsible acts like cohabiting with another woman, not communicating with her, and not supporting their children for a period of not less than ten (10) years without any reason, constitute a severe psychological disorder.[6]

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[3] *Id.* at 28.

[4] Records, pp. 14-19.

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

[6] *Id.* at 17.

In support of her case, Mirasol presented clinical psychologist Sheila Marie Montefalcon (*Montefalcon*) who, in her Psychological Evaluation Report,[7] concluded that Felipe is psychologically incapacitated to fulfill the essential marital obligations. A portion of the report reads:

x x x x x x x x x

The personality disorder speaks of antecedence as it has an early onset, with an enduring pattern and behavior that deviates markedly from the expectations of the individual's culture. His poor parental and family molding (particularly lack of parental parenting) caused him to have a defective superego and he proved to be selfish, immature and negligent person and followed a pattern of gross irresponsibility and gross disregard of the feelings of his partner/wife disregarding the marriage contract and the commitment he agreed on during the wedding. In other words, the root cause of respondent's flawed personality pattern can be in childhood milieu. Respondent's familial constellation, unreliable parenting style from significant figures around him, and unfavorable childhood experiences have greatly affected his perceptions of himself and his environment in general. The respondent did not grow up mature enough to cope with his obligations and responsibilities as married man and father.

It also speaks of gravity as he was not able to carry out the normative and ordinary duties of marriage and family, shouldered by any married man, existing in ordinary circumstances. He just cannot perform his duties and obligations as a husband, as he entered into marriage for his own self-satisfaction and gratification, manipulate and denigrate the petitioner for his own pleasures and satisfaction. In the process, respondent was unable to assume his marital duties and responsibilities to his wife. He failed to render mutual help and support (Article 68, FC).

Additionally, it also speaks of incurability, as respondent has no psychological insight that he has a character problem. He would not acknowledge the pain he caused to people around him. People suffering from this personality disorder are unmotivated to treatment and impervious to recovery. There are no medications and laboratory examinations to be taken for maladaptive behavior such as the NPD (Narcissistic Personality Disorder).

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[7] *Id.* at 43-54.

Otherwise stated, his personality disorder is chronic and pervasive affecting many aspects of his life, such as social functioning and close relationships. Apparently, he has failed to develop appropriate adjustment methods. He lacks the intrapersonal and interpersonal integration that caused him the failure to understand the very nature of that sharing of life that is directed toward the solidarity and formation of family.

x x x x x x x x x[8]

In a Decision[9] dated January 20, 2012, the RTC in Civil Case No. 4853-11 declared the marriage between Mirasol and Felipe null and void. The dispositive portion of the decision states:

WHEREFORE, premises considered, Court hereby declares the marriage contract by the petitioner MIRASOL CASTILLO to the respondent FELIPE IMPAS on April 22, 1984 in Bani, Pangasinan to be NULL AND VOID AB INITIO.

ACCORDINGLY, pursuant to the provisions of A.M. No. 02-11-10-SC, the Clerk of Court is directed to enter this judgment upon its finality in the Book of Entry of Judgment and to issue the corresponding Entry of Judgment. Thereupon, the Office of the Civil Registrars in Bani, Pangasinan and Imus, Cavite, are also mandated to cause the registration of the said ENTRY OF JUDGMENT in their respective Book of Marriages.

Likewise, furnish the petitioner and the counsel of the petitioner, the respondent, the Solicitor General, 3rd Assistant Provincial Prosecutor Oscar R. Jarlos and the Civil Registrar General with copies hereof.

Upon compliance, the Court shall forthwith issue the DECREE OF NULLITY OF MARRIAGE.

SO ORDERED.[10]

On February 22, 2012, the Republic of the Philippines, through the Office of the Solicitor General (*OSG*), filed a motion for

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[8] *Id.* at 52-53. (Underscoring supplied).

[9] Penned by Executive Judge Perla V. Cabrera-Faller, *rollo,* pp. 60-62.

[10] *Id.* at 62.

reconsideration, which the RTC denied in an Order[11] dated April 3, 2012.

On appeal, the CA in CA-G.R. CV No. 99686 reversed and set aside the decision of the RTC, ruling that Mirasol failed to present sufficient evidence to prove that Felipe was suffering from psychological incapacity, thus, incapable of performing marital obligations due to some psychological illness existing at the time of the celebration of the marriage.[12] A pertinent portion of the decision reads:

x x x x x x x x x

Based on the records, it appears more likely that Felipe became unfaithful as a result of unknown factors that happened during the marriage and not because of his family background. His tendency to womanize was not shown to be due to causes of a psychological nature that are grave, permanent and incurable. In fact, it was only after thirteen (13) years of marriage that he started to engage in extra-marital affairs. In the complaint filed by Mirasol, she said that after they got married, their relationship as husband and wife went smoothly and that she was of the belief that she had a marriage made in heaven.

In short, Felipe's marital infidelity does not appear to be symptomatic of a grave psychological disorder which rendered him incapable of performing his spousal obligations. Sexual infidelity, by itself, is not sufficient proof that petitioner is suffering from psychological incapacity. It must be shown that the acts of unfaithfulness are manifestations of a disordered personality which make him completely unable to discharge the essential obligations of marriage. Since that situation does not obtain in the case, Mirasol's claim of psychological incapacity must fail. Psychological incapacity must be more than just a "difficulty," "refusal" or "neglect" in the performance of some marital obligations. Rather, it is essential that the concerned party was incapable of doing so, due to some psychological illness existing at the time of the celebration of the marriage.

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[11] *Id.* at 63.

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

In fine, given the insufficiency of the evidence proving the psychological incapacity of Felipe, We cannot but rule in favor of the existence and continuation of the marriage and against its dissolution and nullity.

WHEREFORE, the appeal is GRANTED. The Decision dated January 20, 2012 is REVERSED and SET ASIDE.

SO ORDERED.[13]

Upon the denial of her motion for reconsideration, Mirasol elevated the case before this Court raising the issue, thus:

> [Petitioner] was able to establish that respondent is suffering from grave psychological condition that rendered him incognitive of his marital covenants under Article 36 of the Family Code.

Basically, the issue to be resolved by this Court is whether or not the totality of evidence presented warrants, as the RTC determined, the declaration of nullity of the marriage of Mirasol and Felipe on the ground of the latter's psychological incapacity under Article 36 of the Family Code.

This Court rules in the negative.

Mirasol alleges that she has sufficiently established that Felipe is psychologically incapacitated to comply with the essential obligations of marriage. The conclusions of the trial court regarding the credibility of the witnesses are entitled to great respect because of its opportunity to observe the demeanor of the witnesses. Since the court *a quo* accepted the veracity of the petitioner's premises, there is no cause to dispute the conclusion of Felipe's psychological incapacity drawn from the expert witness. She claims that Montefalcon was correct in interviewing her for it was submitted that it was only her who knew best whether her husband was complying with his marital obligations. Moreover, the OSG admits that personal examination of the respondent by the clinical psychologist is not an indispensable requisite for a finding of psychological incapacity.

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

On the other hand, the OSG argues that Mirasol failed to establish from the totality of evidence the gravity, juridical antecedence and incurability of Felipe's alleged Narcissistic Personality Disorder. The conclusions of the clinical psychologist that he was psychologically incapacitated and that such incapacity was present at the inception of the marriage were not supported by evidence. At most, the psychologist merely proved his refusal to perform his marital obligations.[14] Moreover, she has no personal knowledge of the facts from which she based her findings and was working on pure assumptions and secondhand information related to her by one side.[15]

Time and again, it was held that "psychological incapacity" has been intended by law to be confined to the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage.[16] Psychological incapacity must be characterized by (a) **gravity**, *i.e.*, it must be grave and serious such that the party would be incapable of carrying out the ordinary duties required in a marriage, (b) **juridical antecedence**, *i.e.*, it must be rooted in the history of the party antedating the marriage, although the overt manifestations may emerge only after the marriage, and (c) **incurability**, *i.e.*, it must be incurable, or even if it were otherwise, the cure would be beyond the means of the party involved.[17]

In the case of *Republic v. Court of Appeals and Molina,*[18] this Court laid down the more definitive guidelines in the disposition of psychological incapacity cases, *viz.*:

x x x x x x x x x

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[14] *Id.* at 80.

[15] *Id.* at 84.

[16] *Santos v. Court of Appeals*, 310 Phil. 21, 40 (1995).

[17] *Republic v. Cabantug-Baguio,* 579 Phil. 187 (2008) citing *Republic v. Iyoy,* G.R. No. 152577, September 21, 2005, 470 SCRA 508, 521.

[18] G.R. No. 108763, February 13, 1997, 268 SCRA 198.

(1) The burden of proof to show the nullity of the marriage belongs to the plaintiff. Any doubt should be resolved in favor of the existence and continuation of the marriage and against its dissolution and nullity. x x x

(2) The *root cause* of the psychological incapacity must be (a) medically or clinically identified, (b) alleged in the complaint, (c) sufficiently proven by experts and (d) clearly explained in the decision. x x x

(3) The incapacity must be proven to be existing at "the time of the celebration" of the marriage. x x x

(4) Such incapacity must also be shown to be medically or clinically permanent or *incurable*. Such incurability may be absolute or even relative only in regard to the other spouse, not necessarily absolutely against everyone of the same sex. x x x

(5) Such illness must be *grave* enough to bring about the disability of the party to assume the essential obligations of marriage. x x x In other words, there is a natal or supervening disabling factor in the person, an adverse integral element in the personality structure that effectively incapacitates the person from really accepting and thereby complying with the obligations essential to marriage.

(6) The essential marital obligations must be those embraced by Articles 68 up to 71 of the Family Code as regards the husband and wife as well as Articles 220, 221 and 225 of the same Code in regard to parents and their children. x x x

(7) Interpretations given by the National Appellate Matrimonial Tribunal of the Catholic Church in the Philippines, while not controlling or decisive, should be given great respect by our courts. x x x

(8) The trial court must order the prosecuting attorney or fiscal and the Solicitor General to appear as counsel for the state. x x x

x x x x x x x x x[19]

The existence or absence of the psychological incapacity shall be based strictly on the facts of each case and not on a *priori* assumptions, predilections or generalizations.[20]

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[19] *Id.* at 209-213.

[20] *Republic v. Dagdag,* G.R. No. 109975, February 9, 2001, 351 SCRA 425, 431.

As held in *Ting v. Velez-Ting*:[21]

> By the very nature of cases involving the application of Article 36, it is logical and understandable to **give weight to the expert opinions furnished by psychologists regarding the psychological temperament of parties in order to determine the root cause, juridical antecedence, gravity and incurability of the psychological incapacity**. However, such opinions, while highly advisable, are not conditions *sine qua non* in granting petitions for declaration of nullity of marriage. **At best, courts must treat such opinions as decisive but not indispensable evidence in determining the merits of a given case.** In fact, if the totality of evidence presented is enough to sustain a finding of psychological incapacity, then actual medical or psychological examination of the person concerned need not be resorted to. **The trial court, as in any other given case presented before it, must always base its decision not solely on the expert opinions furnished by the parties but also on the totality of evidence adduced in the course of the proceedings**.[22]

The presentation of any form of medical or psychological evidence to show the psychological incapacity, however, did not mean that the same would have automatically ensured the granting of the petition for declaration of nullity of marriage. It bears repeating that the trial courts, as in all the other cases they try, must always base their judgments not solely on the expert opinions presented by the parties but on the totality of evidence adduced in the course of their proceedings.[23]

Guided by the foregoing principles and after a careful perusal of the records, this Court rules that the totality of the evidence presented failed to establish Felipe's psychological incapacity.

Clinical psychologist Montefalcon opined that respondent is encumbered with a personality disorder classified as Narcissistic Personality Disorder deeply ingrained in his personality structure that rendered him incapacitated to perform

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[21] G.R. No. 166562, March 31, 2009, 582 SCRA 694, 709.

[22] *Id.* (Emphasis supplied)

[23] *Mendoza v. Republic,* 698 Phil. 241, 254 (2012).

his marital duties and obligations. In her direct testimony, she stated:

ATTY. BAYAUA:

Question: Were you able to interview and conduct examination on the respondent?
Answer: No, sir.

Question: [W]here did you base your conclusion that supported your findings that the husband of Mirasol is psychologically incapacitated to comply with the essential obligations of marriage?
Answer: From the interviews I had with the petitioner and also from my interview of the couple's common friend who validated all information given to me by the petitioner.

Question: You mean to say you were not able to interview the respondent?
Answer: No sir. But I sent him an invitation to undergo the same psychological evaluation I administered with the petitioner but he did not respond to my invitation.

Question: [W]hat relevant information were you able to gather from your interview of the friend of the couple?
Answer: She validated every piece of information relayed to me by the petitioner during the interview.

x x x x x x x x x

Question: Madam witness, were you able to determine at what point in time in the life of the respondent did he acquire this disorder that you mentioned?
Answer: The disorder of the respondent already existed even at the time of celebration of their marriage, although the incapacity became manifest only after their marriage. **His disorder seemed to have started during the early years of his life.**

Question: In your expert opinion, what would be the likely source of the disorder of the respondent?
Answer: **The disorder of the respondent seemed to have developed during the early years of his life due to his poor parental and family [molding] particularly lack of parental guidance.** [His] parents separated when he was still young and when [his] mother had another affair and lived with her common-law husband. Respondent's familial constellation and [unfavorable] childhood

experiences have greatly affected his perceptions of himself and his environment. Respondent did not grow up mature enough to cope with his obligations and responsibilities as a married man and father.

x x x x x x x x x[24]

The RTC noticeably relied heavily on the result of the psychological evaluation by Montefalcon. A perusal of the RTC's decision would reveal that there was no assessment of the veracity of such allegations, the credibility of the witnesses, and the weight of the pieces of evidence presented. Also, there were no factual findings which can serve as bases for its conclusion of Felipe's psychological incapacity.

The presentation of expert proof in cases for declaration of nullity of marriage based on psychological incapacity presupposes a thorough and an in-depth assessment of the parties by the psychologist or expert, for a conclusive diagnosis of a grave, severe and incurable presence of psychological incapacity.[25] The **probative force of the testimony of an expert** does not lie in a mere statement of her theory or opinion, but rather in the **assistance that she can render to the courts in showing the facts that serve as a basis for her criterion and the reasons upon which the logic of her conclusion is founded**.[26]

Although the evaluation report of Montefalcon expounds on the juridical antecedence, gravity and incurability of Felipe's personality disorder, it was, however, admitted that she evaluated respondent's psychological condition indirectly from the information gathered from Mirasol and her witness. Felipe's dysfunctional family portrait which brought about his personality disorder as painted in the evaluation was based solely on the assumed truthful knowledge of petitioner. There was no

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[24] TSN, December 12, 2011, pp. 4-5. (Emphasis supplied).

[25] *Marable v. Marable,* 654 Phil. 528, 538 (2011).

[26] *Republic of the Philippines vs. Court of Appeals and De Quintos, Jr.*, G.R. No. 159594, November 12, 2012, 685 SCRA 33, 46. (Emphasis supplied).

independent witness knowledgeable of respondent's upbringing interviewed by the psychologist or presented before the trial court. Angelica Mabayad, the couple's common friend, agreed with petitioner's claims in the interview with the psychologist, confirmed the information given by petitioner, and alleged that she knew Felipe as "*chick boy*" or "*playboy*."[27] She did not testify before the court *a quo*.

As such, there are no other convincing evidence asserted to establish Felipe's psychological condition and its associations in his early life. Montefalcon's testimony and psychological evaluation report do not provide evidentiary support to cure the doubtful veracity of Mirasol's one-sided assertion. The said report falls short of the required proof for the Court to rely on the same as basis to declare petitioner's marriage to respondent as void.

While the examination by a physician of a person in order to declare him psychologically incapacitated is not required, the root cause thereof must still be "medically or clinically identified," and adequately established by evidence.[28] We cannot take the conclusion that Felipe harbors a personality disorder existing prior to his marriage which purportedly incapacitated him with the essential marital obligations as credible proof of juridical antecedence. The manner by which such conclusion was reached leaves much to be desired in terms of meeting the standard of evidence required in determining psychological incapacity. The lack of corroborative witness and evidence regarding Felipe's upbringing and family history renders Montefalcon's opinion on the root cause of his psychological incapacity conjectural or speculative.

Even if the testimonies of Mirasol and Montefalcon at issue are considered since the judge had found them to be credible enough, this Court cannot lower the evidentiary benchmark with regard to information on Felipe's pre-marital history which is

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[27] Records, pp. 43-44.

[28] *Republic v. Cabantug-Baguio, supra* note 17.

crucial to the issue of antecedence in this case because we only have petitioner's words to rely on. To make conclusions and generalizations on a spouse's psychological condition based on the information fed by only one side, as in the case at bar, is, to the Court's mind, not different from admitting hearsay evidence as proof of the truthfulness of the content of such evidence.[29]

Anent Felipe's sexual infidelity, Mirasol alleged in her judicial affidavit, to wit:

x x x x x x x x x

Question: You said Madam Witness that after several months you and respondent became sweethearts, what happened next Madam Witness?

Answer: Sir, while we were already sweethearts, I got dismayed when respondent was also maintaining another woman who was his former girlfriend.

Question: What was the reaction of the respondent when you told him about his relation with his former girlfriend?

Answer: Respondent was shocked and became moody Sir. This turned our relationship sour and it led to being stormy.

Question: You said Madam Witness that you and respondent's relationship became sour and stormy, what happened next, if any?

Answer: Sir, my relationship with respondent should have been ended had it not been with the timely intervention of our parents. Respondent and I reconciled.

x x x x x x x x x

Question: Madam Witness as you said you finally got married with the respondent as evidenced in fact by a Marriage Certificate. What happened next after the marriage?

Answer: After our wedding, our relationship as husband and wife went on smoothly. I was of the belief that my

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[29] *Ochosa v. Alano,* 655 Phil. 512 (2011).

marriage was made in heaven and that respondent had already reformed his ways and had completely deviated from his relationship with his ex-girlfriend;

x x x x x x x x x[30]

Question: After giving birth to your first child did respondent change or become responsible considering that he is already a father?

Answer: No, Sir. I thought that having our first child would already change the ways of respondent. The birth of our first child did not actually help improve respondent's ways because respondent is really a man who is not contented with one woman even before we got married;

x x x x x x x x x[31]

Question: After you gave birth to you[r] second child what happened next Madam Witness?

Answer: Sir, after thirteen (13) years of marriage, respondent is back to his old habit where he has been seen having relationship with a different woman. This was also seen by our relatives and friends of respondent.

x x x x x x x x x[32]

Irreconcilable differences, **sexual infidelity** or perversion, emotional immaturity and irresponsibility and the like, do not by themselves warrant a finding of psychological incapacity under Article 36, as the same may only be due to a person's refusal or unwillingness to assume the essential obligations of marriage.[33] In order for sexual infidelity to constitute as psychological incapacity, the **respondent's unfaithfulness must be established as a manifestation of a disordered personality, completely preventing the respondent from discharging the**

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[30] Records, pp. 56-57.

[31] *Id.* at 58.

[32] *Id.* at 59.

[33] *Republic of the Philippines vs. Court of Appeals and De Quintos, Jr.*, *supra* note 26, at 47-48.

essential obligations of the marital state; there must be proof of a natal or supervening disabling factor that effectively incapacitated him from complying with the obligation to be faithful to his spouse.[34] It is indispensable that the evidence must show a link, medical or the like, between the acts that manifest psychological incapacity and the psychological disorder itself.[35]

As discussed, the findings on Felipe's personality profile did not emanate from a personal interview with the subject himself. Apart from the psychologist's opinion and petitioner's allegations, no other reliable evidence was cited to prove that Felipe's sexual infidelity was a manifestation of his alleged personality disorder, which is grave, deeply rooted, and incurable. We are not persuaded that the natal or supervening disabling factor which effectively incapacitated him from complying with his obligation to be faithful to his wife was medically or clinically established.

Basic is the rule that bare allegations, unsubstantiated by evidence, are not equivalent to proof, *i.e.*, mere allegations are not evidence.[36] Based on the records, this Court finds that there exists insufficient factual or legal basis to conclude that Felipe's sexual infidelity and irresponsibility can be equated with psychological incapacity as contemplated by law. We reiterate that there was no other evidence adduced. Aside from the psychologist, petitioner did not present other witnesses to substantiate her allegations on Felipe's infidelity notwithstanding the fact that she claimed that their relatives saw him with other women. Her testimony, therefore, is considered self-serving and had no serious evidentiary value.

In sum, this Court finds no cogent reason to reverse the ruling of the CA against the dissolution and nullity of the parties' marriage due to insufficiency of the evidence presented. The policy of the State is to protect and strengthen the family as

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[34] *Toring v. Toring,* 640 Phil. 434 (2010). (Emphasis supplied).

[35] *Marable v. Marable, supra* note 25, at 539.

[36] *Real v. Belo*, 542 Phil. 109, 122 (2007).

the basic social institution and marriage is the foundation of the family. Thus, any doubt should be resolved in favor of validity of the marriage.[37]

WHEREFORE, we **DENY** the petition for review on *certiorari* filed by herein petitioner Mirasol Castillo. Accordingly, we **AFFIRM** the assailed Decision and Resolution, dated March 10, 2014 and August 28, 2014, respectively, of the Court of Appeals.

SO ORDERED.

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

Leonen, J., see separate dissent.

DISSENTING OPINION

LEONEN, *J.*:

The Regional Trial Court declared void the marriage of Mirasol Castillo (Mirasol) and Felipe Impas (Felipe) due to Felipe's psychological incapacity.[1] The Court of Appeals, however, reversed and set aside[2] the Regional Trial Court Decision[3] and held that Mirasol failed to sufficiently prove that Felipe is psychologically incapacitated to perform his marital obligations.[4]

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[37] *Villalon v. Villalon,* 512 Phil. 219, 230 (2005).

[*] Associate Justice Francis H. Jardeleza, no part; Associate Justice Mariano C. del Castillo designated Additional Member per Special Oder No. 2416-J dated January 4, 2017.

[1] Ponencia, p. 3.

[2] *Rollo*, pp. 27-13. The Decision was penned by Associate Justice Magdangal M. De Leon (Chair) and concurred in by Associate Justices Stephen C. Cruz and Eduardo B. Peralta, Jr. of the Tenth Division, Court of Appeals, Manila.

[3] *Id.* at 60-62. The Decision was penned by Executive Judge Perla V. Cabrera-Faller of Branch 90, Regional Trial Court, Dasmarinas, Cavite, sitting in Imus, Cavite.

[4] *Ponencia*, p. 4.

The ponencia affirmed the Court of Appeals Decision.[5] It held that the totality of evidence offered by Mirasol failed to substantiate Felipe's alleged psychological incapacity and its relation to his "early life."[6] Although Dr. Shiela Marie Montefalcon's[7] (Dr. Montefalcon) psychological evaluation report explained the juridical antecedence, gravity, and incurability of Felipe's personality disorder, this Court found that it fell short of the necessary proof to declare the marriage void.[8] As Dr. Montefalcon admitted that she evaluated Felipe's psychological condition based on the information given by Mirasol and the couple's common friend, her evaluation report failed to "provide evidentiary support to cure the doubtful veracity of Mirasol's one-sided assertion."[9] Thus, the ponencia concluded:

> As discussed, the findings on Felipe's personality profile did not emanate from a personal interview with the subject himself. Apart from the psychologist's opinion and petitioner's allegations, no other reliable evidence was cited to prove that Felipe's sexual infidelity was a manifestation of his alleged personality disorder, which is grave, deeply rooted, and incurable. We are not persuaded that the natal or supervening disabling factor which effectively incapacitated him from complying with his obligation to be faithful to his wife was medically or clinically established.
>
> Basic is the rule that bare allegations, unsubstantiated by evidence, are not equivalent to proof, *i.e.*, mere allegations are not evidence. Based on the records, this Court finds that there exists insufficient factual or legal basis to conclude that Felipe's sexual infidelity and irresponsibility can be equated with psychological incapacity as contemplated by law. We reiterate that there was no other evidence adduced. Aside from the psychologist, petitioner did not present other witnesses to substantiate her allegations on Felipe's infidelity

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[5] *Id.* at 12.

[6] *Id.* at 7.

[7] *Rollo*, p. 61, Regional Trial Court Decision.

[8] *Ponencia*, p. 9.

[9] *Id.*

notwithstanding the fact that she claimed that their relatives saw him with other women. Her testimony, therefore, is considered self-serving and had no serious evidentiary value.

In sum, this Court finds no cogent reason to reverse the ruling of the [Court of Appeals] against the dissolution and nullity of the parties' marriage due to insufficiency of the evidence presented. The policy of the State is to protect and strengthen the family as the basic social institution and marriage is the foundation of the family. Thus, any doubt should be resolved in favor of validity of the marriage.[10] (Citations omitted)

I disagree. Mirasol has sufficiently proven that Felipe is psychologically incapacitated. The totality of evidence confirms that Felipe's marital infidelity is a manifestation of a grave psychological order, which renders him incapable of fulfilling his essential marital obligations.

I

The evidence presented by Mirasol mainly consisted of her testimony and Dr. Montefalcon's psychological evaluation report.[11] The ponencia found that apart from these, no other dependable evidence was offered to prove that Felipe's sexual infidelity was a manifestation of a "grave, deeply rooted[,] and

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[10] *Id.* at 12.

[11] *Rollo*, p.61.

"***To support her claim, the petitioner [Mirasol] consulted with Mme. Shiela Marie O. Montefalcon, the psychologist on case, and based on her psychological evaluation of the parties,*** it appeared that the respondent is encumbered with a personality deficit classified as narcissistic personality disorder, which is grave, severe and incurable, as well as deeply ingrained in his personality structure that has rendered him as psychologically incapacitated to perform his marital duties and obligations.

. . . . . .

Largely on the basis of the marital history of the petitioner and the respondent, supported with the findings of the clinical psychologist, the Court finds that the petitioner has sufficiently established the root cause of the psychological incapacity[.]" (Emphasis supplied)

incurable" personal disorder.[12] Furthermore, it pointed out that the trial court's decision mainly relied on Dr. Montefalcon's psychological evaluation.[13] The trial court failed to assess the veracity of the allegations contained in the report, as well as the credibility of the witnesses and the weight of the evidence offered.[14] Hence, "there were no factual findings [that] can serve as bases for its conclusion" that Felipe is psychologically incapacitated.[15]

The courts, in determining the presence of psychological incapacity as a ground for annulment, must essentially "rely on the opinions of experts in order to inform themselves on the matter."[16] Courts are "not endowed with expertise in the field of psychology"; resorting to expert opinion enables them to reach an "intelligent and judicious" ruling.[17]

In her psychological evaluation report, Dr. Montefalcon concluded that Felipe was suffering from narcissistic personality disorder.[18] This condition was ingrained from Felipe's "poor parental and family molding," which caused him to "develop a defective superego and gross disregard for the feelings of others, particularly his wife."[19] Thus:

> The personality disorder speaks of antecedence as it has an early onset, with an enduring pattern and behavior that deviates markedly from the expectations of the individual's culture. *His poor parental and family molding (particularly lack of parental parenting) caused*

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[12] *Ponencia*, p. 12.

[13] *Id.* at 9.

[14] *Id.* at 9.

[15] *Id.* at 9.

[16] *Kalaw v. Fernandez*, G.R. No. 166357, January 14, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/january2015/166357.pdf> 7 [Per J. Bersamin, Special First Division].

[17] *Id.*

[18] *Ponencia*, p. 3.

[19] *Rollo*, p. 61.

him to have a defective superego and he proved to be [a] selfish, immature and negligent person and followed a pattern of gross irresponsibility and gross disregard of the feelings of his partner/ wife[,] disregarding the marriage contract and the commitment he agreed on [sic] during the wedding. In other words, the root cause of respondent's flawed personality pattern can be in childhood milieu. Respondent's familial constellation, unreliable parenting style from significant figures around him, and unfavorable childhood experiences have greatly affected his perceptions of himself and his environment in general. The respondent did not grow up mature enough to cope with his obligations and responsibilities as married man and father.

It also speaks of *gravity as he was not able to carry out the normative and ordinary duties of marriage and family, shouldered by any married man, existing in ordinary circumstances. He just cannot perform his duties and obligations as a husband, as he entered into marriage for his own self-satisfaction and gratification, manipulate[d] and denigrate[d] the petitioner for his own pleasures and satisfaction*. In the process, respondent was unable to assume his marital duties and responsibilities to his wife. He failed to render mutual help and support.

Additionally, it also speaks of *incurability, as respondent has no psychological insight that he has a character problem. He would not acknowledge the pain he caused to people around him. People suffering from this personality disorder are unmotivated to treatment and impervious to recovery*. There are no medications and laboratory examinations to be taken for maladaptive behavior such as the NPD (Narcissistic Personality Disorder).

Otherwise stated, his personality disorder is chronic and pervasive[,] affecting many aspects of his life, such as social functioning and close relationships. Apparently, he has failed to develop appropriate adjustment methods. *He lacks the intrapersonal and interpersonal integration that caused him the failure to understand the very nature of that sharing of life that is directed toward the solidarity and formation of family.*[20] (Emphasis supplied)

Dr. Montefalcon's expert testimony was consistent with the undisputed facts evincing Felipe's incapability to fulfill his essential marital obligations to Mirasol.

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[20] *Ponencia*, pp. 2-3.

Mirasol and Felipe started as good friends as their parents were business partners.[21] During their courtship, Mirasol found out that Felipe maintained an affair with his former girlfriend. This caused their relationship to be tumultuous, and it was only after their parents' intervention that they reconciled and got married.[22] After 13 years of marriage, Felipe began philandering again. Even their friends and relatives saw him with other women. On one instance, Mirasol returned home from a trip to surprise her family but, to her dismay, she caught Felipe "in a compromising act with another woman."[23] This prompted Mirasol to leave their conjugal dwelling and file a Complaint for declaration of nullity of marriage before the trial court.[24]

Felipe's continuous philandering, despite his being married and having children, shows a grave and incurable psychological incapacity that warrants the dissolution of his marriage with Mirasol. Moreover, his indifference about being seen publicly by friends and relatives with other women, as well as engaging in a compromising act with a woman not his wife, shows his utter disregard for Mirasol's feelings.

In this case, even without Dr. Montefalcon's evaluation report, the undisputed narrative of events offered by Mirasol undoubtedly points to the conclusion that Felipe is psychologically incapacitated. Felipe's acts—which already left traces even during the inception of their marriage—are indicative of a disordered personality. This makes him incapable of fulfilling his essential marital obligations[25] embodied in the Family Code, thus:

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[21] *Id.* at 1.

[22] *Id.* at 2.

[23] *Id.*

[24] *Id.* at 2.

[25] *Republic v. Court of Appeals and Molina* 335 Phil. 664, 678 (1997) [Per Justice Panganiban, *En Banc*]: "The essential marital obligations must be those embraced by Articles 68 up to 71 of the Family Code as regards the husband and wife as well as Articles 220, 221 and 225 of the same Code in regard to parents and their children."

Article 68. The husband and wife are obliged to live together, observe mutual love, respect and fidelity, and render mutual help and support.

. . . . . .

Article 220. The parents and those exercising parental authority shall have with respect to their unemancipated children or wards the following rights and duties:

(1) To keep them in their company, to support, educate and instruct them by right precept and good example, and to provide for their upbringing in keeping with their means;

(2) To give them love and affection, advice and counsel, companionship and understanding;

(3) To provide them with moral and spiritual guidance, inculcate in them honesty, integrity, self-discipline, self- reliance, industry and thrift, stimulate their interest in civic affairs, and inspire in them compliance with the duties of citizenship;

(4) To enhance, protect, preserve and maintain their physical and mental health at all times;

(5) To furnish them with good and wholesome educational materials, supervise their activities, recreation and association with others, protect them from bad company, and prevent them from acquiring habits detrimental to their health, studies and morals;

(6) To represent them in all matters affecting their interests;

(7) To demand from them respect and obedience;

(8) To impose discipline on them as may be required under the circumstances; and

(9) To perform such other duties as are imposed by law upon parents and guardians.

Contrary to the ponencia, the trial court did not "heavily rel[y] on the result" of Dr. Montefalcon's evaluation report, which allegedly lacked "factual findings which can serve as bases" for concluding that Felipe is psychologically incapacitated.[26] The totality of evidence presented by Mirasol

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[26] *Ponencia*, p. 9.

is more than enough to prove Felipe's psychological incapacity. Hence, Mirasol and Felipe's marriage is void under Article 36[27] of the Family Code.

II

Dr. Montefalcon's admission that she evaluated Felipe's psychological condition indirectly from the testimonies of Mirasol and the couple's common friend should not discredit her evaluation as expert testimony.

In *Camacho-Reyes v. Reyes-Reyes*,[28] this Court underscored that the lack of examination of the party afflicted with a personality disorder neither discredits a doctor's testimony nor renders his or her findings as hearsay:

> The lack of personal examination and interview of the respondent, or any other person diagnosed with personality disorder, does not *per se* invalidate the testimonies of the doctors. Neither do their findings automatically constitute hearsay that would result in their exclusion as evidence.
>
> *For one, marriage, by its very definition, necessarily involves only two persons. The totality of the behavior of one spouse during the cohabitation and marriage is generally and genuinely witnessed mainly by the other. In this case, the experts testified on their individual assessment of the present state of the parties' marriage from the perception of one of the parties, herein petitioner. Certainly, petitioner, during their marriage, had occasion to interact with, and experience, respondent's pattern of behavior which she could then validly relay to the clinical psychologists and the psychiatrist*.[29] (Emphasis supplied)

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[27] FAMILY CODE, Art. 36 provides:

A marriage contracted by any party who, at the time of the celebration, was psychologically incapacitated to comply with the essential marital obligations of marriage, shall likewise be void even if such incapacity becomes manifest only after its solemnization.

The action for declaration of nullity of the marriage under this Article shall prescribe in ten years after its celebration.

[28] 642 Phil. 602 (2010) [Per *J.* Nachura, Second Division].

[29] *Id.* at 627.

The interview conducted by Dr. Montefalcon with Mirasol to indirectly evaluate Felipe's psychological condition should not be set aside. Because of the intimate nature of marriage, Mirasol knows best whether Felipe has fulfilled his marital obligations as well as his responsibilities to his children.

Psychological incapacity as a ground for nullity of marriage may be ascertained through the totality of evidence offered.[30] That the respondent should be examined by a physician or psychologist is neither a necessity nor a *conditio sine qua non* for a declaration of nullity.[31]

For this reason, the ponencia cannot readily conclude that Dr. Montefalcon's psychological evaluation report lacks the "evidentiary support to cure the doubtful veracity of Mirasol's one-sided assertion."[32] As the totality of evidence is sufficient to substantiate Felipe's psychological incapacity, Dr. Montefalcon's evaluation report has become unnecessary. Nonetheless, Mirasol went beyond what is required of her when she substantiated her claims through Dr. Montefalcon's evaluation report.

Furthermore, I emphasize that Felipe failed to participate in the proceedings. Despite valid service of summons, he did not even bother to file any responsive pleading.[33] Similarly, Mirasol asserted that Felipe was sent a letter of request for psychological tests.[34] The request was left unheeded.[35] Despite Mirasol's efforts to compel Felipe to participate in the proceedings, Felipe remained unresponsive. Hence, Felipe's refusal to be examined should not be taken against Mirasol.

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[30] *Marcos v. Marcos*, 397 Phil. 840, 850-852 (2000) [Per *J*. Panganiban, Third Division].

[31] *Id.*

[32] *Ponencia*, p. 9.

[33] *Rollo*, p. 60.

[34] *Id.* at 13, Petition for Review.

[35] *Id.*

III

Article 36 of the Family Code provides:

> Article 36. A marriage contracted by any party who, at the time of the celebration, was psychologically incapacitated to comply with the essential marital obligations of marriage, shall likewise be void even if such incapacity becomes manifest only after its solemnization.
>
> The action for declaration of nullity of the marriage under this Article shall prescribe in ten years after its celebration.

The term "psychological incapacity" was not explicitly defined in the Family Code.[36] The Family Code Revision Committee intended not to give examples for fear that it "would limit the applicability of the provision under the principle of *ejusdem generis*."[37] The Committee also decided to accept the provision "with less specificity than expected" for the law to allow "some resiliency in its application."[38]

Therefore, each case involving the application of Article 36 must be specifically regarded and ruled on "not on the basis of *a priori* assumptions, predilections or generalizations" but based on its own associated facts.[39] Courts should construe the provision "on a case-to case-basis, guided by experience, the findings of experts and researchers in psychological disciplines, and by decisions of church tribunals."[40]

However, "psychological incapacity" does not mean to grasp "all such possible cases of psychoses."[41] The ponencia, citing

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[36] *Santos v. Court of Appeals*, 310 Phil. 21, 30 (1995) [Per *J*. Vitug, *En Banc*].

[37] *Id.* at 36, *citing Salita v. Hon. Magtolis*, 303 Phil. 106, 113-114 (1994) [Per *J*. Bellosillo, First Division].

[38] *Id.*

[39] *Aurelio v. Aurelio*, 665 Phil. 693, 703 (2011) [Per *J*. Peralta, Second Division].

[40] *Id.*

[41] *Santos v. Court of Appeals*, 310 Phil. 21,39 (1995) [Per *J*. Vitug, *En Banc*].

Santos v. Court of Appeals,[42] reiterated that "psychological incapacity" deliberately pertains to "the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage."[43] Similarly, it cited *Republic v. Cabantug-Baguio*[44] and enumerated the following characterizations of psychological incapacity:

> (a) **gravity**, *i.e.*, it must be grave and serious such that the party would be incapable of carrying out the ordinary duties required in a marriage, (b) **juridical antecedence**, *i.e.*, it must be rooted in the history of the party antedating the marriage, although the overt manifestations may emerge only after the marriage, and (c) **incurability**, *i.e.*, it must be incurable, or even if it were otherwise, the cure would be beyond the means of the party involved.[45] (Emphasis in the original)

The guidelines in interpreting Article 36 of the Family Code, as provided for in *Republic v. Court of Appeals and Molina*,[46] are reiterated and applied in this case. Thus:

> (1) The burden of proof to show the nullity of the marriage belongs to the plaintiff. Any doubt should be resolved in favor of the existence and continuation of the marriage and against its dissolution and nullity. . .
>
> . . . . . .
>
> (2) The *root cause* of the psychological incapacity must be (a) medically or clinically identified, (b) alleged in the complaint, (c) sufficiently proven by experts and (d) clearly explained in the decision. . . .
>
> (3) The incapacity must be proven to be existing at "the time of the celebration" of the marriage. . . .

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[42] 310 Phil. 21 (1995) [Per *J.* Vitug, *En Banc*].

[43] *Ponencia*, p. 6.

[44] 579 Phil. 187 (2008) [Per *J.* Carpio Morales, Second Division].

[45] *Ponencia*, p. 6.

[46] 335 Phil. 664 (1997) [Per *J.* Panganiban, *En Banc*].

(4) Such incapacity must also be shown to be medically or clinically permanent or *incurable*. Such incurability may be absolute or even relative only in regard to the other spouse, not necessarily absolutely against everyone of the same sex. . . .

(5) Such illness must be *grave* enough to bring about the disability of the party to assume the essential obligations of marriage. Thus, "mild characteriological peculiarities, mood changes, occasional emotional outbursts" cannot be accepted as *root* causes. The illness must be shown as downright incapacity or inability, not a refusal, neglect or difficulty, much less ill will. In other words, there is a natal or supervening disabling factor in the person, an adverse integral element in the personality structure that effectively incapacitates the person from really accepting and thereby complying with the obligations essential to marriage.

(6) The essential marital obligations must be those embraced by Articles 68 up to 71 of the Family Code as regards the husband and wife as well as Articles 220, 221 and 225 of the same Code in regard to parents and their children. . .

(7) Interpretations given by the National Appellate Matrimonial Tribunal of the Catholic Church in the Philippines, while not controlling or decisive, should be given great respect by our courts. . . .

. . . . . .

(8) The trial court must order the prosecuting attorney or fiscal and the Solicitor General to appear as counsel for the state[.][47] (Emphasis in the original)

Contrary to the supposed resilient application of Article 36, *Ngo-Te v. Yu-te*[48] compared the rigid guidelines in *Molina* to a "*strait-jacket*"[49] Thus:

In hindsight, it may have been inappropriate for the Court to impose a rigid set of rules, as the one in *Molina*, in resolving all cases of

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[47] *Id.* at 676-679.

[48] 598 Phil. 666 (2009) [Per *J.* Nachura, Third Division].

[49] *Id.* at 696.

psychological incapacity. Understandably, the Court was then alarmed by the deluge of petitions for the dissolution of marital bonds, and was sensitive to the OSG's exaggeration of Article 36 as the "most liberal divorce procedure in the world." The unintended consequences of *Molina*, however, has taken its toll on people who have to live with deviant behavior, moral insanity and sociopathic personality anomaly, which, like termites, consume little by little the very foundation of their families, our basic social institutions. Far from what was intended by the Court, *Molina* has become a strait-jacket, forcing all sizes to fit into and be bound by it. Wittingly or unwittingly, the Court, in conveniently applying *Molina*, has allowed diagnosed sociopaths, schizophrenics, nymphomaniacs, narcissists and the like, to continuously debase and pervert the sanctity of marriage. Ironically, the Roman Rota has annulled marriages on account of the personality disorders of the said individuals.[50] (Citations omitted)

Likewise, *Ngo-Te* underscored that in dissolving marriages due to psychological incapacity, this Court is not destroying the foundation of families. Rather, it is protecting the sanctity of marriages:

In dissolving marital bonds on account of either party's psychological incapacity, the Court is not demolishing the foundation of families, but it is actually protecting the sanctity of marriage, because it refuses to allow a person afflicted with a psychological disorder, who cannot comply with or assume the essential marital obligations, from remaining in that sacred bond. It may be stressed that the infliction of physical violence, constitutional indolence or laziness, drug dependence or addiction, and psychosexual anomaly are manifestations of a sociopathic personality anomaly. Let it be noted that in Article 36, there is no marriage to speak of in the first place, as the same is void from the very beginning. To indulge in imagery, the declaration of nullity under Article 36 will simply provide a decent burial to a stillborn marriage.[51]

Thus, *Ngo-Te* explicitly provides that it does not, in any way, propose the abandonment of the guidelines provided for under

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[50] *Id.* 695-696.

[51] *Id.* at 698-699.

Molina.[52] It reiterates that the necessity to consider other perspectives in disposing cases under Article 36 exists.[53]

The recent case of *Kalaw v. Fernandez*[54] is instructive, in that Article 36 of the Family Code must not be strictly and literally read as to give way for the real intention of its drafters:

> The foregoing guidelines [in Molina] have turned out to be rigid, such that their application to every instance practically condemned the petitions for declaration of nullity to the fate of certain rejection. But Article 36 of the Family Code must not be so strictly and too literally read and applied given the clear intendment of the drafters to adopt its enacted version of "less specificity" obviously to enable "some resiliency in its application." Instead, every court should approach the issue of nullity "not on the basis of *a priori* assumptions, predilections or generalizations, but according to its own facts" in recognition of the verity that no case would be on "all fours" with the next one in the field of psychological incapacity as a ground for the nullity of marriage; hence, every "trial judge must take pains in examining the factual milieu and the appellate court must, as much as possible, avoid substituting its own judgment for that of the trial court."[55]

It is imperative upon this Court to annul the marriage between Mirasol and Felipe. Mirasol admitted that she was happy when she married Felipe.[56] Although she once discovered that Felipe had been keeping his affair with his former girlfriend, she had hopes that Felipe would reform from his old ways.[57] However,

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[52] *Id.* at 699.

[53] *Id.*

[54] *Kalaw v. Fernandez*, G.R. No. 166357, January 14, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/january2015/166357.pdf> [Per *J.* Bersamin, Special First Division]. This Court granted petitioner's motion for reconsideration and similarly declaring the parties' marriage as void due to psychological incapacity.

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

[56] *Rollo*, p. 60.

[57] *Id.* at 61.

Felipe continued womanizing after Mirasol gave birth to their daughter.[58]

I have had the privilege to emphasize in *Matudan v. Republic*:[59]

> The effects of applying the rigid Article 36 guidelines does not negate the compassion that some of the Members of this Court may have for the parties. ***Still, it is time that this Court operate within the sphere of reality. The law is an instrument to provide succor.*** It is not a burden that unreasonably interferes with individual choices of intimate arrangements.
>
> The choice to stay in or leave a marriage is not for this Court, or the State, to make. The choice is given to the partners, with the Constitution providing that "[t]he right of spouses to found a family in accordance with their religious convictions and demands of responsible parenthood[.]" Counterintuitively, the State protects marriage if it allows those found to have psychological illnesses that render them incapable of complying with their marital obligations to leave the marriage. ***To force partners to stay in a loveless marriage, or a spouseless marriage as in this case, only erodes the foundation of a family.***[60] (Emphasis supplied, citations omitted)

I cannot join the majority's reading of the law as it condemns loveless married couples to a life of pain and suffering. The law should not be read as too callous or cruel that it forever condemns those who may have made very human errors in choosing those with whom they should be intimate. For the State to enforce this cruelty is the very antithesis of the freedoms embodied in many provisions of our Constitution.

Marriage is a struggle. In some cases, fortunate couples discover that they become better together. They learn that their compromises make them grow further.

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[58] *Id.*

[59] G.R. No. 203284, November 14, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/november2016/203284.pdf> [Per *J.* Del Castillo, Second Division].

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

However, there are others who discover that marriage creates a bond that magnifies their differences. Irreconcilable differences make every moment of eternal bondage excruciating. The State, through the courts, do not add any new factor in a couple's intimate relationship when it denies petitions for declarations of nullity in failed marriages. The State leaves its citizens in a perpetual state of misery and places multiple hardships on a couple and their children.

Felipe's continuous philandering, albeit having his own family, manifests an incurable psychological disorder of utmost gravity. If Felipe's sexual infidelity were merely caused by his "refusal or unwillingness"[61] to assume his marital obligations, then he would not have been indifferent about being seen publicly with the other women with whom he had other affairs. What Felipe has done apparently caused much pain to his family and should be put to an end. It is cruel for this Court to rule that Mirasol should remain married to Felipe.

Republic v. Court of Appeals and Molina interpreted Article 36 of the Family Code to introduce restrictions not found in the text of the law. Worse, it was inspired by a conservative, religious view of what marriages should be. This has caused untold hardships and costs for many Filipinos. It is time we review this doctrine and allow intimate relationships to be what they truly are: a life of celebration, rather than a living hell.

ACCORDINGLY, I vote to **GRANT** the Petition.

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[61] *Ponencia*, p. 11.

SECOND DIVISION

[G.R. No. 214406. February 6, 2017]

BP OIL AND CHEMICALS INTERNATIONAL PHILIPPINES, INC., *petitioner, vs.* **TOTAL DISTRIBUTION & LOGISTIC SYSTEMS, INC.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ONLY QUESTIONS OF LAW SHOULD BE RAISED; EXCEPTIONS.— 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. x x x 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.

2. ID.; ID.; PLEADINGS; ACTION BASED ON DOCUMENT; A DOCUMENT IS ACTIONABLE WHEN AN ACTION IS

GROUNDED UPON SUCH WRITTEN DOCUMENT.— A document is actionable when an action or defense is grounded upon such written instrument or document. The complaint filed by petitioner is an action for collection of sum of money arising from the termination of the Agency Agreement with TDLSI. The CA, therefore, was correct when it stated that petitioner's cause of action is primarily based on the alleged non-payment of outstanding debts of respondent as well as the unremitted collections/payments and unsold stocks, despite demand. Thus, petitioner's cause of action is not based solely on the April 30, 2001 letter allegedly stating the "present value of stocks, collections and accounts receivables" of TDLSI. Noteworthy is the denial of respondent TDLSI's Demurrer to Evidence by the RTC because it clearly discussed petitioner's cause of action and the sufficiency of the evidence it presented.

3. **ID.; EVIDENCE; RULES OF ADMISSIBILITY; ADMISSION AGAINST INTEREST.—** It is basic that whoever alleges a fact has the burden of proving it because a mere allegation is not evidence. In civil cases, the burden of proof is on the party who would be defeated if no evidence is given on either side. x x x [Now,] [a]dmissions against interest are those made by a party to a litigation or by one in privity with or identified in legal interest with such party, and are admissible whether or not the declarant is available as a witness. An admission against interest is the best evidence that affords the greatest certainty of the facts in dispute, based on the presumption that no man would declare anything against himself unless such declaration is true. It is fair to presume that the declaration corresponds with the truth, and it is his fault if it does not. No doubt, admissions against interest may be refuted by the declarant. In this case, however, respondent failed to refute the contents of Exhibit "J".

4. **ID.; ID.; WEIGHT AND SUFFICIENCY; PREPONDERANCE OF EVIDENCE.—** Section 1, Rule 133 of the Rules of Court mandates that in civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. By preponderance of evidence, according to *Raymundo v. Lunaria*, [means] that the evidence as a whole adduced by one side is superior to that of the other. It refers to the weight, credit and value of the aggregate evidence on either side and

is usually considered to be synonymous with the term "greater weight of evidence" or "greater weight of the credible evidence." It is evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto.

APPEARANCES OF COUNSEL

Siguion Reyna Montecillo & Ongsiako Law Offices for petitioner.

Jocelyn Bonnie V. Valeros for respondent.

D E C I S I O N

PERALTA, *J.*:

Before this Court is the Petition for Review on *Certiorari* under Rule 45, dated November 10, 2014 of petitioner BP Oil and Chemicals International Philippines, Inc. (*BP Oil*) that seeks to reverse and set aside the Decision[1] dated April 30, 2014 of the Court of Appeals (*CA*) which, in turn, reversed and set aside the Decision[2] dated January 21, 2011 of the Regional Trial Court (*RTC*), Branch 148, Makati City, in a case for a collection of sum of money.

The antecedent facts follow.

A Complaint for Sum of Money was filed by petitioner BP Oil against respondent Total Distribution & Logistic Systems, Inc. (*TDLSI*) on April 15, 2002, seeking to recover the sum of ₱36,440,351.79 representing the total value of the moneys, stock and accounts receivables that TDLSI has allegedly refused to return to BP Oil.

The allegations of the parties, as summarized by the RTC, are as follows:

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[1] Penned by Associate Justice Vicente S.E. Veloso, with the concurrence of Associate Justices Jane Aurora C. Lantion and Nina G. Antonio-Valenzuela.

[2] Penned by Judge Oscar B. Pimentel.

According to the allegations in the complaint, the defendant entered into an Agency Agreement (the Agreement) with BP Singapore on September 30, 1997, whereby it was given the right to act as the exclusive agent of the latter for the sales and distribution of its industrial lubricants in the Philippines. The agency was for a period of five years from 1997 to 2002. In return, the defendant was supposed to meet the target sales volume set by BP Singapore for each year of the Agreement. As agreed in the Supplemental Agreement they executed on January 6, 1998, the defendant was supposed to deposit the proceeds of the sales it made to a depositary account that the defendant will open for the purpose. On April 27, 1998, BP Singapore assigned its rights under the Agreement to the plaintiff effective March 1, 1998.

When the defendant did not meet its target sales volume for the first year of the Agreement, the plaintiff informed the defendant that it was going to appoint other distributors to sell the BP's industrial lubricant products in the Philippines. The defendant did not object to the plan of the plaintiff but asked for ₱10,000,000.00 as compensation for the expenses. The plaintiff did not agree to the demand made by the defendant.

On August 19, 1999, the defendant through its lawyer, wrote the plaintiff a letter where it demanded that it be paid damages in the amount of ₱40,000,000.00 and announced that it was withholding remittance of the sales until it was paid by the plaintiff. On September 1, 1999, the plaintiff wrote the defendant back to give notice that it was terminating the Agreement unless the defendant rectified the breaches it committed within a period of 30 days. The plaintiff also demanded that the defendant pay the plaintiff its outstanding obligations and return the unsold stock in its possession.

On October 11, 1999, the plaintiff gave the defendant formal notice of [sic] that it was terminating the Agreement after it did not hear from the defendant. The plaintiff would find out that the defendant had filed a request for arbitration with the Philippine Dispute Resolution Center, Inc. (PDRCI).

On October 9, 2000, the plaintiff, through Mr. Lau Hock Lee, sent the defendant another letter to reiterate its demand for the defendant to return the unremitted collections and stocks in its possession.

On April 30, 2001, the defendant, through Mr. Miguel G. de Asis, its Chief Finance Officer, wrote the plaintiff a letter admitting that

as of the said date, it had in its possession collections against sales in the amount of ₱27,261,305.75, receivables in the amount of ₱8,767,656.26 and stocks valued at ₱1,155,000.00.

On July 9, 2001, the law firm of Siguion Reyna Montecillo & Ongsiako sent the defendant a formal demand letter for the payment of the total amount of ₱36,440,351.79 representing the total amount of the collections, receivables and stocks that defendant should have returned to the plaintiff as of May 31, 2001. The amount was based on a summary of account prepared by Ms. Aurora B. Osanna, plaintiff's Business Development Supervisor.

On April 15, 2002, the plaintiff filed the instant complaint for collection against the defendant. The defendant initially filed a Motion to Dismiss the complaint on the ground for [sic] lack of cause of action because of the existence of an arbitration agreement, as well as a previously filed arbitration proceeding between the parties. This Court denied the defendant's Motion to Dismiss for lack of merit in its Order dated February 21, 2003. The Motion for Reconsideration filed by the defendant was likewise denied by this Court on April 30, 2003. The Defendant went up to the Court of Appeals to question the denial of its Motion to Dismiss via a Petition for *Certiorari* and Prohibition.

On June 9, 2003, the Defendant filed its Answer *Ad Cautelam* with Compulsory Counterclaim *Ad Cautelam*.

In its answer, the defendant alleged that it was appointed as the exclusive agent of the plaintiff to sell BP brand industrial lubricants in the Philippines. The agency was to last for five years from signing of the Agreement, or until September 29, 2001. As the exclusive agent of BP products, the defendant was tasked to promote, market, distribute and sell the BP products supplied the plaintiff.

The defendant further alleged that it did not fail to meet the sales target for Year I. Delays on the part of the plaintiff in shipping the products moved the commencement of the Agreement from January 1997 to August 1997, making the stipulated sales target no longer applicable.

On June 8, 1999, the plaintiff unexpectedly informed the defendant of its intention to assume more control of Philippine operations, including the appointment of a full-time representative in the Philippines and new distributors. No reason was given for this policy change.

Although the defendant pointed out to the plaintiff that the appointment of a new distributor would violate the Agency Agreement, the plaintiff ignored the defendant's protests and affirmed that it would proceed with taking over control of the distribution in the Philippines of BP products and with appointing additional distributors.

While business proceeded, the defendant's counsel, Atty. Eugeniano E. Perez III, sent the plaintiff a letter dated August 19, 1999 pointing out, among others, that: a) The plaintiff's plan to take over the lubricant business and appoint other distributors was in breach of the Agency Agreement; b) the defendant incurred losses because of the plaintiff's non-compliance with the Agreement and lack of support; and c) the defendant would be carrying on the business would be withholding any funds to be collected pending compliance with the demand.

Instead of heeding the consequences of its proposed illegal acts, the plaintiffs took steps to take over the distribution of BP Products in the Philippines and to appoint new agents for this purpose. Even before the termination of the Agreement, the plaintiff cut off the supply of BP products to the defendant, and even tried to sell directly to the defendant's customers, without the defendant's knowledge. To protect its rights, and pursuant to the arbitration clause under the Agreement, the defendant filed a Request for Arbitration before the Philippine Dispute Resolution Center, Inc. (PDRCI) on 5 October 1999.

By way of affirmative defenses, the defendant argued that: 1.) it has the right to retain in pledge objects subject of the agency until it is indemnified by the plaintiff for the damages it suffered under Article 1914 in relation to Articles 1912 and 1913 of the Civil Code; 2.) the complaint is dismissible on the ground of lack of cause of action for being prematurely filed and/or *litis pendencia* because the issue in the case is already a sub-issue in the arbitration proceedings; and 3.) the action should be stayed in accordance with Republic Act No. 876.

On March 21, 2004, the Court of Appeals came out with its Decision affirming this Court's denial of the defendant's Motion to Dismiss after the defendant filed it Answer *Ad Cautelam*. The Court of Appeals also denied the defendant's Motion for Reconsideration on August 16, 2004. The Decision of the Court of Appeals sustaining this Court attained finality with the denial by the Supreme Court on November 10, 2004 of the Petition for Review on *Certiorari* filed by the defendant as well as its Motion for Reconsideration from the said denial.

In light of the finality of the decision of the Court of Appeals, the defendant lost its right to invoke the pendency of the arbitration proceedings as part of its affirmative defenses. The defendant is therefore left with only one affirmative defense to the complaint of the plaintiff, and this is the right of retention given to an agent under Article 1912, 1913 and 1914 of the Civil Code.

This makes the issue to be resolved by this Court uncomplicated: 1) whether the plaintiff has the right to collect the amount of ₱36,440,351.79 from the defendant together with legal interest computed from September 1, 1999, attorney's fees and costs of suit; and 2) whether the defendant is justified in retaining the amounts and stocks in its possession by virtue of the aforementioned provisions of the Civil Code on agency.[3]

In its Decision dated January 21, 2011, the RTC ruled in favor of the petitioner, the dispositive portion of which reads as follows:

WHEREFORE, premises considered, judgment is hereby rendered, granting the claim of the plaintiff and directing the defendant to pay the plaintiff the sum of:

(1) Thirty-Six Million Nine Hundred Forty-Three Thousand Eight Hundred Twenty-Nine Pesos and Thirteen Centavos (₱36,943,829.13) for the value of the stocks and the moneys received and retained by the defendant in its possession pursuant to the Agreement with legal interest computed at 6% per annum from July 19, 2001 up to the finality of this decision and at 12% per annum from finality of this decision up to the date of payment.

(2) Attorney's fees in the amount of One Million Five Hundred Thousand Pesos (₱1,500,000.00) and costs of suit amounting to Four Hundred Thirty-Nine Thousand Eight Hundred Forty Pesos (₱439,840.00).

SO ORDERED.[4]

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[3] *Rollo*, pp. 95-98.

[4] *Id.* at 105.

After the respondent elevated the case to the CA, the latter court reversed and set aside the decision of the RTC and found in favor of the respondent in its Decision dated April 30, 2014, thus:

> WHEREFORE, the instant appeal is GRANTED. The assailed Decision dated January 21, 2011 of the Regional Trial Court of Makati City, Branch 148 is REVERSED and SET ASIDE. The instant complaint is DISMISSED.
>
> SO ORDERED.[5]

The CA ruled, among others, that the admission made by respondent in Exhibit "J", that it was withholding moneys, receivables and stocks respectively valued at ₱27,261,305.75, ₱8,767,656.26 and ₱1,155,000.00 from petitioner, has no evidentiary weight, thus, petitioner was not able to preponderantly establish its claim.

Hence, the present petition where petitioner states the following grounds:

> THE COURT OF APPEALS COMMITTED SERIOUS ERROR OF LAW IN RENDERING ITS DECISION AS WELL AS IN DENYING BP OIL'S MOTION FOR RECONSIDERATION. SPECIFICALLY:
>
> I
>
> THE COURT OF APPEALS ERRED IN NOT RULING THAT TDLSI HAS MADE A JUDICIAL ADMISSION THAT IT HAS POSSESSION OF THE STOCKS, MONEYS AND RECEIVABLES THAT BP OIL SEEKS TO RECOVER IN THE COMPLAINT BELOW, CONSIDERING THAT:
>
> a. EXHIBIT "J" QUALIFIES AS AN ACTIONABLE DOCUMENT WHOSE AUTHENTICITY AND DUE EXECUTION WERE DEEMED ADMITTED BY TDLSI FOLLOWING ITS FAILURE TO SPECIFICALLY DENY THE SAME UNDER OATH IN ITS ANSWER.

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[5] *Id*. at 75.

b. REGARDLESS OF WHETHER EXHIBIT "J" MAY BE CONSIDERED AS AN ACTIONABLE DOCUMENT, THE FACT REMAINS THAT TDLSI HAD ACTUALLY ADMITTED PREPARING AND SENDING THE SAME TO BP OIL IN ITS ANSWER.

i. NO RESERVATION WAS EVER MADE BY TDLSI REGARDING THE AUTHENTICITY OF ITS CONTENTS AND NO WITNESS WAS EVER PRESENTED BY TDLSI TO DISOWN ITS DUE EXECUTION.

ii. ASIDE FROM BEING SELF-SERVING, THE ANSWER TO WRITTEN INTERROGATORIES GIVEN BY TDLSI'S MR. MIGUEL DE ASIS AND CITED IN THE DECISION AS A BASIS TO NEGATE TDLSI'S ADMISSION OF EXHIBIT "J" WAS NEVER OFFERED IN EVIDENCE. THE COURT OF APPEALS SHOULD NOT HAVE EVEN CONSIDERED THE SAME IN RENDERING ITS DECISION.

c. THE RIGHT OF RETENTION INVOKED BY TDLSI IN ITS ANSWER CARRIES WITH IT THE ADMISSION: (i) THAT BP OIL IS ENTITLED TO THE STOCKS, MONEYS AND RECEIVABLES SUBJECT OF THE COMPLAINT BELOW, AND (ii) THAT TDLSI IS WITHHOLDING THE SAME FROM BP OIL.

II

THE COURT OF APPEALS SERIOUSLY ERRED IN NOT RULING THAT WITH OR WITHOUT EXHIBIT "J", BP OIL HAS MET THE QUANTUM OF PROOF REQUIRED BY LAW TO PROVE ITS CLAIM.

a. CIVIL CASES ONLY REQUIRE A PREPONDERANCE OF EVIDENCE AND BP OIL HAS DISCHARGED ITS BURDEN OF MEETING THIS STANDARD OF PROOF.

b. THE REFUSAL OF THE COURT TO GIVE WEIGHT TO SOME OF THE PIECES OF EVIDENCE PRESENTED BY BP OIL HAS NO LEGAL BASIS.

c. THE DENIAL OF TDLSI'S DEMURRER TO EVIDENCE SHOWS THAT BP OIL HAS MADE OUT A PRIMA FACIE

CASE IN SUPPORT OF ITS CLAIMS AGAINST TDLSI AND TDLSI'S FAILURE TO CONTROVERT THIS PRIMA FACIE CASE JUSTIFIES A RULING IN FAVOR OF BP OIL.

According to petitioner, Exhibit "J" qualifies as an actionable document whose authenticity and due execution were deemed admitted by respondent or TDLSI following its failure to specifically deny the same under oath. Petitioner insists that it has met the quantum of proof required by law.

In its Comment dated March 24, 2015, respondent reiterates the ruling of the CA that Exhibit "J" is not an actionable document and cannot be considered a judicial admission on its part.

The petition is devoid of any merit.

The Rules of Court require that only questions of law should be raised in petitions filed under Rule 45.[6] 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"[7] when supported by substantial evidence.[8] Factual findings of the appellate courts will not be reviewed nor disturbed on appeal to this court.[9]

This Court's Decision in *Cheesman v. Intermediate Appellate Court*[10] distinguished questions of law from questions of fact:

As distinguished from a question of law — which exists "when the doubt or difference arises as to what the law is on a certain state of

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[6] Sec. 1, Rule 45, Rules of Court.

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

[8] *Siasat v. Court of Appeals*, 425 Phil. 139, 145 (2002) [Per *J.* Pardo, First Division]; *Tabaco v. Court of Appeals*, 239 Phil. 485, 490 (1994) [Per *J.* Bellosillo, First Division]; and *Padilla v. Court of Appeals,* 241 Phil. 776, 781 (1988) [Per *J.* Paras, Second Division].

[9] *Bank of the Philippine Islands v. Leobrera,* 461 Phil. 461, 469 (2003) [Per *J.* Ynares-Santiago, Special First Division].

[10] 271 Phil. 89 (1991) [Per *J.* Narvasa, Second Division].

facts" — "there is a question of fact when the doubt or difference arises as to the truth or the falsehood of alleged facts"; or when the "query necessarily invites calibration of the whole evidence considering mainly the credibility of witnesses, existence and relevancy of specific surrounding circumstances, their relation to each other and to the whole and the probabilities of the situation."[11]

Seeking recourse from this court through a petition for review on certiorari under Rule 45 bears significantly on the manner by which this court shall treat findings of fact and evidentiary matters. As a general rule, it becomes improper for this court to consider factual issues: the findings of fact of the trial court, as affirmed on appeal by the Court of Appeals, are conclusive on this court. "The reason behind the rule is that [this] Court is not a trier of facts and it is not its duty to review, evaluate, and weigh the probative value of the evidence adduced before the lower courts."[12]

However, these rules do admit exceptions.[13] 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.*:[14]

(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

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[11] *Cheesman v. Intermediate Appellate Court, supra,* at 97-98.

[12] *Frondarina v. Malazarte*, 539 Phil. 279, 290-291 (2006) [Per *J.* Velasco, Third Division].

[13] *Remedios Pascual v. Benito Burgos, et al.*, G.R. No. 171722, January 11, 2016.

[14] 269 Phil. 225 (1990) [Per *J.* Bidin, Third Division].

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.[15]

A close reading of the present petition shows that what this Court is being asked to resolve is, what should prevail — the findings of facts of the RTC or the findings of facts of the CA on the alleged misapprehension of facts of the RTC. The findings of facts of both Courts are obviously conflicting, hence, the need for this Court to rule on the present petition.

On the issue of whether Exhibit "J" is an actionable document, the CA ruled:

> Here, plaintiff-appellee relies heavily on its Exhibit "J", defendant-appellant's purported letter dated April 30, 2001, which it alleged to be an "actionable document" which defendant-appellant failed to deny under oath. It does amounts to a judicial admission on the part of defendant-appellant that it has possession of its stocks, moneys and receivables belonging to plaintiff-appellee.
>
> x x x x x x x x x
>
> Here, the purported April 30, 2001 letter is not an actionable document *per se*. The present complaint is an action for collection of sum of money arising from the termination of the Agency Agreement between the parties. Plaintiff-appellee's cause of action is primarily based on the alleged non-payment of outstanding debts of defendant-appellant as well as the unremitted collections/payments and unsold stocks, despite demand. In other words, plaintiff-appellee's cause of action is not based solely on the April 30, 2001 letter allegedly stating the "present value of stocks, collections and accounts receivables" of defendant-appellant. Clearly, said document is not an actionable document contemplated in Section 7, Rule 8 of the 1997 Rules of Court but is merely evidentiary in nature. As such, there was no need for defendant-appellant to deny its genuineness and due execution under oath. We thus cannot sustain plaintiff-appellee's contention that the aforesaid Exhibit "J" amounted to a judicial admission because it's due execution and authenticity was never denied under oath by defendant appellant.

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[15] *Medina v. Mayor Asistio, Jr., supra*, at 232.

Verily, an admission is any statement of fact made by a party against its interest or unfavorable to the conclusion for which he contends or is inconsistent with the facts alleged by him. To be admissible, an admission must (a) involve matters of fact, and not of law; (b) be categorical and definite; (c) be knowingly and voluntarily made; and (d) be adverse to the admitter's interests, otherwise it would be self-serving and inadmissible.

In this case, the alluded Exhibit "J" was introduced in evidence by plaintiff-appellee alleging in its Complaint that:

> "18. Under date of 30 April 2001, TDLSI wrote BP Oil a letter admitting that the following stocks, collections and accounts receivable were still in their possession as of even date:
>
> | | |
> |---|---|
> | Amount collected against sales | ₱27,261,305.75 |
> | Accounts Receivable | 8,767,656.26 |
> | Estimated Value of Stocks | 1,155,000.00 |
>
> A copy of the 30 April 2001 letter of TDLSI is hereto attached as Annex "J" and made an integral part hereof."

In its Answer *Ad Cautelam* with Compulsory Counterclaim *Ad Cautelam*, defendant-appellant TDLSI averred, *viz.*:

> "17. Paragraph 18 is admitted, with qualification [that] TDLSI's letter dated 30 April 2001 was prepared and sent to BP Oil solely on the latter's representations that the figures were being sought only to negotiate a settlement of the parties' dispute and end the pending arbitration. Instead, in shocking bad faith, BP Oil refused to settle and made TDLSI's letter the basis of the instant Complaint."

Hence, while defendant-appellant admitted said Exhibit "J", it nevertheless qualified and limited said admission to, merely, the existence thereof. In fact, in its Comment to Plaintiff's Exhibits, defendant clearly stated:

> "(9) EXH. "J" – only the existence of the letter sent by Defendant to Plaintiff dated April 30, 2001, signed by Miguel de Asis and addressed to Hok Lee Hau, is admitted. The contents as well as the factual basis thereof, are not admitted. Besides, the circumstances leading to the sending of this letter were thoroughly explained by Miguel de Asis in his answer to Plaintiff's written interrogatories."

x x x x x x x x x

Evidently, the afore-quoted letter does not, in any way, categorically declare that the figures stated therein are "still in [the] possession of" or, in the hands of, defendant-appellant TDLSI. The "present value" of the accounts receivables, collections and stocks is one thing, the "value in possession or on hand" of said accounts is another.

Sans the above-discussed Exhibit "J", therefore, this Court is not convinced that plaintiff-appellee BP Oil was able to preponderantly establish its claim against defendant-appellant TDLSI in the amount of ₱36,440,351.79 for the value of the moneys, stock and accounts receivables which the latter allegedly refused to deliver to the former. As aptly argued by defendant-appellant TDLSI, the purported Acknowledgment Receipts and Delivery Receipts presented by plaintiff-appellee BP Oil the purpose of which is "to prove that TDLSI, through its General manager, Mr. Ivor Williams, acknowledged receipt and delivery of the stocks" are totally baseless since the same were never signed as having been "received by" said Mr. Ivor Williams. Hence, without the latter's signature, the purpose for which said documents were offered becomes nil.

The above findings of the CA are partially correct.

Exhibit "J" reads as follows:

Mr. Lau,

Some considerable time has passed since either party had the opportunity to review their respective position (sic) on the disagreement between us. It was pleasing to note that a discussion has now started between us again and you give the impression that a settlement is a better solution for both parties than to continue through the legal route.

The present value of stocks, collections and accounts receivable was requested. As of today, we can state the following:

Amount Collected against Sales	₱27,261,305.75
Accounts receivables	₱ 8,767,656.26
Estimated Value of Stocks	₱ 1,155,000.00

Please note that the stock value is estimated because the drums are no longer sealable due to their condition. However, this is not significant in number.

To the mind of the Court, Exh. "J" is not an actionable document but is an evidence that may be admissible and; hence, need not be denied under oath. Sections 7 and 8 of the 1997 Rules of Court provide:

Section 7. *Action or defense based on document*. – Whenever an action or defense is based upon a written instrument or document, the substance of such instrument or document shall be set forth in the pleading, and the original or a copy thereof shall be attached to the pleading as an exhibit, which shall be deemed to be a part of the pleading, or said copy may with like effect be set forth in the pleading.

Section 8. *How to contest such documents*. – When an action or defense is founded upon a written instrument, copied in or attached to the corresponding pleading as provided in the preceding Section, the genuineness and due execution of the instrument shall be deemed admitted unless the adverse party, under oath, specifically denied them, and sets forth what he claims to be the facts, but the requirement of an oath does not apply when the adverse party does not appear to be a party to the instrument or when compliance with an order for an inspection of the original instrument is refused.

A document, therefore, is actionable when an action or defense is grounded upon such written instrument or document. The complaint filed by petitioner is an action for collection of sum of money arising from the termination of the Agency Agreement with TDLSI. The CA, therefore, was correct when it stated that petitioner's cause of action is primarily based on the alleged non-payment of outstanding debts of respondent as well as the unremitted collections/payments and unsold stocks, despite demand. Thus, petitioner's cause of action is not based solely on the April 30, 2001 letter allegedly stating the "present value of stocks, collections and accounts receivables" of TDLSI. Noteworthy is the denial of respondent TDLSI's Demurrer to Evidence by the RTC because it clearly discussed petitioner's cause of action and the sufficiency of the evidence it presented, thus:

Upon consideration of the pleadings and arguments filed by the parties, the Court is convinced to DENY the demurrer.

The record shows that the plaintiff presented sufficient evidence that will preponderantly establish its claim against the defendant.

Among the evidence presented which might prove the claim or right to relief of the plaintiff against the defendant include (1) the purchase orders of TDLSI's third party customers; (2) original approved copies of the requests for approval sent by TDLSI to BP Oil from May 21, 1998 to August 14, 1999; (3) TDLSI invoices covering the products subject of the purchase orders and requests for approval; and (4) The sales invoices issued by BP Oil to TDLSI to its customers.

The aforesaid evidence presented was to the mind of the Court contain pertinent facts and such evidence will prove that the plaintiff has a cause of action against the defendant. As correctly pointed out by the plaintiff, TDLSI cannot premise its demurrer on any supposed lack of proof of delivery by BP Oil of certain moneys and receivables. The allegations in the complaint, as well as the evidence presented by BP Oil, establish that generated as they were by the sales made by TDLSI, the moneys and receivables have always been in TDLSI's possession and it is the obligation of the latter to deliver them to BP Oil.

The Court is of the view that the better way to weigh and decide this case based on merits is for the defendant to present its own evidence to refute the plaintiff's allegations. It is better that the defendant be given a day in court to prove its defenses in a full-blown trial.

The Court cannot just dismiss the case on the ground that upon the facts and law presented by the plaintiff it was not able to show a right to relief when in fact the evidence presented, testimonial and documentary, show otherwise and its claim appears to be meritorious. To ensure that justice would be served and that the case be decided on its real merits upon a careful review and appreciation of facts and evidence presented it would be best that defendant should instead present its own defenses in a formal trial and not just to dismiss the case allegedly in the absence of clear proof that plaintiff has no right to the reliefs prayed for.

Moreover, the Court noted that this case has been prolonged for so long and this Court can no longer allow any more delay to this case.

WHEREFORE, premises considered, the Demurrer to Evidence is hereby DENIED for lack of merit.[16]

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[16] *Rollo*, pp. 206-207. (Emphasis supplied)

It is basic that whoever alleges a fact has the burden of proving it because a mere allegation is not evidence.[17] In civil cases, the burden of proof is on the party who would be defeated if no evidence is given on either side.[18] The RTC's denial of TDLSI's Demurrer to Evidence shows and proves that petitioner had indeed laid a *prima facie* case in support of its claim. Having been ruled that petitioner's claim is meritorious, the burden of proof, therefore, was shifted to TDLSI to controvert petitioner's *prima facie* case.

The CA, however, ruled that while TDLSI admitted Exhibit "J", it nevertheless qualified and limited said admission to, merely, the existence thereof, thus, without Exhibit "J" the same court was not convinced that petitioner was able to preponderantly establish its claim against TDLSI in the amount of ₱36,440,351.79 for the value of the moneys, stock and accounts receivables which TDLSI allegedly refused to deliver to petitioner. This is erroneous. The fact is, TDLSI indeed admitted the existence of Exhibit "J". Thus, Exhibit "J" can be considered as an admission against interest. Admissions against interest are those made by a party to a litigation or by one in privity with or identified in legal interest with such party, and are admissible whether or not the declarant is available as a witness.[19] An admission against interest is the best evidence that affords the greatest certainty of the facts in dispute, based on the presumption that no man would declare anything against himself unless such declaration is true.[20] It is fair to presume that the

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[17] *Luxuria Homes, Inc. v. Court of Appeals,* G.R. No. 125986, January 28, 1999, 302 SCRA 315, 325; *Coronel v. Court of Appeals,* G.R. No. 103577, October 7, 1996, 263 SCRA 15, 35.

[18] *Pacific Banking Corporation Employees Organization v. Court of Appeals*, G.R. No. 109373, March 27, 1998, 288 SCRA 197, 206.

[19] *Alejandra S. Lazaro, et al. v. Modesta Agustin, et al.*, G.R. No. 152364, April 15, 2010, 618 SCRA 298, 308, citing *Unchuan v. Lozada*, G.R. No. 172671, April 16, 2009, 585 SCRA 421, 435.

[20] *Taghoy v. Tigol, Jr.,* G.R. No. 159665, August 3, 2010, 626 SCRA 341, 350, citing *Heirs of Miguel Franco v. Court of Appeals,* 463 Phil. 417, 425 (2003); *Yuliongsiu v. PNB*, 130 Phil. 575, 580 (1968); *Republic v. Bautista,*

declaration corresponds with the truth, and it is his fault if it does not.[21] No doubt, admissions against interest may be refuted by the declarant.[22] In this case, however, respondent failed to refute the contents of Exhibit "J".

Be that as it may, the qualification made by respondent in the admission of Exhibit "J" is immaterial as the contents thereof were merely corroborative of the other pieces of evidence presented by petitioner and that respondent failed in its defense, to present evidence to defeat the claim of petitioner. As aptly ruled by the RTC:

> After going over the allegations and the evidence presented by the parties, the Court finds as it did in its Order denying the Demurrer to Evidence of the defendant that the plaintiff presented sufficient evidence that will preponderantly establish its claim against the defendant. **The Court notes that apart from not presenting any evidence in support of its defense, the defendant did not really put up any serious defense to defeat the claim of the plaintiff, and its only remaining defense consisting of the right of retention given to agents under Articles 1912, 1913 and 1914 of the Civil Code, even if proven to exist, will not negate the finding that the plaintiff is entitled to the value of the moneys and stocks in the defendant's possession.**
>
> **To the mind of the court, the evidence presented by the plaintiff, unrebutted by any evidence on the part of the defendant and even aided by the admissions made by the defendant in its letter dated April 30, 2001 to the plaintiff (Exhibit "J"), proves that the plaintiff has a cause of action for the payment of the amount of Thirty-Six Million Nine Hundred Forty-Three Thousand Eight Hundred Twenty-Nine Pesos and Thirteen Centavos (₱36,943,829.13) for the value of the stocks and the moneys received and retained by the defendant in its possession pursuant to the Agreement with legal interest computed at 6% per annum from July 19, 2001, when formal demand (Exhibit "L") was made by**

G.R. No. 169801, September 11, 2007, 532 SCRA 598, 609; and *Bon v. People,* 464 Phil. 125, 138 (2004).

[21] *Rufina Patis Factory v. Alusitain*, 478 Phil. 544, 558 (2004).

[22] *Id.*

the plaintiff for the liquidated amount of ₱36,943,829.13, up to the finality of this decision up to the date of payment thereof.

Considering that the plaintiff was compelled to engage in litigation for almost 10 years, it must also be indemnified for the costs of suit corresponding to filing fees in the amount of ₱429,840.00 and attorney's fees equivalent to ₱1,500,000.00.[23]

Section 1,[24] Rule 133 of the Rules of Court mandates that in civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. By preponderance of evidence, according to *Raymundo v. Lunaria*,[25] [means] that the evidence as a whole adduced by one side is superior to that of the other. It refers to the weight, credit and value of the aggregate evidence on either side and is usually considered to be synonymous with the term "greater weight of evidence" or "greater weight of the credible evidence." It is evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto.

Upon close analysis, therefore, this Court is inclined to believe the findings of the RTC that petitioner was able to prove its case by a preponderance of evidence and that respondent failed to disprove petitioner's claim. As such, the CA gravely erred in reversing the decision of the RTC.

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[23] *Id*. at 104-105. (Emphasis supplied)

[24] Section 1. *Preponderance of evidence, how determined.* — "In civil cases, the party having burden of proof must establish his case by a preponderance of evidence. In determining where the preponderance or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which there are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility so far as the same may legitimately appear upon the trial. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number.

[25] G.R. No. 171036, October 17, 2008, 569 SCRA 526, 532.

A modification, however, must be made as to the rate of interest applied by the RTC. The RTC ordered the respondent to pay the amount adjudged "with legal interest computed at 6% *per annum* from July 19, 2001 up to the finality of the decision and at 12% *per annum* from finality of the decision up to the date of payment." Now, the interest imposed should be 12% *per annum* from July 19, 2001 until June 30, 2013 and 6% *per annum* from July 1, 2013 until full satisfaction per decision of this Court in *Secretary of the Department of Public Works and Highways, et al. v. Spouses Heracleo and Ramona Tecson*[26] which set forth the following guidelines:

In summary, the interest rates applicable to loans and forbearance of money, in the absence of an express contract as to such rate of interest, for the period of 1940 to present are as follows:

Law, Rule and Regulations, BSP Issuances	**Date of Effectivity**	**Interest Rate**
Act No. 2655	May 1, 1916	6%
CB Circular No. 416	July 29, 1974	12%
CB Circular No. 905	December 22, 1982	12%
CB Circular No. 799	July 1, 2013	6%

It is important to note, however, that interest shall be compounded at the time judicial demand is made pursuant to Article 2212[27] of the Civil Code of the Philippines, and sustained in *Eastern Shipping Lines v. Court of Appeals*,[28] then later on in *Nacar v. Gallery Frames*,[29] save for the reduction of interest rate to 6% for loans or forbearance of money, thus:

1. When the obligation is breached, and it consists in the payment of a sum of money, *i.e.*, a loan or forbearance of money, the interest due should be that which may have been stipulated in writing.

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[26] G.R. No. 179334, April 21, 2015 (Reso).

[27] Art. 2212. Interest due shall earn legal interest from the time it is judicially demanded, although the obligation may be silent upon this point.

[28] G.R. No. 97412, July 12, 1994, 234 SCRA 78.

[29] G.R. No. 189871, August 13, 2013, 703 SCRA 439.

Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 6% per annum to be computed from default, *i.e.*, from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.[30]

WHEREFORE, the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court dated November 10, 2014 of BP Oil and Chemicals International Philippines, Inc. is **GRANTED**. Consequently, the Decision dated April 30, 2014 of the Court of Appeals is **REVERSED** and **SET ASIDE** and the Decision dated January 21, 2011 of the Regional Trial Court, Branch 148, Makati City is **AFFIRMED** and **REINSTATED**, with the **MODIFICATION** that the interest imposed should be 12% *per annum* from July 19, 2001 until June 30, 2013 and 6% *per annum* from July 1, 2013 until fully paid.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 215910. February 6, 2017]

MANUEL C. UBAS, SR., *petitioner, vs.* **WILSON CHAN**, *respondent.*

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[30] *Nacar v. Gallery Frames, supra,* at 457-458.

[*] Designated Additional Member per Special Order No. 2416 dated January 4, 2017.

SYLLABUS

1. COMMERCIAL LAW; NEGOTIABLE INSTRUMENTS LAW; PRESUMPTION OF CONSIDERATION FOR EVERY NEGOTIABLE INSTRUMENT ISSUED; PREVAILS UNLESS SUFFICIENTLY REBUTTED.— Jurisprudence holds that "in a suit for a recovery of sum of money, as here, the plaintiff-creditor [(petitioner in this case)] has the burden of proof to show that defendant [(respondent in this case)] had not paid [him] the amount of the contracted loan. However, it has also been long established that where the plaintiff-creditor possesses and submits in evidence an instrument showing the indebtedness, a presumption that the credit has not been satisfied arises in [his] favor. Thus, the defendant is, in appropriate instances, required to overcome the said presumption and present evidence to prove the fact of payment so that no judgment will be entered against him." This presumption stems from Section 24 of the NIL, which provides that: Section 24. *Presumption of Consideration*.– Every negotiable instrument is deemed *prima facie* to have been issued for a valuable consideration; and every person whose signature appears thereon to have become a party thereto for value. x x x [Here] as the RTC correctly ruled, it is presumed that the subject checks were issued for a valid consideration, which therefore, dispensed with the necessity of any documentary evidence to support petitioner's monetary claim. Unless otherwise rebutted, the legal presumption of consideration under Section 24 of the NIL stands. Verily, "the vital function of legal presumption is to dispense with the need for proof."

2. ID.; ID.; ID.; SUBSTANTIATED BY PREPONDERANCE OF EVIDENCE.— Section 16 of the NIL provides that when an instrument is no longer in the possession of the person who signed it and it is complete in its terms, "a valid and intentional delivery by him is presumed until the contrary is proved," as in this case. In *Pacheco v. CA*, the Court has expressly recognized that a check "constitutes an evidence of indebtedness" and is a veritable "proof of an obligation." Hence, petitioner may rely on the same as proof of respondent's personal obligation to him. x x x Respondent was not able to overcome the presumption of consideration under Section 24 of the NIL and establish any of his affirmative defenses. On the other hand, as the holder of

> the subject [dishonored] checks which are presumed to have been issued for a valuable consideration, and having established his privity of contract with respondent, petitioner has substantiated his cause of action by a preponderance of evidence. "'Preponderance of evidence' is a phrase that, in the last analysis, means probability of the truth. It is evidence that is more convincing to the court as worthy of belief than that which is offered in opposition thereto."

APPEARANCES OF COUNSEL

Marlon Fritz Broto for petitioner.
Vicente A. Espina, Jr. for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] is the Decision[2] dated October 28, 2014 of the Court of Appeals (CA) in CA-G.R. CV No. 04024 dismissing the complaint filed by petitioner Manuel C. Ubas, Sr. (petitioner) for lack of cause of action.

The Facts

This case stemmed from a Complaint for Sum of Money with Application for Writ of Attachment[3] (Complaint) filed by petitioner against respondent Wilson Chan (respondent) before the Regional Trial Court of Catarman, Northern Samar, Branch 19 (RTC), docketed as Civil Case No. C-1071. In his Complaint, petitioner alleged that respondent, "doing business under the name and style of UNIMASTER," was indebted to

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[1] *Rollo*, pp. 3-26.

[2] *Id.* at 28-45. Penned by Associate Justice Ma. Luisa C. Quijano-Padilla, with Associate Justices Ramon Paul L. Hernando and Marie Christine Azcarraga-Jacob concurring.

[3] Dated December 14, 2001. Records, pp. 1-5.

him in the amount of ₱1,500,000.00, representing the price of boulders, sand, gravel, and other construction materials allegedly purchased by respondent from him for the construction of the Macagtas Dam in Barangay Macagtas, Catarman, Northern Samar (Macagtas Dam project). He claimed that the said obligation has long become due and demandable and yet, respondent unjustly refused to pay the same despite repeated demands.[4] Further, he averred that respondent had issued three (3) bank checks, payable to "CASH" in the amount of ₱500,000.00 each, on January 31, 1998, March 13, 1998, and April 3, 1998, respectively (subject checks),[5] but when petitioner presented the subject checks for encashment on June 29, 1998, the same were dishonored due to a stop payment order. As such, respondent was guilty of fraud in incurring the obligation.[6]

Respondent filed an Answer with Motion to Dismiss,[7] seeking the dismissal of the case on the following grounds: (*a*) the complaint states no cause of action, considering that the checks do not belong to him but to Unimasters Conglomeration, Inc. (Unimasters); (*b*) there is no contract that ever existed between him and petitioner; and (*c*) if petitioner even had a right of action at all, the complaint should not have been filed against him but against Unimasters, a duly registered construction company which has a separate juridical personality from him.[8]

During trial, petitioner testified that on January 1, 1998, he entered into a verbal agreement with respondent for the supply of gravel, sand, and boulders for the Macagtas Dam project.[9] He presented as the only proof of their business transaction

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[4] Petitioner's last demand was through a Demand Letter received by respondent on December 5, 2001 per Registry Return Receipt (see *id*. at 6).

[5] See *id*. at 7.

[6] See records, pp. 1-2 and *rollo*, pp. 15-16.

[7] Dated May 10, 2002. Records, pp. 23-30.

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

[9] See TSN, November 24, 2004, pp. 14-16 and TSN, January 31, 2005, p. 6.

the subject checks issued to him by respondent and delivered to his office by respondent's worker on different occasions.[10] He alleged that, at the behest of respondent, he only deposited the checks to his bank account on June 29, 1998.[11] When the checks were dishonored, petitioner demanded from respondent the value of the dishonored checks, but to no avail.[12] Apart from his own testimony, petitioner presented Jose Chie Ubas, the company operations manager of Ubas Construction, Inc., who testified that in 1998, he accompanied several deliveries of gravel, sand, and boulders to a certain project engineer named Paking dela Cruz at the Macagtas Dam project site, and that respondent issued checks for their payment; thus, he came to know that there was a transaction between them.[13] Petitioner also presented Francisco Barrelo, the former employee of Far East Bank, who testified that the subject checks were dishonored upon presentment because of a stop payment order by the bank.[14]

On the other hand, respondent presented Unimasters' comptroller, Belma Murillo (Murillo), who testified that Unimasters was contracted by the Department of Public Works and Highways for the Macagtas Dam project; that Engineer Ereberto Merelos (Engr. Merelos) was hired as project engineer tasked to supervise the work, the hiring of laborers, the delivery and payment of aggregates, and the payroll, and was likewise in charge of negotiating the supply of aggregates and the revolving fund for its payments; that the subject checks were issued for the replenishment of the revolving fund,[15] but Engr. Merelos lost the same sometime in January 1998; and that upon being informed about the loss of the checks, respondent, as President of Unimasters, instructed Murillo to issue a Stop

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[10] See TSN, November 24, 2004, pp. 16-17.

[11] See *id*. at 17-18.

[12] See *id*. at 22-24.

[13] See TSN, August 13, 2004, pp. 7-8 and 21-22.

[14] See TSN, November 24, 2004, pp. 3-4 and 9.

[15] See TSN, March 3, 2006, pp. 2, 9-15, and 22.

Payment Order on April 10, 1998.[16] Murillo belied petitioner's claim that the subject checks were given to the latter in payment of the aggregates and materials that he allegedly delivered for the Macagtas Dam project, considering that their office did not process any delivery receipt or proof of delivery of such aggregates by petitioner.[17]

For his part, respondent admitted to having issued the subject checks. However, he claimed that they were not issued to petitioner, but to Engr. Merelos for purposes of replenishing the project's revolving fund.[18] Respondent also described the procedure in the delivery of aggregates to their project sites, asserting that petitioner was not among their suppliers of aggregates for the Macagtas Dam project as, in fact, the latter never submitted any bill attaching purchase orders and delivery receipts for payments as other suppliers did.[19]

The RTC Ruling

In a Decision[20] dated January 30, 2008, the RTC ruled that petitioner had a cause of action against respondent. At the outset, it observed that petitioner's demand letter – which clearly stated the serial numbers of the checks, including the dates and amounts thereof – was not disputed by respondent. Also, it did not lend credence to respondent's claim that the subject checks were lost and only came into the possession of petitioner, considering the fact that petitioner mentioned the details of the subject checks in the said demand letter and, thus, would have incriminated himself had he actually stolen them.[21] It also took note that respondent did not file a case for theft in relation to the lost

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[16] See *id*. at 15-16 and 17-18.

[17] See *id*. at 17-18.

[18] See TSN, December 4, 2006, pp. 13-16.

[19] See *id*. at 7-9, 12, and 17-18.

[20] *Rollo*, pp. 46-59. Penned by Judge Norma Megenio Cardenas.

[21] *Id*. at 57.

checks found in possession of petitioner.[22] Thus, finding that respondent failed to overcome the disputable presumption that every party to an instrument acquired the same for a valuable consideration under Section 24 of Act No. 2031,[23] or the Negotiable Instruments Law (NIL), the RTC ordered him to pay petitioner the amount of ₱1,500,000.00 representing the principal obligation plus legal interests from June 1998 until fully paid, ₱40,000 as litigation expenses, ₱50,000 as attorney's fees, and cost of the suit.[24]

With the subsequent denial[25] of his motion for reconsideration,[26] respondent filed a notice of appeal.[27]

The CA Ruling

In a Decision[28] dated October 28, 2014, the CA reversed and set aside the RTC's ruling, dismissing petitioner's complaint on the ground of lack of cause of action.

It held that respondent was not the proper party defendant in the case, considering that the drawer of the subject checks was Unimasters, which, as a corporate entity, has a separate and distinct personality from respondent. It observed that the subject checks cannot be validly used as proof of the alleged transactions between petitioner and respondent, since from the face of these checks alone, it is readily apparent that they are not personal checks of the former. Thus, if at all, the said checks can only serve as evidence of transactions between Unimasters and petitioner.[29] Accordingly, Unimasters is an indispensable

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[22] *Id*.

[23] Enacted on February 3, 1911.

[24] *Rollo*, p. 58.

[25] See Resolution dated August 19, 2008; records, pp. 347-348.

[26] Dated February 26, 2008; *id*. at 322-330.

[27] Dated September 19, 2008; *id*. at 351-353.

[28] *Rollo*, pp. 28-45.

[29] See *id*. at 41-42.

party, and since it was not impleaded, the court had no jurisdiction over the case.[30]

In any event, the CA found that petitioner's claim of unpaid deliveries had no merit, given that not a single delivery receipt, trip ticket or similar document was presented to establish the delivery of construction materials to respondent.[31] Further, the CA gave scant consideration to petitioner's argument that respondent and Unimasters should be treated as one and the same under the doctrine of piercing the veil of corporate fiction because not only was the issue raised for the first time on appeal, but that the records bear no evidence that would establish the factual conditions for the application of the doctrine.[32]

Hence, the instant petition.

The Issue Before the Court

The sole issue in this case is whether or not the CA erred in dismissing petitioner's complaint for lack of cause of action.

The Court's Ruling

The petition is meritorious.

Cause of action is defined as the act or omission by which a party violates a right of another. It is well-settled that the existence of a cause of action is determined by the allegations in the complaint.[33]

In this case, petitioner's cause of action is anchored on his claim that respondent personally entered into a contract with him for the delivery of construction materials amounting to ₱1,500,000.00, which was, however, left unpaid. He also avers that respondent is guilty of fraud in the performance of said obligation because the subject checks issued to him by respondent

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[30] *Id.* at 42.

[31] *Id.* at 43.

[32] See *id.* at 43-44.

[33] *Heirs of Ypon v. Ricaforte*, 713 Phil. 570, 574-575 (2013).

were dishonored on the ground of stop payment. As proof, petitioner offered in evidence, among others, the demand letter he sent to respondent detailing the serial numbers of the checks that were issued by the latter, including the dates and amounts thereof. He also offered the dishonored checks which were in his possession.

Respondent neither disputes the fact that he had indeed signed the subject checks nor denies the demand letter sent to him by petitioner. Nevertheless, he claims that the checks were not issued to petitioner but to the project engineer of Unimasters who, however, lost the same. He also disclaims any personal transaction with petitioner, stating that the subject checks were in fact, issued by Unimasters and not him. Besides, petitioner failed to present any documentary proof that he or his firm delivered construction materials for the Macagtas Dam project.

The Court finds for petitioner.

Jurisprudence holds that "in a suit for a recovery of sum of money, as here, the plaintiff-creditor [(petitioner in this case)] has the burden of proof to show that defendant [(respondent in this case)] had not paid [him] the amount of the contracted loan. However, it has also been long established that where the plaintiff-creditor possesses and submits in evidence an instrument showing the indebtedness, a presumption that the credit has not been satisfied arises in [his] favor. Thus, the defendant is, in appropriate instances, required to overcome the said presumption and present evidence to prove the fact of payment so that no judgment will be entered against him."[34] This presumption stems from Section 24 of the NIL, which provides that:

> Section 24. *Presumption of Consideration.* – Every negotiable instrument is deemed *prima facie* to have been issued for a valuable consideration; and every person whose signature appears thereon to have become a party thereto for value.

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[34] *Ting Ting Pua v. Sps. Lo Bun Tiong*, 720 Phil. 511, 524 (2013).

As mentioned, petitioner had presented in evidence the three (3) dishonored checks which were undeniably signed by respondent. During trial, respondent admitted to the following:

> [Atty. Arturo Villarin] Q: Showing to you this check dated January 31, 1998 x x x, please go over this check and tell the Honorable Court if that is the same check that you issued as replenishment for the revolving fund?
>
> x x x x x x x x x
>
> [Respondent] **A: Yes, this is the check I signed.**
>
> Q: At the right bottom portion of this check is a signature, whose signature is this?
>
> **A: That is my signature.**
>
> Q: Likewise, for the month of March 13, 1998[,] there is a check in the amount of [₱500,000.00]. Is this also the check that you issued as replenishment for the project?
>
> **A: Yes, Sir.**[35] (Emphases supplied)

Hence, as the RTC correctly ruled, it is presumed that the subject checks were issued for a valid consideration, which therefore, dispensed with the necessity of any documentary evidence to support petitioner's monetary claim. Unless otherwise rebutted, the legal presumption of consideration under Section 24 of the NIL stands. Verily, "the vital function of legal presumption is to dispense with the need for proof."[36]

Respondent's defense that the subject checks were lost and, thus, were not actually issued to petitioner is a factual matter already passed upon by the RTC. As aptly pointed out by the trial court, it would have been contrary to human nature and experience for petitioner to send respondent a demand letter detailing the particulars of the said checks if he indeed unlawfully obtained the same. In fact, it is glaring that respondent did not present Engr. Merelos, the project engineer who had purportedly

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[35] TSN, December 4, 2006, p. 14-15.

[36] *Malic v. Workmen's Compensation Commission*, 182 Phil. 5, 8 (1979).

lost the checks, to personally testify on the circumstances surrounding the checks' loss. Further, Unimasters' comptroller, Murillo, testified during trial that "she came to know that the lost checks were deposited in the account of [petitioner as] she was informed by the [o]ffice[r]-in-charge of the drawee bank, the Far East Bank of Tacloban, City Branch."[37] However, there was no showing that Unimasters and/or respondent commenced any action against petitioner to assert its interest over a significant sum of ₱1,500,000.00 relative to the checks that were supposedly lost/stolen. Clearly, this paucity of action under said circumstances is again, inconsistent with ordinary human nature and experience. Thus, absent any cogent reason to the contrary, the Court defers to the RTC's findings of fact on this matter. In *Madrigal v. CA*,[38] it was explained that:

> The Supreme Court's jurisdiction is limited to reviewing errors of law that may have been committed by the lower court. The Supreme Court is not a trier of facts. It leaves these matters to the lower court, which [has] more opportunity and facilities to examine these matters. This same Court has declared that it is the policy of the Court to defer to the factual findings of the trial judge, who has the advantage of directly observing the witnesses on the stand and to determine their demeanor whether they are telling or distorting the truth.[39]

Besides, Section 16 of the NIL provides that when an instrument is no longer in the possession of the person who signed it and it is complete in its terms, "a valid and intentional delivery by him is presumed until the contrary is proved," as in this case.

In *Pacheco v. CA*,[40] the Court has expressly recognized that a check "constitutes an evidence of indebtedness" and is a veritable "proof of an obligation." Hence, petitioner may rely

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[37] *Rollo*, p. 54.

[38] 496 Phil. 149 (2005).

[39] *Id*. at 156, citing *Bernardo v. CA*, G.R. No. 101680, December 7, 1992, 216 SCRA 224, 232.

[40] See 377 Phil. 627 (1999).

on the same as proof of respondent's personal obligation to him.

Although the checks were under the account name of Unimasters, it should be emphasized that the manner or mode of payment does not alter the nature of the obligation. The source of obligation, as claimed by petitioner in this case, stems from his contract with respondent. When they agreed upon the purchase of the construction materials on credit for the amount of ₱1,500,000,00, the contract between them was perfected.[41] Therefore, even if corporate checks were issued for the payment of the obligation, the fact remains that the juridical tie between the two (2) parties was already established during the contract's perfection stage and, thus, does not preclude the creditor from proceeding against the debtor during the contract's consummation stage.

That a privity of contract exists between petitioner and respondent is a conclusion amply supported by the averments and evidence on record in this case.

First, the Court observes that petitioner was consistent in his account that he directly dealt with respondent in his personal and not merely his representative capacity. In his Complaint, petitioner alleged that "[Chan, doing business under the name and style of Unimaster] is indebted to [him] in the amount [₱1,500,000.00] x x x."[42]

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[41] "An obligation is a juridical necessity to give, to do or not to do (Art. 1156, Civil Code). The obligation is constituted upon the concurrence of the essential elements thereof, *viz.*: (a) The *vinculum juris* or juridical tie which is the efficient cause established by the various sources of obligations (law, contracts, *quasi*-contracts, *delicts* and *quasi-delicts*); (b) the object which is the prestation or conduct, required to be observed (to give, to do or not to do); and (c) the subject-persons who, viewed from the demandability of the obligation, are the active (obligee) and the passive (obligor) subjects." (*Asuncion v. CA*, G.R. No. 109125, December 2, 1994, 238 SCRA 602, 610.)

[42] Records, p. 1.

Moreover, the demand letter, which was admitted by respondent, was personally addressed to respondent and not to Unimasters as represented by the latter.[43]

Also, it deserves mentioning that in his testimony before the RTC, petitioner explained that he delivered the construction materials to respondent absent any written agreement due to his trust on the latter, *viz.*:

[Atty. Daniel Arnold Añover] Q: So, when you delivered the aggregates, did you agree to deliver the aggregates to Mr. Chan the defendant in this case, you did not put the terms into writing? Am I correct?

[Petitioner] A: None, because it is verbal only, because I trusted him being a contractor.

x x x x x x x x x

Q: Now, Mr. Witness you said that you trusted Mr. Chan, am I correct?

A: Yes, Sir.

Q: And that he promised you several times that he would pay you?

A: Yes, he promised me many times.

Q: And yet you still hold all these checks for security? Correct?

A: Yes Sir.

Q: Now, Mr. Witness, you said that you trusted Mr. Chan, then why did you not just handed [sic] over the checks to him, because you said you trusted him?

A: How many times I gone to Tacloban and I went to Unimaster Office but they referred me to the Leyte Park Hotel, since they are no longer in good terms with Mr. Wilson Chan so they referred me to Leyte Park Hotel and then I went to Mr. Chan he promised that he will pay me and after several months again, the same will be paid next month because there will be final inspection I even let him borrow my equipment for free and hoping that the checks will be funded but again he lied.[44]

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[43] *Id*. at 6. See also *rollo,* p. 57.

[44] TSN, January 31, 2005, pp. 6-7.

This squares with respondent's own testimony, wherein he stated that every time he wanted to have supplies delivered for the Macagtas Dam project, he would not enter into any written contract:

[Atty. Marlonfritz Broto] Q: [Okay], now having read this particular statement Mr. Witness would you agree with this representation that every time **you want to have supplies in Macagtas dam you do not enter into contract** as you testified here a while ago?

[Respondent] A: Yes, Sir.[45] (Emphasis supplied)

Petitioner further testified that he personally demanded the value of the subject checks from respondent in his office, *viz.*:

[Atty. Daniel Arnold Añover] Q: Now, Mr. Witness you said that you visited Leyte Park Hotel several times, am I correct?

[Petitioner] A: I think once or twice to demand from Mr. Wilson Chan.

Q: And of course, you were able to see Mr. Chan personally?

A: Yes, we had the conversation.

x x x x x x x x x

Q: So you are saying you are talking to him in his office?

A: Yes, apparently, it was his Office.

x x x x x x x x x

Q: You said that when you were there you were just talking each other [sic] and you were taking coffee and made promises, right?

A: Yes, sir.[46]

Notably, these statements were considered undisputed. Hence, the same are binding on the parties.

In fine, the Court holds that the CA erred in dismissing petitioner's complaint against respondent on the ground of lack

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[45] TSN, December 4, 2006, p. 24.

[46] TSN, January 31, 2005, p. 17.

of cause of action. Respondent was not able to overcome the presumption of consideration under Section 24 of the NIL and establish any of his affirmative defenses. On the other hand, as the holder of the subject checks which are presumed to have been issued for a valuable consideration, and having established his privity of contract with respondent, petitioner has substantiated his cause of action by a preponderance of evidence. "'Preponderance of evidence' is a phrase that, in the last analysis, means probability of the truth. It is evidence that is more convincing to the court as worthy of belief than that which is offered in opposition thereto."[47] Consequently, petitioner's Complaint should be granted.

WHEREFORE, the petition is **GRANTED**. The Decision dated October 28, 2014 of the Court of Appeals in CA-G.R. CV No. 04024 is hereby **SET ASIDE**. The Decision dated January 30, 2008 of the Regional Trial Court of Catarman, Northern Samar, Branch 19 in Civil Case No. C-1071 is **REINSTATED**.

SO ORDERED.

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

EN BANC

[A.C. No. 5408. February 7, 2017]

ANITA SANTOS MURRAY, *complainant, vs.* **ATTY. FELICITO J. CERVANTES,** *respondent.*

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[47] *Heirs of Lim v. Lim*, 628 Phil. 40, 48 (2010).

SYLLABUS

1. **LEGAL ETHICS; LAWYERS; FAILURE TO TIMELY AND DILIGENTLY DELIVER ON HIS PROFESSIONAL UNDERTAKING AND FAILURE TO KEEP COMPLAINANT ABREAST OF RELEVANT DEVELOPMENTS THEREIN; RETURN OF ₱80,000.00 PAID BY COMPLAINANT TO LAWYER FOR SERVICES NOT RENDERED IS PROPER.—** It is evident from the records that respondent failed to deliver on the services that he committed to complainant despite receiving the amount of ₱80,000.00 as acceptance fee. x x x [R]espondent failed to communicate with complainant or update her on the progress of the services that he was supposed to render. x x x [H]e also failed to respond to complainant's queries and requests for updates. Respondent's failure to timely and diligently deliver on his professional undertaking justifies the Integrated Bar of the Philippines' conclusion that he must restitute complainant the amount of ₱80,000.00. x x x This amount was delivered to respondent during complainant's engagement of his professional services, or in the context of an attorney-client relationship. This is neither an extraneous nor purely civil matter. x x x [Indeed,] respondent falls short of the standards imposed by Canon 18 of the Code of Professional Responsibility: [that] A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE.

2. **ID.; ID.; ID.; ID.; AS LAWYER ACKNOWLEDGED HIS DUTY TO COMPENSATE COMPLAINANT AND MADE A COMMITMENT TO RETURN THE LATTER THE SUM PAID, FAILURE TO DELIVER ON THE SAME FOR MORE THAN A DECADE WARRANTS A PENALTY MORE SEVERE THAN INITIALLY CONTEMPLATED.—** [D]uring the proceedings before the Integrated Bar of the Philippines, respondent acknowledged his duty to compensate complainant for the amount of ₱80,000.00. He then made a commitment to return that sum to her. To date, however, he has failed to deliver on the commitment made almost twelve and a half years ago. We clarify that the oral instruction given to respondent in the Integrated Bar of the Philippines' August 18, 2004 hearing was not a juridically binding order. x x x Nevertheless, respondent acknowledged his duty to compensate

> complainant for the amount of ₱80,000.00 and made his own commitment to make this compensation. He may not have been bound by a juridical instruction, but he was certainly bound by his own honor. That he has failed to adhere to his own freely executed commitment after more than a decade speaks volumes of how he has miserably failed to live up to the "high standard of ... morality, honesty, integrity and fair dealing" that is apropos to members of the legal profession. For this reason, we exact upon respondent a penalty more severe than that initially contemplated by the Integrated Bar of the Philippines Board of Governors. Moreover, to impress upon respondent the urgency of finally returning to complainant the amount he received, we impose on him an additional penalty corresponding to the duration for which he fails to make restitution. We adopt the Integrated Bar of the Philippines Board of Governors' position in Resolution No. XVI-2004-481 that an additional period of suspension must be imposed on respondent for every month (or fraction) that he fails to pay in full the amount he owes complainant. x x x [H]e is to be suspended for one (1) month for every such period of failure to make full payment.

APPEARANCES OF COUNSEL

Roberto C. Bermejo for complainant.

R E S O L U T I O N

LEONEN, *J.*:

We sustain, with modification, the Integrated Bar of the Philippines Board of Governors' Resolution No. XVI-2004-481[1] and Resolution No. XVIII-2008-711.[2]

Resolution No. XVI-2004-481 modified the Board of Governors' Resolution No. XV-2002-599.[3] The latter ruled that respondent Atty. Felicito J. Cervantes must be reprimanded

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[1] *Rollo,* p. 278.

[2] *Id*. at 275.

[3] *Id*. at 132.

and ordered to return to complainant Anita Santos Murray the sum of ₱80,000.00.[4] Resolution No. XVI-2004-481 modified this with the penalty of one (1)-year suspension from the practice of law, with an additional three (3)-month suspension for every month (or fraction) that respondent is unable to deliver to complainant the sum of ₱80,000.00.[5] Resolution No. XVIII-2008-711 denied respondent's Motion for Reconsideration.[6]

On February 2, 2001, complainant filed before this Court a Complaint[7] charging respondent with violating Canon 18[8] of the Code of Professional Responsibility.

Complainant alleged that sometime in June 2000, she sought the services of a lawyer to assist in the naturalization (that is, acquisition of Philippine citizenship) of her son, Peter Murray, a British national. Respondent was later introduced to her. On June 14, 2000, she and respondent agreed on the latter's services, with complainant handing respondent the sum of ₱80,000.00 as acceptance fee.[9]

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[4] *Id*.

[5] *Id*. at 278.

[6] *Id*. at 275.

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

[8] Code of Professional Responsibility, Canon 18 provides:

CANON 18 – A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE.

Rule 18.01 – A lawyer shall not undertake a legal service which he knows or should know that he is not qualified to render. However, he may render such service if, with the consent of his client, he can obtain as collaborating counsel a lawyer who is competent on the matter.

Rule 18.02 – A lawyer shall not handle any legal matter without adequate preparation.

Rule 18.03 – A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

Rule 18.04 – A lawyer shall keep the client informed of the status of his case and shall respond within a reasonable time to the client's request for information.

[9] *Rollo*, p. 133.

About three (3) months passed without respondent doing "anything substantial."[10] Thus, on September 11, 2000, complainant wrote respondent to inform him that she was terminating his services. She explained:

> I am not satisfied with the way things are going regarding my petition. I am expecting that you keep me abreast of your activities but I am left in the dark as to what have you done so far. You do not show up on our scheduled appointments nor do you call me up to let me know why you cannot come. You stood me up twice already which shows that you are not even interested in my case.
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> . . . . . .
>
> Since I already paid the ₱80,000.00 acceptance fee in full, I expect to get a refund of the same from you.[11]

As respondent failed to return the ₱80,000.00 acceptance fee, complainant instituted the Complaint in this case. She also instituted criminal proceedings against respondent for violation of Article 315(1)(b)[12] of

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[10] *Id*. at 134.

[11] *Id*.

[12] REV. PEN. CODE, Art. 315 provides:

Article 315. Swindling (Estafa). – Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

1st. The penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period, if the amount of the fraud is over 12,000 pesos but does not exceed 22,000 pesos, and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos; but the total penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be.

2nd. The penalty of *prision correccional* in its minimum and medium periods, if the amount of the fraud is over 6,000 pesos but does not exceed 12,000 pesos;

3rd. The penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period if such amount is over 200 pesos but does not exceed 6,000 pesos; and

the Revised Penal Code.[13]

This case was subsequently referred to the Integrated Bar of the Philippines for its investigation, report, and recommendation.[14]

After the proceedings before the Integrated Bar of the Philippines, Investigating Commissioner Demaree J.B. Raval (Commissioner Raval) furnished a Report[15] dated September 9, 2002 recommending that respondent be reprimanded and required to return the sum of ₱80,000.00 to complainant. In its Resolution No. XV-2002-599,[16] the Integrated Bar of the Philippines Board of Governors adopted Commissioner Raval's recommendations.

Respondent filed before this Court a Motion for Leave to Admit Additional Evidence with Motion to Dismiss.[17] He asserted that he never required complainant to immediately pay him ₱80,000.00 as acceptance fee.[18] This Motion was forwarded to the Integrated Bar of the Philippines[19] and was treated as

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4[th]. By *arresto mayor* in its maximum period, if such amount does not exceed 200 pesos, provided that in the four cases mentioned, the fraud be committed by any of the following means:

1. With unfaithfulness or abuse of confidence, namely:

. . . .

(b) By misappropriating or converting, to the prejudice of another, money, goods, or any other personal property received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of or to return the same, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property.

[13] *Rollo,* p. 134.

[14] *Id.* at 65, Resolution dated September 17, 2001.

[15] *Id.* at 133-137.

[16] *Id.* at 132.

[17] *Id.* at 140-148.

[18] *Id.* at 141-142.

[19] *Id.* at 183.

respondent's Motion for Reconsideration.[20] For her part, complainant filed several manifestations and motions asking that a heavier penalty be imposed on respondent.[21]

Acting on the pending incidents of the case, Investigating Commissioner Dennis A.B. Funa (Commissioner Funa) furnished a Report[22] recommending that respondent be suspended from the practice of law for one (1) year, with an additional three (3)-month suspension for every month (or fraction) that respondent fails to deliver to complainant the sum of ₱80,000.00.

Commissioner Funa justified the penalty of suspension by emphasizing that, in a hearing conducted by the Integrated Bar of the Philippines on August 18, 2004, respondent was "orally directed" to return the ₱80,000.00 not later than the end of August 2004.[23] Respondent acceded to this; however, he failed to return the ₱80,000.00.[24]

In its Resolution No. XVI-2004-481,[25] the Board of Governors adopted Commissioner Funa's recommendation.

The Board of Governors' Resolution No. XVIII-2008-711 later denied respondent's Motion for Reconsideration.[26]

It is evident from the records that respondent failed to deliver on the services that he committed to complainant despite receiving the amount of ₱80,000.00 as acceptance fee. Although respondent asserted that he did not actively solicit this amount from complainant, it remains, as Commissioner Funa underscored, that respondent accepted this amount as

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[20] *Id*. at 227.

[21] *Id*. at 186-187, 190-191, 197-198, 201-202, 204-205.

[22] *Id*. at 226-229.

[23] *Id*. at 228.

[24] *Id*.

[25] *Id*. at 225.

[26] *Id*. at 275.

consideration for his services.[27] Moreover, following complainant's engagement of his services, respondent failed to communicate with complainant or update her on the progress of the services that he was supposed to render. Not only did he fail in taking his own initiative to communicate; he also failed to respond to complainant's queries and requests for updates.

Respondent's failure to timely and diligently deliver on his professional undertaking justifies the Integrated Bar of the Philippines' conclusion that he must restitute complainant the amount of ₱80,000.00.

Luna v. Galarrita[28] has explained the parameters for ordering restitution in disciplinary proceedings:

> In *Ronquillo v. Atty. Cezar*, the parties entered a Deed of Assignment after which respondent received ₱937,500.00 from complainant as partial payment for the townhouse and lot. However, respondent did not turn over this amount to developer Crown Asia, and no copy of the Contract to Sell was given to complainant. This court suspended Atty. Cezar from the practice of law for three (3) years, but did not grant complainant's prayer for the return of the ₱937,500.00.
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> *Ronquillo* held that "[d]isciplinary proceedings against lawyers do not involve a trial of an action, but rather investigations by the court into the conduct of one of its officers." Thus, disciplinary proceedings are limited to a determination of "whether or not the attorney is still fit to be allowed to continue as a member of the Bar."
>
> Later jurisprudence clarified that this rule excluding civil liability determination from disciplinary proceedings "remains applicable only to claimed liabilities which are purely civil in nature — for instance, when the claim involves moneys received by the lawyer from his client in a transaction separate and distinct [from] and not intrinsically linked to his professional engagement." This court has thus ordered

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[27] *Id*. at 228.

[28] A.C. No. 10662, July 7, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/july2015/10662.pdf> [Per *J*. Leonen, *En Banc*].

in administrative proceedings the return of amounts representing legal fees.

This court has also ordered restitution as concomitant relief in administrative proceedings when respondent's civil liability was already established:

> Although the Court renders this decision in an administrative proceeding primarily to exact the ethical responsibility on a member of the Philippine Bar, the Court's silence about the respondent lawyer's legal obligation to restitute the complainant will be both unfair and inequitable. No victim of gross ethical misconduct concerning the client's funds or property should be required to still litigate in another proceeding what the administrative proceeding has already established as the respondent's liability. That has been the reason why the Court has required restitution of the amount involved as a concomitant relief in the cited cases of *Mortera v. Pagatpatan*, *Almendarez, Jr. v. Langit*, *Small v. Banares*.[29] (Citations and emphases omitted)

It is proper, in the course of these disciplinary proceedings, that respondent be required to return to complainant the amount of ₱80,000.00. This amount was delivered to respondent during complainant's engagement of his professional services, or in the context of an attorney-client relationship. This is neither an extraneous nor purely civil matter.

By the same failure to timely and diligently deliver on his professional undertaking (despite having received fees for his services), as well as by his failure to keep complainant abreast of relevant developments in the purposes for which his services were engaged, respondent falls short of the standards imposed by Canon 18 of the Code of Professional Responsibility:

CANON 18 — A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE.

Rule 18.01 — A lawyer shall not undertake a legal service which he knows or should know that he is not qualified to render. However,

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[29] *Id.* at 13-14.

he may render such service if, with the consent of his client, he can obtain as collaborating counsel a lawyer who is competent on the matter.

Rule 18.02 – A lawyer shall not handle any legal matter without adequate preparation.

Rule 18.03 – *A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.*

Rule 18.04 – *A lawyer shall keep the client informed of the status of his case and shall respond within a reasonable time to the client's request for information.* (Emphasis supplied)

Disciplinary sanctions more severe than those considered proper by the Integrated Bar of the Philippines are warranted.

We emphasize that, during the proceedings before the Integrated Bar of the Philippines, respondent acknowledged his duty to compensate complainant for the amount of ₱80,000.00. He then made a commitment to return that sum to her. To date, however, he has failed to deliver on the commitment made almost twelve and a half years ago.

We clarify that the oral instruction given to respondent in the Integrated Bar of the Philippines' August 18, 2004 hearing was not a juridically binding order. Rule 139-B of the Rules of Court sanctions and spells out the terms of the Integrated Bar of the Philippines' involvement in cases involving the disbarment and/or discipline of lawyers. The competence of the Integrated Bar of the Philippines is only recommendatory. Under Article VIII, Section 5(5)[30] of the 1987 Constitution, only this Court has the power to actually rule on disciplinary cases of lawyers, and to impose appropriate penalties.

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[30] CONST., Art. VIII, Sec. 5 provides:

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

. . . .

(5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to

Rule 139-B merely delegates investigatory functions to the Integrated Bar of the Philippines. With the exercise of its delegated investigatory power, the Integrated Bar of the Philippines refers proposed actions to this Court. Recognizing the Integrated Bar of the Philippines' limited competence in disciplinary cases impels a concomitant recognition that, pending favorable action by this Court on its recommendations, its determinations and conclusions are only provisional. Therefore, rulings on disciplinary cases attain finality and are enforceable only upon this Court's own determination that they must be imposed.

The oral instruction given to respondent in the August 18, 2004 hearing has, thus, not attained such a degree of finality as would immutably require him to comply, such that failure to comply justifies additional or increased penalties. Penalizing him for non-compliance is premature.

Nevertheless, respondent acknowledged his duty to compensate complainant for the amount of ₱80,000.00 and made his own commitment to make this compensation.[31] He may not have been bound by a juridical instruction, but he was certainly bound by his own honor. That he has failed to adhere to his own freely executed commitment after more than a decade speaks volumes of how he has miserably failed to live up to the "high standard of . . . morality, honesty, integrity and fair dealing"[32] that is apropos to members of the legal profession.

For this reason, we exact upon respondent a penalty more severe than that initially contemplated by the Integrated Bar of the Philippines Board of Governors. Moreover, to impress upon respondent the urgency of finally returning to complainant

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the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.

[31] *Rollo,* p. 228.

[32] *Ventura v. Samson*, 699 Phil. 404, 407 (2012) [*Per Curiam*, *En Banc*].

the amount he received, we impose on him an additional penalty corresponding to the duration for which he fails to make restitution. We adopt the Integrated Bar of the Philippines Board of Governors' position in Resolution No. XVI-2004-481 that an additional period of suspension must be imposed on respondent for every month (or fraction) that he fails to pay in full the amount he owes complainant. However, instead of a three (3)-month suspension for every month (or fraction) of non-payment or incomplete payment, he is to be suspended for one (1) month for every such period of failure to make full payment.

This approach hopefully underscores the burden that respondent must justly carry. By automatically extending his suspension should he not return the amount, we save complainant, the victim, from the additional costs of having to find and retain another counsel to compel the return of what is due her. Counsels who have caused harm on their clients must also suffer the costs of restitution.

WHEREFORE, respondent Atty. Felicito J. Cervantes is **SUSPENDED** from the practice of law for one (1) year and six (6) months. He is **ORDERED** to restitute complainant Anita Santos Murray the sum of ₱80,000.00. For every month (or fraction) the he fails to fully restitute complainant the sum of ₱80,000.00, respondent shall suffer an additional suspension of one (1) month.

He is likewise **WARNED** that a repetition of similar acts shall be dealt with more severely.

Let copies of this Resolution be served on the Office of the Bar Confidant, the Integrated Bar of the Philippines, and all courts in the country for their information and guidance. Let a copy of this Resolution be attached to respondent's personal record as attorney.

SO ORDERED.

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

Caguioa, J., on leave.

EN BANC

[A.M. No. 17-01-04-SC. February 7, 2017]

RE: COMPLAINT OF AERO ENGR. DARWIN A. RECI AGAINST COURT ADMINISTRATOR JOSE MIDAS P. MARQUEZ AND DEPUTY COURT ADMINISTRATOR THELMA C. BAHIA RELATIVE TO CRIMINAL CASE NO. 05-236956

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICIALS; GROSS NEGLECT OF DUTY; REQUIRES SUBSTANTIAL EVIDENCE.— Dereliction of duty may be classified as gross or simple neglect of duty or negligence. Gross neglect of duty or gross negligence "refers to negligence characterized by the want of even slight care, or by acting or omitting to act in a situation where there is a duty to act, not inadvertently but wilfully and intentionally, with a conscious indifference to the consequences, insofar as other persons may be affected. It is the omission of that care that even inattentive and thoughtless men never fail to give to their own property." It denotes a flagrant and culpable refusal or unwillingness of a person to perform a duty. In cases involving public officials, gross negligence occurs when a breach of duty is flagrant and palpable. In contrast, simple neglect of duty means the failure of an employee or official to give proper attention to a task expected of him or her, signifying a "disregard of a duty resulting from carelessness or indifference." In this relation, it is settled that the quantum of evidence necessary to find an individual liable for the aforesaid offenses is substantial evidence, or "that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion." Substantial evidence does not necessarily mean preponderant proof as required in ordinary civil cases, but such kind of relevant evidence as a reasonable mind might accept as adequate to support a conclusion or evidence commonly accepted by reasonably prudent men in the conduct of their affairs.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

The instant administrative case arose from a single-paged Administrative Complaint dated August 20, 2016 filed by complainant Aero Engr. Darwin A. Reci (complainant) charging Court Administrator Jose Midas P. Marquez (CA Marquez) and Deputy Court Administrator Thelma C. Bahia (DCA Bahia) with Gross Negligence and Dereliction of Duty.

The Facts

Complainant alleges that he is the older brother of PO2 Dennis Azuela Reci (PO2 Reci), the accused in Criminal Case No. 05-236956 for the crime of Qualified Trafficking in Persons defined and penalized under Section 6 of Republic Act No. 9208, otherwise known as the "Anti-Trafficking in Persons Act of 2003," docketed before the Regional Trial Court of the City of Manila, Branch 9 (RTC) and presided by Judge Amelia Tria Infante (Judge Infante). It appears that PO2 Reci was convicted in the said case, and as such, his counsel filed a Notice of Appeal before the RTC. According to complainant, he discovered that after three (3) long years from the filing of said notice, the case records have yet to be transmitted to the Court of Appeals, and that it was only after his subsequent prodding that such transmittal was made. Complainant further alleges that while the delayed transmittal resulted in administrative sanctions meted by the Second Division of the Court (*i.e.*, reprimand and warning), he feels that the same were insufficient as there were no penalties imposed upon the clerk of court and the court stenographer of the RTC. Thus, he filed the instant complaint accusing CA Marquez and DCA Bahia of Gross Negligence and Dereliction of Duty "for failing to monitor the gross incompetence of [Judge Infante]" in the transmittal of the records of Criminal Case No. 05-236956 to the Court of Appeals in due time. Complainant insists that CA Marquez and DCA Bahia were equally responsible for the

aforesaid delay, and thus, should also be held administratively liable.[1]

The Issue Before the Court

The sole issue raised for the Court's resolution is whether or not CA Marquez and DCA Bahia should be held administratively liable for Gross Negligence and Dereliction of Duty.

The Court's Ruling

Dereliction of duty may be classified as gross or simple neglect of duty or negligence. Gross neglect of duty or gross negligence "refers to negligence characterized by the want of even slight care, or by acting or omitting to act in a situation where there is a duty to act, not inadvertently but wilfully and intentionally, with a conscious indifference to the consequences, insofar as other persons may be affected. It is the omission of that care that even inattentive and thoughtless men never fail to give to their own property." It denotes a flagrant and culpable refusal or unwillingness of a person to perform a duty. In cases involving public officials, gross negligence occurs when a breach of duty is flagrant and palpable.[2] In contrast, simple neglect of duty means the failure of an employee or official to give proper attention to a task expected of him or her, signifying a "disregard of a duty resulting from carelessness or indifference."[3]

In this relation, it is settled that the quantum of evidence necessary to find an individual liable for the aforesaid offenses is substantial evidence, or "that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion."[4] Substantial evidence does not necessarily mean

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[1] *Rollo*, p. 2.

[2] *Office of the Ombudsman v. De Leon*, 705 Phil. 26, 37-38 (2013); citations omitted.

[3] *Id*. at 38, citing *Republic v. Canastillo*, 551 Phil. 987, 996 (2007).

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

preponderant proof as required in ordinary civil cases, but such kind of relevant evidence as a reasonable mind might accept as adequate to support a conclusion or evidence commonly accepted by reasonably prudent men in the conduct of their affairs.[5]

Applying the foregoing to this case, it is clear that aside from his bare allegations, complainant has not shown any *prima facie* evidence to support his claim that CA Marquez and DCA Bahia should be held equally liable for the delay in the transmittal of the case records of Criminal Case No. 05-236956 to the Court of Appeals in due time. Absent any proof to the contrary, CA Marquez and DCA Bahia are presumed to have regularly performed their duties,[6] and consequently, the complaint against them ought to be dismissed.

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

SO ORDERED.

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

Caguioa, J., on leave.

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[5] *Office of the Ombudsman (Visayas) v. Zaldarriaga,* 635 Phil. 361, 368 (2010), citing *The Ombudsman v. Jurado*, 583 Phil. 132, 152.

[6] See Section 3 (m), Rule 131 of the Rules of Court.

EN BANC

[G.R. No. 187257. February 7, 2017]

REPUBLIC OF THE PHILIPPINES, represented by the OFFICE OF THE SOLICITOR GENERAL (OSG) as the PEOPLE'S TRIBUNE, and the NATIONAL POWER BOARD, *petitioners, vs.* **HON. LUISITO G. CORTEZ, Presiding Judge, Regional Trial Court, Branch 84, Quezon City, ABNER P. ELERIA, MELITO B. LUPANGCO, NAPOCOR EMPLOYEES CONSOLIDATED UNION (NECU), and NAPOCOR EMPLOYEES AND WORKERS UNION (NEWU),** *respondents.*

[G.R. No. 187776. February 7, 2017]

ROLANDO G. ANDAYA, in his capacity as Secretary of the Department of Budget and Management and member of the Board of Directors of the National Power Corporation, *petitioners, vs.* **HON. LUISITO G. CORTEZ, Presiding Judge, Regional Trial Court, Branch 84, Quezon City, ABNER P. ELERIA, MELITO B. LUPANGCO, NAPOCOR EMPLOYEES CONSOLIDATED UNION and NAPOCOR EMPLOYEES AND WORKERS UNION,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; THE OFFICE OF THE SOLICITOR GENERAL REPRESENTS THE GOVERNMENT OF THE PHILIPPINES, ITS AGENCIES AND INSTRUMENTALITIES AND ITS OFFICIALS AND AGENTS IN ANY LITIGATION, PROCEEDING, INVESTIGATION OR MATTER REQUIRING THE SERVICES OF LAWYERS, EXCEPT WHEN IT ACTS AS THE "PEOPLE'S TRIBUNE", AS SUCH, IT REPRESENTS THE BEST INTERESTS OF THE STATE, AND MAY TAKE AN ADVERSE POSITION

FROM THE GOVERNMENT AGENCY UNDER LITIGATION; RATIONALE.— Generally, the Office of the Solicitor General "represent[s] the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of lawyers." The exception to this rule is when it acts as the "People's Tribune." As such, it represents the best interests of the State, and may take an adverse position from the government agency under litigation. In *Pimentel, Jr. v. Commission on Elections*: True, the Solicitor General is mandated to represent the Government, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of a lawyer. However, the Solicitor General may, as it has in instances take a position adverse and contrary to that of the Government on the reasoning that it is incumbent upon him to present to the court what he considers would legally uphold the best interest of the government although it may run counter to a client's position. The rationale for the Solicitor General's role is further explained in *Gonzales v. Hon. Chavez*: Indeed, in the final analysis, it is the Filipino people as a collectivity that constitutes the Republic of the Philippines. Thus, the distinguished client of the OSG is the people themselves of which the individual lawyers in said office are a part. Moreover, endowed with a broad perspective that spans the legal interests of virtually the entire government officialdom, the OSG may be expected to transcend the parochial concerns of a particular client agency and instead, promote and protect the public weal. Given such objectivity, it can discern, metaphorically speaking, the panoply that is the forest and not just the individual trees. Not merely will it strive for a legal victory circumscribed by the narrow interests of the client office or official, but as well, the vast concerns of the sovereign which it is committed to serve.

2. REMEDIAL LAW; CIVIL PROCEDURE; MOTION FOR RECONSIDERATION; THE FILING OR PENDENCY OF THE MOTION FOR RECONSIDERATION WILL NOT TOLL THE RUNNING OF THE PERIOD TO APPEAL WHERE A PARTY FAILED TO COMPLY WITH THE THREE-DAY NOTICE RULE, BUT THE COURT MAY STILL ACT ON THE MOTION PROVIDED DOING SO

WILL NEITHER CAUSE PREJUDICE TO THE OTHER PARTY NOR VIOLATE HIS/HER DUE PROCESS RIGHTS. — Generally, all written motions are required to include a notice of hearing and must be addressed to all parties and served to them at least three (3) days before the date of the hearing. When a party fails to comply, "the running of the period to appeal is not tolled by [the] filing or pendency." This three-day notice rule, however, is not absolute. The motion may still be acted upon by the court "provided doing so will neither cause prejudice to the other party nor violate his or her due process rights." The trial court in this case nevertheless conducted a hearing on January 23, 2009 and resolved the Motion for Reconsideration on its merits. NECU and NEWU likewise did not allege any violation to their right to due process due to the lack of a notice of hearing. Thus, the filing of the Motion of Reconsideration was able to toll the running of the period of appeal.

3. **ID.; ID.; APPEALS; APPEAL FROM A DECISION OF THE REGIONAL TRIAL COURT; MODES OF APPEAL; A DIRECT APPEAL WITH THE COURT THROUGH A PETITION FOR REVIEW UNDER RULE 45 OF THE RULES OF COURT WILL BE DISMISSED OUTRIGHT WHERE QUESTIONS OF FACT ARE PRESENTED. —** The Office of the Solicitor General's appeal required a review of the documentary evidence presented, thus, it was necessary to first file a notice of appeal with the trial court under Rule 41 of the Rules of Court. A direct appeal with this Court through a petition for review under Rule 45 of the Rules of Court would have been dismissed outright for presenting questions of fact. There are three modes of appeal from a decision or final order from the Regional Trial Court. The first mode is an ordinary appeal to the Court of Appeals in cases decided by the trial court in the exercise of its original jurisdiction. This is done by filing a notice of appeal with the trial court. The second mode is through a petition for review with the Court of Appeals in cases decided in the exercise of the trial court's appellate jurisdiction. The third mode is by filing a petition for review on certiorari with this Court if the appeal involves only questions of law. Only the third mode of appeal limits the scope of the issues to be brought. The first and second modes of appeal thus involve appeals where there are both questions of law and

of fact. The test used to determine whether there is a question of fact or of law "is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine 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."

4. ID.; ID.; ID.; QUESTIONS OF FACT ARE BETTER ADDRESSED IN AN ORDINARY APPEAL BEFORE THE COURT OF APPEALS BY FILING A NOTICE OF APPEAL BEFORE THE REGIONAL TRIAL COURT.— By filing a Notice of Appeal, the Office of the Solicitor General intended to appeal to the Court of Appeals via an ordinary appeal under Rule 41, Sec. 1 (a). NECU and NEWU questioned this mode of appeal on the ground that only questions of law were presented. The Office of the Solicitor General's main argument, however, was that the COLA and AA were already *factually* integrated into the standardized salary rates of NAPOCOR's employees. It had intended this fact to be established by documentary evidence such as the Notice of Position Allocation and Salary Adjustment. NECU and NEWU likewise presented documentary evidence before the trial court to establish their position. In order to review any appeal of the case, it would have been necessary to review the weight and evidentiary value of the documents presented. These would have been questions of fact better addressed in an ordinary appeal before the Court of Appeals. The Office of the Solicitor General, thus, did not err in first filing a notice of appeal before the Regional Trial Court.

5. ID.; ID.; JUDGMENT ON THE PLEADINGS; WHEN ALLOWED; A JUDGMENT ON THE PLEADINGS IS IMPROPER WHERE THE OFFICE OF THE SOLICITOR GENERAL PRESENTED AN ADVERSE POSITION.— Considering that the Office of the Solicitor General represented an adverse position, a judgment on the pleadings was improper in this instance. A judgment on the pleadings may be allowed in cases "[w]here an answer fails to tender an issue, or otherwise admits the material allegations of the adverse party's pleading[.]" NECU and NEWU's documentary evidence consisted of documents by the NAPOCOR Board of Directors stating that the employees were entitled to the back pay of their COLA and AA. Thus, the Regional Trial Court concluded that since

the NAPOCOR admitted the material allegations of the complaint, a judgment on the pleadings was proper. The trial court, however, operated on the mistaken assumption that the Office of the Solicitor General represented NAPOCOR. At this point in the proceedings, the Office of the Solicitor General had already withdrawn its appearance as counsel for NAPOCOR and entered its appearance as the People's Tribune. In presenting an adverse position, the Office of the Solicitor General could not be deemed to have admitted the material allegations of the complaint.

6. POLITICAL LAW; ADMINISTRATIVE LAW; COMPENSATION AND POSITION CLASSIFICATION ACT OF 1989 (REPUBLIC ACT No. 6758); THE COST OF LIVING ALLOWANCE (COLA) AND AMELIORATION ALLOWANCE (AA) ARE ALREADY DEEMED INTEGRATED INTO THE STANDARDIZED SALARIES OF THE NAPOCOR EMPLOYEES EFFECTIVE JULY 1, 1989.— Republic Act No. 6758 remained effective during the period of ineffectivity of DBM-CCC No. 10. Thus, the COLA and AA of NAPOCOR officers and employees were integrated into the standardized salaries effective July 1, 1989 pursuant to Section 12 of Republic Act No. 6758, which provides: Section 12. Consolidation of Allowances and Compensation.— All allowances, except for representation and transportation allowances; clothing and laundry allowances; subsistence allowance of marine officers and crew on board government vessels and hospital personnel; hazard pay; allowances of foreign service personnel stationed abroad; and such other additional compensation not otherwise specified herein as may be determined by the DBM, shall be deemed included in the standardized salary rates herein prescribed. Such other additional compensation whether in cash or in kind , being received by incumbents only as of July 1, 1989 not integrated into the standardized salary rates shall continue to be authorized. x x x Unlike in *Philippine Ports Authority (PPA) Employees Hired After July 1, 1989,* there would be no basis to distinguish between those hired before July 1, 1989 and those hired after July 1, 1989. Both sets of NAPOCOR employees were continuously receiving their COLA and AA since these allowances were already factually integrated into the standardized salaries pursuant to Section 12 of Republic Act No. 6758.

7. ID.; ID.; ID.; ID.; GRANT OF BACK PAYMENT OF COLA AND AA TO NAPOCOR EMPLOYEES DESPITE THEIR FACTUAL INTEGRATION INTO THE STANDARDIZED SALARY WILL CAUSE SALARY DISTORTIONS AND WILL RESULT IN A VIOLATION OF THE EQUAL PROTECTION CLAUSE.— In order to settle any confusion, we abandon any other interpretation of our ruling in *Philippine Ports Authority (PPA) Employees Hired after July 1, 1989* with regard to the entitlement of the NAPOCOR officers and employees to the back payment of COLA and AA during the period of legal limbo. To grant any back payment of COLA and AA despite their factual integration into the standardized salary would cause salary distortions in the Civil Service. It would also provide unequal protection to those employees whose COLA and AA were proven to have been factually discontinued from the period of Republic Act No. 6758's effectivity. Generally, abandoned doctrines of this Court are given only prospective effect. However, a strict interpretation of this doctrine, when it causes a breach of a fundamental constitutional right, cannot be countenanced. In this case, it will result in a violation of the equal protection clause of the Constitution.

8. ID.; ID.; ID.; ID.; THE GRANT OF BACK PAY OF COLA AND AA FROM JULY 1, 1989 TO DECEMBER 31, 1993, TO THE NAPOCOR EMPLOYEES WHEN THEY HAVE ALREADY RECEIVED SUCH ALLOWANCES FOR THIS PERIOD IS TANTAMOUNT TO ADDITIONAL COMPENSATION, WHICH IS PROSCRIBED BY THE CONSTITUTION.— The integration of COLA into the standardized salary rates is not repugnant to the law. *Gutierrez, et al. v. Department of Budget and Management, et al.* explains: COLA is not in the nature of an allowance intended to reimburse expenses incurred by officials and employees of the government in the performance of their official functions. It is not payment in consideration of the fulfillment of official duty. As defined, cost of living refers to "the level of prices relating to a range of everyday items" or "the cost of purchasing those goods and services which are included in an accepted standard level of consumption." Based on this premise, COLA is a benefit intended to cover increases in the cost of living. Thus, it is and should be integrated into the standardized salary rates. Thus, it would be incongruous to grant any alleged back pay of COLA and

AA from July 1, 1989 to December 31, 1993, when the NAPOCOR officers and employees have already received such allowances for this period. The grant would be tantamount to additional compensation, which is proscribed by Section 8, Article IX (B) of the Constitution: x x x Mandamus cannot lie to compel the performance of an unconstitutional act. The Regional Trial Court clearly acted in grave abuse of discretion in ordering the back payment, to the affected NAPOCOR officers and employees, the COLA and AA for the period of July 1, 1989 to December 31, 1993.

9. ID.; ID.; ID.; ID.; NO BASIS FOR THE GRANT OF ADDITIONAL ALLOWANCES AS THERE WAS NO DIMINUTION IN THE SALARIES AND BENEFITS OF THE NAPOCOR EMPLOYEES UPON THE IMPLEMENTATION OF THE NEW COMPENSATION PLAN.— Pursuant to Republic Act No. 7648, then President Fidel V. Ramos issued Memorandum Order No. 198, providing for a different position classification and compensation plan for NAPOCOR employees to take effect on January 1, 1994. x x x In issuing Memorandum No. 198, series of 1994, the President determined that the New Compensation Plan for the NAPOCOR personnel shall include the basic salary, PERA and Additional Compensation, Rice Subsidy, and Reimbursable Allowances. The discretion of the President to specify the new salary rates, however, is qualified by the statement: "*Nothing in this Section shall result in the diminution of the present salaries and benefits of the personnel of the NAPOCOR*." x x x [C]OLA and AA were already deemed integrated into the basic standardized salary from July 1, 1989 to December 31, 1993. These allowances need not be separately granted. *All basic salaries by December 31, 1993 already included the COLA and AA*. Thus, in order to conclude that the NAPOCOR employees were not able to receive their COLA and AA upon the implementation of the New Compensation Plan, it must first be determined whether its implementation resulted in the diminution of their salaries and benefits. Evidence on record, however, shows that the affected employees suffered no diminution in their compensation upon the implementation of the New Compensation Plan on January 1, 1994.

10. REMEDIAL LAW; CIVIL PROCEDURE; EXECUTION AND SATISFACTION OF JUDGMENT; EXECUTION ISSUES AS A MATTER OF RIGHT ONLY UPON THE EXPIRATION OF THE PERIOD TO APPEAL IF NO APPEAL HAS BEEN DULY PERFECTED; IMMEDIATE EXECUTION OF THE DECISION EVEN BEFORE THE LAPSE OF THE PERIOD FOR APPEAL CONSTITUTES GRAVE ABUSE OF DISCRETION.— The Regional Trial Court committed grave abuse of discretion in ordering the immediate execution of its November 28, 2008 Decision even before the lapse of the period for appeal. Execution issues as a matter of right only "upon the expiration of the period to appeal ... if no appeal has been duly perfected." The Regional Trial Court denied the Office of the Solicitor General's Notice of Appeal and the Department of Budget and Management's Motion for Reconsideration in the Joint Order dated March 20, 2009. From this date, the parties had 15 days to file an ordinary appeal, a petition for review with the Court of Appeals or a petition for review with the Supreme Court. They also had 60 days to file a petition for *certiorari*, prohibition, or mandamus with the Court of Appeals or the Supreme Court. Despite these clear periods for appeal, the Regional Trial Court issued a Certificate of Finality of Judgment and a Writ of Execution on March 23, 2009, or a mere three (3) calendar days from the issuance of its Joint Order. The Regional Trial Court premises its order of finality on the alleged failure of the Office of the Solicitor General, as counsel for NAPOCOR and its Board of Directors, to perfect its appeal. The Office of the Solicitor General's Notice of Appeal was timely filed. The Regional Trial Court failed to take into account that by the time the Office of the Solicitor General filed its appeal, it ceased to represent NAPOCOR and its Board of Directors. The Decision dated November 28, 2008 should not have been considered final and executory as against the Office of the Solicitor General, acting as the People's Tribune.

11. ID.; ID.; ID.; THE BACK PAYMENT OF ANY COMPENSATION TO PUBLIC OFFICERS AND EMPLOYEES CANNOT BE DONE THROUGH A WRIT OF EXECUTION, AS MONEY CLAIMS AND JUDGMENTS AGAINST THE GOVERNMENT MUST FIRST BE FILED WITH THE COMMISSION ON

AUDIT.— [T]he back payment of any compensation to public officers and employees cannot be done through a writ of execution. Under Section 26 of the Government Auditing Code of the Philippines, only the Commission on Audit has the jurisdiction to settle claims "of any sort" against the government: x x x Money claims and judgments against the government must first be filed with the Commission on Audit. Trial courts have already been strongly cautioned against the issuance of writs of execution in cases involving the disbursement of public funds in Supreme Court Administrative Circular No. 10-2000.

APPEARANCES OF COUNSEL

Legal and Legislative Sevices, Department of Budget and Management for petitioner Rolando Andaya.

Napoleon Uy Galit and Associates Law for respondents NECU, NEWU, A. Eleria & M. Lupangco.

V.V. Orocio and Associates Law Offices for petitioner PGEA-NPC.

Office of the Government Corporate Counsel for PSALM & Board of Directors.

The Solicitor General for petitioners in G.R. No. 187257.

Maria Florinia B. Binalay-Estilo, Co-Counsel for PGEA-NPC.

D E C I S I O N

LEONEN, *J.*:

The implementation of Republic Act No. 6758 resulted in the integration of all allowances previously received, including Cost of Living Allowance and Amelioration Allowance, into the basic standardized salary. When a government entity ceases to be covered by Republic Act No. 6758, the new position classification and compensation plan must also include all allowances previously received in the basic salary, in line with the principle of non-diminution of pay.

This is a consolidated case resulting from a Petition for Mandamus filed by the president of the National Power Corporation Employees Consolidated Union (NECU) and the president of the National Power Corporation Employees and Workers Union (NEWU) before the Regional Trial Court, Branch 84, Quezon City.[1] The Petition sought to direct the National Power Corporation (NAPOCOR), its President and its Board of Directors to release and pay the Cost of Living Allowance (COLA) and Amelioration Allowance (AA) to all NAPOCOR employees beginning July 1, 1989 to March 16, 1999.[2] The Petition for Mandamus was granted by the trial court and the NAPOCOR was ordered to pay a total of ₱6,496,055,339.98 as back payment for COLA and AA with an additional ₱704,777,508.60 as legal interest.[3]

NAPOCOR was created under Commonwealth Act No. 120[4] as a government-owned and controlled corporation. Under the law, its National Power Board was authorized to fix the compensation of its officers and employees.[5]

In 1976, a salary standardization and compensation plan for public employees, including that of government-owned and

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[1] *Rollo* (G.R. No. 187257), p. 1531, Regional Trial Court Decision in Civil Case No. Q-07-61728.

[2] *Id*.

[3] *Id*. at 1552.

[4] An Act Creating the "National Power Corporation," Prescribing its Powers and Activities, Appropriating the Necessary Funds Therefor, and Reserving the Unappropriated Public Waters for its Use (1936).

[5] Com. Act No. 120 (1936), Sec. 5 provides:

. . . . . .

The duties and powers as well as the compensation of the said officers and employees shall be such as may be defined and prescribed or fixed by the National Power Board: Provided, That no additional compensation shall be given to any officer or employee of the Commonwealth or any of its political subdivisions or of any public or semi-public corporation, who may be designated to perform additional duties in the Corporation[.]

controlled corporations, was enacted through Presidential Decree No. 985.[6] The Decree likewise provided that notwithstanding the standardization and compensation plan, additional incentives may be established by government-owned and controlled corporations from their corporate funds.[7] Pursuant to the Decree, then President Ferdinand E. Marcos issued Letter of Implementation No. 97,[8] granting additional financial incentives to employees of government-owned and controlled corporation performing critical functions, among which was NAPOCOR.[9] The additional incentives included COLA and AA.[10]

On August 21, 1989, Congress enacted Republic Act No. 6758, or the Compensation and Position Classification Act of 1989, to standardize compensation and benefits of public

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[6] A Decree Revising the Position Classification and Compensation Systems in the National Government, and Integrating the Same (1976).

[7] Pres. Decree No. 985 (1976), Sec. 2 provides:

Section 2. Declaration of Policy. It is hereby declared to be the policy of the national government to provide equal pay for substantially equal work and to base differences in pay upon substantive differences in duties and responsibilities, and qualification requirements of the positions. In determining rates of pay, due regard shall be given to, among others, prevailing rates in private industry for comparable work. For this purpose, there is hereby established a system of compensation standardization and position classification in the national government for all departments, bureaus, agencies, and offices including government-owned or controlled corporations and financial institutions: *Provided, That notwithstanding a standardized salary system established for all employees, additional financial incentives may be established by government corporation and financial institutions for their employees to be supported fully from their corporate funds and for such technical positions as may be approved by the President in critical government agencies*. (Emphasis supplied)

[8] Authorizing the Implementation of Standard Compensation and Position Classification Plans for the Infrastructure/Utilities Group of Government Owned or Controlled Corporations (1979).

[9] *See* L.O. Impl. No. 97, second whereas clause and no. 1(b).

[10] *Rollo* (G.R. No. 187257), p. 1569, Notice of Position Allocation and Salary Adjustment.

employees, effective July 1, 1989.[11] The law applied to all positions, whether appointive or elective, including those in government-owned and controlled corporations.[12] The law also provided that all allowances and other additional compensation not otherwise stated "shall be deemed included"[13] in the prescribed standardized salary rates. Section 12 reads:

> Section 12. Consolidation of Allowances and Compensation. – All allowances, except for representation and transportation allowances; clothing and laundry allowances; subsistence allowance of marine officers and crew on board government vessels and hospital personnel; hazard pay; allowances of foreign service personnel stationed abroad; and such other additional compensation not otherwise specified herein as may be determined by the DBM, shall be deemed included in the standardized salary rates herein prescribed. Such other additional compensation, whether in cash or in kind, being received by incumbents only as of July 1, 1989 not integrated into the standardized salary rates shall continue to be authorized.
>
> Existing additional compensation of any national government official or employee paid from local funds of a local government unit shall be absorbed into the basic salary of said official or employee and shall be paid by the National Government.

On October 2, 1989, the Department of Budget and Management issued Corporate Compensation Circular No. 10 (DBM-CCC No. 10),[14] which provided for the integration of COLA, AA, and other allowances into the standardized salaries of public employees effective November 1, 1989.[15]

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[11] Rep. Act No. 6758 (1989), Sec. 23.

[12] *See* Rep. Act No. 6758 (1989), Sec. 4.

[13] Rep. Act No. 6758 (1989), Sec. 12.

[14] *Rollo* (G.R. No. 187257), pp. 482-492.

[15] *See NAPOCOR Employees Consolidated Union (NECU) v. National Power Corporation (NPC)*, 519 Phil. 372, 377-378 (2006) [Per *J.* Garcia, *En Banc*].

On April 5, 1993, Congress enacted Republic Act No. 7648, or the Electric Power Crisis Act of 1993, allowing the President of the Philippines to upgrade the compensation of NAPOCOR employees "at rates comparable to those prevailing in privately-owned power utilities[.]"[16]

Pursuant to Republic Act No. 7648, then President Fidel V. Ramos issued Memorandum Order No. 198[17] providing for a different position classification and compensation plan for NAPOCOR employees to take effect on January 1, 1994.[18]

On August 12, 1998, this Court promulgated *De Jesus v. Commission on Audit*,[19] which found DBM-CCC No. 10 ineffective for lack of publication in the Official Gazette or in a newspaper of general circulation.[20] Thus, the circular only became effective on March 16, 1999.[21]

In *Philippine Ports Authority (PPA) Employees Hired After July 1, 1989 v. Commission on Audit*,[22] this Court recognized that the ineffectivity of DBM-CCC No. 10 from July 1, 1989 to March 16, 1999 created a "legal limbo" wherein the COLA and AA were "not effectively integrated into the standardized salaries."[23] Hence, during the period of the legal limbo, affected employees would be entitled to receive the two allowances:

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[16] Rep. Act No. 7648 (1993), Sec. 5.

[17] Directing and Authorizing the Upgrading of Compensation of Personnel of the National Power Corporation at Rates Comparable with those Prevailing in Privately-Owned Power Utilities and for Other Purposes (1994).

[18] Memo. Order No. 198 (1994), Sec. 10.

[19] 355 Phil. 584 (1998) [Per *J.* Purisima, *En Banc*].

[20] *Id.* at 589-591.

[21] *Philippine Ports Authority (PPA) Employees Hired After July 1, 1989 v. Commission on Audit*, 506 Phil. 382, 390-391 (2005) [Per Acting *C.J.* Panganiban, *En Banc*].

[22] 506 Phil. 382 (2005) [Per Acting *C.J.* Panganiban, *En Banc*].

[23] *Id.* at 389.

To stress, the failure to publish DBM-CCC No. 10 meant that the COLA and the amelioration allowance were not effectively integrated into the standardized salaries of the PPA employees as of July 1, 1989. The integration became effective only on March 16, 1999. Thus, in between those two dates, they were still entitled to receive the two allowances.[24]

On December 28, 2007, Abner P. Eleria, president of NECU, and Melito B. Lupanggo, president of NEWU, filed a Petition for Mandamus with the Regional Trial Court of Quezon City, Branch 84, praying that NAPOCOR be ordered to release the COLA and AA due them.[25] NECU and NEWU filed their Motion for Leave of Court to file a Petition-in-Intervention, which was granted by the trial court on March 14, 2008.[26] The trial court consolidated the petitions and treated them as a class suit.[27]

NECU and NEWU alleged that they requested NAPOCOR to release their COLA and AA on March 12, 2006.[28] NAPOCOR subsequently created a Committee[29] "to study . . . the grant of [the] additional allowances[.]"[30]

On May 28, 2007, the Committee issued a Certification that the COLA and AA were not integrated into the salaries of NAPOCOR employees hired from July 1, 1989 to March 16, 1999.[31] NAPOCOR "thereafter referred the matter to the Department of Budget and Management[.]"[32]

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[24] *Id*. at 390.

[25] *Rollo* (G.R. No. 187257), p. 1531, Regional Trial Court Decision in Civil Case No. Q-07-61728.

[26] *Id*.

[27] *Id*.

[28] *Id*. at 1532.

[29] *Id*. The Committee was composed of the President, Vice President of Human Resources and Finance, General Counsel, and Senior Department Managers of Human Resources and Internal Audit.

[30] *Id*.

[31] *Id*.

[32] *Id*.

On September 18, 2007, then Secretary of Budget and Management Rolando Andaya, Jr. (Secretary Andaya, Jr.) wrote a letter to NAPOCOR stating that the determination of whether the COLA and AA were factually integrated rested with it since the payment of the allowances did not require the prior approval of the Budget and Management Secretary.[33]

NECU and NEWU again requested the release of their COLA and AA pursuant to Secretary Andaya, Jr.'s letter. NAPOCOR again referred the matter to the Committee for further study. Due to the continued refusal of NAPOCOR to release the allowances, NECU and NEWU were constrained to file the Petition for Mandamus.[34]

In its Consolidated Comment before the trial court, the Office of the Solicitor General, on behalf of NAPOCOR, alleged that the Notice of Position Allocation and Salary Adjustment (NPASA) of employees should be examined to find out if the COLA and AA were nevertheless integrated into the salaries despite the ineffectivity of DBM-CCC No. 10. The affected employees must also show that they suffered a diminution of pay as a result of its implementation. The Office of the Solicitor General likewise pointed out that the COLA and AA were not among those allowances specifically excluded in Section 12 of Republic Act No. 6758 and thus were deemed to have been included in the standardized salary rates.[35]

In their Reply with Motion for Judgment on the Pleadings before the trial court, NECU and NEWU submitted the following documents to prove right to COLA and AA:

a. Letter of [NPC President] Del Callar dated October 9, 2007 categorizing the workers/employees of the NAPOCOR into three groups, *viz*:

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[33] *Id*.

[34] *Id*.

[35] *Id*. at 1533-1534.

a.1 NPC employees who were incumbent as of June 30, 1989 are no longer entitled to their COLA and AA from July 1, 1989 to December 31, 1993 since said allowances have been factually integrated into their salaries but entitled to COLA and AA from January 1, 1994 to March 15, 1999;

a.2 NPC employees hired between July 1, 1989 and December 31, 1993 are entitled to COLA and AA since said benefits were not factually integrated into their salaries from their date of employment up to March 15, 1999; and

a.3 NPC employees as of January 1, 1994 to March 15, 1999 are entitled to COLA and AA from their date of employment up to March 15, 1999.

b. Certification issued by Mr. Alexander P. Japon, NPC's Senior Finance Department Manager dated April 22, 2008 admitting its obligation to pay COLAs and AAs due the NPC workers/employees as well as certifying the availability of funds in the amount of ₱8.5 Billion for the purpose and pursuant to DBM CCC No. 12; and

c. Letter of [NPC President] Del Callar dated April 23, 2008 to the NAPOCOR Board certifying the NPC stand to pay the COLA and AA to the workers/employees.[36] (Citations omitted)

The Office of the Solicitor General filed an Omnibus Motion seeking to withdraw its appearance as counsel for NAPOCOR and asking for leave to intervene as the People's Tribune. The Motion stated that the position taken by NAPOCOR ran counter to the Office of the Solicitor General's stand that the COLA and AA were already integrated into the standardized salaries.[37]

The Department of Budget and Management likewise submitted a Supplemental Comment to the trial court, arguing that the COLA and AA were already integrated into the standardized salary rates, as shown in their Notice of Position Allocation and Salary Adjustment.[38] It further posited that

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[36] *Id*. at 1534.

[37] *Id*. at 1535.

[38] *Id*. at 1537.

De Jesus only applied in instances where the integration of allowance was by "mere legal fiction"[39] and that *Philippine Ports Authority (PPA) Employees Hired After July 1, 1989* was similarly inapplicable since there was already a factual integration of allowances.[40] It likewise pointed out that the new compensation plan for NAPOCOR employees did not include the grant of additional COLA and AA and that the 2008 General Appropriations Act prohibited the use of savings for additional COLA and AA.[41] It maintained that the test to the entitlement of additional allowances was whether there was a diminution of pay as a result of the law's implementation and that mandamus only lied "where there is a clear legal right sought to be enforced."[42]

On November 28, 2008, the Regional Trial Court rendered its Decision[43] in favor of NECU and NEWU. According to the trial court, the determination of whether the COLA and AA had been factually integrated was already resolved when the NAPOCOR Committee certified that the COLA and AA of the employees from July 1, 1989 to December 31, 1993 were not factually integrated into their standardized salaries.[44] The trial court also cited *De Jesus*, *Philippine Ports Authority (PPA) Employees Hired After July 1, 1989*, and *Metropolitan Waterworks and Sewerage System v. Bautista, et al.*[45] in support of the conclusion that the employees were entitled to COLA and AA from 1989 to 1999 as a matter of right.[46] The dispositive portion of the Decision reads:

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[39] *Id*.

[40] *Id*. at 1538.

[41] *Id*.

[42] *Id*.

[43] *Id*. at 1530-1553. The Decision was penned by Presiding Judge Luisito G. Cortez.

[44] *Id*. at 1542.

[45] 572 Phil. 383 (2008) [Per *J*. R.T. Reyes, Third Division].

[46] *Rollo* (G.R. No. 187257), p. 1544, Regional Trial Court Decision in Civil Case No. Q-07-61728.

WHEREFORE, in the light of the foregoing considerations, judgment is hereby rendered in favor of the petitioners and intervenors NECU & NEWU and against the respondents National Power Corporation, its President and Board of Directors ordering them as follows:

1. To **RELEASE and to PAY** the amount of **SIX BILLION FOUR HUNDRED NINETY SIX MILLION FIFTY-FIVE THOUSAND THREE HUNDRED THIRTY NINE PESOS AND NINETY-EIGHT CENTAVOS [Php 6,496,055,339.98]**, Philippine Currency representing the COLAs and AAs and **TO PAY** the amount of **SEVEN HUNDRED FOUR MILLION SEVEN HUNDRED SEVENTY-SEVEN THOUSAND FIVE HUNDRED EIGHT HUNDERED** (sic) **PESOS AND SIXTY CENTAVOS [Php 704,777,508.60]**, Philippine Currency, representing **interest** computed from December 28, 2007, within 30 days from finality of this Decision to petitioners, intervenors and other non-union employees similarly situated.

The said monetary judgment shall earn another interest of **12%** per annum from date of finality of the decision until its full satisfaction.

2. To **PAY** Attorney's fees in the amount of **₱100,000.00** in favor of the Petitioners and **₱200,000.00** in favor of the Intervenors NECU & NEWU;

3. To **DEDUCT** the amount of **ONE HU[N]DRED FORTY-FIVE MILLION FOUR HUNDRED SIXTY-FOUR THOUSAND EIGHT HUNDRED SEVENTY-TWO PESOS AND FIFTY-FIVE CENTAVOS [Php 145,464,872.55]** representing the **deficiency payment of docket and other legal fees** to be taken from the said lists of NAPOCOR officials, workers, and employees including non-union beneficiaries similarly situated, and to **REMIT AND PAY** the same to the Office of the Clerk of Court of the Regional Trial Court of Quezon City, within 15 days from finality of this Decision, and finally, to **FURNISH** this court proof of compliance hereof. The said Amount shall be without prejudice and subject to the final computation and assessment of the Office of the Clerk of Court. The said docket and legal fees shall be a lien on this judgment and **shall be first satisfied** pursuant to the provisions of Rule 141 and Rule 39 of the Rules of Court.

> **4. DECLARING** the Consultancy Agreement to be valid and binding between the counsels and the Petitioners and the Intervenors NECU & NEWU, and its members.
>
> 4.1 To **DEDUCT the FIVE** percent (**5%**) of the amount payable to each of the NAPOCOR employees including non-union beneficiaries similarly situated for the said attorney's fees PRO RATA, **AND** to **PAY** the amount deducted to Atty. Napoleon Uy Galit and Atty. Jonathan S. Presquito, after deducting the appropriate taxes.

SO ORDERED.[47] (Emphasis and underscoring in the original, citation omitted)

The Office of the Solicitor General filed a Notice of Appeal of this Decision.[48] Secretary Andaya, Jr. also filed a Motion for Reconsideration, arguing, among others, that the employees were duly notified that their COLA and AA were already integrated into their standardized salaries and that a Certification could be used as basis since this was merely advisory for the Board of Directors.[49] NECU and NEWU, on the other hand, filed an Urgent Motion for Execution even within the period for appeal alleging that the needed amount had already been certified available and that the release of the allowances did not require the approval of the Department of Budget and Management.[50]

In a Joint Order[51] dated March 20, 2009, the Regional Trial Court denied the Notice of Appeal and Motion for Reconsideration; and granted the Motion for Execution.[52]

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[47] *Id*. at 1552-1553.

[48] *Id*. at 1515, Regional Trial Court Joint Order in Civil Case No. Q-07-61728.

[49] *Id*. at 1515 and 1519.

[50] *Id*. at 1515-1517 and 1519.

[51] *Id*. at 1515-1529. The Joint Order was penned by Presiding Judge Luisito G. Cortez.

[52] *Id*. at 1527-1528.

The trial court noted that since the Office of the Solicitor General withdrew its appearance as counsel for NAPOCOR and entered its appearance as the People's Tribune, it could no longer file an appeal that would accrue to NAPOCOR's benefit.[53] The trial court also reiterated that the Committee Certification was approved by the NAPOCOR President and was included in NAPOCOR's Certified Obligation from 2001 to 2007. As a Certified Obligation submitted to Congress, its funds were already earmarked for the payment of the obligation.[54]

The trial court likewise found that the Motion for Execution could be granted since NAPOCOR could set aside the funds needed for the payment of the COLA and AA. Its payment would not only redound to the benefit of the affected employees and their families, but also to the economy due to increased consumer spending. The National Treasury could also benefit from the tax remittances due from these allowances.[55] The dispositive portion of the Joint Order reads:

WHEREFORE, in the light of the foregoing considerations, the Court resolves as follows, *viz*:

> **1. GRANTS** the **Motion for Execution** filed by NPC workers, petitioners and intervenors NECU & NEWU.
>
> Accordingly, the Branch Clerk of Court is **directed** to forthwith issue the **Certificate of Finality of Judgment** and the **Writ of Execution** to enforce the Court's Decision dated November 28, 2008.
>
> Let the corresponding Writ of Execution be issued and served simultaneous with the service of this Order to the parties to be implemented by the deputy sheriff of this Court.
>
> The initial computation of filing fees amounting to **ONE HUNDRED FORTY-FIVE MILLION FOUR HUNDRED**

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[53] *Id*. at 1522.

[54] *Id*. at 1523-1524.

[55] *Id*. at 1526-1527.

SIXTY FOUR THOUSAND EIGHT HUNDRED SEVENTY-TWO PESOS AND FIFTY-FIVE CENTAVOS, [Php 145,464, 872.55], Philippine Currency, SHALL be first executed and paid to the Clerk of Court of RTC Quezon City, pursuant to the provisions of Rule 141 of the Revised Rules of Court, to be eventually remitted to the account of the Supreme Court.

2. GRANTS the motion of petitioners and intervenors to Deposit the Amount Equivalent to Judgment Award and Interest.

Accordingly, **ORDERS** the **NPC Management** through its **President, NPC BOARD, and Treasurer to DEPOSIT the amount of SIX BILLION FOUR HUNDRED NINETY SIX MILLION FIFTY-FIVE THOUSAND THREE HUNDRED THIRTY NINE PESOS AND NINETY EIGHT CENTAVOS [Php 6,496,055,339.98], Philippine Currency** representing the COLAs and AAs, and **the amount of SEVEN HUNDRED FOUR MILLION SEVEN HUNDRED SEVENTY SEVEN THOUSAND FIVE HUNDRED EIGHT PESOS AND SIXTY CENTAVOS (Php 704,777,508.60), Philippine Currency, representing interest** computed from December 28, 2007, with Land Bank of the Philippines, with high yielding bearing interest, **within 30 days from receipt hereof**.

Thereafter, to SUBMIT their COMPLIANCE hereto within 15 days from date of deposit of said amounts for the information of the Court.

The said amount shall be under *Custodia Legis* of the Court pending its distribution to the listed and qualified beneficiaries or pending appeal with the Higher Court.

3. DENIES and DISMISSES the **Notice of Appeal** filed by the Office of the Solicitor General for utter lack of merit.

4. DENIES the Motion for Reconsideration filed by the Public Respondent Hon. Rolando G. Andaya, Jr. with finality.

SO ORDERED.[56]

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[56] *Id.* at 1527-1528.

On March 23, 2009, the trial court issued a Certificate of Finality of Judgment[57] and a Writ of Execution.[58]

Aggrieved, the Office of the Solicitor General, acting as the People's Tribune filed a Petition for Certiorari and Prohibition (With Urgent Prayer for the Immediate Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction),[59] docketed by this Court as **G.R. No. 187257**.

The Department of Budget and Management, through then Secretary Andaya, Jr., also filed a Motion for Reconsideration of the Joint Order dated March 20, 2009 and a Motion to Quash the Writ of Execution dated March 23, 2009.[60] While the Motions were pending before the trial court, the Department of Budget and Management filed a Petition for Certiorari and Prohibition[61] with this Court, docketed as **G.R. No. 187776**.

On April 14, 2009, the Office of the Solicitor General filed a Very Urgent Plea for a Temporary Restraining Order[62] to enjoin the implementation of the trial court's November 28, 2008 Decision, March 20, 2009 Joint Order, and March 23, 2009 Writ of Execution.

In a Resolution[63] dated April 15, 2009, this Court issued a Temporary Restraining Order[64] to enjoin the implementation of the Writ of Execution.

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[57] *Id*. at 1560-1563.

[58] *Id*. at 1554-1557.

[59] *Id*. at 7-68.

[60] *Rollo* (G.R. No. 187776), pp. 3-4, Petition for *Certiorari* and Prohibition.

[61] *Id*. at 2-42.

[62] *Rollo* (G.R. No. 187257), pp. 576-579.

[63] *Id*. at 581-582.

[64] *Id*. at 583-585.

On April 21, 2009, NECU and NEWU filed a Petition[65] before this Court, docketed as **G.R. No. 187359**, seeking to restrain the implementation and enforcement of the Operations and Maintenance Agreement entered into by NAPOCOR and Power Sector Assets and Liabilities Management (PSALM).[66] The Petition alleged that certain provisions of the Agreement regarding the remittance of NAPOCOR's revenues to PSALM was an attempt to thwart the execution of the trial court's November 28, 2008 Decision.[67]

Another Petition[68] was filed by the Power Generation Employees Association-NPC (PGEA-NPC), seeking to restrain the implementation of the Operations and Maintenance Agreement, arguing that the Agreement contravened the provisions of Republic Act No. 9136 or the Electric Power Industry Reform Act of 2001.[69] This Petition was docketed as **G.R. No. 187420**.[70]

In the Resolution[71] dated July 13, 2009, this Court consolidated G.R. No. 187359 with G.R. Nos. 187257 and 187776. Upon motion of the Office of the Solicitor General, this Court, in the Resolution[72] dated September 9, 2009 also consolidated G.R. No. 187420 with these cases.

On February 17, 2011, NECU and NEWU filed an Omnibus Motion[73] seeking to withdraw the Petition in G.R. No. 187359 and to detach the petition from G.R. No. 187420 and have it

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[65] *Rollo* (G.R. No 187359), pp. 3-59.

[66] *Id.* at 55.

[67] *Id.* at 48-55.

[68] *Rollo* (G.R. No. 187420), pp. 3-34.

[69] *Id.* at 4.

[70] *Id.* at 3.

[71] *Rollo* (G.R. No. 187776), pp. 149-150.

[72] *Rollo* (G.R. No. 187257), pp. 1115-A-1115-B.

[73] *Rollo* (G.R. No. 187359), pp. 645-651.

consolidated instead with G.R. No. 156208,[74] a case then pending on the extent by which PSALM would answer for NAPOCOR's liabilities.

In a Resolution[75] dated June 22, 2011, the Court granted the Motion to Withdraw the Petition in G.R. No. 187359 but denied the prayer to have G.R. No. 187420 consolidated with G.R. No. 156208. The Court then considered G.R. No. 187359 as closed and terminated.[76]

On March 10, 2014, this Court, in the Resolution[77] resolving the motion of NECU and NEWU,[78] deconsolidated G.R. No. 187420 from G.R. Nos. 187257 and 187776. Thus, only the Petitions in **G.R. Nos. 187257 and 187776** are to be resolved in this Decision.

Procedural

Whether the Regional Trial Court committed grave abuse of discretion in dismissing the Notice of Appeal filed by the Office of the Solicitor General as the People's Tribune.

Whether the appeals were timely filed as to bar the finality of the Decision dated November 28, 2008.

Whether the case presented pure issues of law that should have been appealed directly to this Court through a petition for review under Rule 45 of the Rules of Court.

Whether the trial court erred in deciding the case based on a judgment on the pleadings.

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[74] *Id*. at 649. G.R. No. 156208 is entitled *NPC Drivers and Mechanics Association, et al. v. National Power Corporation, et al.*

[75] *Rollo* (G.R. No. 187257), pp. 1581-1582.

[76] *Id*. at 1582.

[77] *Rollo* (G.R. No. 187776), pp. 428-429.

[78] *Id*. at 422-425.

Substantive

Whether NAPOCOR employees are entitled to the payment of their COLA and AA from the period of July 1, 1989 to March 16, 1999.

Whether the COLA and AA were already deemed factually integrated into the standardized salaries pursuant to Section 12 of Republic Act No. 6758.

Whether the COLA and AA were already integrated into the standardized salaries pursuant to the New Compensation Plan for NAPOCOR employees in Republic Act No. 7648 and Memorandum No. 198, series of 1994.

Whether the trial court violated the Constitution when it ordered NAPOCOR to back pay COLA and AA from its corporate funds.

Procedural Issues

The Office of the Solicitor General maintains that it filed its Notice of Appeal before the trial court as the People's Tribune with the authority and duty to uphold the best interests of the State.[79] Although it was initially tasked with representing the NAPOCOR and its Board of Directors, it withdrew as counsel.[80] The trial court also granted its motion for leave to intervene as the People's Tribune, so it had standing to file its own petition on its "perceived best interest of the State."[81]

The Office of the Solicitor General argues that its Notice of Appeal was timely filed and thus, the trial court had the ministerial duty to give due course to it.[82] It also pointed out that the trial court's November 28, 2008 Decision had not yet attained finality since the Writ of Execution was issued by the trial court on

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[79] *Rollo* (G.R. No. 187257), p. 1314, Office of the Solicitor General's Memorandum.

[80] *Id*.

[81] *Id*. at 1315.

[82] *Id*. at 1317.

March 23, 2009, merely three calendar days after it issued its Joint Order on March 20, 2009.[83]

The Department of Budget and Management likewise points out that the issuance of a Writ of Execution was premature since it still had a fresh 15-day period within which to appeal the Decision when its Motion for Reconsideration was denied by the trial court in its March 20, 2009 Joint Order.[84] It also agrees that the Office of the Solicitor General had standing to file a Notice of Appeal as the People's Tribune.[85] It avers that the Regional Trial Court should not have decided mainly on the pleadings since the case raises several substantive issues.[86]

NECU and NEWU, on the other hand, insist that the Notice of Appeal was correctly denied since the case only presented pure issues of law, which required a direct resort to this Court under Rule 45 of the Rules of Court.[87] They also contend that the Department of Budget and Management's Motion for Reconsideration was correctly denied since it did not contain a notice of hearing.[88] Since the appeal was not perfected, there was no bar to the Decision attaining finality.[89] They argue that a judgment on the pleadings was proper since the facts were undisputed.[90]

NECU and NEWU further claim that the Office of the Solicitor General, as the People's Tribune, "should realize that upon the 16,000 workers' lawful and legitimate demand to their long withheld wages, the 80 million Filipinos are behind them in

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[83] *Id*. at 1321-1322.

[84] *Id*. at 1504, Department of Budget and Management's Memorandum.

[85] *Id*. at 1506.

[86] *Id*. at 1502-1503.

[87] *Id*. at 1387, Workers' Consolidated Memorandum.

[88] *Id*. at 1392.

[89] *Id*. at 1390.

[90] *Id*. at 1382-1383.

this honorable quest."[91] They argue that the Department of Budget and Management has no standing to appeal since it is the Secretary of the Department, who is designated as a member of the NAPOCOR Board of Directors. They point out that then Secretary Andaya, Jr. instructed NAPOCOR "to proceed [with the] payment of the workers[']s COLA/AA from its Corporate Funds."[92]

Substantive Issues

The Office of the Solicitor General contends that Section 12[93] of Republic Act No. 6758 already integrated all allowances into standardized salary rates, including the COLA and AA since these allowances were not specifically mentioned in the exempted allowances under the law.[94] It cites *Gutierrez, et al. v. Department of Budget and Management, et al.*,[95] promulgated after *De Jesus*, *Philippine Ports Authority (PPA) Employees Hired After July 1, 1989*, and *Metropolitan Waterworks and*

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[91] *Id.* at 1417.

[92] *Id.* at 1393.

[93] Rep. Act No. 6758 (1989), Sec. 12 provides:

Section 12. Consolidation of Allowances and Compensation. – All allowances, except for representation and transportation allowances; clothing and laundry allowances; subsistence allowance of marine officers and crew on board government vessels and hospital personnel; hazard pay; allowances of foreign service personnel stationed abroad; and such other additional compensation not otherwise specified herein as may be determined by the DBM, shall be deemed included in the standardized salary rates herein prescribed. Such other additional compensation, whether in cash or in kind, being received by incumbents only as of July 1, 1989 not integrated into the standardized salary rates shall continue to be authorized.

Existing additional compensation of any national government official or employee paid from local funds of a local government unit shall be absorbed into the basic salary of said official or employee and shall be paid by the National Government.

[94] *Rollo* (G.R. No. 187257), pp. 1293-1294, Office of the Solicitor General's Memorandum.

[95] 630 Phil. 1, 16-17 (2010) [Per *J.* Abad, *En Banc*].

Sewerage System, wherein this Court stated that the COLA was already deemed integrated into the standardized salary rates of public employees.[96]

The Office of the Solicitor General argues that the Certification of NAPOCOR's Board was not binding since it did not specify the premise of its conclusion that the COLA and the AA were not factually integrated and the persons who certified the document stood to benefit from the certification.[97] It cites *NAPOCOR Employees Consolidated Union (NECU) v. National Power Corporation (NPC)*,[98] wherein this Court used the Notice of Position Allocation and Salary Adjustment to conclude that the employee welfare allowance was already deemed factually integrated into the standardized salary rates.[99] It claims that *De Jesus*, *Philippine Ports Authority (PPA) Employees Hired After July 1, 1989*, and *Metropolitan Waterworks and Sewerage System* were inapplicable since *NAPOCOR Employees Consolidated Union (NECU)* already clarified that the non-publication of DBM-CCC No. 10 did not render ineffective Section 12 of Republic Act No. 6758.[100] The Office of the Solicitor General also points out that the back pay of COLA and AA in addition to the standardized salary was an "additional compensation that [was] prohibited by the Constitution[.]"[101]

The Department of Budget and Management echoes the Office of the Solicitor General's argument that the COLA and AA were already deemed factually integrated into the standardized salary rates as shown in its Notice of Position Allocation and

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[96] *Rollo* (G.R. No. 187257), pp. 1294-1295, Office of the Solicitor General's Memorandum.

[97] *Id*. at 1296.

[98] 519 Phil. 372, 384-387 (2006) [Per *J*. Garcia, *En Banc*].

[99] *Rollo* (G.R. No. 187257), pp. 1299-1302, Office of the Solicitor General's Memorandum.

[100] *Id*. at 1306-1311.

[101] *Id*. at 1311-1313.

Salary Adjustment.[102] It presents the 1992 notices of several employees, where it was clearly stated that the COLA and AA were received in addition to their salaries and other benefits.[103] Also submitted is a Memorandum from the Office of the General Counsel of NAPOCOR, stating that the employees actually received their COLA and AA from July 1, 1989 to August 31, 1992 and that these allowances were deemed factually integrated into their salaries from September 1992 to December 31, 1993.[104]

The Department of Budget and Management maintains that the New Compensation Plan pursuant to Republic Act No. 7648 and Memorandum No. 198, series of 1994 did not authorize the grant of additional COLA and AA from January 1, 1994.[105] The law provided that only the President of the Philippines could upgrade the compensation of the employees; thus, only those allowances in the compensation plan could be modified by the NAPOCOR Board of Directors.[106] It points out that NECU and NEWU have not shown "any evidence of diminution [of] pay to justify their claim for additional COLA and AA[,]"[107] as required by this Court in *NAPOCOR Employees Consolidated Union (NECU)*.[108]

The Department of Budget and Management also argues that the trial court violated the Constitution when it ordered NAPOCOR to pay the COLA and AA from its corporate funds without the required appropriation for that purpose.[109] It alleges that Executive Order No. 518, series of 1979 requires that

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[102] *Id*. at 1484-1488, Department of Budget and Management's Memorandum.

[103] *Id*. at 1488-1490.

[104] *Id*. at 1491.

[105] *Id*. at 1494-1495.

[106] *Id*. at 1495-1496.

[107] *Id*. at 1496.

[108] *Id*. at 1496-1498.

[109] *Id*. at 1499-1502.

government-owned and controlled corporations prepare their Corporate Operating Budgets to obligate the amounts used for its operations and "serves [as] the appropriation[s] cover for the utilization of corporate funds[.]"[110] When the NAPOCOR officers were asked specifically where in their Corporate Operating Budget the payment of COLA and AA would be included, they stated that it "was not included in the [Corporate Operating Budget] approved by Congress."[111] Despite lacking the requisite Congressional approval, the trial court still ordered the NAPOCOR officials the release of the corporate funds, in direct contravention to the Constitution.[112]

NECU and NEWU, on the other hand, maintain that *De Jesus*, *Philippine Ports Authority (PPA) Employees Hired After July 1, 1989*, and *Metropolitan Waterworks and Sewerage System* have all decreed that they were entitled to their COLA and AA from July 1, 1989 to March 16, 1999.[113] The Office of the Solicitor General is trying to confuse the issue by citing *NAPOCOR Employees Consolidated Union (NECU)*, which concerned the employee welfare fund allowance, and not the COLA and AA.[114] They also point out that the Office of the Solicitor General "selectively"[115] chose the three Notices of Position Allocation and Salary Adjustment instead of subpoenaing the notices of all the workers.[116] They insist that Memorandum No. 198, series of 1994 did not include the COLA and AA on the presumption that DBM-CCC No. 10 was still in effect.[117] They also argue that the funds to be used to pay

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[110] *Id*. at 1499.

[111] *Id*. at 1500.

[112] *Id*. at 1500-1502.

[113] *Id*. at 1378, Workers' Consolidated Memorandum.

[114] *Id*. at 1380-1381.

[115] *Id*. at 1446, Workers' Supplemental/Reply Memorandum.

[116] *Id*. at 1445-1446.

[117] *Id*. at 1458.

are the corporate funds of the NAPOCOR, which could be subject to garnishment.[118]

I

Generally, the Office of the Solicitor General "represent[s] the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of lawyers."[119]

The exception to this rule is when it acts as the "People's Tribune." As such, it represents the best interests of the State, and may take an adverse position from the government agency under litigation. In *Pimentel, Jr. v. Commission on Elections*:[120]

> True, the Solicitor General is mandated to represent the Government, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of a lawyer. However, the Solicitor General may, as it has in instances take a position adverse and contrary to that of the Government on the reasoning that it is incumbent upon him to present to the court what he considers would legally uphold the best interest of the government although it may run counter to a client's position.[121]

The rationale for the Solicitor General's role is further explained in *Gonzales v. Hon. Chavez*:[122]

> Indeed, in the final analysis, it is the Filipino people as a collectivity that constitutes the Republic of the Philippines. Thus, the distinguished

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[118] *Id*. at 1416-1417, Workers' Consolidated Memorandum.

[119] 1987 ADM. CODE (1987), Book IV, Title III, Chap. 12, Sec. 35.

[120] 352 Phil. 424 (1998) [Per *J*. Kapunan, *En Banc*].

[121] *Id*. at 431-432, *citing* Pres. Decree No. 478 (1974), Sec. 1, 1987 ADM. CODE, book IV, title III, chap. 12, Sec. 35, *Sec. Orbos of the Department of Transportation and Communications v. Civil Service Commission*, 267 Phil. 476, 483-484 (1990) [Per *J*. Gancayco, *En Banc*], *Martinez v. Court of Appeals*, 307 Phil. 592, 601 (1994) [Per *C.J.* Narvasa, Second Division].

[122] 282 Phil. 858 (1992) [Per *J*. Romero, *En Banc*].

client of the OSG is the people themselves of which the individual lawyers in said office are a part.

. . . . . .

Moreover, endowed with a broad perspective that spans the legal interests of virtually the entire government officialdom, the OSG may be expected to transcend the parochial concerns of a particular client agency and instead, promote and protect the public weal. Given such objectivity, it can discern, metaphorically speaking, the panoply that is the forest and not just the individual trees. Not merely will it strive for a legal victory circumscribed by the narrow interests of the client office or official, but as well, the vast concerns of the sovereign which it is committed to serve.[123]

In this instance, the Office of the Solicitor General initially represented NAPOCOR and its Board of Directors in the proceedings before the Regional Trial Court. It later on filed an Omnibus Motion To Withdraw Appearance as Counsel for Respondents and For Leave to Intervene as People's Tribune,[124] which was granted by the trial court in its June 20, 2008 Order.[125] In denying the Office of the Solicitor General's Notice of Appeal, the trial court stated:

The Court is of the humble opinion and so holds that OSG has ceased to be the counsel of NPC and the subsequent filing of the notice of appeal is not appropriately filed or such notice will accrue to the benefit of NPC.[126]

In granting the Office of the Solicitor General's Omnibus Motion, the trial court allowed a party, separate from NAPOCOR – the People's Tribune — to enter its appearance in the case. As with any other party, it was allowed to file a Notice of Appeal

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[123] *Id*. at 889-891.

[124] *Rollo* (G.R. No. 187257), p. 1535, Regional Trial Court Decision in Civil Case No. Q-07-61728.

[125] *Id*. at 1522, Regional Trial Court Joint Order in Civil Case No. Q-07-61728.

[126] *Id*.

separately from NAPOCOR. Its Notice of Appeal was not for the benefit of NAPOCOR; rather, it was for the protection of the interests of the State. Its Notice of Appeal would have been timely filed.

A similar issue was raised regarding the Department of Budget and Management's standing to file a Motion for Reconsideration of the November 28, 2008 Decision.

The case was brought against NAPOCOR and its Board of Directors, which included the Secretary of Budget and Management.[127] All members of the Board were served a copy of the petition before the trial court but only then Secretary Andaya, Jr. filed his Comment.[128] Thus, when he filed a Motion for Reconsideration of the trial court's Decision, it was "as a member of the Board of Directors of the [NAPOCOR.]"[129] Being a party to the case, the Secretary of the Budget and Management had standing to file the Motion for Reconsideration.

NECU and NEWU likewise assail Secretary Andaya, Jr.'s Motion for Reconsideration for failing to state a notice of hearing.

Generally, all written motions are required to include a notice of hearing and must be addressed to all parties and served to them at least three (3) days before the date of the hearing.[130]

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[127] *See NAPOCOR Employees Consolidated Union (NECU) v. National Power Corporation (NPC)*, 519 Phil. 372, 375 (2006) [Per *J.* Garcia, *En Banc*].

[128] *Rollo* (G.R. No. 187257), p. 1536, Regional Trial Court Decision in Civil Case No. Q-07-61728.

[129] *Id*. at 1515, Regional Trial Court Joint Order in Civil Case No. Q-07-61728.

[130] *See* RULES OF COURT, Rule 15, Sec. 4 provides:

RULE 15. Motions

. . . . . .

SECTION 4. Hearing of Motion. – Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.

When a party fails to comply, "the running of the period to appeal is not tolled by [the] filing or pendency."[131] This three-day notice rule, however, is not absolute. The motion may still be acted upon by the court "provided doing so will neither cause prejudice to the other party nor violate his or her due process rights."[132]

The trial court in this case nevertheless conducted a hearing on January 23, 2009 and resolved the Motion for Reconsideration on its merits.[133] NECU and NEWU likewise did not allege any violation to their right to due process due to the lack of a notice of hearing. Thus, the filing of the Motion of Reconsideration was able to toll the running of the period of appeal.

II

The Office of the Solicitor General's appeal required a review of the documentary evidence presented, thus, it was necessary to first file a notice of appeal with the trial court under Rule 41 of the Rules of Court. A direct appeal with this Court through a petition for review under Rule 45 of the Rules of Court would have been dismissed outright for presenting questions of fact.

There are three modes of appeal from a decision or final order from the Regional Trial Court. The first mode is an ordinary appeal to the Court of Appeals in cases decided by the trial court in the exercise of its original jurisdiction. This is done by filing a notice of appeal with the trial court.[134] The second

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Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.

[131] *Nuñez v. GSIS Family Bank*, 511 Phil. 735, 747-748 (2005) [Per *J.* Carpio Morales, Third Division].

[132] *Laude v. Ginez-Jabalde*, G.R. No. 217456, November 24, 2015, 775 SCRA 408, 426 [Per *J.* Leonen, *En Banc*].

[133] *Rollo* (G.R. No. 187257), p. 1523, Regional Trial Court Joint Order in Civil Case No. Q-07-61728.

[134] RULES OF COURT, Rule 41, Sec. 2(a).

mode is through a petition for review with the Court of Appeals in cases decided in the exercise of the trial court's appellate jurisdiction.[135] The third mode is by filing a petition for review on certiorari with this Court if the appeal involves only questions of law.[136]

Only the third mode of appeal limits the scope of the issues to be brought. The first and second modes of appeal thus involve appeals where there are both questions of law and of fact. The test used to determine whether there is a question of fact or of law "is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine 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."[137]

By filing a Notice of Appeal, the Office of the Solicitor General intended to appeal to the Court of Appeals via an ordinary appeal under Rule 41, Sec. 1 (a). NECU and NEWU questioned this mode of appeal on the ground that only questions of law were presented.

The Office of the Solicitor General's main argument, however, was that the COLA and AA were already *factually* integrated into the standardized salary rates of NAPOCOR's employees. It had intended this fact to be established by documentary evidence such as the Notice of Position Allocation and Salary Adjustment. NECU and NEWU likewise presented documentary

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[135] RULES OF COURT, Rule 41, Sec. 2(b) and Rule 42, Sec. 1.

[136] RULES OF COURT, Rule 41, Sec. 2(c) and Rule 45, Sec. 1.

[137] *Republic v. Malabanan, et al.*, 646 Phil. 631, 638 (2010) [Per *J.* Villarama, Jr., Third Division], *citing Leoncio, et al. v. Vera, et al.*, 569 Phil. 512, 516 (2008) [Per *J.* Nachura, Third Division], *which cited Binay v. Odeña*, 551 Phil. 681, 689 (2007) [Per *J.* Nachura, *En Banc*] and *Velayo-Fong v. Spouses Velayo*, 539 Phil. 377, 386-387 (2006) [Per *J.* Austria-Martinez, First Division]. *See also Century Iron Works, Inc., et al. v. Bañas*, 711 Phil. 576, 585-586 (2013) [Per *J.* Brion, Second Division] and *Tongonan Holdings and Development Corporation v. Atty. Escaño, Jr.*, 672 Phil. 747, 756 (2011) [Per *J.* Mendoza, Third Division].

evidence before the trial court to establish their position. In order to review any appeal of the case, it would have been necessary to review the weight and evidentiary value of the documents presented. These would have been questions of fact better addressed in an ordinary appeal before the Court of Appeals.

The Office of the Solicitor General, thus, did not err in first filing a notice of appeal before the Regional Trial Court.

III

Considering that the Office of the Solicitor General represented an adverse position, a judgment on the pleadings was improper in this instance.

A judgment on the pleadings may be allowed in cases "[w]here an answer fails to tender an issue, or otherwise admits the material allegations of the adverse party's pleading[.]"[138] NECU and NEWU's documentary evidence consisted of documents by the NAPOCOR Board of Directors stating that the employees were entitled to the back pay of their COLA and AA. Thus, the Regional Trial Court concluded that since the NAPOCOR admitted the material allegations of the complaint, a judgment on the pleadings was proper.[139]

The trial court, however, operated on the mistaken assumption that the Office of the Solicitor General represented NAPOCOR. At this point in the proceedings, the Office of the Solicitor General had already withdrawn its appearance as counsel for NAPOCOR and entered its appearance as the People's Tribune.[140] In presenting an adverse position, the Office of the Solicitor

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[138] RULES OF COURT, Rule 34, Sec. 1.

[139] *Rollo* (G.R. No. 187257), pp. 1542-1543, Regional Trial Court Decision in Civil Case No. Q-07-61728.

[140] *Id*. at 1535-1536. The OSG filed its Motion To Withdraw as Counsel for Respondents and For Leave to Intervene as the People's Tribune on June 11, 2008. It filed its Comment/Opposition to the Motion for Judgment on the Pleadings on June 12, 2008.

General could not be deemed to have admitted the material allegations of the complaint.

IV

COLA and AA are already deemed integrated into the standardized salaries of the NAPOCOR employees from July 1, 1989 to December 31, 1993.

Before the enactment of Republic Act No. 6758, previous compensation and position classification laws, such as Presidential Decree No. 985, as amended by Presidential Decree No. 1597,[141] only granted allowances and fringe benefits upon the recommendation of the Commissioner of Budget and the approval of the President of the Philippines.[142] Republic Act No. 6758 aimed "to standardize salary rates among government personnel and do away with multiple allowances and other incentive packages and the resulting differences in compensation among them."[143] Thus, Section 12 of Republic Act No. 6758 introduced the concept of integration of allowance upon the standardization of the salary rates.[144] Section 12 states:

> Section 12. Consolidation of Allowances and Compensation. – All allowances, except for representation and transportation allowances; clothing and laundry allowances; subsistence allowance of marine officers and crew on board government vessels and hospital personnel; hazard pay; allowances of foreign service personnel stationed abroad; and such other additional compensation not otherwise specified herein as may be determined by the DBM, shall be deemed included in the standardized salary rates herein prescribed. Such other additional compensation, whether in cash or in kind, being received by incumbents only as of July 1, 1989 not integrated into the standardized salary rates shall continue to be authorized.

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[141] Further Rationalizing the System of Compensation and Position Classification in the National Government (1978).

[142] Pres. Decree No. 1597 (1978), Sec. 5.

[143] *Ambros v. Commission on Audit*, 501 Phil. 255, 279 (2005) [Per *J.* Callejo, Sr., *En Banc*].

[144] *See Maritime Industry Authority v. Commission on Audit*, G.R. No. 185812, January 13, 2015, 745 SCRA 300, 319 [Per *J.* Leonen, *En Banc*].

Existing additional compensation of any national government official or employee paid from local funds of a local government unit shall be absorbed into the basic salary of said official or employee and shall be paid by the National Government.

As a general rule, "all allowances are deemed included in the standardized salary [rates]."[145] The following allowances, however, are deemed *not* to have been integrated:

…representation and transportation allowances; clothing and laundry allowances; subsistence allowance of marine officers and crew on board government vessels and hospital personnel; hazard pay; allowances of foreign service personnel stationed abroad; and such other additional compensation not otherwise specified herein as may be determined by the DBM…[146]

The phrase "such other additional compensation not otherwise specified herein as may be determined by the DBM" specifies that the Department of Budget and Management has the delegated authority to determine other allowances that are not deemed integrated into the standardized salaries.[147] The Department of Budget and Management subsequently issued DBM-CCC No. 10, enumerating all allowances deemed included in the basic salary and discontinuing all allowances and fringe benefits granted on top of the basic salary.[148] Item 4.1 states:

4.1 The present salary of an incumbent for purposes of this Circular shall refer to the sum total of actual basic salary including allowances enumerated hereunder, being received as of June 30, 1989 and authorized pursuant to P.D. No. 985 and other legislative or administrative issuances:

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[145] *Maritime Industry Authority v. Commission on Audit*, G.R. No. 185812, January 13, 2015, 745 SCRA 300, 321 [Per *J*. Leonen, *En Banc*].

[146] Rep. Act No. 6758 (1989), Sec. 12.

[147] *See Maritime Industry Authority v. Commission on Audit*, G.R. No. 185812, January 13, 2015, 745 SCRA 300, 334-335 [Per *J*. Leonen, *En Banc*].

[148] *De Jesus v. Commission on Audit*, 355 Phil. 584, 587 (1998) [Per *J*. Purisima, *En Banc*].

> 4.1.1 Cost-of-Living Allowance/Bank Equity Pay (COLA/ BEP) equivalent to forty percent (40%) of basic salary or ₱300.00 per month, whichever is higher;
>
> 4.1.2 Amelioration Allowance equivalent to ten percent (10%) of basic salary of ₱150.00 per month, whichever is higher;
>
> 4.1.3 COLA guaranteed to GOCCs/GFIs covered by the Compensation and Position Classification Plan for the regular agencies/offices of the National Government and to GOCCs/GFIs following the Compensation and Position Classification Plan under LOImp. No. 104/CCC No. 1 and LOImp.No. 97/ CCC No. 2 in the amount of ₱550.00 per month for those whose monthly basic salary is ₱1,500 and below, and ₱500 for those whose monthly basic salary is ₱1,501 and above, granted on top of the COLA/ BEP mentioned in Item No. 4.1.1 above[.][149]

Item No. 5.6 of the Circular states:

> Payment of other allowances/fringe benefits and all other forms of compensation granted on top of basic salary, whether in cash or in kind, . . . shall be discontinued effective November 1, 1989. Payment made for such allowances/fringe benefits after said date shall be considered as illegal disbursement of public funds.[150]

In *De Jesus*, the Commission on Audit disallowed the payment of honoraria to employees of the Local Water Utilities Administration on the ground that this was a fringe benefit granted on top of the basic salary.[151] This Court, however, set aside the disallowance and rendered DBM-CCC No. 10 ineffective for non-publication in the Official Gazette or in a newspaper of general circulation:

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[149] *Rollo* (G.R. No. 187257), p. 483, Department of Budget and Management Corporate Compensation Circular No. 10.

[150] *De Jesus v. Commission on Audit*, 355 Phil. 584, 587 (1998) [Per *J.* Purisima, *En Banc*].

[151] *Id*.

[I]t is decisively clear that DBM-CCC No. 10, which completely disallows payment of allowances and other additional compensation to government officials and employees, starting November 1, 1989, is not a mere interpretative or internal regulation. It is something more than that. And why not, when it tends to deprive government workers of their allowances and additional compensation sorely needed to keep body and soul together. At the very least, before the said circular under attack may be permitted to substantially reduce their income, the government officials and employees concerned should be apprised and alerted by the publication of subject circular in the Official Gazette or in a newspaper of general circulation in the Philippines — to the end that they be given amplest opportunity to voice out whatever opposition they may have, and to ventilate their stance on the matter. This approach is more in keeping with democratic precepts and rudiments of fairness and transparency.

In light of the foregoing disquisition on the ineffectiveness of DBM-CCC No. 10 due to its non-publication in the Official Gazette or in a newspaper of general circulation in the country, as required by law, resolution of the other issue at bar is unnecessary.[152]

In *Philippine Ports Authority (PPA) Employees Hired After July 1, 1989*, the Philippine Ports Authority had been paying its officials and employees COLA and AA prior to the issuance of DBM-CCC No. 10.[153] Upon the issuance of the Circular, it discontinued the payment of these allowances as these were already deemed integrated into the standardized salaries.[154] *De Jesus*, however, rendered the Circular ineffective for non-publication. Thus, a question arose as to whether the employees were entitled to the back pay of their COLA and AA.

This Court held that since the Philippine Port Authority has already granted these allowances to its employees, the employees should continue to receive them during the period of ineffectivity of DBM-CCC No. 10:

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[152] *Id.* at 590-591.

[153] *Philippine Ports Authority (PPA) Employees Hired After July 1, 1989 v. Commission on Audit*, 506 Phil. 382, 385 (2005) [Per Acting *C.J.* Panganiban, *En Banc*].

[154] *Id.*

The parties fail to cite any law barring the continuation of the grant of the COLA and the amelioration allowance during the period when DBM-CCC No. 10 was in legal limbo.

The present case should be distinguished from *PNB v. Palma*, in which the respondents sought by mandamus to compel the petitioner therein to grant them certain fringe benefits and allowances that continued to be given to Philippine National Bank (PNB) employees hired prior to July 1, 1989. This Court held that PNB could not be compelled to do so, because the respondents had been hired after that date. Under Section 12 of RA 6758, only "incumbent" government employees (as of July 1, 1989) already receiving those benefits may continue to receive them, apart from their standardized pay.

In the present case, the PPA already granted herein petitioners the COLA and the amelioration allowances, even if they were hired after July 1, 1989. The only issue is whether they should have continued to receive the benefits during the period of the "ineffectivity" of DBC-CCC No. 10; that is, from July 1, 1989 to March 16, 1999, the period during which those allowances were not deemed integrated into their standard salary rates. Furthermore, in the *PNB* Decision, the employees claimed a right to receive the allowances from July 1, 1989 to January 1, 1997. PNB was able to grant the benefits post facto, because on that date (January 1, 1997) it had already been privatized and was thus no longer subject to the restrictions imposed by RA 6758 (the Salary Standardization Law).

Tellingly, the subject matter of the *PNB* case involved benefits that had not been deemed integrated into, but in fact exempted from, the standardized salary rates. In the present case, the subject matter refers to those deemed included, but were placed "in limbo" as a result of this Court's ruling in *De Jesus v. COA*.

To stress, the failure to publish DBM-CCC No. 10 meant that the COLA and the amelioration allowance were not effectively integrated into the standardized salaries of the PPA employees as of July 1, 1989. The integration became effective only on March 16, 1999. Thus, in between those two dates, they were still entitled to receive the two allowances.[155]

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[155] *Id*. at 389-390, *citing Philippine National Bank v. Palma*, 503 Phil. 917 (2005) [Per *J.* Panganiban, Third Division].

Thus, *Philippine Ports Authority (PPA) Employees Hired After July 1, 1989* clarified that those who were already receiving COLA and AA as of July 1, 1989, **but whose receipt was discontinued due to the issuance of DBM-CCC No. 10, were entitled to receive such allowances during the period of the Circular's ineffectivity, or from July 1, 1989 to March 16, 1999. The same factual premise was present in *Metropolitan Waterworks and Sewerage System*, wherein this Court reiterated that those already receiving COLA as of July 1, 1989 were entitled to its payment from 1989 to 1999**.[156]

In neither of these cases did this Court suggest that the compensation of the employees after the promulgation of Republic Act No. 6758 would be **increased** with the addition of the COLA and AA. If the total compensation package were the same, then clearly the COLA or AA, or both were **factually** integrated.

NECU and NEWU anchor their entitlement to the back pay of COLA and AA from July 1, 1989 to March 16, 1999 on these three cases. It is necessary to examine first if the officers and employees of the NAPOCOR were already receiving COLA and AA from July 1, 1989 and whether their receipt of these allowances were discontinued due to the issuance of DBM-CCC No. 10.

In *NAPOCOR Employees Consolidated Union (NECU)*, this Court was confronted with the issue of whether the employees' welfare allowance was deemed integrated into the standardized salaries of the NAPOCOR employees.[157] In holding that the employee welfare allowance was already deemed integrated, this Court also found that the NAPOCOR employees were already receiving COLA and AA prior to the effectivity of Republic Act No. 6758:

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[156] *Metropolitan Waterworks and Sewerage System v. Bautista, et al.*, 572 Phil. 383, 403-407 (2008) [Per J. R. T. Reyes, Third Division].

[157] *NAPOCOR Employees Consolidated Union (NECU) v. National Power Corporation (NPC)*, 519 Phil. 372, 382 (2006) [Per J. Garcia, *En Banc*].

The State aims in Rep. Act No. 6758 to provide equal pay for substantially equal work and to base differences in pay upon substantive differences in duties and responsibilities, and qualification requirements of the positions. Prior to the effectivity of that law, NPC employees were receiving, aside from cost of living allowance, myriad of allowances like social amelioration allowance, emergency allowance, longevity pay and employee welfare allowance.[158] (Citation omitted)

NAPOCOR Employees Consolidated Union (NECU) also clarifies that *Philippine Ports Authority (PPA) Employees Hired After July 1, 1989* was inapplicable since it only applied to back pay of COLA and AA that was previously withheld and not to those who continued to receive these benefits even after the issuance of DBM-CCC No. 10:

The Court has, to be sure, taken stock of its recent ruling in *Philippine Ports Authority (PPA) Employees Hired After July 1, 1989 vs. Commission on Audit*. Sadly, however, our pronouncement therein is not on all fours applicable owing to differing factual milieu. There, the Commission on Audit allowed the payment of back cost of living allowance (COLA) and amelioration allowance previously withheld from PPA employees pursuant to the heretofore ineffective DBM-CCC No. 10, but limited the back payment only to incumbents as of July 1, 1989 who were already then receiving both allowances. COA considered the COLA and amelioration allowance of PPA employees as "not integrated" within the purview of the second sentence of Section 12 of Rep. Act No. 6758, which, according to COA confines the payment of "not integrated" benefits only to July 1, 1989 incumbents already enjoying said allowances.

In setting aside COA's ruling, we held in *PPA Employees* that there was no basis to use the elements of incumbency and prior receipt as standards to discriminate against the petitioners therein. For, DBM –CCC No. 10, upon which the incumbency and prior receipt requirements are contextually predicated, was in legal limbo from July 1, 1989 (effective date of the unpublished DBM-CCC No. 10) to March 16, 1999 (date of effectivity of the heretofore unpublished DBM circular). And being in legal limbo, the benefits otherwise covered by the circular, if properly published, were likewise in legal

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[158] *Id*. at 383.

limbo as they cannot be classified either as effectively integrated or not integrated benefits.

There lies the difference.

Here, the employee welfare allowance was, as above demonstrated, integrated by NPC into the employees' standardized salary rates effective July 1, 1989 pursuant to Rep. Act No. 6758. Unlike in *PPA Employees*, the element of discrimination between incumbents as of July 1, 1989 and those joining the force thereafter is not obtaining in this case. And while after July 1, 1989, PPA employees can rightfully complain about the discontinuance of payment of COLA and amelioration allowance effected due to the incumbency and prior receipt requirements set forth in DBM-CCC No[.] 10, NPC cannot do likewise with respect to their welfare allowance since NPC has, for all intents and purposes, never really discontinued the payment thereof.[159] (Citation omitted)

Republic Act No. 6758 remained effective during the period of ineffectivity of DBM-CCC No. 10.[160] Thus, the COLA and AA of NAPOCOR officers and employees were integrated into the standardized salaries effective July 1, 1989 pursuant to Section 12 of Republic Act No. 6758, which provides:

Section 12. Consolidation of Allowances and Compensation. – All allowances, except for representation and transportation allowances; clothing and laundry allowances; subsistence allowance of marine officers and crew on board government vessels and hospital personnel; hazard pay; allowances of foreign service personnel stationed abroad; and such other additional compensation not otherwise specified herein as may be determined by the DBM, shall be deemed included in the standardized salary rates herein prescribed. Such other additional compensation, whether in cash or in kind, being received by incumbents only as of July 1, 1989 not integrated into the standardized salary rates shall continue to be authorized.

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[159] *Id.* at 388-389.

[160] *See NAPOCOR Employees Consolidated Union (NECU) v. National Power Corporation (NPC)*, 519 Phil. 372, 382 (2006) [Per J. Garcia, *En Banc*].

Existing additional compensation of any national government official or employee paid from local funds of a local government unit shall be absorbed into the basic salary of said official or employee and shall be paid by the National Government.

Unlike in *Philippine Ports Authority (PPA) Employees Hired After July 1, 1989*, there would be no basis to distinguish between those hired before July 1, 1989 and those hired after July 1, 1989. Both sets of NAPOCOR employees were continuously receiving their COLA and AA since these allowances were already factually integrated into the standardized salaries pursuant to Section 12 of Republic Act No. 6758.

In order to settle any confusion, we abandon any other interpretation of our ruling in *Philippine Ports Authority (PPA) Employees Hired After July 1, 1989* with regard to the entitlement of the NAPOCOR officers and employees to the back payment of COLA and AA during the period of legal limbo. To grant any back payment of COLA and AA despite their factual integration into the standardized salary would cause salary distortions[161] in the Civil Service. It would also provide unequal protection to those employees whose COLA and AA were proven to have been factually discontinued from the period of Republic Act No. 6758's effectivity.

Generally, abandoned doctrines of this Court are given only prospective effect.[162] However, a strict interpretation of this doctrine, when it causes a breach of a fundamental constitutional right, cannot be countenanced. In this case, it will result in a violation of the equal protection clause of the Constitution.

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[161] The term "wage distortion" is defined in Rep. Act No. 6727 (1989) as "a situation where an increase in prescribed wage rates results in the elimination or severe contraction of intentional quantitative differences in wage or salary rates between and among employee groups in an establishment as to effectively obliterate the distinctions embodied in such wage structure based on skills, length of service, or other logical bases of differentiation."

[162] *See Carpio Morales v. Court of Appeals (Sixth Division)*, G.R. Nos. 217126-27, November 10, 2015, 774 SCRA 431 [Per *J.* Perlas-Bernabe, *En Banc*], on our abandonment of the condonation doctrine.

Furthermore, *Philippine Ports Authority (PPA) Employees Hired After July 1, 1989* only applies if the compensation package of those hired before the effectivity of Republic Act No. 6758 actually decreased; or in the case of those hired after, if they received a lesser compensation package as a result of the deduction of COLA or AA. Neither situation applies in this case.

NECU and NEWU take exception to the application of *NAPOCOR Employees Consolidated Union (NECU)* to this case, arguing that this case involved COLA and AA, and not the employee welfare allowance. NECU and NEWU, however, are arguing on semantics. At its most basic, *NAPOCOR Employees Consolidated Union (NECU)* involved an allowance appearing in the Notices of Position Allocation and Salary Adjustment to have already been integrated into the basic salary. The two allowances involved in this case appear on the same notices.

The prior acts of the parties likewise support the finding that from July 1, 1989 to December 31, 1993, the COLA and AA were already deemed integrated into the basic salary.

On March 20, 2006, the Department of Budget and Management issued Corporate Compensation Circular No. 12,[163] providing the guidelines for implementation of this Court's decisions on the grant of additional allowances to officers and employees of government-owned and controlled corporations and government financial institutions. It stated, in part:

> For employees hired after July 1, 1989 or the effectivity of RA 6758, a finding that the subject allowance was factually integrated into the basic salaries of incumbents as of July 1, 1989 shall mean that said allowances were likewise paid and factually integrated into the basic salaries of those hired after July 1, 1989.
>
> Any finding that the concerned allowance was not factually integrated into the basic salary, and hence, has not been paid, shall be supported by sworn certifications from the President of the concerned GOCC/

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[163] *Rollo* (G.R. No. 187257), pp. 507-508.

GFI, its Vice President for Human Resource and Finance, and other relevant officers directly in charge thereof, or officials with equivalent ranks and responsibilities, attesting to the fact that the subject allowance was not factually integrated in the basic salary after accomplishment of the above matrix, and as supported by the foregoing documents.[164]

Pursuant to this Circular, NAPOCOR submitted to the Department of Budget and Management a Certification[165] dated May 28, 2007[166] stating:

This is to certify that the Cost of Living Allowance (COLA) and Amelioration Allowance (AA) to be paid to the four thousand nine hundred thirteen (4,913) NPC employees hired during the period 01 July 1989 to 31 December 1993 per the attached matrix were not factually integrated in their respective basic salaries for the subject period.

This is to further certify that the COLA and AA to be paid to the nine thousand seven hundred seventy-seven (9,777) NPC employees concerned during the period 01 January 1994 to 16 March 1999 have not been factually integrated into the basic salaries of the subject employees.

Attached herewith is the accomplished matrix prescribed under DBM CCC # 12, which forms an integral part of this certification.[167]

The Department of Budget and Management, through Secretary Andaya, Jr., wrote a letter[168] dated September 18, 2007 concerning the submission of these documents, stating:

Based on CCC No. 12, determination of whether such allowances authorized by the Supreme Court to be granted have factually been integrated or not and paid to the NPC employees concerned now rests with the NPC management. The documents enumerated under paragraph 2.1 to 2.4 of said Circular shall serve as basis for determining

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[164] *Id*. at 508.

[165] *Id*. at 673.

[166] *Id*. The date refers to the date of notarization.

[167] *Id*.

[168] *Id*. at 680-681.

whether their officials and employees are still entitled to payment of such allowances. It may be noted that CCC No. 12 does not require GOCCs/GFIs to submit the said documents to the Department of Budget and Management. Likewise, payment of such allowances does not require prior approval of the DBM Secretary.

The findings of the NPC as to who are entitled to payment of back COLA and AA can only be possible after a diligent and exhaustive review and evaluation of all pertinent documents enumerated in CCC No. 12. May we call your attention, however, to the following[:]

a) NPC employees who were incumbents of positions as of June 30, 1989 are no longer entitled to COLA and AA for the period July 1, 1989 to December 31, 1993 since said allowances have been factually integrated into the standardized salaries as clearly reflected in a Notice of Position Allocation and Salary Adjustment (NPASA) of an employee submitted by NPC in connection with the En banc decision of the Supreme Court in the case NAPOCOR EMPLOYEES CONSOLIDATED UNION[,] et al. vs. THE NATIONAL POWER CORPORATION, et al. under G.R. No. 157492 dated March 10, 2006. As reflected in the said NPASA, not only the Welfare Allowance was integrated, but likewise the COLA and Amelioration Allowance being claimed by the NPC employees.

b) For employees hired between July 1, 1989 and December 31, 1993, it is inconceivable that NPC was not aware of the Implementation of RA No. 6758. The SSL had already been in effect on July 1, 1989 and as such, the hiring rate under the SSL should have been allowed to NPC employees hired effective the said period. NPC could not have continuously and separately granted any COLA and AA to those hired effective July 1, 1989 and thereafter.

c) It may also be worth mentioning that in CY 1994, NPC adopted a new Salary Pay [sic] pursuant to RA No. 7643, the Energy Power Crisis Act, as implemented by Memorandum Order (MO) 198. Under the said Salary Plan, the COLA and AA are no longer subsisting and these have already been integrated into the standardized salary of employees effective July 1, 1989.[169]

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[169] *Id*.

In a letter[170] dated October 9, 2007, President Cyril C. del Callar (President del Callar) conceded Secretary Andaya, Jr.'s first point but took exception to the second and third point:

[W]e would like to make some clarifications on the following concerns made on our request:

a) NPC employees who were incumbents of positions as of June 30, 1989 are no longer entitled to COLA and AA for the period July 1, 1989 to December 31, 1993 since said allowances have been factually integrated into the standardized rates as reflected in a NPASA of an employee submitted by NPC in connection with the En banc decision of the Supreme Court …….. by NPC employees..

Your position on item a) above is the same with our position as stated in our letter of 10 May 2007. NPC employees who were incumbents of positions as of 30 June 1989 may not be entitled to COLA and AA because during the period 01 July 1989 to 31 December 1993, these employees either actually received such benefits or the said benefits were already factually integrated into their respective standardized salaries.

Attached are copies of pay slips of employees who were incumbents as of 30 June 1989 to illustrate that their COLA and AA were integrated into their standardized salaries during the covered period.

b) For employees hired between July 1, 1989 and December 31, 1993, it is inconceivable that NPC was not aware of the implementation of RA No. 6758. The SSL had already been in effect on July 1, 1989 and as such, the hiring rate under the SSL should have been allowed to NPC employees hired effective the said period. NPC could not have continuously and separately granted any COLA and AA to those hired effective July 1, 1989 and thereafter.

NPC is very much aware of the implementation of RA 6758 and that the SSL took effect on 01 July 1989. However, we would like to remind you that CCC No. 10 was declared ineffective by the Supreme Court due to its non-publication

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[170] *Id*. at 678-679.

in the Official Gazette in the case of De Jesus, et al. vs. COA (294 SCRA 152). In the case of Philippine Ports Authority Employees vs. COA (GR No. 160396, September 6, 2005), the High Court ruled that the failure to publish DBM-CCC No. 10 meant that the COLA and AA were not effectively integrated into the standardized salaries. It was further ruled that "All – not only incumbents as of July 1, 1989 – should be allowed to receive back pay corresponding to the said benefits, from July 1, 1989 to the new effectivity of DBM-CCC No. 10 – March 16, 1999.

Attached for your reference are copies of pay slips of NPC employees hired after the effectivity of the SSL to serve as proof that the subject benefits were not factually integrated into the respective basic salaries of employees hired after June 30, 1989. Being non-incumbents as of 30 June 1989, nothing was integrated into their salaries effective July 1, 1989 or respective dates they were actually employed thereafter. The COLA and AA were not part of the total compensation package they were receiving during the period 01 July 1989 to 31 December 1993.

c) It may also be worth mentioning that in CY 1994, NPC adopted a new Salary Pay [sic] ***pursuant to RA No. 6743*** [sic]***, the Energy Power Crisis Act, as implemented by Memorandum Order (MO) 198. Under the said Salary Plan, the COLA and AA are no longer subsisting and these have already been integrated into the standardized salary of employees effective July 1, 1989.***

The new NPC Pay Plan which took effect in 1994 was authorized under Memorandum Order (MO) 198. The salary and benefits level accorded to NPC personnel was aligned with the private sector and was based on the result of the study conducted by SGV. The grant of several existing government-mandated allowances was allowed. However, the COLA and AA were not included in the Schedule of Monthly Allowances due to the belief that DBM-CCC No. 10 was still in effect.[171] (Emphasis in the original)

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[171] *Id*.

Unfortunately, the attached Notices of Position Allocation and Salary Adjustment and pay slips only served to prove that from July 1, 1989 to December 31, 1993, the COLA and AA were already deemed integrated into the basic salary. According to the various Notices of Position Allocation and Salary Adjustment[172] submitted to this Court, the receipt of COLA and AA was not discontinued due to the implementation of Republic Act No. 6758. One employee, Ernesto Camagong (Mr. Camagong), was a Plant Equipment Operator, classified as Salary Grade 10:

JOB GRADE: 10 WITH A SALARY AS OF 06/30/89 AS FOLLOWS:

BASIC SALARY		[₱] 3,912.00
COST OF LIVING ALLOWANCE (COLA)		1,564.80
ADDITIONAL COLA		200.00
SOCIAL AMELIORATION ALLOWANCE		391.20
EMERGENCY ALLOWANCE		255.00
RED CIRCLE RATE (RCR)		1,592.10
LONGEVITY PAY		200.00
EMPLOYEE WELFARE ALLOWANCE		391.20
T O T A L	AS OF 06/30/89	8,506.30
SALARY ADJUSTMENT	EFFECTIVE JULY 1, 1989	NONE
TRANSITION ALLOWANCE	EFFECTIVE JULY 1, 1989	4,120.30
ADJUSTED SALARY	EFFECTIVE JULY 1, 1989	4,386.00
TOTAL COMPENSATION	EFFECTIVE JULY 1, 1989	8,506.30[173]

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[172] *Id*. at 1569-1571.

NAPOCOR Employees Consolidated Union (NECU) v. National Power Corporation (NPC), 519 Phil. 372, 385 (2006) [Per *J*. Garcia, *En Banc*] cited the same NPASA in its Decision.

[173] *Id*. at 1569.

Prior to Republic Act No. 6758, or on June 30, 1989, Mr. Camagong was receiving a total salary of ₱8,506.30. Upon the effectivity of the law, or on July 1, 1989, all allowances, except those specifically excluded, were deemed integrated into his basic salary. *To stress, all allowances previously granted were already deemed integrated into the standardized salary rates by July 1, 1989.*

As shown above, Mr. Camagong's adjusted salary of ₱4,386.00 already included all allowances previously received. This amount is obviously less than his previous total compensation of ₱8,506.30. The law, however, provided a remedy in the form of a transition allowance. *NAPOCOR Employees Consolidated Union (NECU)* explains:

> When Rep. Act No. 6758 became effective on July 1, 1989, the new position title of Camagong was Plant Equipment Operator B with a salary grade of 14 and with a monthly salary of ₱4,386.00.
>
> Admittedly, in the case of Camagong, his monthly gross income of ₱8,506.30 prior to the effectivity of Rep. Act No. 6758, was thereafter reduced to only ₱4,386.00. The situation, however, is duly addressed by the law itself. For, while Rep. Act No. 6758 aims at standardizing the salary rates of government employees, yet the legislature has adhered to the policy of non-diminution of pay when it enacted said law. So it is that Section 17 thereof precisely provides for a "transition allowance," as follows:
>
> > Section 17. Salaries of Incumbents. — Incumbents of positions presently receiving salaries and additional compensation/fringe benefits including those absorbed from local government units and other emoluments, the aggregate of which exceeds the standardized salary rate as herein prescribed, shall continue to receive such excess compensation, which shall be referred to as transition allowance. The transition allowance shall be reduced by the amount of salary adjustment that the incumbent shall receive in the future.
> >
> > The transition allowance referred to herein shall be treated as part of the basic salary for purposes of computing retirement pay, year-end bonus and other similar benefits.
> >
> > As basis for computation of the first across-the-board salary adjustment of incumbents with transition allowance, no

> incumbent who is receiving compensation exceeding the standardized salary rate at the time of the effectivity of this Act, shall be assigned a salary lower than ninety percent (90%) of his present compensation or the standardized salary rate, whichever is higher. Subsequent increases shall be based on the resultant adjusted salary.

Evidently, the transition allowance under the aforequoted provision was purposely meant to bridge the difference in pay between the pre-R.A. 6758 salary of government employees and their standardized pay rates thereafter, and because non-diminution of pay is the governing principle in Rep. Act No. 6758, Camagong, pursuant to Section 17 of that law was given a transition allowance of ₱4,120.30. This explains why, in the case of Camagong, his gross monthly income remained at ₱8,506.30, as can be seen in his NPASA, clearly showing that the allowances he used to receive prior to the effectivity of Rep. Act No. 6758, were integrated into his standardized salary rate.[174] (Citation omitted)

The integration of COLA into the standardized salary rates is not repugnant to the law. *Gutierrez, et al. v. Department of Budget and Management, et al*.[175] explains:

COLA is not in the nature of an allowance intended to reimburse expenses incurred by officials and employees of the government in the performance of their official functions. It is not payment in consideration of the fulfillment of official duty. As defined, cost of living refers to "the level of prices relating to a range of everyday items" or "the cost of purchasing those goods and services which are included in an accepted standard level of consumption." Based on this premise, COLA is a benefit intended to cover increases in the cost of living. Thus, it is and should be integrated into the standardized salary rates.[176]

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[174] *NAPOCOR Employees Consolidated Union (NECU) v. National Power Corporation (NPC)*, 519 Phil. 372, 385-386 (2006) [Per *J*. Garcia, *En Banc*], *citing Philippine Ports Authority v. Commission on Audit*, 289 Phil. 266, 274 (1992) [Per *J*. Gutierrez, Jr., *En Banc*].

[175] 630 Phil. 1 (2010) [Per *J*. Abad, *En Banc*].

[176] *Id*. at 17, *citing Bureau of Fisheries and Aquatic Resources (BFAR) Employees Union, Regional Office No. VII, Cebu City v. Commission on*

Thus, it would be incongruous to grant any alleged back pay of COLA and AA from July 1, 1989 to December 31, 1993, when the NAPOCOR officers and employees have already received such allowances for this period. The grant would be tantamount to additional compensation, which is proscribed by Section 8, Article IX (B) of the Constitution:

> SECTION 8. No elective or appointive public officer or employee shall receive additional, double, or indirect compensation, unless specifically authorized by law, nor accept without the consent of the Congress, any present, emolument, office, or title of any kind from any foreign government.
>
> Pensions or gratuities shall not be considered as additional, double, or indirect compensation.

Mandamus cannot lie to compel the performance of an unconstitutional act.[177] The Regional Trial Court clearly acted in grave abuse of discretion in ordering the back payment, to the affected NAPOCOR officers and employees, the COLA and AA for the period of July 1, 1989 to December 31, 1993.

The question remains, however, as to the entitlement of NECU and NEWU to the back pay of COLA and AA from January 1, 1994 to March 16, 1999.

V

The enactment of Republic Act No. 7648, or the Electric Power Crisis Act of 1993 authorized the President of the Philippines to reorganize NAPOCOR and to upgrade its compensation plan. From this period, NAPOCOR ceased to be covered by the standardized salary rates of Republic Act No. 6758.

Audit, 584 Phil. 132, 140 (2008) [Per *C.J.* Puno, *En Banc*], *THE NEW OXFORD AMERICAN DICTIONARY* (Oxford University Press, 2005), and *WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY* (Merriam-Webster Inc., 1993).

[177] *See* RULES OF COURT, Rule 65, Sec. 3 and *NAPOCOR Employees Consolidated Union (NECU) v. National Power Corporation (NPC)*, 519 Phil. 372, 389-390 (2006) [Per *J.* Garcia, *En Banc*].

Pursuant to Republic Act No. 7648, then President Fidel V. Ramos issued Memorandum Order No. 198, providing for a different position classification and compensation plan for NAPOCOR employees to take effect on January 1, 1994. The compensation plan states:

SEC. 2. COMPENSATION PLAN. The NPC Compensation Plan consists of the following:

2.1 Total monthly compensation structure as shown in Annex "A" which shall include:

2.1.1 Monthly basic salary schedule as shown in Annex "B"; and

2.1.2 Schedule of monthly allowances as provided in Annex "C" which include existing government mandated allowances such as PERA and Additional Compensation, and Rice Subsidy, and Reimbursable Allowances, i.e., RRA, RTA and RDA, provided however, that the NP Board is hereby authorized to further rationalize and/or revise the rates for such allowances as may be necessary; and

2.2 "Pay for Performance". Pay for Performance is a variable component of the total annual cash compensation consisting of bonuses and incentives but excluding the 13th month pay, earned on the basis of corporate and/or group performance or productivity, following a Productivity Enhancement Program (PEP), and step-increases given in recognition of superior individual performance using a performance rating system, duly approved by the NP Board. The corporate or group productivity or incentive bonus shall range from zero (0) to four (4) months basic salary, to be given in lump-sum for each year covered by the PEP. The in-step increases on the other hand, once granted, shall form part of the monthly basic salary.

Thus, *Philippine Ports Authority (PPA) Employees Hired After July 1, 1989* is inapplicable for the period following the enactment of Republic Act No. 7648. This case interprets provisions of Republic Act No. 6758. The "legal limbo" contemplated in this case does not apply to a period where a new position classification and compensation plan has already been enacted. Thus, entitlement to the back pay of COLA and AA from 1994 to 1999 should not be premised on this case.

The question as to whether the COLA and AA were deemed integrated in this new compensation plan was the subject of then NAPOCOR President del Callar's letter[178] dated May 10, 2007 to Secretary Andaya, Jr. Secretary Andaya, Jr. replied:

> It may also be worth mentioning that in CY 1994, NPC adopted a new Salary Pay [sic] pursuant to RA No. 6743 [sic], the Energy Power Crisis Act, as implemented by Memorandum Order (MO) 198. Under the said Salary Plan, the COLA and AA are no longer subsisting and these have already been integrated into the standardized salary of employees effective July 1, 1989.[179]

NAPOCOR's Office of the General Counsel disagreed with this assessment, stating that Memorandum Order No. 198, series of 1994 did not include the COLA and AA "presumably due to the belief that DBM-CCC No. 10 was still in effect (the Supreme Court decisions declaring the said Circular as ineffective were not yet promulgated as of that time)."[180] This sentiment was echoed in President del Callar's letter[181] dated October 9, 2007 to Secretary Andaya, Jr.

This statement, however, fails to take into account that DBM-CCC No. 10 implements Republic Act No. 6758,[182] not Republic

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[178] *Rollo* (G.R. No. 187257), pp. 1572-1573.

[179] *Id*. at 1575, National Power Corporation President Cyril C. del Callar's letter dated October 9, 2007.

[180] *Id*. at 1577-1578, National Power Corporation's Memorandum dated May 2, 2007.

[181] *Id*. at 1574-1575.

[182] *Id*. at 482. Department of Budget and Management Corporate Compensation Circular No. 10, item 1.0 states:

> 1.0 PURPOSE
>
> This Circular is being issued in compliance with Section 23 of R.A. No. 6758, entitled, "An Act Prescribing A Revised Compensation and Position Classification System In the Government and For Other Purposes," mandating the Department of Budget and Management (DBM) to prepare and issue the necessary guidelines to implement the mandate of said law within sixty (60) days after its approval.

Act No. 7648. By January 1, 1994, NAPOCOR officers and employees were no longer covered by the standardized salary rates of Republic Act No. 6758. Thus, the effectivity or ineffectivity of DBM-CCC No. 10 from January 1, 1994 is irrelevant.

Memorandum Order No. 198, series of 1994 only includes the basic salary and the following allowances: Personal Economic Relief Allowance (PERA) and Additional Compensation, Rice Subsidy, and Reimbursable Allowances. Republic Act No. 7648 also provides that only the President of the Philippines can upgrade the compensation of NAPOCOR personnel:

> SECTION 5. Reorganization of the National Power Corporation. — The President is hereby empowered to reorganize the NAPOCOR, to make it more effective, innovative, and responsive to the power crisis. For this purpose, the President may abolish or create offices; split, group, or merge positions; transfer functions, equipment, properties, records and personnel; institute drastic cost-cutting measures and take such other related actions necessary to carry out the purpose herein declared. *Nothing in this Section shall result in the diminution of the present salaries and benefits of the personnel of the NAPOCOR*: Provided, That any official or employee of the NAPOCOR who may be phased out by reason of the reorganization authorized herein shall be entitled to such benefits as may be determined by the Board of Directors of the NAPOCOR, with the approval of the President.
>
> The President may upgrade the compensation of the personnel of the NAPOCOR at rates comparable to those prevailing in privately-owned power utilities to take effect upon approval by Congress of the NAPOCOR's budget for 1994. (Emphasis supplied)

In issuing Memorandum No. 198, series of 1994, the President determined that the New Compensation Plan for the NAPOCOR personnel shall include the basic salary, PERA and Additional Compensation, Rice Subsidy, and Reimbursable Allowances. The discretion of the President to specify the new salary rates, however, is qualified by the statement: "*Nothing in this Section shall result in the diminution of the present salaries and benefits of the personnel of the NAPOCOR*." This qualification is repeated in Section 7 of the Memorandum:

SEC. 7. NON-DIMINUTION IN PAY. Nothing in this Order shall result in the reduction of the compensation and benefits entitlements of NPC personnel prior to the effectivity of this Order.

The Board of Directors is authorized to rationalize or revise only the rates for PERA and Additional Compensation, Rice Subsidy, and Reimbursable Allowances:

2.1.2 Schedule of monthly allowances as provided in Annex "C" which include existing government mandated allowances such as PERA and Additional Compensation, and Rice Subsidy, and Reimbursable Allowances, i.e., RRA, RTA and RDA, provided however, that the NP Board is hereby authorized to further rationalize and/or revise the rates *for such allowances* as may be necessary[.][183] (Emphasis supplied)

As previously discussed, COLA and AA were already deemed integrated into the basic standardized salary from July 1, 1989 to December 31, 1993. These allowances need not be separately granted. *All basic salaries by December 31, 1993 already included the COLA and AA*.

Thus, in order to conclude that the NAPOCOR employees were not able to receive their COLA and AA upon the implementation of the New Compensation Plan, it must first be determined whether its implementation resulted in the diminution of their salaries and benefits.

Evidence on record, however, shows that the affected employees suffered no diminution in their compensation upon the implementation of the New Compensation Plan on January 1, 1994.

The pay slips[184] of an employee, Melinda A. Bancolita, from December 1993 to January 1994 are instructive. For the period of December 1 to 7, 1993, she had the position of "SR IRD/ IRM OFFICER", and was receiving a total compensation of

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[183] Memo. Order No. 198 (1994), Sec. 2.1.2.

[184] *Rollo* (G.R. No. 187257), pp. 339-348.

₱8,017.40.[185] From January 1 to 7, 1994, she held the same position and was still receiving a total compensation of ₱8,017.40.[186] The pay slips[187] of another employee, Corazon C. San Andres, from this period are similarly instructive. For the period of December 1 to 7, 1993, she held the position of "SECRETARY A," and was receiving a total compensation of ₱3,917.00.[188] From January 1 to 7, 1993, she held the same position and was receiving the same amount of compensation.[189]

Considering there was no diminution in the salaries and benefits of the NAPOCOR employees upon the implementation of the New Compensation Plan, there was no basis for the Regional Trial Court to grant NECU and NEWU's money claims. To repeat, the indiscriminate grant of additional allowances would be tantamount to additional compensation, which is proscribed by Section 8,[190] Article IX (B) of the Constitution.

VI

The Regional Trial Court committed grave abuse of discretion in ordering the immediate execution of its November 28, 2008 Decision even before the lapse of the period for appeal.

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[185] *Id*. at 343.

[186] *Id.* at 344.

[187] *Id*. at 351-359.

[188] *Id*. at 353.

[189] *Id*. at 354.

[190] CONST., Art. IX(B), Sec. 8 provides:

ARTICLE IX. Constitutional Commissions

. . . . . .

B. The Civil Service Commission

. . . . . .

SECTION 8. No elective or appointive public officer or employee shall receive additional, double, or indirect compensation, unless specifically authorized by law, nor accept without the consent of the Congress, any present, emolument, office, or title of any kind from any foreign government. Pensions or gratuities shall not be considered as additional, double, or indirect compensation.

Execution issues as a matter of right only "upon the expiration of the period to appeal . . . if no appeal has been duly perfected."[191] The Regional Trial Court denied the Office of the Solicitor General's Notice of Appeal and the Department of Budget and Management's Motion for Reconsideration in the Joint Order dated March 20, 2009. From this date, the parties had 15 days to file an ordinary appeal,[192] a petition for review with the Court of Appeals[193] or a petition for review with the Supreme Court.[194] They also had 60 days to file a petition for certiorari, prohibition, or mandamus with the Court of Appeals or the Supreme Court.[195] Despite these clear periods for appeal, the Regional Trial Court issued a Certificate of Finality of Judgment[196] and a Writ of Execution[197] on March 23, 2009, or a mere three (3) calendar days from the issuance of its Joint Order.

The Regional Trial Court premises its order of finality on the alleged failure of the Office of the Solicitor General, as counsel for NAPOCOR and its Board of Directors, to perfect its appeal.[198] As previously discussed, the Office of the Solicitor General's Notice of Appeal was timely filed. The Regional Trial Court failed to take into account that by the time the Office of the Solicitor General filed its appeal, it ceased to represent NAPOCOR and its Board of Directors. The Decision dated

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[191] *See* RULES OF COURT, Rule 39, Sec. 1, which provides:

RULE 39. Execution, Satisfaction and Effect of Judgments

SECTION 1. Execution Upon Judgments or Final Orders. — Execution shall issue as a matter of right, or 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.

[192] *See* RULES OF COURT, Rule 41, Sec. 3.

[193] *See* RULES OF COURT, Rule 42, Sec. 1.

[194] *See* RULES OF COURT, Rule 45, Sec. 2.

[195] *See* RULES OF COURT, Rule 65, Sec. 4.

[196] *Rollo* (G.R. No. 187257), pp. 1560-1563.

[197] *Id*. at 1554-1556.

[198] *Id*. at 1525, Regional Trial Court Joint Order in Civil Case No. Q-07-61728.

November 28, 2008 should not have been considered final and executory as against the Office of the Solicitor General, acting as the People's Tribune.

Even assuming that the Office of the Solicitor General failed to file a timely appeal, the Department of Budget and Management, through Secretary Andaya, Jr., was able to file its Motion for Reconsideration of the November 28, 2008 Decision. Upon the denial of the Motion, Secretary Andaya, Jr. still had a fresh period within which to appeal the Decision with a higher court. Thus, the November 28, 2008 Decision would not have been considered final and executory as against the Department of Budget and Management.

The Regional Trial Court likewise found "strong and compelling reasons"[199] for the immediate issuance of its Decision. In particular, it stated that:

> [O]n the basis of the testimonies of the aforementioned key officers of the NPC who categorically stated that NPC had sold and has been selling all its power plants and transmission lines and the proceeds thereof were given to Power Sector Assets and Liabilities Management ["PSA[L]M"] for payment of its obligations to the exclusion of the present COLAs and AAs; that at present, NPC has ₱400 Million bank deposits but the payment of COLAs and AAs can be sourced from the revenues of generated funds and guaranteed receivables from 58 power customers; that the effect of selling all the NPC's power plants and transmission lines will result to lesser future income that cannot meet the present judgment award. That if ordered by the Court, the management can set aside funds based on the present generated income revenues where NPC has been receiving ₱10 Billion per month from the present 58 customers.[200] (Citation omitted)

The preparation of corporate operating budgets of government-owned and controlled corporations is governed by Executive Order No. 518, series of 1979.[201] Through Republic Act No.

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[199] *Id*. at 1526.

[200] *Id*.

[201] Establishing a Procedure for the Preparation and Approval of the Operating Budgets of Government Owned or Controlled Corporations (1979).

7638,[202] NAPOCOR was placed under the supervision of the Department of Energy, and their corporate operating budgets were submitted to Congress for approval.[203]

An examination of the testimony the Regional Trial Court relied on reveals that the corporate officers attempted to mask the back payment of additional COLA and AA as a Certified Obligation, to avoid scrutiny by Congress:

COURT: Can you explain to the Court what does the administration or management of National Power Corporation, as certified obligation insofar as this matter is concerned?

[NPC VP EDMUNDO ANGULUAN]: No, your Honor, what we do is we advise the finance to include this in our certified obligation at the end of the year. That should be the case.

COURT: Are you telling to the Court that this obligation amounting to ₱6,496,055,339.98 plus 2 billion estimated amount of back COLA for those persons who claimed their salary thru disbursement voucher were included in the year 2005 of certified obligation?

A: Yes, your Honor.

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[202] Department of Energy Act of 1992.

[203] *See* Rep. Act No. 7638, Chap. III, Sec. 13 provides:

CHAPTER III. ATTACHED AGENCIES AND CORPORATIONS

Section 13. Attached Agencies and Corporations. – The Philippine National Oil Company (PNOC), the National Power Corporation (NPC), and the National Electrification Administration (NEA) are hereby placed under the supervision of the Department, but shall continue to perform their respective functions insofar as they are not inconsistent with this Act. *Their annual budget shall be submitted to Congress for approval.* The Secretary shall, in a concurrent capacity, be the ex officio chairman of the respective boards of the PNOC,NPC, and NEA, unless otherwise directed by the President: Provided, That in no case shall the Secretary be the chief executive officer or chief operating officer of the said agencies or their subsidiaries, any law to the contrary notwithstanding. (Emphasis supplied)

COURT: *So what happened after the same has been submitted in Congress, was it approved by Congress?*

A: *It is only internal to us, your Honor, the inclusion of the certified obligation submitted to the Finance is internal to the NPC and this has been carried on for two (2) [years]. Because during the first year, we were not successful in getting paid of the cost of living so we included it again in the C.O.*

COURT: So, when it is included as certified obligation, can you please explain to the Court in a common parlance, what did the corporation do insofar as this obligations are concerned? Am I correct to say or to state that as a certified obligation that seems to be that the NPC or the management recognized this proposition will be due and payable?

A: Yes, your Honor.

COURT: Does it also mean that as certified obligation they are now earmarking portion of their funds for the payments of this obligation?

A: Yes, your Honor.[204] (Emphasis supplied, citation omitted)

It should be noted that the corporate officers of NAPOCOR, including Vice President Anguluan, also stand to benefit from the back payment of any additional COLA and AA.

In any case, the back payment of any compensation to public officers and employees cannot be done through a writ of execution. Under Section 26 of the Government Auditing Code of the Philippines,[205] only the Commission on Audit has the jurisdiction to settle claims "of any sort" against the government:

SECTION 26. General Jurisdiction. – The authority and powers of the Commission shall extend to and comprehend all matters relating to auditing procedures, systems and controls, the keeping of the general

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[204] *Rollo* (G.R. No. 187257), p. 1524, Regional Trial Court Joint Order in Civil Case No. Q-07-61728.

[205] Pres. Decree No. 1445 (1978).

accounts of the Government, the preservation of vouchers pertaining thereto for a period of ten years, the examination and inspection of the books, records, and papers relating to those accounts; and the audit and settlement of the accounts of all persons respecting funds or property received or held by them in an accountable capacity, as well as the examination, audit, and *settlement of all debts and claims of any sort due from or owing to the Government or any of its subdivisions, agencies and instrumentalities*. The said jurisdiction extends to all government-owned or controlled corporations, including their subsidiaries, and other self-governing [sic] boards, commissions, or agencies of the Government, and as herein prescribed, including non-governmental entities subsidized by the government, those funded by donation through the government, those required to pay levies or government share, and those for which the government has put up a counterpart fund or those partly funded by the government. (Emphasis supplied)

Money claims and judgments against the government must first be filed with the Commission on Audit. Trial courts have already been strongly cautioned against the issuance of writs of execution in cases involving the disbursement of public funds in Supreme Court Administrative Circular No. 10-2000:[206]

[SUPREME COURT] ADMINISTRATIVE CIRCULAR NO. 10-2000

TO : All Judges of Lower Courts

SUBJECT : Exercise of Utmost Caution, Prudence and Judiciousness in the Issuance of Writs of Execution to Satisfy Money Judgments Against Government Agencies and Local Government Units

In order to prevent possible circumvention of the rules and procedures of the Commission on Audit, judges are hereby enjoined to observe utmost caution, prudence and judiciousness in the issuance of writs of execution to satisfy money judgments against government agencies and local government units.

Judges should bear in mind that in *Commissioner of Public Highways v. San Diego* (31 SCRA 617, 625 [1970]), this Court explicitly stated:

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[206] The Administrative Circular was dated October 25, 2000.

> The universal rule that where the State gives its consent to be sued by private parties either by general or special law, it may limit claimant's action 'only up to the completion of proceedings anterior to the stage of execution' and that the power of the Court ends when the judgment is rendered, since government funds and properties may not be seized under writs of execution or garnishment to satisfy such judgments, is based on obvious considerations of public policy. Disbursements of public funds must be covered by the corresponding appropriation as required by law. The functions and public services rendered by the State cannot be allowed to be paralyzed or disrupted by the diversion of public funds from their legitimate and specific objects, as appropriated by law.

Moreover, it is settled jurisprudence that upon determination of State liability, the prosecution, enforcement or satisfaction thereof must still be pursued in accordance with the rules and procedures laid down in P.D. No. 1445[,] otherwise known as the Government Auditing Code of the Philippines (*Department of Agriculture [vs.] NLRC*, 227 SCRA 693, 701-02 [1993] citing *Republic vs. Villasor*, 54 SCRA 84 [1973]). All money claims against the Government must first be filed with the Commission on Audit which must act upon it within sixty days. Rejection of the claim will authorize the claimant to elevate the matter to the Supreme Court on certiorari and in effect sue the State thereby (P.D. 1445, Sections 49-50)[.]

Thus, in *National Electrification Administration v. Morales*,[207] this Court held that while any entitlement to the back payment of allowances under Republic Act No. 6758 may be adjudicated before the trial court, the parties must file a separate action before the Commission on Audit for the satisfaction of any judgment award.[208]

The Regional Trial Court should have been more prudent in granting the immediate execution, considering that the execution of the judgment award involves the payment of almost ₱8.5 billion in public funds. As previously discussed, there was no legal basis to grant the back payment of additional COLA and AA to NAPOCOR personnel from July 1, 1989 to March 16, 1999.

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[207] 555 Phil. 74 (2007) [Per *J.* Austria-Martinez, Third Division].

[208] *Id*. at 83-86.

WHEREFORE, the Petitions for Certiorari and Prohibition in **G.R. Nos. 187257** and **187776** are **GRANTED**. The Decision dated November 28, 2008, Joint Order dated March 20, 2009, and Writ of Execution dated March 23, 2009 of the Regional Trial Court of Quezon City, Branch 84 in Civil Case No. Q-07-61728 are **VACATED** and **SET ASIDE**. The Temporary Restraining Order dated April 15, 2009 is made **PERMANENT**.

SO ORDERED.

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

Peralta, Mendoza, and *Jardeleza, JJ.,* no part.

Caguioa, J., on leave.

EN BANC

[G.R. No. 191416. February 7, 2017]

MAYOR WILLIAM N. MAMBA, ATTY. FRANCISCO N. MAMBA, JR., ARIEL MALANA, NARDING AGGANGAN, JOMARI SAGALON, JUN CINABRE, FREDERICK BALIGOD, ROMMEL ENCOLLADO, JOSEPH TUMALIUAN, and RANDY DAYAG, *petitioners, vs.* **LEOMAR BUENO**, *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; A.M. NO. 07-9-12-SC; THE RULE ON THE WRIT OF *AMPARO*; PROHIBITED PLEADINGS AND MOTIONS; A MOTION SEEKING A RECONSIDERATION OF A FINAL JUDGMENT OR ORDER THAT GRANTS OR DENIES A WRIT OF AMPARO IS NOT PROHIBITED, AS THE SAME NO LONGER AFFECTS THE PROCEEDINGS.— There is nothing in A.M. No. 07-9-12-SC which proscribes the filing of a motion for reconsideration of the final judgment

or order that grants or denies a writ of *amparo*. Section 11 of A.M. No. 07-9-12-SC only prohibits the following pleadings and motions: Sec. 11. *Prohibited Pleadings and Motions*. — The following pleadings and motions are prohibited: a. Motion to dismiss; b. Motion for extension of time to file return, opposition, affidavit, position paper and other pleadings; c. Dilatory motion for postponement; d. Motion for a bill of particulars; e. Counterclaim or cross-claim; f. Third-party complaint; g. Reply; h. Motion to declare respondent in default; i. Intervention; j. Memorandum; k. Motion for reconsideration of interlocutory orders or interim relief orders; and l. Petition for *certiorari*, mandamus, or prohibition against any interlocutory order. What is prohibited under Section 11 of A.M. No. 07-9-12-SC are motions for reconsideration directed against interlocutory orders or interim relief orders, not those assailing the final judgment or order. The pleadings and motions enumerated in Section 11 of A.M. No. 07-9-12-SC would unnecessarily cause delays in the proceedings; they are, thus, proscribed since they would run counter to the summary nature of the rule on the writ of *amparo*. A motion seeking a reconsideration of a final judgment or order in such case, obviously, no longer affects the proceedings.

2. ID.; ID.; ID.; ID.; THE RULES ON MOTIONS FOR RECONSIDERATION UNDER THE RULES OF COURT APPLY SUPPLETORILY TO THE RULE ON THE WRIT OF *AMPARO* IN SO FAR AS IT IS NOT INCONSISTENT WITH THE LATTER; FRESH PERIOD RULE APPLIES.— [T]he Rules of Court applies suppletorily to A.M. No. 07-9-12-SC insofar as it is not inconsistent with the latter. Accordingly, there being no express prohibition to the contrary, the rules on motions for reconsideration under the Rules of Court apply suppletorily to the Rule on the Writ of *Amparo*. Nevertheless, considering that under Section 19 of A.M. No. 07-9-12-SC a party is only given five working days from the date of notice of the adverse judgment within which to appeal to this Court through a petition for review on *certiorari*, a motion for reconsideration of a final judgment or order must likewise be filed within the same period. Thereafter, from the order denying or granting the motion for reconsideration, the party concerned may file an appeal to the Court *via* a Rule 45 petition within five working days from notice of the order pursuant to the fresh period rule.

3. ID.; ID.; ID.; ID.; THE PETITION FOR REVIEW ON *CERTIORARI* ASSAILING THE GRANT OF THE WRIT

OF *AMPARO* WAS FILED ON TIME.— The petition for review on *certiorari* before the Court, which assails the CA's grant of the writ of *amparo*, contrary to the respondent's assertion, was filed on time. x x x. The petitioners received a copy of the CA's Decision dated January 18, 2010 on January 20, 2010. They, thus, have until January 27, 2010 to either file a motion for reconsideration with the CA or an appeal to this Court through a Rule 45 petition. On January 25, 2010, the petitioners filed a motion for reconsideration with the CA. The CA denied the petitioners' motion for reconsideration in its Resolution dated March 2, 2010, a copy of which was received by the petitioners' counsel on March 8, 2010. Thus, the petitioners had until March 15, 2010 within which to appeal to this Court. The petitioners filed this petition for review on *certiorari* on March 12, 2010. Thus, contrary to the respondent's claim, this petition was filed within the reglementary period.

4. **ID.; ID.; ID.; ID.; THE WRIT OF *AMPARO* COVERS ONLY EXTRALEGAL KILLINGS AND ENFORCED DISAPPEARANCES OR THREATS THEREOF; TERMS "EXTRALEGAL KILLINGS" AND "ENFORCED DISAPPEARANCE," DEFINED.—** The writ of *amparo* is a protective remedy aimed at providing judicial relief consisting of the appropriate remedial measures and directives that may be crafted by the court, in order to address specific violations or threats of violation of the constitutional rights to life, liberty or security. Section 1 of A.M. No. 07-9-12-SC specifically delimits the coverage of the writ of *amparo* to extralegal killings and enforced disappearances x x x. Extralegal killings are killings committed without due process of law, *i.e.*, without legal safeguards or judicial proceedings. On the other hand, enforced disappearance has been defined by the Court as the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.

5. **ID.; ID.; ID.; ID.; IN AN *AMPARO* ACTION, THE PARTIES MUST ESTABLISH THEIR RESPECTIVE CLAIMS BY SUBSTANTIAL EVIDENCE, FOR IT IS MORE THAN A MERE IMPUTATION OF WRONGDOING OR VIOLATION THAT WOULD WARRANT A FINDING OF**

LIABILITY AGAINST THE PERSON CHARGED.— In an *amparo* action, the parties must establish their respective claims by substantial evidence. Substantial evidence is that amount of evidence which a reasonable mind might accept as adequate to support a conclusion. It is more than a mere imputation of wrongdoing or violation that would warrant a finding of liability against the person charged. After a thorough review of the records of this case, the Court affirms the factual findings of the CA, which is largely based on the respondent's evidence. Verily, the totality of the evidence presented by the respondent meets the requisite evidentiary threshold.

6. **ID.; EVIDENCE; DEFENSE OF DENIAL; INHERENTLY A WEAK DEFENSE. TO BE BELIEVED, DENIAL MUST BE BUTTRESSED BY A STRONG EVIDENCE OF NON-CULPABILITY; OTHERWISE, SUCH DENIAL IS PURELY SELF-SERVING AND WITHOUT EVIDENTIARY VALUE.—** [T]he respective testimonies of the witnesses for the petitioners merely consisted in denial and the allegation that the respondent was indeed the one who robbed the canteen. Clearly, against the positive testimony of the respondent, which was corroborated by his witnesses, the petitioners' allegations must fail. It is settled that denial is inherently a weak defense. To be believed, it must be buttressed by a strong evidence of non-culpability; otherwise, such denial is purely self-serving and without evidentiary value. Further, even if the respondent was indeed guilty of a crime, assuming it to be true, it does not justify his immediate apprehension, in the guise of an invitation, and the subsequent acts of torture inflicted on him.

7. **REMEDIAL LAW; CRIMINAL PROCEDURE; A.M. NO. 07-9-12-SC; THE RULE ON THE WRIT OF *AMPARO*; A WRIT OF *AMPARO* MAY STILL ISSUE IN THE RESPONDENT'S FAVOR NOTWITHSTANDING THAT HE HAS ALREADY BEEN RELEASED FROM DETENTION; IN SUCH CASE, THE WRIT OF *AMPARO* IS ISSUED TO FACILITATE THE PUNISHMENT OF THOSE BEHIND THE ILLEGAL DETENTION THROUGH SUBSEQUENT INVESTIGATION AND ACTION.—** [I]t is undisputed that the respondent, after four days of detention, had been released by the members of the Task Force on June 18, 2009. This fact alone, however, does not negate the propriety of the grant of a writ of *amparo*. In the seminal case of *Secretary of National Defense, et al. v.*

Manalo, et al. the Court emphasized that the writ of *amparo* serves both preventive and curative roles in addressing the problem of extralegal killings and enforced disappearances. It is preventive in that it breaks the expectation of impunity in the commission of these offenses; it is curative in that it facilitates the subsequent punishment of perpetrators as it will inevitably yield leads to subsequent investigation and action. Accordingly, a writ of *amparo* may still issue in the respondent's favor notwithstanding that he has already been released from detention. In such case, the writ of *amparo* is issued to facilitate the punishment of those behind the illegal detention through subsequent investigation and action.

8. ID.; ID.; ID.; ID.; THE WRIT OF *AMPARO* COVERS VIOLATIONS OF THE RIGHT TO SECURITY; SCOPE.— [T]he writ of *amparo* likewise covers violations of the right to security. At the core of the guarantee of the right to security, as embodied in Section 2, Article III of the Constitution, is the immunity of one's person, including the extensions of his/her person, *i.e.*, houses, papers and effects, against unwarranted government intrusion. Section 2, Article III of the Constitution not only limits the State's power over a person's home and possession, but more importantly, protects the privacy and sanctity of the person himself. The right to security is separate and distinct from the right to life. The right to life guarantees essentially the right to be alive — upon which the enjoyment of all other rights is preconditioned. On the other hand, the right to security is a guarantee of the secure quality of life, *i.e.*, the life, to which each person has a right, is not a life lived in fear that his person and property may be unreasonably violated by a powerful ruler. In *Manalo*, the Court further opined that the right to security of person yields various permutations of the exercise of the right, such as freedom from fear or, in the *amparo* context, freedom from threat; a guarantee of bodily and psychological integrity or security; and a guarantee of protection of one's rights by the government. As regards the right to security, in the sense of the guarantee of protection of one's rights by the government, the Court explained: In the context of the writ of *amparo*, this right is **built into the guarantees of the rights to life and liberty** under Article III, Section 1 of the 1987 Constitution **and the right to security of person** (as freedom from threat and guarantee of bodily and psychological integrity) under Article III, Section 2. The right to security of person in

this third sense is a corollary of the policy that the State "guarantees full respect for human rights" under Article II, Section 11 of the 1987 Constitution. As the government is the chief guarantor of order and security, the Constitutional guarantee of the rights to life, liberty and security of person is rendered ineffective if government does not afford protection to these rights especially when they are under threat. Protection includes conducting effective investigations, organization of the government apparatus to extend protection to victims of extralegal killings or enforced disappearances (or threats thereof) and/or their families, and bringing offenders to the bar of justice.

9. ID.; ID.; ID.; ID.; A WRIT OF *AMPARO* SHALL BE ISSUED IN FAVOR OF THE RESPONDENT WHERE THERE IS SUBSTANTIAL EVIDENCE THAT THE RESPONDENT'S RIGHT TO SECURITY, AS A GUARANTEE OF PROTECTION BY THE GOVERNMENT, WAS VIOLATED; LOCAL GOVERNMENT OFFICIALS ARE NOT AT LIBERTY TO DISREGARD THE RESPONDENT'S CONSTITUTIONALLY GUARANTEED RIGHTS TO LIFE, LIBERTY AND SECURITY EVEN IF THE RESPONDENT COMMITTED A CRIME. — [I]t is incumbent upon the petitioners, who all hold positions in the local government of Tuao, to conduct, at the very least, an investigation on the alleged illegal arrest, illegal detention and torture of the respondent. The petitioners, nevertheless, claim that the Office of the Mayor and the police station of Tuao, unknown to the respondent, are conducting an investigation on the incident. However, other than their bare assertion, they failed to present any evidence that would prove the supposed investigation. Mere allegation is not a fact. Absent any evidence that would corroborate the said claim, it is a mere allegation that does not have any probative value. Verily, the petitioners failed to point to any specific measures undertaken by them to effectively investigate the irregularities alleged by the respondent and to prosecute those who are responsible therefor. Worse, the illegal detention and torture suffered by the respondent were perpetrated by the members of the Task Force themselves. Instead of effectively addressing the irregularities committed against the respondent, the petitioners seemingly justify the illegal arrest and detention and infliction of bodily harm upon the respondent by stating that the latter is a habitual delinquent and was the one responsible for the robbery of the canteen. [E]ven if the

respondent committed a crime, the petitioners, as local government officials, are not at liberty to disregard the respondent's constitutionally guaranteed rights to life, liberty and security. It is quite unfortunate that the petitioners, all local government officials, are the very ones who are infringing on the respondent's fundamental rights to life, liberty and security. Clearly, there is substantial evidence in this case that would warrant the conclusion that the respondent's right to security, as a guarantee of protection by the government, was violated. Accordingly, the CA correctly issued the writ of *amparo* in favor of the respondent.

APPEARANCES OF COUNSEL

Morales and Calimag for petitioners.
Commission on Human Rights for respondent.

D E C I S I O N

REYES, *J.*:

This is a Petition for Review on *Certiorari*[1] filed in relation to Section 19 of A.M. No. 07-9-12-SC,[2] seeking to annul and set aside the Decision[3] dated January 18, 2010 and Resolution[4] dated March 2, 2010 of the Court of Appeals (CA) in CA-G.R. SP. No. 00038, which granted the petition for the issuance of a writ of *amparo* filed by Leomar Bueno (respondent) against Mayor William N. Mamba (Mayor Mamba), Atty. Francisco N. Mamba, Jr. (Atty. Mamba), Ariel Malana (Malana), Narding Aggangan (Aggangan), Jomari Sagalon (Sagalon), Jun Cinabre (Cinabre), Frederick Baligod (Baligod), Rommel Encollado

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[1] *Rollo*, pp. 3-16.

[2] The Rule on the Writ of *Amparo*, which took effect on October 24, 2007.

[3] Penned by Associate Justice Andres B. Reyes, Jr., with Associate Justices Remedios Salazar-Fernando and Jose C. Reyes, Jr. concurring; *rollo*, pp. 17-41.

[4] *Id*. at 42-51.

(Encollado), Joseph Tumaliuan (Tumaliuan), and Randy Dayag (Dayag) (collectively, the petitioners).

The Facts

On June 13, 2009, the canteen owned by Emelita N. Mamba (Emelita) in Tuao, Cagayan was robbed. Emelita is the mother of Mayor Mamba, then Mayor of the Municipality of Tuao, Cagayan and Atty. Mamba, then a Malacañang official.[5] The Task Force Lingkod Bayan (Task Force), an agency created by the *Sangguniang Bayan* of Tuao to help the local police force in maintaining peace and order in the municipality, undertook an investigation on the robbery.[6]

On June 14, 2009, several members of the Task Force, Malana, Aggangan and Sagalon, together with barangay officials Cinabre and Encollado, went to the house of the respondent, then still a minor, to invite him for questioning on his supposed involvement in the robbery. The respondent and his mother, Maritess Bueno (Maritess), acceded to the invitation. Thereupon, the respondent was brought to the Tuao police station.[7]

The parties gave different accounts of what happened after the respondent was brought to the Tuao police station.

The petitioners claim that:

When they reached the Tuao police station, there were no police investigators or any representative from the local Social Welfare and Development (SWD) office and, hence, the investigation could not proceed. At that time, Raymund Rodriguez (Raymund), allegedly an eyewitness to the robbery, was at the police station. Raymund pointed to the respondent as among those who robbed the store; the respondent then told Raymund that he would kill him for ratting him out.[8] The

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[5] *Id*. at 19.

[6] *Id*. at 5.

[7] *Id*. at 19.

[8] *Id*. at 5.

petitioners allege that prior to the robbery of the canteen, the respondent approached Raymund and his brother Robin and proposed to them that they rob the canteen. The latter, however, declined the offer. Later that night, Raymund saw the respondent and Lorenzo Haber (Haber) robbing the canteen. Thereafter, Robin reported the incident to the Task Force.[9]

The petitioners further claim that at the time of the robbery, Mayor Mamba and Atty. Mamba were not around since they previously left Tuao, Cagayan for Manila on June 10, 2009. Mayor Mamba was on official leave for 10 days, from June 10, 2009 until June 20, 2009, while Atty. Mamba had to report for work in Malacañang.[10]

The respondent's custody was then referred to the Task Force. Haber was later invited to the police station for questioning regarding his involvement in the robbery. However, his custody was likewise referred to the Task Force since there were still no police investigators.[11]

On June 17, 2009, Atty. Mamba arrived in Tuao, Cagayan. While going out of his residence, Maritess approached Atty. Mamba and asked him about her son. Atty. Mamba told her that he does not know her son and that if the respondent indeed committed a crime, she should not tolerate what her son was doing.[12]

On June 18, 2009, while the members of the Task Force were on their way to bring the respondent and Haber to the police station, they were met by Police Superintendent Joselito Buenaobra (P/Supt. Buenaobra) of the Philippine National Police (PNP) Cagayan Regional Office. Thereafter, the respondent's custody was transferred to the PNP Cagayan Regional Office.[13]

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[9] *Id.* at 223.

[10] *Id.*

[11] *Id.* at 5.

[12] *Id.* at 225.

[13] *Id.* at 21, 225-226.

Maritess then went to the office of Mayor Mamba, but she was told to come back at later date since Mayor Mamba was still on official leave. When Mayor Mamba arrived in Tuao on June 20, 2009, a conference was immediately held. Maritess requested that the members of the Task Force be brought to Mayor Mamba's office. Almost all of the members of the Task Force arrived. However, Maritess was unable to pinpoint who among them took custody of his son. Mayor Mamba then advised her to file a complaint in court should she be able to identify the responsible persons.[14]

On the other hand, the respondent alleges that:

At around 3:00 p.m. of June 14, 2009, Tumaliuan and Dayag, both members of the Task Force, upon the order of Baligod, then Municipal Administrator of Tuao, fetched the respondent from the police station and brought him to Mayor Mamba's house.[15] Sometime in the evening of even date, the respondent was made to board a white van driven by Aggangan. Inside the van, he was beaten with a gun by Malana, who later threatened him that he would be killed. Thereafter, he was brought back to Mayor Mamba's house.[16]

That same evening, Haber, likewise a minor, was invited by the barangay captain in his place, accompanied by about 10 barangay *tanods* and two police officers, for questioning as regards the robbery of the canteen. Haber was brought to the police station where he spent the night.[17]

On June 15, 2009, Haber was brought to Mayor Mamba's house. The respondent and Haber were then tortured to force them to admit to their involvement in the robbery. They were made to roll on the grass while being kicked and beaten with a cue stick by Malana; hot wax was poured over their bodies

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[14] *Id*. at 226.

[15] *Id*. at 19, 123.

[16] *Id*. at 123-124.

[17] *Id*. at 124.

to force them to admit to the robbery, but they denied any involvement therein. Thereafter, they were blindfolded and were questioned by Atty. Mamba regarding the robbery of the canteen. When his blindfold was taken off, the respondent saw Atty. Mamba sitting nearby.[18] On June 16, 2009, Malana brought the respondent and Haber, together with Robin and Raymund, to the office of the Task Force, where they all spent the night.[19]

Meanwhile, Maritess went to the Tuao police station to look for her son; she was told that the respondent was brought to Mayor Mamba's house. However, when Maritess went to Mayor Mamba's house, she was not permitted to see her son. Maritess was able to talk to Mayor Mamba who told her that she should not condone the acts of her son. Maritess then sought the assistance of P/Supt. Buenaobra regarding the respondent's disappearance from the police station. The PNP Cagayan Regional Office was then preparing a case for *habeas corpus* when the respondent was released on June 18, 2009 to the local SWD office.[20]

Maritess then sought the assistance of the Regional Office of the Commission on Human Rights (CHR) in Cagayan as regards the case of the respondent.[21] On August 25, 2009, the respondent, assisted by the CHR, filed a Petition for the Issuance of a Writ of *Amparo* with the CA.[22]

On September 14, 2009, the CA, gave due course to the petition and directed the issuance of the writ of *amparo*. On September 23, 2009, the petitioners filed their verified return.[23]

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[18] *Id*.

[19] *Id*. at 125.

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

[21] *Id*. at 22.

[22] *Id*. at 119.

[23] *Id*. at 18.

A summary hearing was thereafter conducted by the CA. The respondent presented in evidence his own testimony and the testimonies of Dr. Odessa B. Tiangco (Dr. Tiangco) of the Cagayan Valley Medical Center, provincial social welfare officer Elvira Layus (Layus), and Maritess.[24] The petitioners, on the other hand, presented the testimony of Cinabre, Encollado, Baligod, and Robin.[25]

The CA further issued *subpoena duces tecum ad testificandum* to and heard the testimony of P/Supt. Buenaobra.[26]

On January 18, 2010, the CA rendered the herein assailed Decision,[27] the decretal portion of which reads:

WHEREFORE, the Petition for a Writ of Amparo filed by [the respondent] is hereby **GRANTED**. Accordingly:

1. [The petitioners] are hereby enjoined from doing any act of physical or psychological violence that would harm or threaten [the respondent] and his family, including those who assisted him in the preparation of this present petition, especially the [CHR], Regional Office No. 02, Cagayan and his witnesses;

2. The Head of the PNP Regional Office of Cagayan, whoever is the incumbent, is hereby ordered to continue the investigation on the violation done against [the respondent], and using extraordinary diligence, to furnish this Court with a report regarding the said investigation. The investigation must be commenced as soon as possible but not more than 30 days from the receipt of this Decision.

3. [Mayor Mamba] is hereby ordered to provide assistance to the above PNP investigation including but not limited to the act of furnishing and/or providing the latter a list of the members of the Task Force who had direct involvement in the violation of [the respondent's] rights to life, liberty and security, including their identities and whereabouts, and to allow the investigation to run its course unhindered or influenced. He is further ordered to update

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[24] *Id*. at 119.

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

[26] *Id*. at 120.

[27] *Id*. at 17-41.

and furnish this Court of the actions he has done or will be doing regarding this directive.

4. The Head of the PNP Regional Office of Cagayan and [Mayor Mamba] are ordered to update this Court regarding their reportorial duty under this Decision within ten (10) days from the commencement of the investigation, and thereafter, to make a quarterly report regarding the said investigation. The investigation should be completed within one year from the receipt of this Decision;

5. All findings resulting from the said investigation should be made available to [the respondent] and his counsel should they consider the same necessary to aid them in the filing of appropriate actions, criminal or otherwise, against those who are responsible for the violation of the former's rights.

Failure to comply with the above will render the Head of the PNP Regional Office of Cagayan and [Mayor Mamba] liable for contempt of this Court.

The Clerk of Court is hereby ordered to also furnish the Head of the PNP Regional Office of Cagayan a copy of this Decision.

SO ORDERED.[28]

The CA opined that the respondent's rights to liberty and security were undeniably undermined when he was invited by the members of the Task Force for investigation and was brought to Mayor Mamba's house from the Tuao police station.[29] It further pointed out that notwithstanding that Mayor Mamba was not in Tuao when the incident happened, he is still accountable since he failed to show sufficient action to protect the respondent's rights; that Mayor Mamba failed to acknowledge the irregularity of the acts of the members of the Task Force or to identify those who were responsible for the violation of the respondent's rights. The CA further ruled that it was incumbent upon Atty. Mamba, being a public servant, to ensure that the respondent's constitutional rights are not violated.[30]

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[28] *Id*. at 39-41.

[29] *Id*. at 28.

[30] *Id*. at 29.

The CA pointed out that the "invitation" extended to the respondent by the members of the Task Force was in the nature of an arrest as the real purpose of the same was to make him answer to the heist committed the night before. The CA ruled that the same amounted to an invalid warrantless arrest since the circumstances of the case do not fall within the purview of Section 5 of Rule 113 of the Rules of Court.[31]

Further, the CA ruled that although the respondent was subsequently released and that he failed to establish that there is an impending danger of physical harm to him or his family, the refusal of the respondent officials of the local government of Tuao, especially Mayor Mamba, to admit and address the irregularities committed by the members of the Task Force is tantamount to a continuing violation of the respondent's right to security.[32]

The petitioners sought a reconsideration[33] of the Decision dated January 18, 2010, but it was denied by the CA in its Resolution[34] dated March 2, 2010.

Hence, this petition.

The petitioners claim that the CA erred in issuing the writ of *amparo* in favor of the respondent. They insist that the respondent, who was then the suspect in the robbery of the canteen, was not illegally detained or tortured; that the members of the Task Force merely invited him for questioning as to his involvement in the robbery.[35] They allege that the petition for the issuance of a writ of *amparo* is not the proper remedy available to the respondent since the present laws provide ample recourse to him for the alleged threats to his life, liberty and security. They also maintain that the respondent's rights to life, liberty

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[31] *Id*. at 30.

[32] *Id*. at 34.

[33] *Id*. at 262-269.

[34] *Id*. at 42-51.

[35] *Id*. at 228-230.

and security are not under threat since he and his mother stated that they are not afraid of the petitioners.[36]

The petitioners further aver that it was improper for the CA to direct the PNP Cagayan Regional Office to conduct further investigation on the incident since P/Supt. Buenaobra had already testified for the respondent during the summary hearing conducted by the CA.[37] They also maintain that Mayor Mamba and Atty. Mamba had nothing to do with the alleged violation of the rights of the respondent since they were not in Tuao at the time of the incident. That when Mayor Mamba returned to Tuao, he immediately met Maritess to discuss the incident, but the latter failed to identify the persons involved in the incident.[38]

On the other hand, the respondent claims that this petition was filed beyond the reglementary period. He claims that under Section 19 of A.M. No. 07-9-12-SC, an appeal from the final judgment or order must be filed with this Court within five working days from notice of the adverse judgment. The respondent avers that the petitioners, instead of immediately filing a petition for review on *certiorari* with this Court, opted to file a motion for reconsideration with the CA, which is a prohibited pleading since it is dilatory.[39]

The respondent further maintains that the CA did not err when it directed the issuance of a writ of *amparo* in his favor. He claims that the writ of *amparo* is an appropriate remedy in his case since it covers enforced disappearances; that his illegal warrantless arrest is covered by the term "enforced disappearances."[40]

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[36] *Id*. at 10.

[37] *Id*. at 11.

[38] *Id*. at 11-12.

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

[40] *Id*. at 59.

Issues

Essentially, the issues for the Court's consideration are the following: ***first***, whether the petition for review on *certiorari* before the Court was filed within the reglementary period; and ***second***, whether the CA erred in granting the petition for the issuance of a writ of *amparo*.

Ruling of the Court

The petition is devoid of merit.

First Issue: Timeliness of the petition

The petition for review on *certiorari* before the Court, which assails the CA's grant of the writ of *amparo*, contrary to the respondent's assertion, was filed on time. Section 19 of A.M. No. 07-9-12-SC provides that:

> Sec. 19. *Appeal*. – Any party may appeal from the final judgment or order to the Supreme Court under Rule 45. The appeal may raise question of fact or law or both.
>
> The period of appeal shall be five (5) working days from the date of notice of the adverse judgment.
>
> The appeal shall be given the same priority as in *habeas corpus* cases.

There is nothing in A.M. No. 07-9-12-SC which proscribes the filing of a motion for reconsideration of the final judgment or order that grants or denies a writ of *amparo*. Section 11 of A.M. No. 07-9-12-SC only prohibits the following pleadings and motions:

> Sec. 11. *Prohibited Pleadings and Motions*. – The following pleadings and motions are prohibited:
>
> a. Motion to dismiss;
> b. Motion for extension of time to file return, opposition, affidavit, position paper and other pleadings;
> c. Dilatory motion for postponement;
> d. Motion for a bill of particulars;
> e. Counterclaim or cross-claim;

f. Third-party complaint;
g. Reply;
h. Motion to declare respondent in default;
i. Intervention;
j. Memorandum;
k. Motion for reconsideration of interlocutory orders or interim relief orders; and
l. Petition for *certiorari*, mandamus, or prohibition against any interlocutory order.

What is prohibited under Section 11 of A.M. No. 07-9-12-SC are motions for reconsideration directed against interlocutory orders or interim relief orders, not those assailing the final judgment or order. The pleadings and motions enumerated in Section 11 of A.M. No. 07-9-12-SC would unnecessarily cause delays in the proceedings; they are, thus, proscribed since they would run counter to the summary nature of the rule on the writ of *amparo*. A motion seeking a reconsideration of a final judgment or order in such case, obviously, no longer affects the proceedings.

Moreover, the Rules of Court applies suppletorily to A.M. No. 07-9-12- SC insofar as it is not inconsistent with the latter.[41] Accordingly, there being no express prohibition to the contrary, the rules on motions for reconsideration under the Rules of Court apply suppletorily to the Rule on the Writ of *Amparo*.

Nevertheless, considering that under Section 19 of A.M. No. 07-9-12-SC a party is only given five working days from the date of notice of the adverse judgment within which to appeal to this Court through a petition for review on *certiorari*, a motion for reconsideration of a final judgment or order must likewise be filed within the same period. Thereafter, from the order denying or granting the motion for reconsideration, the party concerned may file an appeal to the Court *via* a Rule 45 petition within five working days from notice of the order pursuant to the fresh period rule.[42]

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[41] A.M. No. 07-9-12-SC, Section 25.

[42] *See Neypes v. Court of Appeals*, 506 Phil. 613.

The petitioners received a copy of the CA's Decision dated January 18, 2010 on January 20, 2010.[43] They, thus, have until January 27, 2010 to either file a motion for reconsideration with the CA or an appeal to this Court through a Rule 45 petition.[44] On January 25, 2010, the petitioners filed a motion for reconsideration with the CA.[45] The CA denied the petitioners' motion for reconsideration in its Resolution dated March 2, 2010, a copy of which was received by the petitioners' counsel on March 8, 2010.[46] Thus, the petitioners had until March 15, 2010 within which to appeal to this Court.[47] The petitioners filed this petition for review on *certiorari* on March 12, 2010.[48] Thus, contrary to the respondent's claim, this petition was filed within the reglementary period.

Second Issue: Propriety of the grant of the writ of amparo

The writ of *amparo* is a protective remedy aimed at providing judicial relief consisting of the appropriate remedial measures and directives that may be crafted by the court, in order to address specific violations or threats of violation of the constitutional rights to life, liberty or security.[49] Section 1 of A.M. No. 07-9-12-SC specifically delimits the coverage of the writ of *amparo* to extralegal killings and enforced disappearances, *viz.*:

> Sec. 1. *Petition.* – The petition for a writ of *amparo* is a remedy available to any person whose rights to life, liberty and security is violated or threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or entity.

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[43] *Rollo*, p. 262.

[44] January 23 and 24, 2010 fell on Saturday and Sunday, respectively.

[45] *Rollo*, p. 57.

[46] *Id.* at 3.

[47] March 13 and 14, 2010 fell on Saturday and Sunday, respectively.

[48] *Rollo*, p. 3.

[49] *Gen. Razon, Jr., et al. v. Tagitis*, 621 Phil. 536, 553 (2009).

The writ shall cover extralegal killings and enforced disappearances or threats thereof.

Extralegal killings are killings committed without due process of law, *i.e.*, without legal safeguards or judicial proceedings.[50] On the other hand, enforced disappearance has been defined by the Court as the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.[51]

In an *amparo* action, the parties must establish their respective claims by substantial evidence.[52] Substantial evidence is that amount of evidence which a reasonable mind might accept as adequate to support a conclusion. It is more than a mere imputation of wrongdoing or violation that would warrant a finding of liability against the person charged.[53]

After a thorough review of the records of this case, the Court affirms the factual findings of the CA, which is largely based on the respondent's evidence. Verily, the totality of the evidence presented by the respondent meets the requisite evidentiary threshold. To corroborate his allegations, the respondent presented the testimony of Haber who, during the hearing conducted by the CA on October 6, 2009, averred that on June 15, 2009, he was brought to Mayor Mamba's house where he and the respondent were tortured. Haber testified that hot wax was dripped onto their bodies while they were handcuffed; that they were kicked and beaten with a cue stick and an alcohol

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[50] *Secretary of National Defense, et al. v. Manalo, et al.*, 589 Phil. 1, 37 (2008).

[51] *Navia, et al. v. Pardico*, 688 Phil. 266, 278 (2012), citing *Gen. Razon, Jr., et al. v. Tagitis*, *supra* note 49, at 597.

[52] A.M. No. 07-9-12-SC, Sections 17 and 18.

[53] *Rubrico, et al. v. Macapagal-Arroyo, et al.*, 627 Phil. 37, 69 (2010).

container. Thereafter, Haber testified that he and the respondent were brought to the guardhouse where they were suffocated by placing plastic bags on their heads. He also testified that a wire was inserted inside their penises.[54]

The respondent's claim was further corroborated by Dr. Tiangco who testified that on June 18, 2009, she examined the respondent and found that he suffered several injuries and multiple second degree burns. Layus also attested that she saw the scars incurred by the respondent on his head, arms, and back when she interviewed him on July 26, 2009.[55]

In contrast, the respective testimonies of the witnesses for the petitioners merely consisted in denial and the allegation that the respondent was indeed the one who robbed the canteen.[56] Clearly, against the positive testimony of the respondent, which was corroborated by his witnesses, the petitioners' allegations must fail.

It is settled that denial is inherently a weak defense. To be believed, it must be buttressed by a strong evidence of non-culpability; otherwise, such denial is purely self-serving and without evidentiary value.[57] Further, even if the respondent was indeed guilty of a crime, assuming it to be true, it does not justify his immediate apprehension, in the guise of an invitation, and the subsequent acts of torture inflicted on him.

What is clear is that the respondent was able to prove by substantial evidence that he was apprehended by the members of the Task Force, illegally detained, and tortured. It was further established that Maritess would not have seen his son if not for the timely intercession of P/Supt. Buenaobra of the PNP Cagayan Regional Office. The members of the Task Force apprehended and detained the respondent to make him admit

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[54] *Rollo*, pp. 23-24.

[55] *Id.* at 25.

[56] *Id.* at 27.

[57] *Largo v. Court of Appeals*, 563 Phil. 293, 302 (2007).

to his complicity in the heist the night before *sans* the benefit of legal and judicial processes.

Nevertheless, it is undisputed that the respondent, after four days of detention, had been released by the members of the Task Force on June 18, 2009. This fact alone, however, does not negate the propriety of the grant of a writ of *amparo*.

In the seminal case of *Secretary of National Defense, et al. v. Manalo, et al.*,[58] the Court emphasized that the writ of *amparo* serves both preventive and curative roles in addressing the problem of extralegal killings and enforced disappearances. It is preventive in that it breaks the expectation of impunity in the commission of these offenses; it is curative in that it facilitates the subsequent punishment of perpetrators as it will inevitably yield leads to subsequent investigation and action.[59]

Accordingly, a writ of *amparo* may still issue in the respondent's favor notwithstanding that he has already been released from detention. In such case, the writ of *amparo* is issued to facilitate the punishment of those behind the illegal detention through subsequent investigation and action.

More importantly, the writ of *amparo* likewise covers violations of the right to security. At the core of the guarantee of the right to security, as embodied in Section 2, Article III of the Constitution,[60] is the immunity of one's person, including the extensions of his/her person, *i.e.*, houses, papers and effects, against unwarranted government intrusion. Section 2, Article III of the Constitution not only limits the State's power over

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[58] 589 Phil. 1 (2008).

[59] *Id.* at 41.

[60] 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 or the persons or things to be seized.

a person's home and possession, but more importantly, protects the privacy and sanctity of the person himself.[61]

The right to security is separate and distinct from the right to life. The right to life guarantees essentially the right to be alive – upon which the enjoyment of all other rights is preconditioned. On the other hand, the right to security is a guarantee of the secure quality of life, *i.e.*, the life, to which each person has a right, is not a life lived in fear that his person and property may be unreasonably violated by a powerful ruler.[62]

In *Manalo*, the Court further opined that the right to security of person yields various permutations of the exercise of the right, such as freedom from fear or, in the *amparo* context, freedom from threat; a guarantee of bodily and psychological integrity or security; and a guarantee of protection of one's rights by the government.[63] As regards the right to security, in the sense of the guarantee of protection of one's rights by the government, the Court explained:

> In the context of the writ of *amparo*, this right is **built into the guarantees of the rights to life and liberty** under Article III, Section 1 of the 1987 Constitution **and the right to security of person** (as freedom from threat and guarantee of bodily and psychological integrity) under Article III, Section 2. The right to security of person in this third sense is a corollary of the policy that the State "guarantees full respect for human rights" under Article II, Section 11 of the 1987 Constitution. As the government is the chief guarantor of order and security, the Constitutional guarantee of the rights to life, liberty and security of person is rendered ineffective if government does not afford protection to these rights especially when they are under threat. Protection includes conducting effective investigations, organization of the government apparatus to extend protection to victims of extralegal killings or enforced disappearances (or threats

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[61] *Secretary of National Defense, et al. v. Manalo, et al.*, *supra* note 58, at 49.

[62] *Id.* at 50.

[63] *Id.* at 54.

thereof) and/or their families, and bringing offenders to the bar of justice. x x x.[64] (Citation omitted and emphasis in the original)

In this case, it is incumbent upon the petitioners, who all hold positions in the local government of Tuao, to conduct, at the very least, an investigation on the alleged illegal arrest, illegal detention and torture of the respondent. The petitioners, nevertheless, claim that the Office of the Mayor and the police station of Tuao, unknown to the respondent, are conducting an investigation on the incident. However, other than their bare assertion, they failed to present any evidence that would prove the supposed investigation. Mere allegation is not a fact. Absent any evidence that would corroborate the said claim, it is a mere allegation that does not have any probative value.

Verily, the petitioners failed to point to any specific measures undertaken by them to effectively investigate the irregularities alleged by the respondent and to prosecute those who are responsible therefor. Worse, the illegal detention and torture suffered by the respondent were perpetrated by the members of the Task Force themselves.

Instead of effectively addressing the irregularities committed against the respondent, the petitioners seemingly justify the illegal arrest and detention and infliction of bodily harm upon the respondent by stating that the latter is a habitual delinquent and was the one responsible for the robbery of the canteen. As stated earlier, even if the respondent committed a crime, the petitioners, as local government officials, are not at liberty to disregard the respondent's constitutionally guaranteed rights to life, liberty and security. It is quite unfortunate that the petitioners, all local government officials, are the very ones who are infringing on the respondent's fundamental rights to life, liberty and security.

Clearly, there is substantial evidence in this case that would warrant the conclusion that the respondent's right to security, as a guarantee of protection by the government, was violated.

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[64] *Id.* at 54-55.

Accordingly, the CA correctly issued the writ of *amparo* in favor of the respondent.

The petitioners' claim that it was improper for the CA to direct the PNP Cagayan Regional Office to conduct further investigation on the respondent's allegations deserves scant consideration. There is simply no basis to the petitioners' claim that the PNP Cagayan Regional Office would not be expected to be objective in their investigation since representatives therefrom testified during the summary hearing. It bears stressing that P/Supt. Buenaobra was not a witness for the respondent; he testified pursuant to the *subpoena duces tecum ad testificandum* issued by the CA. Further, as aptly pointed out by the CA, it would be more reasonable for the PNP Cagayan Regional Office to conduct the said investigation since it has already commenced an initial investigation on the incident.

Nevertheless, there is a need to modify the reliefs granted by the CA in favor of the respondent. The CA's Decision was promulgated in 2010. Since then, Mayor Mamba's term of office as Mayor of Tuao had ended and, presumably, a new individual is now occupying the position of Mayor of Tuao. Accordingly, the incumbent Mayor of Tuao should be directed to likewise provide assistance to the investigation to be conducted by the PNP Cagayan Regional Office. Further, it has not been manifested in this case that the PNP Cagayan Regional Office had commenced the investigation on the incident that was ordered by the CA.

WHEREFORE, in consideration of the foregoing disquisitions, the petition is **DENIED**. The Decision dated January 18, 2010 and Resolution dated March 2, 2010 issued by the Court of Appeals in CA-G.R. SP. No. 00038 are hereby **AFFIRMED** subject to the following terms:

1. Petitioners Mayor William N. Mamba, Atty. Francisco N. Mamba, Jr., Ariel Malana, Narding Aggangan, Jomari Sagalon, Jun Cinabre, Frederick Baligod, Rommel Encollado, Joseph Tumaliuan, and Randy Dayag and the incumbent local government officials of Tuao, Cagayan are hereby enjoined from doing any act of

physical or psychological violence on respondent Leomar Bueno and his family including those who assisted him in the filing of the petition for the issuance of a writ of *amparo* with the Court of Appeals;

2. The Regional Director of the Philippine National Police – Cagayan Regional Office, whoever is the incumbent, is hereby directed to conduct an investigation, using extraordinary diligence, on the violation of the rights to life, liberty and security of the respondent when he was supposedly arrested on June 14, 2009 by the members of the Task Force Lingkod Bayan until he was released on June 18, 2009;

3. The petitioners and the incumbent officials of the local government of Tuao are hereby ordered to provide genuine and effective assistance to the investigation to be conducted by the Philippine National Police – Cagayan Regional Office, including but not limited to furnishing and/or providing the latter a list of the members of the Task Force Lingkod Bayan and all those who had a direct involvement in the violation of the respondent's rights to life, liberty and security, including their whereabouts, and to allow the investigation to run its course unhindered;

4. The investigation shall be completed not later than six (6) months from receipt of this Decision; and within thirty (30) days after completion of the investigation, the Regional Director of the Philippine National Police – Cagayan Regional Office shall submit a full report on the results of the investigation to the Court of Appeals;

5. The Court of Appeals, within thirty (30) days from the submission by the Regional Director of the Philippine National Police – Cagayan Regional Office of his full report, is directed to submit to this Court its own report and recommendations on the investigation and furnish a copy thereof to the incumbent Regional Director of the Philippine National Police – Cagayan Regional Office, the petitioners, and the respondent; and

6. This case is referred back to the Court of Appeals for appropriate proceedings directed at the monitoring of (a) the investigation to be conducted by the Philippine National Police – Cagayan Regional Office, (b) the actions to be undertaken in pursuance of the said investigation, and (c) the validation of the results.

SO ORDERED.

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

Mendoza, J., no part.

Caguioa, J., on leave.

THIRD DIVISION

[A.C. No. 7424. February 8, 2017]

NATIVIDAD R. MUNAR, BENNY O. TAGUBA, REYNALD S. LAMPITOC, ADELINA A. FARNACIO, ANITA R. DOMINGO, LUZ T. DOMINGO, EVANGELINE G. VINARAO, MOISES J. BARTOLOME, JR., ROSARIO R. RAMONES, MERCEDITA G. PIMENTEL, MYRNA A. CAMANTE, LEONIDA A. RUMBAOA, NORMA U. VILLANUEVA, ANTONIA M. TANGONAN, ASUNCION C. MARQUEZ, JULIETA B. MADRID, ESTRELLA C. ARELLANO, LUDIVINA B. SALES, JEANY M. FLORENTINO, and SHRI B. VISAYA, *petitioners*, *vs.* **ATTY. ELMER T. BAUTISTA and ATTY. WINSTON F. GARCIA,** *respondents.*

SYLLABUS

1. **LEGAL ETHICS; ATTORNEYS; DISBARMENT; WRONG REMEDY TO ASSAIL THE VALIDITY OF BOARD RESOLUTION NO. 48 AND THE IMPLEMENTATION THEREOF BY RESPONDENT-LAWYERS.—** A careful perusal of the allegations in the complaint would show that the issue hinges on the validity of Board Resolution No. 48 which allowed GSIS to collect arrears for the cancelled housing loans. As aptly found by the IBP Board of Governors, the controversy should have been resolved in accordance with the GSIS Law as set forth in Sections 30 and 31 of R.A. No. 8291 which confers original and exclusive jurisdiction on the GSIS on matters arising therefrom such as in the instant case. x x x. It should also be noted that Board Resolution No. 48 was passed to enhance the collection efforts of the GSIS in view of its fiduciary duty to its members regarding the GSIS funds. The assailed memorandum issued by Atty. Bautista was an enhancement of the collection efforts of the GSIS on delinquent accounts of members who availed of housing loans. The cancellation of the DCS and the cession of SLRRDC's rights in favor of GSIS warranted such collection upon the monthly salaries of the petitioners. There being no administrative declaration of the resolution's invalidity, it was incumbent upon Atty. Garcia to implement the same, as GSIS President and General Manager, in accordance with his mandate under Section 45 of R.A. No. 8291. Any disobedience would hold him liable under R.A. No. 3019 and the GSIS Charter.

2. **ID.; ID.; ID.; IN DISBARMENT PROCEEDINGS, THE BURDEN OF PROOF IS UPON THE COMPLAINANT AND THE COURT WILL EXERCISE ITS DISCIPLINARY POWER ONLY IF THE FORMER ESTABLISHES ITS CASE BY CLEAR, CONVINCING, AND SATISFACTORY EVIDENCE. THE FAILURE OF THE COMPLAINANT TO DISCHARGE THE BURDEN WARRANTS THE DISMISSAL OF THE COMPLAINT.—** As held in Arma v. Atty. Montevilla: Disbarment is the most severe form of disciplinary sanction and, as such, the power to disbar must always be exercised with great caution, only for the most imperative reasons and in clear cases of misconduct affecting the standing and moral character of the lawyer as an officer of

the court and member of the bar. As a rule, an attorney enjoys the legal presumption that he is innocent of the charges proffered against him until the contrary is proved, and that as an officer of the court, he has performed his duties in accordance with his oath. In disbarment proceedings, the burden of proof is upon the complainant and the Court will exercise its disciplinary power only if the former establishes its case by clear, convincing, and satisfactory evidence. Considering the serious consequence of disbarment, this Court has consistently held that only a clear preponderant evidence would warrant the imposition of such a harsh penalty. It means that the record must disclose as free from doubt a case that compels the exercise by the court of its disciplinary powers. The dubious character of the act done, as well as the motivation thereof, must be clearly demonstrated. It is well-settled that protection is afforded to members of the Bar who are at times maliciously charged, not just by their clients. Regrettably, the failure of the petitioners to discharge the burden that the acts of the respondents-lawyers violated Canons 1 and 5, Rules 1.01 and 1.02 of the CPR and the Attorney's Oath warrants the dismissal of the instant petition.

3. ID.; ID.; THE CODE OF PROFESSIONAL RESPONSIBILITY AND THE ATTORNEY'S OATH; NOT VIOLATED.— It should be noted that the focal point of the complaint for disbarment against the respondents was the collection of arrears against the monthly salaries of the petitioners to pay off housing loans. The rampant collection problems which plagued the GSIS from housing loans that were prevalently unpaid by its members resulted in the influx of receivables and bad debts to the detriment of the GSIS fund. The scenario geared the GSIS-BOT and the Management to enhance its collection efforts as a result of which Atty. Bautista issued the second memorandum regarding the legal right of the GSIS to demand payment of the arrearages from the cancelled housing loans due to delinquency, the issuance of Board Resolution No. 48, and the implementation of the same through the management of Atty. Garcia. Clearly, nothing from the acts of the respondents is deemed a violation of Canon 1, Rules 1.01 and 1.02 of the CPR, its Canon 5, and the Attorney's Oath.

APPEARANCES OF COUNSEL

Roque & Butuyan Law Offices for complainants.
Factoran & Associates Law Office for respondents.

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 from the Resolution[2] of the Integrated Bar of the Philippines (IBP) passed by its Board of Governors on June 5, 2008 adopting the Report and Recommendation[3] dated March 27, 2008 of the Commission on Bar Discipline (CBD) Investigating Commissioner Atty. Salvador B. Hababag (Commissioner Hababag) and dismissing the undated administrative Complaint for Disbarment[4] filed on February 1, 2007 by Benny O. Taguba, Natividad R. Munar, Reynald S. Lampitoc, Adelina A. Farnacio, Anita R. Domingo, Luz T. Domingo, Evangeline G. Vinarao, Moises J. Bartolome, Jr., Rosario R. Ramones, Mercedita G. Pimentel, Myrna A. Camante, Leonida A. Rumbaoa, Norma U. Villanueva, Antonia M. Tangonan, Asuncion C. Marquez, Julieta B. Madrid, Estrella C. Arellano, Ludivina B. Sales, Jeany M. Florentino, and Shri B. Visaya (collectively, the petitioners) against Atty. Elmer T. Bautista (Atty. Bautista), Chief Legal Counsel and Atty. Winston F. Garcia (Atty. Garcia), General Manager (respondents), both of the Government Service Insurance System (GSIS), for violations of Rules

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[1] *Rollo*, pp. 270-297.

[2] *Id*. at 252.

[3] *Id*. at 253-258.

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

1.01 and 1.02,[5] Canons 1[6] and 5[7] of the Code of Professional Responsibility (CPR) and the Attorney's Oath.

Factual Background

The petitioners are public school teachers and members of the GSIS residing in the provinces of Isabela and Ifugao.[8] They alleged that sometime in November 1998, marketing representatives of the GSIS and the San Lorenzo Ruiz Realty and Development Corporation (SLRRDC), namely Ferdinand Patajo, Levy Gonzales and Martina Guerrero (Representatives), visited a number of public schools in the provinces of Isabela and Ifugao, and enticed the teachers to avail of SLRRDC's low-cost housing units in San Lorenzo Ruiz Subdivision (the Subdivision) located at Marabulig I, Cauayan, Isabela based on the following representations, to wit: (1) the Subdivision is financed by the GSIS; (2) the housing units are available to the teachers at the least cost, not exceeding ₱1,000.00 or ₱2,000.00 monthly, depending on the teacher's capacity to pay; (3) the monthly amortizations are payable on any convenient time of the year for the teachers, or after five or 10 years; (4) there are no processing fees or downpayment; (5) no salary deduction but only direct payments to the nearest GSIS Branch Office; (6) when the housing units are ready for occupancy, the teachers will receive a cash gift of ₱3,000.00 for the installation of water and electricity facilities; (7) that the units

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[5] Rule 1.01 – A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

Rule 1.02 – A lawyer shall not counsel or abet activities aimed at defiance of the law or at lessening confidence in the legal system.

[6] A lawyer shall uphold the Constitution, obey the laws of the land and promote respect for law and legal processes.

[7] A lawyer shall keep abreast of legal developments, participate in continuing legal education programs, support efforts to achieve high standards in law schools as well as in the practical training of law students and assist in disseminating information regarding the law and jurisprudence.

[8] *Rollo*, p. 1.

are payable until the teacher-buyer reaches 70 years old; (8) the units may not be foreclosed until the 10th year for its payment; (9) in case a teacher-buyer is unable to continue payment, he/she may sell his right to the unit before it is foreclosed; and (10) that the Subdivision is fully developed with first class amenities that blends with nature's finest, such as: a) guarded entrance; b) concrete paved roads; c) perimeter fence; d) street lights and street names; e) shady trees every three meters; f) centralized water system; g) underground drainage; h) clubhouse; i) tennis court; j) basketball court; k) children's playground; and l) one perante orange tree per unit. The Representatives boasted that the Subdivision will "set the standard of fine living" where the teachers' "dreams are now a reality."[9]

The petitioners claimed that they were induced to sign blank forms to supposedly reserve housing units in the Subdivision and were not given the opportunity to review its contents due to the Representatives' excuse of being in a hurry. The Representatives, however, assured them that they will return with the filled-up forms for the petitioners' inspection and final decision, and that more GSIS personnel would meet them regarding the housing project and loan. The petitioners highly relied on the said assurances by signing the blank forms in contemplation of a good future investment.[10]

Apparently, none of the Representatives or any person from SLRRDC or GSIS returned as promised for the supposed further orientation and explanation on the housing project and loan. Sometime in August 1999, the petitioners were aghast at their respective salary deductions in the amount of ₱5,000.00 monthly for an alleged housing loan from the GSIS. They complained that the deduction left them with a measly ₱1,000.00 as "take home" pay. The petitioners claimed that their signatures in the Authority to Deduct were forged.[11]

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[9] *Id.* at 40-41.

[10] *Id.* at 41.

[11] *Id.* at 41-42.

In October 1999, Elvira Agcaoili of the GSIS Main Office visited GSIS Cauayan, Isabela to invite the petitioners to a forum and convinced them to go on with the housing loan on the premise that the GSIS was after their welfare but to no avail. She agreed to stop the salary deductions against the monthly pay of the petitioners by cancelling the Deeds of Conditional Sale (DCS). She, however, told them that it would take six months to do so. It was only in or about August 2003 that the Notices of Cancellation[12] were mostly sent to them by the GSIS.[13]

In 2004, the petitioners received notices from the GSIS that they still remain liable to pay for the accrued interests of the principal amount of the housing loan. To their dismay, the value of the housing loans reflected in their GSIS records ranged from ₱800,000.00 to more than ₱1,000,000.00 for a house and lot they allegedly never bought or even saw, much less occupied. They were also directed to pay the alleged arrears in order to stop the loans from further escalating in interest and their retirement pay may not be even enough to settle them.[14]

On January 19, 2004, Atty. Bautista issued a Memorandum[15] regarding the right of GSIS to retain ownership of the subject housing units and to collect the purchase price thereof through monthly salary deduction against the petitioners. In support of the collection enhancement of the GSIS on the matter, the GSIS Board of Trustees (BOT) passed Board Resolution No. 48.[16] Accordingly, Atty. Garcia, as GSIS General Manager, enforced and implemented the same by effecting salary deductions on the monthly pay of the petitioners as public school teachers.[17]

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[12] *Id*. at 16-33.

[13] *Id*. at 42-43.

[14] *Id*. at 43.

[15] *Id*. at 34-39.

[16] *Id*. at 256.

[17] *Id*. at 168.

The petitioners claimed that the allowance and implementation of the collection on arrears on cancelled housing loans are tantamount to double recovery for the GSIS.[18] The respondents ought to know that double recovery is not only prohibited by law, but it is also against public policy and morals. The respondents, therefore, committed serious infractions of the profession's ethical rules and put in question their moral and continued fitness to remain as members of the legal profession.[19]

In the Resolution[20] dated March 7, 2007, the Court required the respondents to comment on the complaint.

In compliance, Atty. Bautista commented[21] that he rendered a legal opinion on July 25, 2003, as former Chief Legal Counsel of the GSIS Legal Services Group, upon the request of Arnaldo Cuasay, the Senior Vice President of the Housing and Real Property Development Group, regarding the issue on whether the GSIS can collect arrearages on a housing loan with a DCS that was cancelled *vis-á-vis* Republic Act (R.A.) No. 6552 or the Maceda Law.[22]

The legal opinion of Atty. Bautista, in part, reads:

> It is clear then that the law expressly recognizes the vendor's right of cancellation of sale on installments with full retention of previous payments only in commercial and industrial properties. The law does not provide recovery of arrearages from the defaulting buyer in case of cancellation of conditional sale of residential properties. On the contrary, the refund of the cash surrender value of the payments on the residential property to the buyer is mandated.
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> The application of said law in the case of Valarao vs. Court of Appeals, x x x, is also clear when the Supreme Court held that

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[18] *Id*. at 166.

[19] *Id*. at 6.

[20] *Id*. at 50.

[21] *Id*. at 94-109.

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

"the rescission of the contract and the forfeiture of the payments already made could not be effected, because the case falls under [R.A.] No. 6552 x x x."[23]

He explained that he needed to re-study the matter because the GSIS was unable to implement the cancellation of the DCS between SLRRDC and the borrower/member (herein petitioners) to take possession of the subject property through ejectment proceedings, or to even recover its investment in the housing unit. Worse, the awardees of the cancelled housing loans continually occupied the housing units without paying their amortizations or any reasonable rental fees.[24] Hence, Atty. Bautista issued a new legal opinion which provided for the collection of arrearages by the GSIS because of its acquisition of all of SLRRDC's rights in the DCS and the Deed of Absolute Sale and Assignment (DASA) by legal subrogation under Article 1303[25] of the Civil Code. It was also provided therein that allowing the borrower/member to go scot-free after the cancellation of the DCS would be contrary to the principle of unjust enrichment and *solutio indebiti* and at the same time repugnant to the mandate of the GSIS to ensure collection or recovery of all indebtedness payable in its favor.[26]

On March 10, 2004, the GSIS-BOT passed and approved Board Resolution No. 48, as recommended by the Housing and Real Property Development Group based on Atty. Bautista's memorandum pursuant to Section 41(a)[27] of R.A.

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[23] *Id.* at 97.

[24] *Id.* at 97-98.

[25] Art. 1303. Subrogation transfers to the persons subrogated the credit with all the rights thereto appertaining, either against the debtor or against third person, be they guarantors or possessors of mortgages, subject to stipulation in a conventional subrogation.

[26] *Rollo*, pp. 98-100.

[27] Sec. 41. *Powers and Functions of the GSIS.* – The GSIS shall exercise the following powers and functions:

> (a) to formulate, adopt, amend and/or rescind such rules and regulations as may be necessary to carry out the provisions and purposes of this

No. 8291,[28] which supported the collection of arrearages on the cancelled housing loans through salary deduction against the petitioners.[29]

In his Comment,[30] Atty. Garcia averred that the disbarment complaint against him constitutes a collateral attack on the validity of Board Resolution No. 48. He discussed that a real property developer obtains a loan from the GSIS then assigns its rights under a DASA in favor of the latter. GSIS would then collect on the housing loan through monthly amortizations from the member's salary through monthly deduction. Title to the property would only transfer upon full payment of the loan.[31]

To amplify his defense, he explained that the petitioners' non-payment of the monthly amortizations resulted in the cancellation of the DCS and that such rampant practice of non-payment prompted the GSIS to devise a policy that would enhance its collection efforts such as the assailed Board Resolution No. 48, which sought to collect rental fees and not the purchase price of the housing units that were occupied by the petitioners.[32]

As General Manager, he averred that it was his ministerial duty to implement an official act of the GSIS-BOT which, under the law, enjoys a presumption of validity. He further

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Act, as well as the effective exercise of the powers and functions, and the discharge of duties and responsibilities of the GSIS, its officers and employees[.]

x x x x x x x x x

[28] 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. Approved on May 30, 1997.

[29] *Rollo*, pp. 100-101.

[30] *Id.* at 70-82.

[31] *Id.* at 72.

[32] *Id.* at 73.

updated the petitioners that Board Resolution No. 48 is no longer effective because it has already been superseded by Board Resolution No. 125 which was adopted by the GSIS-BOT on October 4, 2006 which significantly reduced the amount of the rentals that had to be paid by the petitioners due to non-accumulation of interests and surcharges in the rentals due.[33] Thus, the complaint for his disbarment is baseless and futile.

In conclusion, the comments of the respondents criticized the petitioners for resorting to a disbarment complaint as a wrong remedy. Since the issue circulates on the issuance of Board Resolution No. 48, they opined that the petitioners should have filed a petition before the GSIS-BOT to question its validity pursuant to Sections 30 and 31 of R.A. No. 8291 which read:

> SEC. 30. *Settlement of Disputes*. — The GSIS shall have original and exclusive jurisdiction to settle any disputes arising under this Act and any other laws administered by the GSIS.
>
> x x x x x x x x x
>
> SEC. 31. *Appeals*. — Appeals from any decision or award of the Board shall be governed by Rules 43 and 45 of the 1997 Rules of Civil Procedure adopted by the Supreme Court on April 8, 1997 which will take effect on July 1, 1997: *Provided*, That pending cases and those filed prior to July 1, 1997 shall be governed by the applicable rules of procedure: *Provided, further*, That the appeal shall take precedence over all other cases except criminal cases when the penalty of life imprisonment or death or *reclusion perpetua* is imposable.
>
> The appeal shall not stay the execution of the order or award unless ordered by the Board, by the Court of Appeals or by the Supreme Court and the appeal shall be without prejudice to the special civil action of *certiorari* when proper.

In the Resolution[34] dated July 9, 2007, the Court referred the case to the IBP for investigation, report and recommendation.

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[33] *Id*. at 77-78.

[34] *Id*. at 127-128.

Ruling of the IBP

In the Report and Recommendation[35] dated March 27, 2008, the IBP-CBD, through Commissioner Hababag, found no merit in the complaint because the disbarment suit constitutes an unwarranted and improper collateral attack against the validity of Board Resolution No. 48 which the GSIS-BOT adopted pursuant to its mandate; that such collateral attack against an official act of the GSIS-BOT infringes public interest and militates against the legal presumption on the regularity of performance of an official duty; and, that the petitioners failed to avail of the remedy of a petition in assailing the resolution's validity before the GSIS-BOT as set forth in Sections 30 and 31 of R.A. No. 8921. Thus, the dismissal of the complaint was recommended.

On June 5, 2008, the IBP Board of Governors adopted and approved the Report of Commissioner Hababag through Resolution No. XVIII-2008-267,[36] as follows:

> RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED the Report and Recommendation of the Investigating Commissioner of the above-entitled case, herein made part of this Resolution as Annex "A"; and, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and considering that the complaint lacks merit, the same is hereby **DISMISSED**.[37]

The petitioners' motion for reconsideration[38] reiterated the same arguments raised in their complaint.

On June 26, 2011, the IBP Board of Governors denied the motion for reconsideration through Board Resolution No. XIX-2011-499,[39] as follows:

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[35] *Id*. at 253-258.

[36] *Id*. at 252.

[37] *Id*.

[38] *Id*. at 193-200.

[39] *Id*. at 251.

RESOLVED to unanimously DENY [the petitioners'] Motion for Reconsideration, there being no cogent reason to reverse the findings of the Board and it being a mere reiteration of the matters which had already been threshed out and taken into consideration. Thus, for lack of substantial ground or reason to disturb it, the Board of Governors' *Resolution No. XVIII-2008-267 dated June 5, 2008* is hereby **AFFIRMED**.[40]

Undaunted by the adverse decision of the IBP, the petitioners filed the instant petition for review before the Court.

Ruling of the Court

The findings and recommendation of the IBP are well-taken.

The petitioners clarify that the instant administrative case is directed against the fitness of the respondents as members of the legal profession and not against the validity of Board Resolution No. 48. They asseverate that the issuance of the memorandum by Atty. Bautista which paved the way for the passage of Board Resolution No. 48 and its implementation through the management of Atty. Garcia were in blatant disregard and flagrant violation of Canon 1, Rules 1.01 and 1.02, Canon 5 of the CPR and the Attorney's Oath. They further argue that the collection of arrears on the supposed housing loans was a disguised payment of the purchase price of the realties involved and, that the policy authorizing its collection was a scheme to window-dress the huge financial losses suffered by GSIS due to mismanagement.

Citing Article 1385[41] of the New Civil Code, the petitioners put to fore the restoration of their prior position before the

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[40] *Id*.

[41] Art. 1385**.** Rescission creates the obligation to return the things which were the object of the contract, together with their fruits, and the price with its interest; consequently, it can be carried out only when he who demands rescission can return whatever he may be obliged to restore.

x x x x x x x x x

execution of the housing contracts upon the cancellation of the DCS. This being so, the GSIS cannot legally collect anything from them anymore as it has retained possession and ownership of the subject properties.

The contention is untenable.

A careful perusal of the allegations in the complaint would show that the issue hinges on the validity of Board Resolution No. 48 which allowed GSIS to collect arrears for the cancelled housing loans. As aptly found by the IBP Board of Governors, the controversy should have been resolved in accordance with the GSIS Law as set forth in Sections 30 and 31 of R.A. No. 8291 which confers original and exclusive jurisdiction on the GSIS on matters arising therefrom such as in the instant case. The Court quotes the IBP-CBD Report and Recommendation, to wit:

> The disbarment suit is a[n] unwarranted and improper collateral attack against the validity of a Board Resolution duly adopted by the GSIS[-BOT] in accordance with its mandate. The complaint assails the validity of Board Resolution No. 48.
>
> A collateral attack against the official act of a duly mandated body such as the GSIS[-BOT], will undermine public interest and will militate against the legal presumption that an official duty has been regularly performed x x x[.]
>
> [R.A. No.] 8291 or the GSIS Act of 1997 provides a remedy for [the petitioners]. Herein [petitioners]/borrowers should have filed a petition before the GSIS[-BOT] to question the validity of Board Resolution No. 48. x x x.[42]

It should also be noted that Board Resolution No. 48 was passed to enhance the collection efforts of the GSIS in view of its fiduciary duty to its members regarding the GSIS funds. The assailed memorandum issued by Atty. Bautista was an enhancement of the collection efforts of the GSIS on delinquent accounts of members who availed of housing loans. The

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[42] *Rollo*, pp. 257-258.

cancellation of the DCS and the cession of SLRRDC's rights in favor of GSIS warranted such collection upon the monthly salaries of the petitioners. There being no administrative declaration of the resolution's invalidity, it was incumbent upon Atty. Garcia to implement the same, as GSIS President and General Manager, in accordance with his mandate under Section 45[43] of R.A. No. 8291. Any disobedience would hold him liable under R.A. No. 3019[44] and the GSIS Charter.

As held in *Arma v. Atty. Montevilla*:[45]

> Disbarment is the most severe form of disciplinary sanction and, as such, the power to disbar must always be exercised with great caution, only for the most imperative reasons and in clear cases of misconduct affecting the standing and moral character of the lawyer as an officer of the court and member of the bar.
>
> As a rule, an attorney enjoys the legal presumption that he is innocent of the charges proffered against him until the contrary is proved, and that as an officer of the court, he has performed his duties in accordance with his oath. In disbarment proceedings, the burden of proof is upon the complainant and the Court will exercise its disciplinary power only if the former establishes its case by clear, convincing, and satisfactory evidence. Considering the serious consequence of disbarment, this Court has consistently held that only a clear preponderant evidence would warrant the imposition of such a harsh penalty. It means that the record must disclose as free from doubt a case that compels the exercise by the court of its disciplinary

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[43] Sec. 45. *Powers and Duties of the President and General Manager*.— The President and General Manager of the GSIS shall, among others, execute and administer the policies and resolutions approved by the Board and direct and supervise the administration and operations of the GSIS. The President and General Manager, subject to the approval of the Board, shall appoint the personnel of the GSIS, remove, suspend or otherwise discipline them for cause, in accordance with existing Civil Service rules and regulations, and prescribe their duties and qualifications to the end that only competent persons may be employed.

[44] ANTI-GRAFT AND CORRUPT PRACTICES ACT. Approved on August 17, 1960.

[45] 581 Phil. 1 (2008).

powers. The dubious character of the act done, as well as the motivation thereof, must be clearly demonstrated.[46] (Citations omitted)

It is well-settled that protection is afforded to members of the Bar who are at times maliciously charged, not just by their clients. Regrettably, the failure of the petitioners to discharge the burden that the acts of the respondents-lawyers violated Canons 1 and 5, Rules 1.01 and 1.02 of the CPR and the Attorney's Oath warrants the dismissal of the instant petition.

It should be noted that the focal point of the complaint for disbarment against the respondents was the collection of arrears against the monthly salaries of the petitioners to pay off housing loans. The rampant collection problems which plagued the GSIS from housing loans that were prevalently unpaid by its members resulted in the influx of receivables and bad debts to the detriment of the GSIS fund. The scenario geared the GSIS-BOT and the Management to enhance its collection efforts as a result of which Atty. Bautista issued the second memorandum regarding the legal right of the GSIS to demand payment of the arrearages[47] from the cancelled housing loans due to delinquency, the issuance of Board Resolution No. 48, and the implementation of the same through the management of Atty. Garcia. Clearly, nothing from the acts of the respondents is deemed a violation of Canon 1, Rules 1.01 and 1.02 of the CPR, its Canon 5, and the Attorney's Oath.

Lastly, the Court commiserates with the sad plight of the petitioners who are among minimum-income earners highly depending on their wages for their daily needs. Nonetheless, they still remain liable to pay the arrears indicated in their GSIS records not only for failing to discharge the burden of proving their allegations in the complaint but also for resorting to a wrong remedy. Despite thereof, the new GSIS Board Resolution No. 125 which replaced the assailed Board Resolution No. 48 is deemed to have given them sufficient leeway from payment

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[46] *Id*. at 7.

[47] *Rollo*, pp. 433-434.

because interests and surcharges will no longer accumulate and put to a halt, as explained by Atty. Garcia. Therefore, their chances of paying the balance of the housing loans would become lighter and no longer that burdensome.

WHEREFORE, the petition is **DENIED.**

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Bersamin, Jardeleza,* and *Caguioa,*[*] *JJ.,* concur.

SECOND DIVISION

[A.C. No. 9364. February 8, 2017]
(Formerly CBD Case No. 13-36960)

FLORDELIZA E. COQUIA, *complainant, vs.* **ATTY. EMMANUEL E. LAFORTEZA,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; DISBARMENT AND SUSPENSION; IN THE ABSENCE OF COGENT PROOF, BARE ALLEGATIONS OF MISCONDUCT CANNOT PREVAIL OVER THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL FUNCTIONS.— In administrative cases for disbarment or suspension against lawyers, the quantum of proof required is clearly preponderant evidence and the burden of proof rests upon the complainant. In the absence of cogent proof, bare allegations of misconduct

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[*] Designated Fifth Member of the Third Division per Special Order No. 2417 dated January 4, 2017.

cannot prevail over the presumption of regularity in the performance of official functions. In the instant case, We find that Coquia failed to present clear and preponderant evidence to show that Atty. Laforteza had direct and instrumental participation, or was in connivance with the Solis' in the preparation of the subject documents. While it may be assumed that Atty. Laforteza had a hand in the preparation of the subject documents, We cannot give evidentiary weight to such a supposition in the absence of any evidence to support it. The Court does not thus give credence to charges based on mere suspicion and speculation.

2. ID.; NOTARY PUBLIC; *EX OFFICIO* NOTARY PUBLIC; THE POWER OF *EX OFFICIO* NOTARIES PUBLIC IS LIMITED TO NOTARIAL ACTS CONNECTED TO THE EXERCISE OF THEIR OFFICIAL FUNCTIONS AND DUTIES, EXCEPT IF A CERTIFICATION IS INCLUDED IN THE NOTARIZED DOCUMENTS ATTESTING TO THE LACK OF ANY OTHER LAWYER OR NOTARY PUBLIC IN THE MUNICIPALITY OR CIRCUIT, AND ALL NOTARIAL FEES CHARGED WILL BE FOR THE ACCOUNT OF THE GOVERNMENT AND TURNED OVER TO THE MUNICIPAL TREASURER. — As early as the case of *Borre v. Moya*, this Court had already clarified that the power of *ex officio* notaries public have been limited to notarial acts connected to the exercise of their official functions and duties. Consequently, the empowerment of *ex officio* notaries public to perform acts within the competency of regular notaries public — such as acknowledgments, oaths and affirmations, jurats, signature witnessing, copy certifications, and other acts authorized under the 2004 Rules on Notarial Practice — is now more of an exception rather than a general rule. They may perform notarial acts on such documents that bear no relation to their official functions and duties only if (1) a certification is included in the notarized documents attesting to the lack of any other lawyer or notary public in the municipality or circuit; and (2) all notarial fees charged will be for the account of the government and turned over to the municipal treasurer. No compliance with these two requirements are present in this case. In the instant case, it is undisputed that Atty. Laforteza notarized and administered oaths in documents that had no relation to his official function. x x x. While Atty. Laforteza serve as notary public *ex officio* and, thus, may notarize documents or administer

oaths, he should not in his *ex-officio* capacity take part in the execution of private documents bearing no relation at all to his official functions.

3. ID.; ID.; ID.; CLERKS OF COURT SHOULD NOT, IN THEIR *EX-OFFICIO* CAPACITY, TAKE PART IN THE EXECUTION OF PRIVATE DOCUMENTS BEARING NO RELATION AT ALL TO THEIR OFFICIAL FUNCTIONS, AND ANY ONE OF THEM WHO DOES SO WOULD BE COMMITTING AN UNAUTHORIZED NOTARIAL ACT, WHICH AMOUNTS TO ENGAGING IN THE UNAUTHORIZED PRACTICE OF LAW AND ABUSE OF AUTHORITY.— Under the provisions of Section 41 (as amended by Section 2 of R. A. No. 6733) and Section 242 of the Revised Administrative Code, in relation to Sections G, M and N, Chapter VIII of the Manual for Clerks of Court, Clerks of Court are notaries public *ex officio*, and may thus notarize documents or administer oaths but only when the matter is related to the exercise of their official functions. In *Exec. Judge Astorga v. Solas*, the Court ruled that clerks of court should not, in their *ex-officio* capacity, take part in the execution of private documents bearing no relation at all to their official functions. Notarization of documents that have no relation to the performance of their official functions is now considered to be beyond the scope of their authority as notaries public *ex officio*. Any one of them who does so would be committing an unauthorized notarial act, which amounts to engaging in the unauthorized practice of law and abuse of authority.

4. ID.; ID.; 2004 RULES ON NOTARIAL PRACTICE; A NOTARY PUBLIC SHOULD NOT NOTARIZE A DOCUMENT UNLESS THE PERSONS WHO SIGNED THE SAME ARE THE VERY SAME PERSONS WHO EXECUTED AND PERSONALLY APPEARED BEFORE HIM TO ATTEST TO THE CONTENTS AND TRUTH OF WHAT ARE STATED THEREIN; VIOLATED.— [I]t is undisputed that Atty. Laforteza failed to comply with the rules of notarial law. He admitted that he notarized a *pre-signed* subject document presented to him. He also admitted his failure to personally verify the identity of all parties who purportedly signed the subject documents and who, as he claimed, appeared before him on January 7, 2009 as he merely relied upon the assurance of Luzviminda that her companions are the actual

signatories to the said documents. x x x. Notarization of documents ensures the authenticity and reliability of a document. Notarization of a private document converts such document into a public one, and renders it admissible in court without further proof of its authenticity. Courts, administrative agencies and the public at large must be able to rely upon the acknowledgment executed by a notary public and appended to a private instrument. Notarization is not an empty routine; to the contrary, it engages public interest in a substantial degree and the protection of that interest requires preventing those who are not qualified or authorized to act as notaries public from imposing upon the public and the courts and administrative offices generally. Hence, a notary public should not notarize a document unless the persons who signed the same are the very same persons who executed and personally appeared before him to attest to the contents and truth of what are stated therein. The purpose of this requirement is to enable the notary public to verify the genuineness of the signature of the acknowledging party and to ascertain that the document is the party's free act and deed.

5. ID.; ID.; ID.; ID.; NOTARIES PUBLIC MUST OBSERVE WITH UTMOST CARE THE BASIC REQUIREMENTS IN THE PERFORMANCE OF THEIR DUTIES. OTHERWISE, THE CONFIDENCE OF THE PUBLIC IN THE INTEGRITY OF THIS FORM OF CONVEYANCE WOULD BE UNDERMINED.— The 2004 Rules on Notarial Practice stresses the necessity of the affiant's personal appearance before the notary public x x x. Thus, a document should not be notarized unless the persons who are executing it are the very same ones who are personally appearing before the notary public. The affiants should be present to attest to the truth of the contents of the document and to enable the notary to verify the genuineness of their signature. Notaries public are enjoined from notarizing a fictitious or spurious document. In fact, it is their duty to demand that the document presented to them for notarization be signed in their presence. Their function is, among others, to guard against illegal deeds. For this reason, notaries public must observe with utmost care the basic requirements in the performance of their duties. Otherwise, the confidence of the public in the integrity of this form of conveyance would be undermined.

6. ID.; ID.; AN *EX-OFFICIO* NOTARY PUBLIC IS NOT RELIEVE FROM COMPLYING WITH THE SAME STANDARDS AND OBLIGATIONS IMPOSED UPON OTHER COMMISSIONED NOTARIES PUBLIC; REVOCATION OF NOTARIAL COMMISSION AND DISQUALIFICATION FROM BEING COMMISSIONED AS A NOTARY PUBLIC SHALL BE IMPOSED FOR NON-COMPLIANCE WITH THE RULES OF NOTARIAL LAW.— While Atty. Laforteza was merely an *ex-officio* notary public by virtue of his position as clerk of court then, it did not relieve him of compliance with the same standards and obligations imposed upon other commissioned notaries public. However, this Court can no longer acquire administrative jurisdiction over Atty. Laforteza for the purpose of imposing disciplinary sanctions over erring court employees since the instant complaint against him was filed **after** he has ceased to be a court employee. In *Talisic vs. Atty. Rinen*, respondent, as *ex-officio* notary public, failed to verify the identity of all the parties to the document. Thus, the Court ordered his notarial commission revoked and disqualified him from being commissioned as a notary public for a period of one year. We deem it proper to impose the same penalty.

APPEARANCES OF COUNSEL

Punzalan & Associates Law Office for complainant.
Bautista & Limbos Law Office for respondent.

D E C I S I O N

PERALTA, *J.*:

Before us is a Petition for Disbarment dated February 6, 2012 filed by Flordeliza E. Coquia[1] (*Coquia*) against respondent Atty. Emmanuel E. Laforteza (*Atty. Laforteza*), docketed as A.C. No. 9364, for Conduct Unbecoming of a Lawyer due to the unauthorized notarization of documents relative to Civil Case No. 18943.[2]

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

[2] *Clemente Solis v. Flordeliza E. Coquia.*

Atty. Laforteza was a former Clerk of Court of Regional Trial Court (*RTC*), Branch 68, Lingayen, Pangasinan, having assumed office in November 17, 2004 until January 31, 2011.[3] On February 1, 2011, Atty. Laforteza transferred to the Department of Justice.[4]

In her Complaint, Coquia alleged that on January 7, 2009, while in office as clerk of court, Atty. Laforteza conspired with Clemente Solis (*Clemente*) to falsify two (2) documents, to wit: (1) *an Agreement between Clemente Solis and Flordeliza Coquia,*[5] and the (2) *Payment Agreement executed by Flordeliza Coquia,* and subsequently notarized the said documents. Coquia claimed that the documents were forged to make it appear that on the said date, she subscribed and sworn to the said documents before Atty. Laforteza when in truth and in fact on the said date and time, she was attending to her classes at the Centro Escolar University in Manila as evidenced by the certified true copy of the Centro Escolar University Faculty Daily Time Record for the period of December 16, 2008 to January 14, 2009.[6]

Coquia asserted that under the law, Atty. Laforteza is not authorized to administer oath on documents not related to his functions and duties as Clerk of Court of RTC, Branch 68, Lingayen, Pangasinan. Thus, the instant complaint for disbarment for conduct unbecoming of a lawyer.

On January 12, 2012, the Office of the Bar Confidant referred the complaint to Atty. Cristina B. Layusa, Deputy Clerk of Court and Bar Confidant, Office of the Bar Confidant, Supreme Court, for appropriate action.[7]

On March 19, 2012, the Court resolved to require Atty. Laforteza to comment on the complaint against him.[8]

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[3] *Rollo,* p. 45.

[4] On January 8, 2016, Atty. Emmanuel E. Laforteza was appointed as Prosecutor II in the OPP-Pangasinan, *id.* at 1.

[5] *Rollo,* pp. 10-11.

[6] *Id.* at 65.

[7] *Id.* at 19.

[8] *Id.* at 35.

In compliance, Atty. Laforteza submitted his Comment[9] dated July 2, 2012 where he denied the allegations in the complaint. Atty. Laforteza recalled that on January 7, 2009, while attending to his work, fellow court employee, Luzviminda Solis (*Luzviminda*), wife of Clemente, with other persons, came to him. He claimed that Luzviminda introduced said persons to him as the same parties to the subject documents. Luzviminda requested him to subscribe the subject documents as proof of their transaction considering that they are blood relatives. Atty. Laforteza claimed that he hesitated at first and even directed them to seek the services of a notary public but they insisted for his assistance and accommodation. Thus, in response to the exigency of the situation and thinking in all good faith that it would also serve the parties' interest having arrived at a settlement, Atty. Laforteza opted to perform the subscription of the *jurat.* He, however, insisted that at that time of subscription, after propounding some questions, he was actually convinced that the persons who came to him are the same parties to the said subject documents.[10]

Atty. Laforteza likewise denied that there was conspiracy or connivance between him and the Solis'. He pointed out that other than the subject documents and Coquia's bare allegation of conspiracy, no evidence was presented to substantiate the same. Atty. Laforteza lamented that he was also a victim of the circumstances with his reliance to the representations made before him. He invoked the presumption of regularity and extended his apology to this Court should his act as a subscribing officer be deemed improper.[11]

In a Joint-Affidavit[12] dated July 2, 2012 of Clemente and Luzviminda, both denied to have connived or conspired with Atty. Laforteza in the preparation and execution of the subject documents. They narrated that Atty. Laforteza in fact initially

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[9] *Id.* at 45-49.

[10] *Id.* at 46.

[11] *Id.* at 47.

[12] *Id.* at 41-43.

refused to grant their request to notarize the subject documents but they were able to convince him to assist them in the interest of justice. Clemente insisted that he was one of the signatories in the said documents and that he has personal knowledge that the signature of Coquia inscribed in the same documents are her true signatures having seen her affixed her signatures.[13]

On October 11, 2012, the Court resolved to refer the instant case to the Integrated Bar of the Philippines (*IBP*) for investigation, report and recommendation.[14]

During the mandatory conference, both parties agreed that Atty. Laforteza is authorized to administer oaths. However, as to the requirement to establish the identity of the parties, Atty. Laforteza admitted that he does not personally know both Coquia and Clemente, and he merely relied on Luzviminda and Lorna Viray, who are known to him as fellow court employees, to establish the identities of the parties. He likewise admitted that Coquia did not sign the documents in his presence and that someone present on the said date allegedly owned the signature of Coquia as hers.[15]

In its Report and Recommendation[16] dated December 18, 2013, the IBP-Commission on Bar Discipline (*CBD*) recommended that the instant complaint be dismissed for lack of sufficient evidence.

However, in a Notice of Resolution No. XXI-2014-818 dated October 11, 2014, the IBP-Board of Governors resolved to reversed and set aside the Report and Recommendation of the IBP-CBD, and instead reprimanded and cautioned Atty. Laforteza to be careful in performing his duties as subscribing officer.[17]

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[13] *Id.* at 42.

[14] *Id.* at 54.

[15] *Id.* at 88.

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

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

We concur with the findings of the IBP-Board of Governors, except as to the penalty.

In administrative cases for disbarment or suspension against lawyers, the quantum of proof required is clearly preponderant evidence and the burden of proof rests upon the complainant.[18] In the absence of cogent proof, bare allegations of misconduct cannot prevail over the presumption of regularity in the performance of official functions.[19]

In the instant case, We find that Coquia failed to present clear and preponderant evidence to show that Atty. Laforteza had direct and instrumental participation, or was in connivance with the Solis' in the preparation of the subject documents. While it may be assumed that Atty. Laforteza had a hand in the preparation of the subject documents, We cannot give evidentiary weight to such a supposition in the absence of any evidence to support it. The Court does not thus give credence to charges based on mere suspicion and speculation.[20]

As to the allegation of unauthorized notarization:

As early as the case of *Borre v. Moya,*[21] this Court had already clarified that the power of *ex officio* notaries public have been limited to notarial acts connected to the exercise of their official functions and duties.

Consequently, the empowerment of *ex officio* notaries public to perform acts within the competency of regular notaries public – such as acknowledgments, oaths and affirmations, jurats, signature witnessing, copy certifications, and other acts authorized under the 2004 Rules on Notarial Practice – is now more of an exception rather than a general rule. They may perform notarial acts on such documents that bear no relation to their official functions and duties only if (1) a certification is included

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[18] *Cruz v. Atty. Centron,* 484 Phil. 671, 675 (2004).

[19] *Atty. Reyes v. Jamora,* 634 Phil. 1, 7 (2010).

[20] *Id.*

[21] 188 Phil. 362, 369 (1980).

in the notarized documents attesting to the lack of any other lawyer or notary public in the municipality or circuit; and (2) all notarial fees charged will be for the account of the government and turned over to the municipal treasurer. No compliance with these two requirements are present in this case.

In the instant case, it is undisputed that Atty. Laforteza notarized and administered oaths in documents that had no relation to his official function. The subject documents, to wit: (1) *an Agreement between Clemente Solis and Flordeliza Coquia,*[22] and the (2) *Payment Agreement executed by Flordeliza Coquia,* are both private documents which are unrelated to Atty. Laforteza's official functions. The civil case from where the subject documents originated is not even raffled in Branch 68 where Atty. Laforteza was assigned. While Atty. Laforteza serve as notary public *ex officio* and, thus, may notarize documents or administer oaths, he should not in his *ex-officio* capacity take part in the execution of private documents bearing no relation at all to his official functions.

Under the provisions of Section 41[23] (as amended by Section 2 of R. A. No. 6733[24]) and Section 242[25] of the Revised

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[22] *Rollo,* pp. 10-11.

[23] Sec. 41. *Officers Authorized to Administer Oath*. The following officers have general authority to administer oaths: President; Vice-President; Members and Secretaries of both Houses of the Congress; Members of the Judiciary; Secretaries of Departments; provincial governors and lieutenant-governors; city mayors; municipal mayors; bureau directors; regional directors; clerks of courts; registrars of deeds; other civilian officers in the public service of the government of the Philippines whose appointments are vested in the President and are subject to confirmation by the Commission on Appointments; all other constitutional officers; and notaries public.

[24] An Act to Amend Section 21, Title I, Book I of the Revised Administrative Code of 1987, Granting Members of Both Houses of the Congress of the Philippines the General Authority to Administer Oaths, and for Other Purposes.

[25] Sec. 242. *Officers acting as notaries public ex officio.* – Except as otherwise specially provided, the following officials, and none other, shall be deemed to be notaries public *ex officio,* and as such they are authorized to perform, within the limits of their territorial jurisdiction as hereinbelow

Administrative Code, in relation to Sections G,[26] M[27] and N,[28] Chapter VIII of the Manual for Clerks of Court, Clerks of Court are notaries public *ex officio,* and may thus notarize documents or administer oaths but only when the matter is related to the exercise of their official functions.[29] In *Exec. Judge Astorga v. Solas*,[30] the Court ruled that clerks of court should not, in their

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defined, all the duties appertaining to the office of notary public. (a) The Chief of the Division of Archives, Patents, Copyrights, and Trade-marks, the Clerk of the Supreme Court, the Clerk of the Court of First Instance of the Ninth Judicial District, the Chief of the General Land Registration Office, and the Superintendent of the Postal Savings Bank Division, Bureau of Posts when acting within the limits of the City of Manila. (b) Clerks of Courts of First Instance outside of the City of Manila, when acting within the judicial districts to which they respectively pertain. (c) Justices of the peace, within the limits of the territory over which their jurisdiction as justices of the peace extends; but auxiliary justices of the peace and other officers who are by law vested with the office of justice of the peace *ex officio* shall not, solely by reason of such authority, be also entitled to act in the capacity of notaries *ex officio.* (d) Any government officer or employee of the Department of Mindanao and Sulu appointed notary public *ex officio* by the judge of the Court of First Instance, with jurisdiction coextensive with the province wherein the appointee is stationed, and for a term of two years beginning upon the first day of January of the year in which the appointment is made.[The Department of Mindanao and Sulu, as a special political division has been abolished by Section 1 of Act 2878.] The authority conferred in subsections (a) and (b) hereof may, in the absence of the chief or clerk of court, be exercised by an assistant chief, acting chief, or deputy clerk of court pertaining to the office in question.

[26] The provisions of Section G, Chapter VIII of the Manual for Clerks of Court are essentially the same as the provisions of Section 242 of the Revised Administrative Code.

[27] The provisions of Section M, Chapter VIII of the Manual for Clerks of Court are lifted from Section 41 of the Revised Administrative Code, as amended.

[28] Section N. DUTY TO ADMINISTER OATH. Officers authorized to administer oaths, with the exception of notaries public, municipal judges and clerks of court, are not obliged to administer oaths or execute certificates **save in matters of official business**; and with the exception of notaries public, the officer performing the service in those matters shall charge no fee, unless specifically authorized by law. (Emphasis ours)

[29] *Exec. Judge Astorga v. Solas,* 413 Phil. 558, 562 (2001).

[30] *Supra.*

ex-officio capacity, take part in the execution of private documents bearing no relation at all to their official functions. Notarization of documents that have no relation to the performance of their official functions is now considered to be beyond the scope of their authority as notaries public *ex officio.* Any one of them who does so would be committing an unauthorized notarial act, which amounts to engaging in the unauthorized practice of law and abuse of authority.

As to the Violation of Notarial Law:

We likewise agree and adopt the findings of the IBP-Board of Governors which found Atty. Laforteza to have violated the Notarial Law.

In this case, it is undisputed that Atty. Laforteza failed to comply with the rules of notarial law. He admitted that he notarized a *pre-signed* subject document presented to him. He also admitted his failure to personally verify the identity of all parties who purportedly signed the subject documents and who, as he claimed, appeared before him on January 7, 2009 as he merely relied upon the assurance of Luzviminda that her companions are the actual signatories to the said documents. In ascertaining the identities of the parties, Atty. Laforteza contented himself after propounding several questions only despite the Rules' clear requirement of presentation of competent evidence of identity such as an identification card with photograph and signature. Such failure to verify the identities of the parties was further shown by the fact that the pertinent identification details of the parties to the subject documents, as proof of their identity, were lacking in the subject documents' acknowledgment portion. Atty. Laforteza even affixed his signature in an incomplete notarial certificate. From the foregoing, it can be clearly concluded that there was a failure on the part of Atty. Laforteza to exercise the due diligence required of him as a notary public *ex-officio*.

Notarization of documents ensures the authenticity and reliability of a document. Notarization of a private document converts such document into a public one, and renders it admissible in court without further proof of its authenticity.

Courts, administrative agencies and the public at large must be able to rely upon the acknowledgment executed by a notary public and appended to a private instrument. Notarization is not an empty routine; to the contrary, it engages public interest in a substantial degree and the protection of that interest requires preventing those who are not qualified or authorized to act as notaries public from imposing upon the public and the courts and administrative offices generally.[31]

Hence, a notary public should not notarize a document unless the persons who signed the same are the very same persons who executed and personally appeared before him to attest to the contents and truth of what are stated therein. The purpose of this requirement is to enable the notary public to verify the genuineness of the signature of the acknowledging party and to ascertain that the document is the party's free act and deed.[32]

The 2004 Rules on Notarial Practice stresses the necessity of the affiant's personal appearance before the notary public Rule II, Section 1 states:

SECTION 1. Acknowledgment.— "Acknowledgment" refers to an act in which an individual on a single occasion:

(a) **appears in person before the notary public and presents and integrally complete instrument or document**;

(b) **is attested to be personally known to the notary public or identified by the notary public through competent evidence of identity as defined by these Rules;** and

(c) represents to the notary public that the signature on the instrument or document was voluntarily affixed by him for the purposes stated in the instrument or document, declares that he has executed the instrument or document as his free and voluntary act and deed, and, if he acts in a particular representative capacity, that he has the authority to sign in that capacity. (Emphasis supplied)

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[31] *Sps. Anudon v. Atty. Cefra,* A.C. No. 5482, February 10, 2015, 750 SCRA 231, 240.

[32] *Id.*

Rule IV, Section 2(b) further states:

> SEC. 2. Prohibitions. — 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.**

Thus, a document should not be notarized unless the persons who are executing it are the very same ones who are personally appearing before the notary public. The affiants should be present to attest to the truth of the contents of the document and to enable the notary to verify the genuineness of their signature. Notaries public are enjoined from notarizing a fictitious or spurious document. In fact, it is their duty to demand that the document presented to them for notarization be signed in their presence. Their function is, among others, to guard against illegal deeds.[33] For this reason, notaries public must observe with utmost care the basic requirements in the performance of their duties. Otherwise, the confidence of the public in the integrity of this form of conveyance would be undermined.[34]

PENALTY

While Atty. Laforteza was merely an *ex-officio* notary public by virtue of his position as clerk of court then, it did not relieve him of compliance with the same standards and obligations imposed upon other commissioned notaries public.[35] However, this Court can no longer acquire administrative jurisdiction over Atty. Laforteza for the purpose of imposing disciplinary sanctions over erring court employees since the instant complaint against him was filed ***after*** he has ceased to be a court employee.

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[33] *Sps. Domingo v. Reed,* 513 Phil. 339, 350 (2005).

[34] *Supra* note 21.

[35] 726 Phil. 497, 501 (2014).

In *Talisic vs. Atty. Rinen,*[36] respondent, as *ex-officio* notary public, failed to verify the identity of all the parties to the document. Thus, the Court ordered his notarial commission revoked and disqualified him from being commissioned as a notary public for a period of one year. We deem it proper to impose the same penalty.

WHEREFORE, based on the foregoing, Atty. Emmanuel E. Laforteza's notarial commission, if there is any, is **REVOKED,** and he is **DISQUALIFIED** from being commissioned as a notary public for a period of one (1) year. He is likewise **STERNLY WARNED** that a repetition of the same or similar acts will be dealt with more severely.

Let copies of this Decision be furnished the Office of the Bar Confidant, to be appended to Atty. Laforteza's personal record. Further, let copies of this Resolution be furnished the Integrated Bar of the Philippines and the Office of the Court Administrator, which is directed to circulate them to all the courts in the country for their information and guidance.

SO ORDERED.

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

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[36] *Supra.*

[*] Designated Additional Member per Special Order No. 2416, dated January 4, 2017.

THIRD DIVISION

[G.R. No. 187543. February 8, 2017]

WERR CORPORATION INTERNATIONAL, *petitioner, vs.* **HIGHLANDS PRIME, INC.,** *respondent.*

[G.R. No. 187580. February 8, 2017]

HIGHLANDS PRIME, INC., *petitioner, vs.* **WERR CORPORATION INTERNATIONAL,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; PETITION FOR REVIEW; FACTUAL ISSUES, WHICH INVOLVE A REVIEW OF THE PROBATIVE VALUE OF THE EVIDENCE PRESENTED, SUCH AS THE CREDIBILITY OF WITNESSES, OR THE EXISTENCE OR RELEVANCE OF SURROUNDING CIRCUMSTANCES AND THEIR RELATION TO EACH OTHER, MAY NOT BE RAISED UNLESS IT IS SHOWN THAT THE CASE FALLS UNDER RECOGNIZED EXCEPTIONS.—** [W]e emphasize that what is before us is a petition for review under Rule 45 where only questions of law may be raised. Factual issues, which involve a review of the probative value of the evidence presented, such as the credibility of witnesses, or the existence or relevance of surrounding circumstances and their relation to each other, may not be raised unless it is shown that the case falls under recognized exceptions.

2. **ID.; ARBITRATION; THE ARBITRAL AWARD SHALL BE BINDING UPON THE PARTIES AND SHALL BE FINAL AND INAPPEALABLE EXCEPT ON QUESTIONS OF LAW WHICH SHALL BE APPEALABLE TO THE SUPREME COURT.—** In cases of arbitral awards rendered by the CIAC, adherence to this rule is all the more compelling. Executive Order No. 1008, which vests upon the CIAC original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines, clearly provides that the arbitral award shall be binding upon the parties and that it shall be

final and inappealable except on questions of law which shall be appealable to the Supreme Court. This rule on the finality of an arbitral award is anchored on the premise that an impartial body, freely chosen by the parties and to which they have confidence, has settled the dispute after due proceedings x x x. Aware of the objective of voluntary arbitration in the labor field, in the construction industry, and in any other area for that matter, the Court will not assist one or the other or even both parties in any effort to subvert or defeat that objective for their private purposes. The Court will not review the factual findings of an arbitral tribunal upon the artful allegation that such body had "misapprehended the facts" and will not pass upon issues which are, at bottom, issues of fact, no matter how cleverly disguised they might be as "legal questions." The parties here had recourse to arbitration and chose the arbitrators themselves; they must have had confidence in such arbitrators. The Court will not, therefore, permit the parties to relitigate before it the issues of facts previously presented and argued before the Arbitral Tribunal, save only where a very clear showing is made that, in reaching its factual conclusions, the Arbitral Tribunal committed an error so egregious and hurtful to one party as to constitute a grave abuse of discretion resulting in lack or loss of jurisdiction. Prototypical examples would be factual conclusions of the Tribunal which resulted in deprivation of one or the other party of a fair opportunity to present its position before the Arbitral Tribunal, and an award obtained through fraud or the corruption of arbitrators. Any other, more relaxed, rule would result in setting at naught the basic objective of a voluntary arbitration and would reduce arbitration to a largely inutile institution. In this case, the issues of whether HPI was able to prove that payments made to suppliers and to third party contractors are prior incurred obligations that should be charged against the retention money, and whether HPI incurred expenses above the retention money that warrants actual damages, are issues of facts beyond the review of the Court under Rule 45.

3. ID.; APPEALS; FACTUAL FINDINGS BY A QUASI-JUDICIAL BODY LIKE THE CONSTRUCTION INDUSTRY ARBITRATION COMMISSION (CIAC), WHICH HAS ACQUIRED EXPERTISE BECAUSE ITS JURISDICTION IS CONFINED TO SPECIFIC MATTERS,

ARE ACCORDED NOT ONLY WITH RESPECT BUT EVEN FINALITY IF THEY ARE SUPPORTED BY SUBSTANTIAL EVIDENCE; EXCEPTIONS; NOT PRESENT.— [E]ven if we consider such factual issues, we are bound by the findings of fact of the CIAC especially when affirmed by the CA. Factual findings by a quasi-judicial body like the CIAC, which has acquired expertise because its jurisdiction is confined to specific matters, are accorded not only with respect but even finality if they are supported by substantial evidence. We recognize that certain cases require the expertise, specialized skills, and knowledge of the proper administrative bodies because technical matters or intricate questions of facts are involved. We nevertheless note that factual findings of the construction arbitrators are not beyond review, such as when the petitioner affirmatively proves the following: (1) the award was procured by corruption, fraud, or other undue means; (2) there was evident partiality or corruption of the arbitrators or any of them; (3) the arbitrators were guilty of misconduct in refusing to hear evidence pertinent and material to the controversy; (4) one or more of the arbitrators were disqualified to act as such under Section 10 of Republic Act No. 876 and willfully refrained from disclosing such disqualifications or of any other misbehavior by which the rights of any party have been materially prejudiced; (5) the arbitrators exceeded their powers, or so imperfectly executed them, that a mutual, final, and definite award upon the subject matter submitted to them was not made; (6) when there is a very clear showing of grave abuse of discretion resulting in lack or loss of jurisdiction as when a party was deprived of a fair opportunity to present its position before the arbitral tribunal or when an award is obtained through fraud or the corruption of arbitrators; (7) when the findings of the CA are contrary to those of the CIAC; or (8) when a party is deprived of administrative due process. However, we do not find that HPI was able to show any of the exceptions that should warrant a review and reversal of the findings made by the CIAC and the CA. Thus, we affirm the CIAC and CA's findings that direct payments charged by HPI in 2007 and 2008 were for materials supplied after the termination of the project and did not correspond to the list of suppliers submitted; that the waterproofing works done by Dubbel Philippines in the amount of ₱629,702.24 were for works done after the termination of the contract that were for the account

of the new contractor; and that the rectification works performed after the termination of the contract worth ₱3,040,000.00 were not proven to have been paid, that it was for rectification works only, and that prior notice of such defective works as required under the Agreement was not proven. Accordingly, we affirm that the balance of the retention money is ₱10,955,899.79.

4. CIVIL LAW; OBLIGATIONS AND CONTRACTS; DAMAGES; LIQUIDATED DAMAGES; THE CONSTRUCTION INDUSTRY'S PREVAILING PRACTICE MAY SUPPLEMENT ANY AMBIGUITIES OR OMISSIONS IN THE STIPULATIONS OF THE CONTRACT; SUBSTANTIAL COMPLETION OF THE PROJECT EQUATES TO ACHIEVEMENT OF 95% PROJECT COMPLETION EXCUSES THE CONTRACTOR FROM THE PAYMENT OF LIQUIDATED DAMAGES.— [W]e do not agree with the CA that industry practice be rejected because liquidated damages is provided in the Agreement, autonomy of contracts prevails, and industry practice is completely set aside. Contracting parties are free to stipulate as to the terms and conditions of the contract for as long as they are not contrary to law, morals, good customs, public order or public policy. Corollary to this rule is that laws are deemed written in every contract. Deemed incorporated into every contract are the general provisions on obligations and interpretation of contracts found in the Civil Code. x x x In previous cases, we applied [Article 1234 and 1376 of the Civil Code] in construction agreements to determine whether the project owner is entitled to liquidated damages. We held that substantial completion of the project equates to achievement of 95% project completion which excuses the contractor from the payment of liquidated damages. In *Diesel Construction Co., Inc. v. UPSI Property Holdings, Inc.*, we applied Article 1234 of the Civil Code. In determining what is considered substantial compliance, we used the CIAP Document No. 102 as evidence of the construction industry practice that substantial compliance is equivalent to 95% accomplishment rate. In that case, the construction agreement requires the contractor "to pay the owner liquidated damages in the amount equivalent to one-fifth (1/5) of one (1) percent of the total Project cost for each calendar day of delay." We declared that the contractor cannot be liable for liquidated damages because it already accomplished 97.56%

of the project. We reiterated this in *Transcept Construction and Management Professionals, Inc. v. Aguilar* where we ruled that since the contractor accomplished 98.16% of the project, the project owner is not entitled to the 10% liquidated damages. Considering the foregoing, it was error for the CA to immediately dismiss the application of industry practice on the sole ground that there is an existing agreement as to liquidated damages. As expressly stated under Articles 1234 and 1376, and in jurisprudence, the construction industry's prevailing practice may supplement any ambiguities or omissions in the stipulations of the contract. Notably, CIAP Document No. 102, by itself, was intended to have suppletory effect on private construction contracts. x x x. As the standard conditions for contract for private construction adopted and promulgated by the CIAP, CIAP Document No. 102 applies suppletorily to private construction contracts to remedy the conflict in the internal documents of, or to fill in the omissions in, the construction agreement. In this case, clause 41.5 of the Agreement is undoubtedly a valid stipulation. However, while clause 41.5 requires payment of liquidated damages if there is delay, it is silent as to the period until when liquidated damages shall run. The Agreement does not state that liquidated damages is due until termination of the project; neither does it completely reject that it is only due until substantial completion of the project. This omission in the Agreement may be supplemented by the provisions of the Civil Code, industry practice, and the CIAP Document No. 102. Hence, the industry practice that substantial compliance excuses the contractor from payment of liquidated damages applies to the Agreement.

5. ID.; ID.; ID.; ID.; ID.; THE EFFECTS OF SUBSTANTIAL COMPLETION WILL ONLY APPLY WHEN THE CONTRACTOR SUCCESSFULLY PROVE BY SUBSTANTIAL EVIDENCE THAT IT ACTUALLY ACHIEVED 95% COMPLETION RATE OF THE PROJECT, FOR TO COMPUTE THE PERIOD OF DELAY WHEN SUBSTANTIAL COMPLIANCE IS NOT YET ACHIEVED BUT MERELY ON THE ASSUMPTION THAT IT WILL EVENTUALLY BE ACHIEVED WOULD RESULT IN AN INIQUITOUS SITUATION WHERE THE PROJECT OWNER WILL BEAR THE RISKS AND ADDITIONAL COSTS FOR THE PERIOD EXCUSED

FROM LIQUIDATED DAMAGES.— [W]e find that Werr cannot benefit from the effects of substantial compliance. Paragraph A.[a.], Article 20.11 of CIAP Document No. 102 requires that the contractor *completes* 95% of the work for there to be substantial completion of the project. Also, in those cases where we applied the industry practice to supplement the contracts and excused payment from liquidated damages under Article 1234, the contractors there actually achieved 95% completion of the project. Neither the CIAC nor the courts assumed as to when substantial compliance will be achieved by the contractor, but the contractors offered substantial evidence that they actually achieved at least 95% completion of the project. Thus, the effects of substantial completion only operate to relieve the contractor from the burden of paying liquidated damages when it has, in reality, achieved substantial completion of the project. While the case before us presents a different scenario, as the contractor here does not demand total release from payment of liquidated damages, we find that in order to benefit from the effects of the substantial completion of a project, the condition precedent must first be met — the contractor must successfully prove by substantial evidence that it *actually* achieved 95% completion rate of the project. As such, it is incumbent upon Werr to show that it had achieved an accomplishment rate of 95% before or at the time of the termination of the contract. Here, there is no dispute that Werr failed to prove that it completed 95% of the project before or at the time of the termination of the contract. As found by CIAC, it failed to present evidence as to what accomplishment it achieved from the time of the last billing until the termination of the contract. What was admitted as accomplishment at the last billing is 93.18%. For this reason, even if we adopt the rule that no liquidated damages shall run after the date of substantial completion of the project, Werr cannot claim benefit for it failed to meet the condition precedent, *i.e.*, the contractor has successfully proven that it actually achieved 95% completion rate. More importantly, Werr failed to show that it is the construction industry's practice to project the date of substantial completion of a project, and to compute the period of delay based on the rate in past progress billings just as what the CIAC has done. Consequently, the CIAC erred when it assumed that Werr continued to perform works, and if it did, that it performed them at the rate of accomplishment of the previous works in the absence of evidence.

That the effects of substantial completion will only apply when *actual* substantial completion is reached is apparent when we consider the reason behind the rules on substantial completion of the project found in Section 20.11[E] of the CIAP Document No. 102 x x x. The rules are intended to balance the allocation and burden of costs between the contractor and the project owner so that the contractor still achieves a return for its completed work, and the project owner will not incur further costs. To compute the period of delay when substantial compliance is not yet achieved but merely on the assumption that it will eventually be achieved would result in an iniquitous situation where the project owner will bear the risks and additional costs for the period excused from liquidated damages. From the foregoing, we affirm the CA's conclusion that the period of delay in computing liquidated damages should be reckoned from October 27, 2006 until the termination of the contract or for 33 days, and not only until the projected substantial completion date. Consistent with the CA's ruling that liquidated damages did not exceed the retention money, we therefore affirm that HPI did not suffer actual damages in the amount of ₱573,012.81.

6. ID.; ID.; ARBITRATION COSTS, ATTORNEY'S FEES AND LITIGATION COSTS; COURTS ARE ALLOWED TO ADJUDGE WHICH PARTY MAY BEAR THE COST OF THE SUIT DEPENDING ON THE CIRCUMSTANCES OF THE CASE; ARBITRATION COSTS SHALL BE SHARED EQUALLY BY BOTH PARTIES; NO BASIS FOR THE AWARD OF ATTORNEY'S FEES AND LITIGATION EXPENSES.— Courts are allowed to adjudge which party may bear the cost of the suit depending on the circumstances of the case. Considering the CA's findings that both parties were able to recover their claims, and neither was guilty of bad faith, we do not find that the CA erred in dividing the arbitration costs between the parties. We also do not find the need to disturb the findings as to attorney's fees and expenses of litigation, both the CIAC and the CA having found that there is no basis for the award of attorney's fees and litigation expenses.

APPEARANCES OF COUNSEL

Librada Law Office for Werr Corporate International.
Tan Acut Lopez & Pison for Highlands Prime, Inc.

D E C I S I O N

JARDELEZA, *J.*:

These are consolidated petitions[1] seeking to nullify the Court of Appeals' (CA) February 9, 2009 Decision[2] and April 16, 2009 Resolution[3] in CA-G.R. SP No. 105013. The CA modified the August 11, 2008 Decision[4] of the Construction Industry Arbitration Commission (CIAC) in CIAC Case No. 09-2008, *viz.*:

> **WHEREFORE**, premises considered, the instant petition for review is **PARTLY GRANTED**. The assailed Decision dated August 11, 2008 of the Construction Industry Arbitration Commission in CIAC Case No. 09-2008 is hereby **MODIFIED** as follows:
>
> 1) Respondent Werr Corporation International shall pay petitioner Highlands Prime, Inc. liquidated damages in the amount of ₱8,969,330.70;
>
> 2) Petitioner Highlands Prime, Inc. shall return to respondent Werr Corporation International the balance of its retention money in the amount of ₱10,955,899.80 with the right to offset the award for liquidated damages in the aforesaid amount of ₱8,969,330.70; and
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> 3) The cost of arbitration shall be shared equally by the parties.
>
> The rest of the decision stands.
>
> **SO ORDERED.**[5]

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[1] Petition for Review on *Certiorari* filed by Werr Corporation International, *rollo* (G.R. No. 187543), pp. 20-45; and Petition for Review on *Certiorari* filed by Highlands Prime, Inc., *rollo* (G.R. No. 187580), pp. 30-82. We resolved to consolidate these petitions in our Resolution dated July 15, 2009, *rollo* (G.R. No. 187543), pp. 69-70.

[2] *Rollo* (G.R. No. 187543), pp. 7-16; penned by Associate Justice Estela M. Perlas-Bernabe (now a Member of this court), and concurred in by Associate Justices Mario L. Guariña III and Ricardo R. Rosario.

[3] *Id.* at 18.

[4] *Id.* at 56-68.

[5] *Id.* at 15-16.

Facts

Highlands Prime, Inc. (HPI) and Werr Corporation International (Werr) are domestic corporations engaged in property development and construction, respectively. For the construction of 54 residential units contained in three clusters of five-storey condominium structures, known as "The Horizon–Westridge Project," in Tagaytay Midlands Complex, Talisay, Batangas, the project owner, HPI, issued a Notice of Award/Notice to Proceed[6] to its chosen contractor, Werr, on July 22, 2005. Thereafter, the parties executed a General Building Agreement[7] (Agreement) on November 17, 2005.[8]

Under the Agreement, Werr had the obligation to complete the project within 210 calendar days from receipt of the Notice of Award/Notice to Proceed on July 22, 2005, or until February 19, 2006.[9] For the completion of the project, HPI undertook to pay Werr a lump sum contract price of ₱271,797,900.00 inclusive of applicable taxes, supply and transportation of materials, and labor.[10] It was agreed that this contract price shall be subject to the following payment scheme: (1) HPI shall pay 20% of the contract price upon the execution of the agreement and the presentation of the necessary bonds and insurance required under the contract, and shall pay the balance on installments progress billing subject to recoupment of downpayment and retention money;[11] (2) HPI shall retain 10% of the contract price in the form of retention bond provided by Werr;[12] (3) HPI may deduct or set off any sum against monies due Werr, including expenses for the rectification of defects in the construction

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[6] *Rollo* (G.R. No. 187580), pp. 165-166.

[7] *Id.* at 113-164.

[8] *Rollo* (G.R. No. 187543), p. 48.

[9] *Id.*

[10] *Rollo* (G.R. No. 187580), pp. 114-115.

[11] *Id.*

[12] *Id.* at 141.

project;[13] and (4) HPI has the right to liquidated damages in the event of delay in the construction of the project equivalent to 1/10 of 1% of the contract price for every day of delay.[14]

Upon HPI's payment of the stipulated 20% downpayment in the amount of ₱54,359,580.00, Werr commenced with the construction of the project. The contract price was paid and the retention money was deducted, both in the progress billings. The project, however, was not completed on the initial completion date of February 19, 2006, which led HPI to grant several extensions and a final extension until October 15, 2006. On May 8, 2006, Werr sought the assistance of HPI to pay its obligations with its suppliers under a "Direct Payment Scheme" totaling ₱24,503,500.08, which the latter approved only up to the amount of ₱18,762,541.67. The amount is to be charged against the accumulated retention money. As of the last billing on October 25, 2006, HPI had already paid the amount of ₱232,940,265.85 corresponding to 93.18% accomplishment rate of the project and retained the amount of ₱25,738,258.01 as retention bond.[15]

The project was not completed on the last extension given. Thus, HPI terminated its contract with Werr on November 28, 2006, which the latter accepted on November 30, 2006.[16] No progress billing was adduced for the period October 28, 2006 until the termination of the contract.[17]

On October 3, 2007, Werr demanded from HPI payment of the balance of the contract price as reflected in its financial status report which showed a conditional net payable amount of ₱36,078,652.90.[18] On January 24, 2007, HPI informed Werr

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[13] *Id.* at 145.

[14] *Id.* at 151-152.

[15] *Rollo* (G.R. No. 187543), p. 49.

[16] *Id.* at 58; 106.

[17] *Id.* at 64.

[18] *Rollo* (G.R. No. 187580), p. 167.

that based on their records, the amount due to the latter as of December 31, 2006 is ₱14,834,926.71.[19] This amount was confirmed by Werr.[20] Not having received any payment, Werr filed a Complaint[21] for arbitration against HPI before the CIAC to recover the ₱14,834,926.71 representing the balance of its retention money.

In its Answer,[22] HPI countered that it does not owe Werr because the balance of the retention money answered for the payments made to suppliers and for the additional costs and expenses incurred after termination of the contract. From the retention money of ₱25,738,258.01, it deducted (1) ₱18,762,541.67 as payment to the suppliers under the Direct Payment Scheme, and (2) ₱7,548,729.15 as additional costs and expenses further broken down as follows: (a) ₱3,336,526.91 representing the unrecouped portion of the 20% downpayment; (b) ₱542,500.00 representing the remainder of Werr's unpaid advances; (c) ₱629,702.24 for the waterproofing works done by Dubbel Philippines; and (d) ₱3,040,000.00 for the rectification works performed by A.A. Manahan Construction after the termination of the contract. Deducting the foregoing from the accumulated retention money resulted in a deficiency of ₱573,012.81 in its favor.[23] By way of counterclaim, HPI prayed for the payment of liquidated damages in the amount of ₱11,959,107.60 for the 44-day delay in the completion of the project reckoned from October 15, 2006 up to the termination of the Agreement on November 28, 2006; for actual damages in the sum of ₱573,012.81; and for attorney's fees of ₱500,000.00 and litigation expenses of ₱100,000.00.[24]

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[19] *Id.* at 168.

[20] *Id.*

[21] *Id.* at 104-107.

[22] *Id.* at 235-262.

[23] *Id.* at 245-247.

[24] *Id.* at 254-259.

CIAC's Ruling

After due proceedings, the CIAC rendered its Decision[25] on August 11, 2008 where it granted Werr's claim for the balance of the retention money in the amount of ₱10,955,899.79 and arbitration costs. It also granted HPI's claim for liquidated damages in the amount of ₱2,535,059.01 equivalent to 9.327 days of delay,[26] but denied its counterclaim for damages, attorney's fees, and litigation expenses.

From the claims of HPI, the CIAC only deducted the amounts of (1) ₱10,903,331.30 representing the direct payments made from September 26, 2006 until December 31, 2006,[27] (2) ₱3,336,526.91 representing the unrecouped retention money, and (3) ₱542,500.00 representing the unpaid cash advances from the ₱25,738,258.01 retention money. It disallowed the direct

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[25] *Rollo* (G.R. No. 187543), pp. 56-68. The dispositive portion of which reads:

In view of all the foregoing, it is hereby ordered, that:

a) Respondent shall pay Claimant the balance of the retention monies in the amount of **Php 10,995,889.79**;

b) Claimant shall pay Respondent for Liquidated Damages in [the] amount of **Php 2,535,059.01**[.]

OFFSETTING the foregoing amounts, there remains the net amount of **Php 8,420,840.78** payable to Claimant by Respondent.

The claim by Respondent for Actual Damages, Attorney's Fees and Cost of Litigation, are hereby denied.

Consistent with our holding that, had Claimant prayed for Attorney's fees, the Tribunal would have given that award since it was compelled to litigate by Respondent's refusal to satisfy its plainly valid and just claims, it follows that Respondent be made to shoulder the entire arbitration costs. It is accordingly the **holding** of this Arbitral Tribunal that Respondent shall reimburse the amount paid for by Claimant as its initial share of the Arbitration Costs.

SO ORDERED. *Id.* at 67.

[26] *Id.* at 65.

[27] The CIAC found this amount as admitted by Werr when it confirmed the amount of ₱14,834,926.71. This amount was arrived at by deducting ₱14,834,926.71 from the ₱25,738,258.01 retention money. *Id.* at 60.

payments charged by HPI in 2007 and 2008 for having been supplied after the termination of the project, for not corresponding to the list of suppliers submitted, and for HPI failing to show that Werr requested it to continue payments even after termination of the Agreement. It also disallowed the amount of ₱629,702.24 for the waterproofing works done by Dubbel Philippines for being works done after the termination of the contract. The ₱3,040,000.00 for the rectification works performed after the termination of the contract was also disallowed because while HPI presented its contract with A.A. Manahan Construction for rectification and completion works, it failed to present proof of how much was specifically paid for rectification works only, as well as the proof of its payment. Moreover, prior notice of such defective works was not shown to have been given to Werr as required under the Agreement, and even noted that HPI's project manager approved of the quality of the works up to almost 94%.[28]

The CIAC further ruled that Werr incurred only 9.327 days of delay. Citing Article 1376[29] of the Civil Code and considering the failure of the Agreement to state otherwise, it applied the industry practice in the construction industry that liquidated damages do not accrue after achieving substantial compliance. It held that delay should be counted from October 27, 2006 until the projected date of substantial completion. Since the last admitted accomplishment is 93.18% on October 27, 2006, the period it will take Werr to perform the remaining 1.82% is the period of delay. Based on the past billings, since it took Werr 5.128 days[30] to achieve 1% accomplishment, it will therefore take it 9.327 days to achieve substantial completion.

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[28] *Id.* at 61-63.

[29] Art. 1376. The usage or custom of the place shall be borne in mind in the interpretation of the ambiguities of a contract, and shall fill the omission of stipulations which are ordinarily established.

[30] The CIAC determined that the period from the date of the Notice of Award/Notice to Proceed (July 22, 2005) until October 27, 2006 is 478 calendar days. Dividing 478 days by 93.18% accomplishment rate, it concluded that it took Werr 5.128 days to achieve 1%. *Rollo* (G.R. No. 187543), p. 65.

Thus, the CIAC concluded that the period of delay until substantial completion of the project is 9.327 days. The liquidated damages under the Agreement being 1/10 of 1% of the ₱271,797,900.00 or ₱271,797.90 per day of delay, Werr is liable for liquidated damages in the amount of ₱2,535,048.95.[31]

Since the liquidated damages did not exhaust the balance of the retention money, the CIAC likewise denied the claim for actual damages.[32]

Thereafter, HPI filed its petition for review[33] under Rule 43 with the CA on August 28, 2008.

CA's Ruling

The CA rendered the assailed decision, affirming the CIAC's findings on the allowable charges against the retention money, and on the attorney's fees and litigation expenses. It, however, disagreed with the CIAC decision as to the amount of liquidated damages and arbitration costs. According to the CA, delay should be computed from October 27, 2006 until termination of the contract on November 28, 2006, or 33 days, since the contract prevails over the industry practice. Thus, the total liquidated damages is ₱8,969,330.70. As to the arbitration costs, it ruled that it is more equitable that it be borne equally by the parties since the claims of both were considered and partially granted.[34]

Hence, these consolidated petitions.

Arguments

Werr argues that the CA erred in modifying the CIAC decision on the amount of liquidated damages and arbitration costs. It insists that the appellate court disregarded Articles 1234, 1235, and 1376 of the Civil Code and the industry practice (as evidenced

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

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

[33] *Rollo* (G.R. No. 187580), pp. 731-779.

[34] *Rollo* (G.R. No. 187543), p. 15.

by Clause 52.1 of the Construction Industry Authority of the Philippines [CIAP] Document No. 101 or the "General Conditions of Contract for Government Construction" and Article 20.11 of CIAP Document No. 102 or the "Uniform General Conditions of Contract for Private Construction") when it did not apply the construction industry practice in computing liquidated damages only until substantial completion of the project, and not until the termination of the contract.[35] Werr further emphasizes that the CIAC, being an administrative agency, has expertise on the subject matter, and thus, its findings prevail over the appellate court's findings.[36]

On the other hand, HPI argues that Werr was unjustly enriched when the CA disallowed HPI's recovery of the amounts it paid to suppliers. HPI claims that: (1) payments made to suppliers identified in the Direct Payment Scheme even after the termination of the contract should be charged against the balance of the retention money, the same having been made pursuant to Werr's express instructions; (2) the payments to Dubbel Philippines and the cost of the contract with A.A. Manahan Construction are chargeable to the retention money, pursuant to the terms of the Agreement; and (3) the expenses incurred in excess of the retention money should be paid by Werr as actual damages. These payments, while made after the termination of the contract, were for prior incurred obligations.[37] HPI also argues that it is not liable for arbitration costs, and reiterates its claims for actual damages, and payment of attorney's fees and litigation expenses.[38]

Issues

I. Whether the payments made to suppliers and contractors after the termination of the contract are chargeable against the retention money.

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[35] *Id.* at 37-42.

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

[37] *Rollo* (G.R. No. 187580), pp. 60-73.

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

II. Whether the industry practice of computing liquidated damages only up to substantial completion of the project applies in the computation of liquidated damages. Consequently, whether delay should be computed until termination of the contract or until substantial completion of the project.

III. Whether the cost of arbitration should be shouldered by both parties.

IV. Whether HPI is entitled to attorney's fees and litigation expenses.

Our Ruling

We deny the consolidated petitions.

I. Charges against the Retention Money

Anent the first issue, we emphasize that what is before us is a petition for review under Rule 45 where only questions of law may be raised.[39] Factual issues, which involve a review of the probative value of the evidence presented, such as the credibility of witnesses, or the existence or relevance of surrounding circumstances and their relation to each other, may not be raised unless it is shown that the case falls under recognized exceptions.[40]

In cases of arbitral awards rendered by the CIAC, adherence to this rule is all the more compelling.[41] Executive Order No. 1008,[42] which vests upon the CIAC original and exclusive jurisdiction over disputes arising from, or connected with,

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

[40] *R.V. Santos Company, Inc. v. Belle Corporation*, G.R. Nos. 159561-62, October 3, 2012, 682 SCRA 219, 233-236.

[41] See *F.F. Cruz & Co., Inc. v. HR Construction Corp.*, G.R. No. 187521, March 14, 2012, 668 SCRA 302, 315-317.

[42] Creating an Arbitration Machinery in the Construction Industry of the Philippines (1985).

contracts entered into by parties involved in construction in the Philippines, clearly provides that the arbitral award shall be binding upon the parties and that it shall be final and inappealable except on questions of law which shall be appealable to the Supreme Court.[43] This rule on the finality of an arbitral award is anchored on the premise that an impartial body, freely chosen by the parties and to which they have confidence, has settled the dispute after due proceedings:

> Voluntary arbitration involves the reference of a dispute to an impartial body, the members of which are chosen by the parties themselves, which parties freely consent in advance to abide by the arbitral award issued after proceedings where both parties had the opportunity to be heard. The basic objective is to provide a speedy and inexpensive method of settling disputes by allowing the parties to avoid the formalities, delay, expense and aggravation which commonly accompany ordinary litigation, especially litigation which goes through the entire hierarchy of courts. Executive Order No. 1008 created an arbitration facility to which the construction industry in the Philippines can have recourse. The Executive Order was enacted to encourage the early and expeditious settlement of disputes in the construction industry, a public policy the implementation of which is necessary and important for the realization of national development goals.
>
> Aware of the objective of voluntary arbitration in the labor field, in the construction industry, and in any other area for that matter, the Court will not assist one or the other or even both parties in any effort to subvert or defeat that objective for their private purposes. The Court will not review the factual findings of an arbitral tribunal upon the artful allegation that such body had "misapprehended the facts" and will not pass upon issues which are, at bottom, issues of fact, no matter how cleverly disguised they might be as "legal questions." The parties here had recourse to arbitration and chose the arbitrators themselves; they must have had confidence in such arbitrators. The Court will not, therefore, permit the parties to relitigate before it the issues of facts previously presented and argued before the Arbitral Tribunal, save only where a very clear showing is made that, in reaching its factual conclusions, the Arbitral Tribunal committed

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[43] *Id.*, Sec. 19.

an error so egregious and hurtful to one party as to constitute a grave abuse of discretion resulting in lack or loss of jurisdiction. Prototypical examples would be factual conclusions of the Tribunal which resulted in deprivation of one or the other party of a fair opportunity to present its position before the Arbitral Tribunal, and an award obtained through fraud or the corruption of arbitrators. Any other, more relaxed, rule would result in setting at naught the basic objective of a voluntary arbitration and would reduce arbitration to a largely inutile institution.[44]

In this case, the issues of whether HPI was able to prove that payments made to suppliers and to third party contractors are prior incurred obligations that should be charged against the retention money, and whether HPI incurred expenses above the retention money that warrants actual damages, are issues of facts beyond the review of the Court under Rule 45.

Moreover, even if we consider such factual issues, we are bound by the findings of fact of the CIAC especially when affirmed by the CA.[45] Factual findings by a quasi-judicial body like the CIAC, which has acquired expertise because its jurisdiction is confined to specific matters, are accorded not only with respect but even finality if they are supported by substantial evidence.[46] We recognize that certain cases require the expertise, specialized skills, and knowledge of the proper administrative bodies because technical matters or intricate questions of facts are involved.[47]

We nevertheless note that factual findings of the construction arbitrators are not beyond review, such as when the petitioner affirmatively proves the following: (1) the award was procured by corruption, fraud, or other undue means; (2) there was evident

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[44] *Hi-Precision Steel Center, Inc. v. Lim Kim Steel Builders, Inc.*, G.R. No. 110434, December 13, 1993, 228 SCRA 397, 405-407.

[45] *Ibex International, Inc. v. Government Service Insurance System*, G.R. No. 162095, October 12, 2009, 603 SCRA 306, 314.

[46] *Advanced Foundation Construction Systems Corporation v. New World Properties and Ventures, Inc.,* G.R. No. 143154, June 21, 2006, 491 SCRA 557, 575.

[47] *Id.*

partiality or corruption of the arbitrators or any of them; (3) the arbitrators were guilty of misconduct in refusing to hear evidence pertinent and material to the controversy; (4) one or more of the arbitrators were disqualified to act as such under Section 10[48] of Republic Act No. 876[49] and willfully refrained from disclosing such disqualifications or of any other misbehavior by which the rights of any party have been materially prejudiced; (5) the arbitrators exceeded their powers, or so imperfectly executed them, that a mutual, final, and definite award upon the subject matter submitted to them was not made; (6) when there is a very clear showing of grave abuse of discretion resulting in lack or loss of jurisdiction as when a party was deprived of a fair opportunity to present its position before the arbitral tribunal or when an award is obtained through fraud or the corruption of arbitrators; (7) when the findings of the CA are contrary to those of the CIAC; or (8) when a party is deprived of administrative due process.[50] However, we do not find that HPI was able to show any of the exceptions that should warrant a review and reversal of the findings made by the CIAC and the CA.

Thus, we affirm the CIAC and CA's findings that direct payments charged by HPI in 2007 and 2008 were for materials supplied after the termination of the project and did not correspond to the list of suppliers submitted; that the waterproofing works done by Dubbel Philippines in the amount

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[48] Stated as Section 9 in the cases cited in note 50.

[49] The Arbitration Law (1953).

[50] *Uniwide Sales Realty and Resources Corporation v. Titan-Ikeda Construction and Development Corporation*, G.R. No. 126619, December 20, 2006, 511 SCRA 335, 345-346, citing *David v. Construction Industry and Arbitration Commission,* G.R. No. 159795, July 30, 2004, 435 SCRA 654, 666; *Megaworld Globus Asia, Inc. v. DSM Construction and Development Corporation,* G.R. No. 153310, March 2, 2004, 424 SCRA 179, 198; *Hi-Precision Steel Center, Inc. v. Lim Kim Steel Builders, Inc.,* G.R. No. 110434, December 13, 1993, 228 SCRA 397, 405-407; and *Metro Construction, Inc. v. Chatham Properties, Inc.*, G.R. No. 141897, September 24, 2001, 365 SCRA 697, 726.

of ₱629,702.24 were for works done after the termination of the contract that were for the account of the new contractor; and that the rectification works performed after the termination of the contract worth ₱3,040,000.00 were not proven to have been paid, that it was for rectification works only, and that prior notice of such defective works as required under the Agreement was not proven. Accordingly, we affirm that the balance of the retention money is ₱10,955,899.79.

II. Delay in computing Liquidated Damages

On the other hand, the question on how liquidated damages should be computed based on the Agreement and prevailing jurisprudence is a question of law that we may review.

The pertinent provision on liquidated damages is found in clause 41.5 of the Agreement, *viz.*:

> 41.5. Considering the importance of the timely completion of the WORKS on the **OWNER'S** commitments to its clients, the **CONTRACTOR** agrees to pay the **OWNER** liquidated damages in the amount of 1/10th of 1% of the amount of the Contract price for every day of delay (inclusive of Sundays and holidays).[51]

Werr, as contractor, urges us to apply the construction industry practice that liquidated damages do not accrue after the date of substantial completion of the project, as evidenced in CIAP Document No. 102, which provides that:

> 20.11 SUBSTANTIAL COMPLETION AND ITS EFFECT:
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> A. [a] There is substantial completion when the Contractor completes 95% of the Work, provided that the remaining work and the performance of the work necessary to complete the Work shall not prevent the normal use of the completed portion.
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> x x x x x x x x x
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> D. [a] No liquidated damages for delay beyond the Completion Time shall accrue after the date of substantial completion of the Work.

[51] *Rollo* (G.R. No. 187580), p. 152.

We reject this claim of Werr and find that while this industry practice may supplement the Agreement, Werr cannot benefit from it.

At the outset, we do not agree with the CA that industry practice be rejected because liquidated damages is provided in the Agreement, autonomy of contracts prevails, and industry practice is completely set aside. Contracting parties are free to stipulate as to the terms and conditions of the contract for as long as they are not contrary to law, morals, good customs, public order or public policy.[52] Corollary to this rule is that laws are deemed written in every contract.[53]

Deemed incorporated into every contract are the general provisions on obligations and interpretation of contracts found in the Civil Code. The Civil Code provides:

> Art. 1234. If the obligation has been substantially performed in good faith, the obligor may recover as though there had been a strict and complete fulfillment, less damages suffered by the obligee.
>
> Art. 1376. The usage or custom of the place shall be borne in mind in the interpretation of the ambiguities of a contract, and shall fill the omission of stipulations which are ordinarily established.

In previous cases, we applied these provisions in construction agreements to determine whether the project owner is entitled to liquidated damages. We held that substantial completion of the project equates to achievement of 95% project completion which excuses the contractor from the payment of liquidated damages.

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[52] CIVIL CODE, Art. 1306. The contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy.

[53] See *Philippine Economic Zone Authority v. Green Asia Construction & Development Corporation*, G.R. No. 188866, October 19, 2011, 659 SCRA 756.

In *Diesel Construction Co., Inc. v. UPSI Property Holdings, Inc.*,[54] we applied Article 1234 of the Civil Code. In determining what is considered substantial compliance, we used the CIAP Document No. 102 as evidence of the construction industry practice that substantial compliance is equivalent to 95% accomplishment rate. In that case, the construction agreement requires the contractor "to pay the owner liquidated damages in the amount equivalent to one-fifth (1/5) of one (1) percent of the total Project cost for each calendar day of delay."[55] We declared that the contractor cannot be liable for liquidated damages because it already accomplished 97.56% of the project.[56] We reiterated this in *Transcept Construction and Management Professionals, Inc. v. Aguilar*[57] where we ruled that since the contractor accomplished 98.16% of the project, the project owner is not entitled to the 10% liquidated damages.[58]

Considering the foregoing, it was error for the CA to immediately dismiss the application of industry practice on the sole ground that there is an existing agreement as to liquidated damages. As expressly stated under Articles 1234 and 1376, and in jurisprudence, the construction industry's prevailing practice may supplement any ambiguities or omissions in the stipulations of the contract.

Notably, CIAP Document No. 102, by itself, was intended to have suppletory effect on private construction contracts. This is evident in CIAP Board Resolution No. 1-98,[59] which states:

Sec. 9. *Policy-Making Body*. — The [CIAP], through the CIAP Executive Office and its various Implementing Agencies, shall

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[54] G.R. No. 154885, March 24, 2008, 549 SCRA 12.

[55] *Id.* at 17.

[56] *Id.* at 29-30.

[57] G.R. No. 177556, December 8, 2010, 637 SCRA 574.

[58] *Id.* at 581-582.

[59] Implementing Rules and Regulations of Presidential Decree No. 1746 titled "An Act Creating the Construction Industry Authority of the Philippines."

continuously monitor and study the operations of the construction industry, both domestic and overseas operations, to identify its needs, problems and opportunities, in order to provide for the pertinent policies and/or executive action and/or legislative agenda necessary to implement plans, programs and measures required to support the sustainable development of the construction industry, such as but not limited to the following:

x x x x x x x x x

9.05 The promulgation and adoption of Standard Conditions of Contract for the public construction and private construction sector which shall have suppletory effect in cases where there is a conflict in the internal documents of a construction contract or in the absence of the general conditions of a construction agreement[.]

As the standard conditions for contract for private construction adopted and promulgated by the CIAP, CIAP Document No. 102 applies suppletorily to private construction contracts to remedy the conflict in the internal documents of, or to fill in the omissions in, the construction agreement.

In this case, clause 41.5 of the Agreement is undoubtedly a valid stipulation. However, while clause 41.5 requires payment of liquidated damages if there is delay, it is silent as to the period until when liquidated damages shall run. The Agreement does not state that liquidated damages is due until termination of the project; neither does it completely reject that it is only due until substantial completion of the project. This omission in the Agreement may be supplemented by the provisions of the Civil Code, industry practice, and the CIAP Document No. 102. Hence, the industry practice that substantial compliance excuses the contractor from payment of liquidated damages applies to the Agreement.

Nonetheless, we find that Werr cannot benefit from the effects of substantial compliance.

Paragraph A.[a.], Article 20.11 of CIAP Document No. 102 requires that the contractor *completes* 95% of the work for there to be substantial completion of the project. Also, in those cases where we applied the industry practice to supplement the

contracts and excused payment from liquidated damages under Article 1234, the contractors there actually achieved 95% completion of the project. Neither the CIAC nor the courts assumed as to when substantial compliance will be achieved by the contractor, but the contractors offered substantial evidence that they actually achieved at least 95% completion of the project. Thus, the effects of substantial completion only operate to relieve the contractor from the burden of paying liquidated damages when it has, in reality, achieved substantial completion of the project.

While the case before us presents a different scenario, as the contractor here does not demand total release from payment of liquidated damages, we find that in order to benefit from the effects of the substantial completion of a project, the condition precedent must first be met—the contractor must successfully prove by substantial evidence that it *actually* achieved 95% completion rate of the project. As such, it is incumbent upon Werr to show that it had achieved an accomplishment rate of 95% before or at the time of the termination of the contract.

Here, there is no dispute that Werr failed to prove that it completed 95% of the project before or at the time of the termination of the contract. As found by CIAC, it failed to present evidence as to what accomplishment it achieved from the time of the last billing until the termination of the contract.[60] What was admitted as accomplishment at the last billing is 93.18%. For this reason, even if we adopt the rule that no liquidated damages shall run after the date of substantial completion of the project, Werr cannot claim benefit for it failed to meet the condition precedent, *i.e.*, the contractor has successfully proven that it actually achieved 95% completion rate.

More importantly, Werr failed to show that it is the construction industry's practice to project the date of substantial completion of a project, and to compute the period of delay

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[60] *Rollo* (G.R. No. 187543), p. 65.

based on the rate in past progress billings just as what the CIAC has done. Consequently, the CIAC erred when it assumed that Werr continued to perform works, and if it did, that it performed them at the rate of accomplishment of the previous works in the absence of evidence.

That the effects of substantial completion will only apply when *actual* substantial completion is reached is apparent when we consider the reason behind the rules on substantial completion of the project found in Section 20.11[E] of the CIAP Document No. 102, *viz.*:

> E. The purpose of this Article [ART. 20, WORK; 20.11: SUBSTANTIAL COMPLETION AND ITS EFFECT] is to ensure that the Contractor is paid for Work completed and for the Owner to retain such portion of the Contract Price which, together with the Performance Bond, is sufficient to complete the Work without additional cost to the Owner.

The rules are intended to balance the allocation and burden of costs between the contractor and the project owner so that the contractor still achieves a return for its completed work, and the project owner will not incur further costs. To compute the period of delay when substantial compliance is not yet achieved but merely on the assumption that it will eventually be achieved would result in an iniquitous situation where the project owner will bear the risks and additional costs for the period excused from liquidated damages.

From the foregoing, we affirm the CA's conclusion that the period of delay in computing liquidated damages should be reckoned from October 27, 2006 until the termination of the contract or for 33 days, and not only until the projected substantial completion date. Consistent with the CA's ruling that liquidated damages did not exceed the retention money, we therefore affirm that HPI did not suffer actual damages in the amount of ₱573,012.81.

III. Arbitration Costs, Attorney's Fees, and Litigation Costs

Courts are allowed to adjudge which party may bear the cost of the suit depending on the circumstances of the case.[61] Considering the CA's findings that both parties were able to recover their claims, and neither was guilty of bad faith, we do not find that the CA erred in dividing the arbitration costs between the parties.

We also do not find the need to disturb the findings as to attorney's fees and expenses of litigation, both the CIAC and the CA having found that there is no basis for the award of attorney's fees and litigation expenses.[62]

WHEREFORE, the petitions are **DENIED**. The Court of Appeals' February 9, 2009 Decision and April 16, 2009 Resolution are **AFFIRMED**. The net award in favor of Werr Corporation International shall earn interest at the rate of 6% *per annum* from date of demand on October 3, 2007 until finality of this Decision. Thereafter, the total amount shall earn interest from finality of this Decision until fully paid.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Bersamin, Reyes,* and *Caguioa,*[*] *JJ.,* concur.

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[61] RULES OF COURT, Rule 142, Sec. 1; See *Philippine National Construction Corporation v. Court of Appeals*, G.R. No. 165433, February 6, 2007, 514 SCRA 569, 574-575.

[62] *Rollo* (G.R. No. 187543), pp. 15; 66-67.

[*] Designated as Fifth Member of the Third Division per Special Order No. 2417 dated January 4, 2017.

SECOND DIVISION

[G.R. No. 193381. February 8, 2017]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **APO CEMENT CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; PLEADINGS AND PRACTICES; VERIFICATION; A PLEADING, WHEREIN THE VERIFICATION IS MERELY BASED ON THE PARTY'S KNOWLEDGE, INFORMATION AND BELIEF SHALL BE TREATED AS AN UNSIGNED PLEADING, WHICH PRODUCES NO LEGAL EFFECT, SUBJECT TO THE DISCRETION OF THE COURT TO ALLOW THE DEFICIENCY TO BE REMEDIED.— The amendment to Section 4, Rule 7 entirely removed any reference to "belief' as basis. This is to ensure that the pleading is anchored on facts and not on imagination or speculation, and is filed in good faith. In *Go v. Court of Appeals*: Mere belief is insufficient basis and negates the verification which should be on the basis of personal knowledge or authentic records. Verification is required to secure an assurance that the allegations of the petition have been made in good faith, or are true and correct and not merely speculative. To emphasize this further, the third paragraph of Rule 7, Section 4 of the 1997 Rules of Civil Procedure, as amended, expressly treats pleadings with a verification based on "information and belief' or "knowledge, information and belief," as unsigned. In *Negros Oriental Planters Association, Inc. v. Hon. Presiding Judge of RTC-Negros Occidental, Branch 52, Bacolod City*, the Court explained that the amendment in the rules was made stricter so that a party cannot be allowed to base his statements on his belief. Otherwise, the pleading is treated as unsigned which produces no legal effect. The court, though, in its discretion, may give the party a chance to remedy the insufficiency. x x x In this case, petitioner did not submit a corrected verification despite the order of this Court. This alone merits the denial of the Petition outright.

2. TAXATION; THE 2007 TAX AMNESTY LAW (REPUBLIC ACT NO. 9480); THE SUBMISSION OF THE DOCUMENTARY REQUIREMENTS AND PAYMENT OF THE AMNESTY TAX IS CONSIDERED FULL COMPLIANCE WITH REPUBLIC ACT NO. 9480 AND THE TAXPAYER CAN IMMEDIATELY ENJOY THE IMMUNITIES AND PRIVILEGES ENUMERATED IN SECTION 6 OF THE LAW.— The pertinent provisions on the grant and availment of tax amnesty under Republic Act No. 9480 x x x. Taxpayers who availed themselves of the tax amnesty program are entitled to the immunities and privileges under Section 6 of the law x x x. This Court has declared that submission of the documentary requirements and payment of the amnesty tax is considered full compliance with Republic Act No. 9480 and the taxpayer can immediately enjoy the immunities and privileges enumerated in Section 6 of the law. The plain and straightforward conditions were obviously meant to encourage taxpayers to avail of the amnesty program, thereby enhancing revenue administration and collection. Here, it is undisputed that respondent had submitted all the documentary requirements.

3. ID.; ID.; ID.; THE STATEMENT OF ASSETS, LIABILITIES AND NETWORTH (SALN) IS PRESUMED CORRECT; EXCEPTIONS; THE ONE-YEAR PERIOD IS CONSIDERED ONLY AS A PRESCRIPTIVE PERIOD WITHIN WHICH PARTIES OTHER THAN THE BUREAU OF INTERNAL REVENUE (BIR) OR ITS AGENTS, CAN QUESTION THE STATEMENT OF ASSETS, LIABILITIES AND NETWORTH (SALN) NOT AS A WAITING PERIOD DURING WHICH THE BIR MAY CONTEST THE SALN AND THE TAXPAYER PREVENTED FROM ENJOYING THE IMMUNITIES AND PRIVILEGES UNDER THE LAW.— Under the [Section 4 of] the SALN is presumed correct unless there is a concurrence of the following: a. There is under-declaration of net worth by 30%; b. The under-declaration is established in proceedings initiated by parties other than the BIR; and c. The proceedings were initiated within one (1) year from the filing of the tax amnesty. x x x. We cannot disregard the plain and categorical text of Section 4. It is a basic rule of statutory construction that where the language of the law is

clear and unambiguous, it should be applied as written. Determining its wisdom or policy is beyond the realm of judicial power. In *CS Garment, Inc. v. Commissioner of Internal Revenue*, the Court clarified that — The one-year period referred to in the law should ... be considered only as a prescriptive period within which third parties, meaning 'parties other than the BIR or its agents,' can question the SALN — not as a waiting period during which the BIR may contest the SALN and the tax payer prevented from enjoying the immunities and privileges under the law.

4. **ID.; ID.; ID.; THE AMNESTY GRANTED UNDER THE LAW IS REVOKED ONCE THE TAXPAYER IS PROVEN TO HAVE UNDER-DECLARED HIS ASSETS IN HIS SALN BY 30% OR MORE, AND HE/SHE SHALL NOT ONLY BE LIABLE FOR PERJURY UNDER THE REVISED PENAL CODE, BUT, UPON CONVICTION, ALSO SUBJECT TO IMMEDIATE TAX FRAUD INVESTIGATION IN ORDER TO COLLECT ALL TAXES DUE AND TO CRIMINALLY PROSECUTE FOR TAX EVASION.—** The Court explained that the documentary requirements and payment of the amnesty tax operate as a suspensive condition, such that completion of these requirements entitles the taxpayer-applicant to immediately enjoy the immunities and privileges under Republic Act No. 9480. However, the Court further stated that Section 6 of the law contains a resolutory condition. Immunities and privileges will cease to apply to taxpayers who, in their SALN, were proven to have understated their net worth by 30% or more. This clarification, however, does not mean that the amnesty taxpayers would go scot-free in case they substantially understate the amounts of their net worth in their SALN. The 2007 Tax Amnesty Law imposes a resolutory condition insofar as the enjoyment of immunities and privileges under the law is concerned. Pursuant to Section 4 of the law, third parties may initiate proceedings contesting the declared amount of net worth of the amnesty taxpayer within one year following the date of the filing of the tax amnesty return and the SALN. Section 6 then states that "All these immunities and privileges shall not apply ... where the amount of net worth as of December 31, 2005 is proven to be understated to the extent of thirty percent (30%) or more,

in accordance with the provisions of Section 3 hereof." Accordingly, Section 10 provides that amnesty taxpayers who willfully understate their net worth shall be (a) liable for perjury under the Revised Penal Code; and (b) subject to immediate tax fraud investigation in order to collect all taxes due and to criminally prosecute those found to have willfully evaded lawful taxes due. Thus, the amnesty granted under the law is revoked once the taxpayer is proven to have under-declared his assets in his SALN by 30% or more. Pursuant to Section 10 of the Tax Amnesty Law, amnesty taxpayers who wilfully understate their net worth shall not only be liable for perjury under the Revised Penal Code, but, upon conviction, also subject to immediate tax fraud investigation in order to collect all taxes due and to criminally prosecute for tax evasion.

5. ID.; ID.; ID.; REQUISITES TO OVERTURN THE PRESUMPTION OF CORRECTNESS OF THE TAXPAYER'S SALN, NOT MET.— Here, the requisites to overturn the presumption of correctness of respondent's 2005 SALN were not met. Respondent filed its Tax Amnesty documents on January 25, 2008. Since then, and up to the time of the filing of respondent's Motion to Cancel Tax Assessment on April 17, 2009, there had been no proceeding initiated to question its declared amount of net worth. Petitioner never alleged, before the Court of Tax Appeals and this Court, the existence of any such proceeding to challenge respondent's 2005 SALN during this period. Indeed, petitioner first raised the possibility of under-declaration of assets only in her Opposition to respondent's Motion to Cancel Tax Assessment. Thus, the lapse of the one-year period effectively closed the window to question respondent's 2005 SALN. Significantly, as explained by respondent, there was no understatement in its 2005 SALN because the shares of stocks, which the BIR repeatedly referred to, were sold in 2002 or more than three (3) years prior to the tax amnesty availment.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Zambrano & Gruba Law Offices for respondent.

D E C I S I O N

LEONEN, *J.*:

This resolves a Petition for Review[1] seeking to reverse and set aside the Court of Tax Appeals *En Banc's* Decision[2] dated June 24, 2010, which affirmed the Second Division's Resolution[3] dated June 11, 2009 granting respondent's Motion to Cancel Tax Assessment; and Resolution[4] dated August 23, 2010 denying respondent's motion for reconsideration.

On September 1, 2003, the Bureau of Internal Revenue sent Apo Cement Corporation (Apo Cement) a Final Assessment Notice (FAN) for deficiency taxes for the taxable year 1999, as follows:

DEFICIENCY TAXES	AMOUNT
Income Tax	₱479,977,176.22
Value-Added Tax	181,345,963.86
VAT Withholding	23,536,374.48
Withholding Tax on Compensation	15,595,098.12

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[1] *Rollo*, pp. 10-34. Filed under Rule 45 of the Rules of Court.

[2] *Id*. at 35-57. The Decision was penned by Associate Justice Lovell R. Bautista and concurred in by Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Caesar A. Casanova, Olga Palanca-Enriquez, Esperanza R. Fabon-Victorino and Amelia R. Cotangco-Manalastas of the *En Banc*, Court of Tax Appeals, Quezon City; Associate Justice Cielito N. Mindaro-Grulla was on leave.

[3] *Id*. at 58-60. The Resolution was signed by Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy and Olga Palanca-Enriquez of the Second Division, Court of Tax Appeals, Quezon City.

[4] *Id*. at 54-57. The Resolution was penned by Associate Justice Lovell R. Bautista and concurred in by Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Caesar A. Casanova, Olga Palanca-Enriquez, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla and Amelia R. Cotangco-Manalastas of the *En Banc*, Court of Tax Appeals, Quezon City.

Unremitted Withholding Tax on Compensation	10,388,757.86
Expanded Withholding Tax	17,642,981.74
Unremitted Expanded Withholding Tax	3,510,390.71
Final Withholding Tax	53,808,355.59
Fringe Benefits Tax	167,337.31
Documentary Stamp Tax	52,480,372.77
Administrative Penalties	25,000.00[5]

Apo Cement protested the FAN.[6] The Bureau issued the Final Decision on Disputed Assessment dated June 15, 2006 denying the Apo Cement's protest.[7] The Final Decision contained the following deficiency assessments, *viz:*

DEFICIENCY TAXES	AMOUNT
Income Tax	₱ 9,305,697.74
Value-Added Tax	1,610,070.51
Withholding Tax on Compensation	20,916,611.66
Unremitted Withholding Tax on Compensation	13,479,061.25
Expanded Withholding Tax	23,664,416.39
Unremitted Expanded Withholding Tax	4,549,677.32
Final Withholding Tax	3,095,786.45
Fringe Benefits Tax	213,656.36
Documentary Stamp Tax	67,433,862.97
Administrative Penalties	25,000.00
Total	**₱ 144,293,840.65**[8] (Emphasis supplied)

On August 3, 2006, Apo Cement filed a Petition for Review with the Court of Tax Appeals.[9]

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[5] *Id*. at 36.

[6] *Id*. at 37.

[7] *Id*.

[8] *Id*.

[9] *Id*.

In its Answer, the Commissioner of Internal Revenue admitted that Apo Cement had already paid the deficiency assessments reflected in the Bureau's Final Decision on Disputed Assessment, except for the documentary stamp taxes.[10] The deficiency documentary stamp taxes were allegedly based on several real property transactions of the corporation consisting of the assignment of several parcels of land with mineral deposits to Apo Land and Quarry Corporation, a wholly owned subsidiary, and land acquisitions in 1999.[11] According to the Commissioner, Apo Cement should have paid documentary stamp taxes based on the zonal value of property with mineral/quarry content, not on the zonal value of regular residential property.[12]

On January 25, 2008, Apo Cement availed of the tax amnesty under Republic Act No. 9480, particularly affecting the 1999 deficiency documentary stamp taxes.[13]

After stipulation of facts and presentation of evidence, Apo Cement filed on April 17, 2009 a Motion to Cancel Tax Assessment (with Motion to Admit Attached Formal Offer of Evidence).[14] The Commissioner filed her Opposition.[15]

On June 11, 2009, the Court of Tax Appeals (Second Division) granted[16] Apo Cement's Motion to Cancel Tax Assessment. It found Apo Cement a qualified tax amnesty applicant under Republic Act No. 9480;[17] and fully compliant with the requirements of the law, the Department Order No. 29-07, and

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[10] *Id.*

[11] *Id.* at 37-38.

[12] *Id.*

[13] *Id.* at 133, Comment.

[14] *Id.* at 61-75.

[15] *Id.* at 38.

[16] *Id.* at 58-60.

[17] An Act Enhancing Revenue Administration and Collection by Granting an Amnesty on All Unpaid Internal Revenue Taxes Imposed by the National Government for Taxable Year 2005 and Prior Years (2007).

Revenue Memorandum Circular No. 19-2008. The Decision disposed as follows:

> **WHEREFORE**, premises considered:
>
> 1) the Assessment Notices for deficiency Documentary Stamp Taxes for taxable year 1999 issued against [Apo Cement Corporation] are hereby **CANCELLED** and **SET ASIDE**, solely in view of [its] availment of the Tax Amnesty under RA 9480;
>
> 2) the Assessment Notices for deficiency Income Tax, Value-Added Tax, VAT Withholding Tax, Withholding Tax on Compensation, Unremitted Withholding Tax on Compensation, Expanded Withholding Tax, Unremitted Expanded Withholding Tax, Final Withholding Tax, and Fringe Benefits Tax are **CANCELLED** and **SET ASIDE** in view of petitioner's payment of said taxes.
>
> Accordingly, the –above-captioned case is hereby considered **CLOSED** and **TERMINATED**.
>
> **SO ORDERED**.[18]

The Commissioner filed a Motion for Reconsideration, which the Court of Tax Appeals denied in a Resolution dated October 19, 2009 for lack of merit.

On November 19, 2009, the Commissioner appealed to the *En Banc*.[19] However, in a Decision promulgated on June 24, 2010, the Court of Tax Appeals *En Banc* dismissed the Commissioner's appeal and affirmed the Second Division's resolution ordering the cancellation of the assessment for deficiency documentary stamp taxes in view of the Apo Cement's availment of the tax amnesty program. The *En Banc* ruled that (a) Apo Cement is qualified to avail of the tax amnesty;[20] (b) it submitted the required documents to the court;[21] (c) the

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[18] *Rollo*, p. 60.

[19] *Id*. at 17.

[20] *Id*. at 46.

[21] *Id*. at 47-48.

Commissioner is not the proper party to challenge the SALN;[22] (d) the one-year prescriptive period already lapsed;[23] and (e) in another tax case involving the same parties (CTA EB No. 256, CTA Case No. 6710), it was already adjudged that Apo Cement complied with the requirements of Tax Amnesty.[24]

The Commissioner filed a Motion for Reconsideration, but the same was denied in the Court of Tax Appeals *En Banc's* Resolution dated August 23, 2010.[25]

Hence, the petitioner filed its Petition for Review with this Court. Respondent filed its Comment[26] and petitioner her Reply.[27]

In a Resolution[28] dated June 15, 2011, the Court expunged from the records respondent's Rejoinder to petitioner's Reply.

The core issue is whether respondent had fully complied with all the requirements to avail of the tax amnesty granted under Republic Act No. 9480.

The Petition is devoid of merit. The Court of Tax Appeals committed no reversible error.

I

We shall first address the procedural issue of defective verification raised by the respondent.

Through the Verification and Certification of Non-Forum Shopping[29] attached to the present Petition, Deputy Commissioner Estela V. Sales of the Legal and Inspection Group of the Bureau

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[22] *Id*. at 49.

[23] *Id*.

[24] *Id*. at 51.

[25] *Id*. at 17.

[26] *Id*. at 126-165.

[27] *Id*. at 166-172.

[28] *Id*. at 189.

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

of Internal Revenue states that the contents of the Petition are true and correct of her own "knowledge and belief based on authentic records."[30]

In the Court's Resolution[31] dated December 8, 2010, the petitioner was directed to submit a sufficient verification within five (5) days from notice. Petitioner did not comply.

Petitioner would argue however that while the verification still stated "belief," it was qualified by "based on authentic records." Hence, "the statement implies that the contents of the petition were based not only on the pleader's belief but ultimately they are recitals from authentic records."[32]

We are not persuaded.

The amendment to Section 4, Rule 7 entirely removed any reference to "belief" as basis.[33] This is to ensure that the pleading is anchored on facts and not on imagination or speculation, and is filed in good faith.

In *Go v. Court of Appeals*:[34]

> Mere belief is insufficient basis and negates the verification which should be on the basis of personal knowledge or authentic records. Verification is required to secure an assurance that the allegations of the petition have been made in good faith, or are true and correct and not merely speculative.[35]

To emphasize this further, the third paragraph of Rule 7, Section 4 of the 1997 Rules of Civil Procedure, as amended, expressly treats pleadings with a verification based on

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[30] *Id*. at 31.

[31] *Id*. at 114.

[32] *Id*. at 168.

[33] A.M. No. 00-2-10-SC (2000).

[34] 557 Phil. 700 (2007) [Per *J*. Quisumbing, Second Division].

[35] *Id*. at 707.

"information and belief" or "knowledge, information and belief," as unsigned.[36]

In *Negros Oriental Planters Association, Inc. v. Hon. Presiding Judge of RTC-Negros Occidental, Branch 52, Bacolod City,*[37] the Court explained that the amendment in the rules was made stricter so that a party cannot be allowed to base his statements on his belief. Otherwise, the pleading is treated as unsigned which produces no legal effect. The court, though, in its discretion, may give the party a chance to remedy the insufficiency. Thus:

> Clearly, the amendment was introduced in order to make the verification requirement stricter, such that the party cannot now merely state under oath that he *believes* the statements made in the pleading. He cannot even merely state under oath that he *has knowledge* that such statements are true and correct. His knowledge must be specifically alleged under oath to be either *personal knowledge* or at least *based on authentic records*.
>
> Unlike, however, the requirement for a Certification against Forum Shopping in Section 5, wherein failure to comply with the requirements is not curable by amendment of the complaint or other initiatory pleading, Section 4 of Rule 7, as amended, states that the effect of the failure to properly verify a pleading is that the pleading shall be treated as unsigned:

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[36] *Vicencio v. Villar,* 690 Phil. 59, 67 (2012) [Per *C.J.* Sereno, *En Banc*]. Rules of Court, Rule 7, Sec. 4, as amended by A.M. No. 00-2-10-SC (2000) provides:

SEC. 4. *Verification.* — Except when otherwise specifically required by law or rule, pleadings need not be under oath, verified or accompanied by affidavit.

A pleading is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his personal knowledge or based on authentic records.

A pleading required to be verified which contains a verification based on "information and belief," or upon "knowledge, information and belief," or lacks a proper verification, shall be treated as an unsigned pleading.

[37] 595 Phil. 1158 (2008) [Per *J.* Chico-Nazario, Third Division].

> **A pleading required to be verified which contains a verification** based on "information and belief," or **upon "knowledge, information and belief"**, or lacks a proper verification, **shall be treated as an unsigned pleading**.

Unsigned pleadings are discussed in the immediately preceding section of Rule 7:

> SEC. 3. *Signature and address*. — . . . .
>
> . . . .
>
> An unsigned pleading produces no legal effect. However, the court ***may, in its discretion,*** allow such deficiency to be remedied if it shall appear that the same was due to mere inadvertence and not intended for delay. Counsel who deliberately files an unsigned pleading, or signs a pleading in violation of this Rule, or alleges scandalous or indecent matter therein, or fails to promptly report to the court a change of his address, shall be subject to appropriate disciplinary action. (5a)

A pleading, therefore, wherein the Verification is merely based on the party's knowledge and belief **produces no legal effect**, subject to the **discretion of the court to allow the deficiency to be remedied**.[38]

In this case, petitioner did not submit a corrected verification despite the order of this Court. This alone merits the denial of the Petition outright.

In any case, we find respondent had fully complied with the requirements of Republic Act No. 9480. Hence, the Court of Tax Appeals properly cancelled the remaining assessment for deficiency documentary stamp taxes.

II.

The pertinent provisions on the grant and availment of tax amnesty under Republic Act No. 9480 state:

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[38] *Id.* at 1166-1167.

SECTION 1. *Coverage*. — There is hereby authorized and granted a tax amnesty which shall cover all national internal revenue taxes for the taxable year 2005 and prior years, with or without assessments duly issued therefor, that have remained unpaid as of December 31, 2005: *Provided, however*, That the amnesty hereby authorized and granted shall not cover persons or cases enumerated under Section 8 hereof.

SEC. 2. Availment of the Amnesty. — Any person, natural or juridical, who wishes to avail himself of the tax amnesty authorized and granted under this Act shall file with the Bureau of Internal Revenue (BIR) a notice and Tax Amnesty Return accompanied by a Statement of Assets, Liabilities and Net worth (SALN) as of December 31, 2005, in such form as may be prescribed in the implementing rules and regulations (IRR) of this Act, and pay the applicable amnesty tax within six months from the effectivity of the IRR.

SECTION 3. *What to Declare in the SALN.* — The SALN shall contain a declaration of the assets, liabilities and net worth as of December 31, 2005, as follows:

(a) Assets within or without the Philippines, whether real or personal, tangible or intangible, whether or not used in trade or business: *Provided*, That property other than money shall be valued at the cost at which the property was acquired: *Provided, further*, That foreign currency assets and/or securities shall be valued at the rate of exchange prevailing as of the date of the SALN;

(b) All existing liabilities which are legitimate and enforceable, secured or unsecured, whether or not incurred in trade or business; and

(c) The net worth of the taxpayer, which shall be the difference between the total assets and total liabilities.

. . . .

SEC. 5. *Grant of Tax Amnesty.* — Except for the persons or cases covered in Section 8 hereof, any person, whether natural or juridical, may avail himself of the benefits of tax amnesty under this Act, and pay the amnesty tax due thereon, based on his net worth as of December 31, 2005 as declared in the SALN as of said period, in accordance with the following schedule of amnesty tax rates and minimum amnesty tax payments required:

. . . . . .

(b) Corporations

(1)	With subscribed capital of above ₱50 Million	5% or ₱500,000, whichever is higher
(2)	With subscribed capital of above ₱20 Million up to ₱50 Million	5% or ₱250,000, whichever is higher
(3)	With subscribed capital of P5 Million to ₱20 Million	5% or ₱100,000, whichever is higher
(4)	With subscribed capital of below ₱5 Million	5% or ₱25,000, whichever is higher

. . . . . .

(d) Taxpayers who filed their balance sheet/SALN, together with their income tax returns for 2005, and who desire to avail of the tax amnesty under this Act shall amend such previously filed statements by including still undeclared assets and/or liabilities and pay an amnesty tax equal to five percent (5%) based on the resulting increase in net worth: *Provided*, That such taxpayers shall likewise be categorized in accordance with, and subjected to the minimum amounts of amnesty tax prescribed under the provisions of this Section. (Emphasis supplied)

In addition to the above provisions of law, the Department of Finance Department Order No. 29-07[39] provides:

SECTION 6. *Method of Availment of Tax Amnesty*. —

1. *Forms/Documents to be filed*. — To avail of the general tax amnesty, concerned taxpayers shall file the following documents/ requirements:

a. Notice of Availment in such form as may be prescribed by the BIR.

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[39] Rules and Regulations to Implement Republic Act No. 9480 (2007).

b. Statements of Assets, Liabilities and Net worth (SALN) as of December 31, 2005 in such form, as may be prescribed by the BIR.

c. Tax Amnesty Return in such form as may be prescribed by the BIR.

2. *Place of Filing of Amnesty Tax Return*. — The Tax Amnesty Return, together with the other documents stated in Sec. 6 (1) hereof, shall be filed as follows:

a. Residents shall file with the Revenue District Officer (RDO)/ Large Taxpayer District Office of the BIR which has jurisdiction over the legal residence or principal place of business of the taxpayer, as the case may be.

b. Non-residents shall file with the office of the Commissioner of the BIR, or with any RDO.

c. At the option of the taxpayer, the RDO may assist the taxpayer in accomplishing the forms and computing the taxable base and the amnesty tax payable, but may not look into, question or examine the veracity of the entries contained in the Tax Amnesty Return, Statement of Assets, Liabilities and Net worth, or such other documents submitted by the taxpayer.

3. *Payment of Amnesty Tax and Full Compliance*. — Upon filing of the Tax Amnesty Return in accordance with Sec. 6 (2) hereof, the taxpayer shall pay the amnesty tax to the authorized agent bank or in the absence thereof, the Collection Agent or duly authorized Treasurer of the city or municipality in which such person has his legal residence or principal place of business.

The RDO shall issue sufficient Acceptance of Payment Forms, as may be prescribed by the BIR for the use of — or to be accomplished by — the bank, the collection agent or the Treasurer, showing the acceptance of the amnesty tax payment. In case of the authorized agent bank, the branch manager or the assistant branch manager shall sign the acceptance of payment form.

The Acceptance of Payment Form, the Notice of Availment, the SALN, and the Tax Amnesty Return shall be submitted to the RDO, which shall be received only after complete payment. The completion of these requirements shall be deemed full compliance with the provisions of RA 9480.

4. *Time for Filing and Payment of Amnesty Tax*. — The filing of the Tax Amnesty Return, together with the SALN, and the payment of the amnesty tax shall be made within six (6) months from the effectivity of these Rules.

Taxpayers who availed themselves of the tax amnesty program are entitled to the immunities and privileges under Section 6 of the law:

SEC. 6. *Immunities and Privileges*. — Those who availed themselves of the tax amnesty under Section 5 hereof, and have fully complied with all its conditions shall be entitled to the following immunities and privileges:

(a) The taxpayer shall be immune from the payment of taxes, as well as additions thereto, and the appurtenant civil, criminal or administrative penalties under the National Internal Revenue Code of 1997, as amended, arising from the failure to pay any and all internal revenue taxes for taxable year 2005 and prior years.

(b) The taxpayer's Tax Amnesty Return and the SALN as of December 31, 2005 shall not be admissible as evidence in all proceedings that pertain to taxable year 2005 and prior years, insofar as such proceedings relate to internal revenue taxes, before judicial, quasi-judicial or administrative bodies in which he is a defendant or respondent, and except for the purpose of ascertaining the net worth beginning January 1, 2006, the same shall not be examined, inquired or looked into by any person or government office. However, the taxpayer may use this as a defense, whenever appropriate, in cases brought against him.

(c) The books of accounts and other records of the taxpayer for the years covered by the tax amnesty availed of shall not be examined: *Provided*, That the Commissioner of Internal Revenue may authorize in writing the examination of the said books of accounts and other records to verify the validity or correctness of a claim for any tax refund, tax credit (other than refund or credit of taxes withheld on wages), tax incentives, and/or exemptions under existing laws.

All these immunities and privileges shall not apply where the person failed to file a SALN and the Tax Amnesty Return, or where the amount of net worth as of December 31, 2005 is proven to be understated to the extent of thirty percent (30%) or more, in accordance with the provisions of Section 3 hereof.

This Court has declared[40] that submission of the documentary requirements and payment of the amnesty tax is considered full compliance with Republic Act No. 9480 and the taxpayer can immediately enjoy the immunities and privileges enumerated in Section 6 of the law.

The plain and straightforward conditions were obviously meant to encourage taxpayers to avail of the amnesty program, thereby enhancing revenue administration and collection.[41]

Here, it is undisputed that respondent had submitted all the documentary requirements. The Court of Tax Appeals *En Banc* found that respondent had submitted the following:

i. Letter to the Commissioner of Internal Revenue, addressed to the Chief-LT Audit and Investigation Division II, Ms. Olivia O. Lao, received on January 25, 2008;
ii. Notice of Availment of the Tax Amnesty;
iii. Tax Amnesty Payment Form/Acceptance of Payment Form (BIR Form No. 0617);
iv. Tax Amnesty Return (BIR Form No. 2116);
v. Statement of Assets, Liabilities and Net worth;
vi. Annual Income Tax Return for the taxable year 2005 with Audited Financial Statements for the year 2005; and
vii. Development Bank of the Philippines BIR Tax Payment Deposit Slip in the amount of ₱3,668,951.06.[42]

The Court of Tax Appeals further found that there was nothing in the records, which would show that proceedings to question the correctness of the Statement of Assets, Liabilities, and Net

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[40] *CS Garment, Inc. v. Commissioner of Internal Revenue,* 729 Phil. 253, 267-272 [Per *C.J.* Sereno, First Division]; *Metropolitan Bank and Trust Co. v. Commissioner of Internal Revenue*, 612 Phil. 544, 571-572 (2009) [Per *J.* Chico-Nazario, Third Division]; *Philippine Banking Corporation (now Global Business Banking) v. Commissioner of Internal Revenue,* 597 Phil. 363, 383-389 (2009) [Per *J.* Carpio, First Division].

[41] Rep. Act No. 9480 (2007) was entitled An Act Enhancing Revenue Administration And Collection By Granting An Amnesty On All Unpaid Internal Revenue Taxes Imposed By The National Government For Taxable Year 2005 And Prior Years.

[42] *Id.* at 47-48.

Worth (SALN) have been filed within the one-year period stated in Section 4 of the law.[43] Hence, it concluded that respondent had duly complied with the requisites enumerated under Republic Act No. 9480 and is therefore entitled to the benefits under Section 6.[44]

III.

The Commissioner disputes, however, the correctness of respondent's 2005 SALN because respondent allegedly did not include the 57,500,000 shares of stocks it acquired in 1999 from its subsidiary – Apo Land and Quarry Corporation – in exchange for several parcels of land.[45]

Consequently, respondent underpaid its amnesty tax by ₱89,858,951.05, corresponding to the value of the shares of stocks, which respondent allegedly did not include in its declaration of assets in the SALN.[46]

Petitioner further submits that the one-year contestability period under Section 4 has not yet lapsed – as it had not yet even commenced – due to respondent's failure to file a complete SALN and to pay the correct amnesty tax.[47]

Respondent counters that the petitioner is not the proper party to question the correctness of its SALN.[48] Under Section 4 of Republic Act No. 9480, there is a presumption of correctness of the SALN and only parties other than the Bureau of Internal Revenue or its agents may dispute the correctness of the SALN.[49]

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

[44] *Id*. at 50.

[45] *Id*. at 22.

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

[47] *Id*. at 27.

[48] *Id*. at 148.

[49] *Id*.

Even assuming that petitioner has the standing to question the SALN, Republic Act No. 9480 provides that the proceeding to challenge the SALN must be initiated within one year following the date of filing of the Tax Amnesty documents.[50] Respondent asserts that it availed of the tax amnesty program on January 25, 2008.[51] Hence, petitioner's challenge, made only in April 2009, was already time-barred.[52]

In her Reply, petitioner argues that: (1) she is the proper party to question the completeness of the applicant's SALN; and (2) the State is not bound by the acts of the Bureau's officials, who examined respondent's SALN and accepted the wrong amnesty tax payment.[53]

IV.

Section 4 of Republic Act No. 9480 provides:

> **SEC. 4.** ***Presumption of Correctness of the SALN.*** — The SALN as of December 31, 2005 shall be considered as true and correct except where the amount of declared net worth is understated to the extent of thirty percent (30%) or more as may be established in proceedings initiated by, or **at the instance of, parties other than the BIR or its agents**: Provided, That such proceedings must be initiated within one year following the date of the filing of the tax amnesty return and the SALN. Findings of or admission in congressional hearings, other administrative agencies of government, and/or courts shall be admissible to prove a thirty percent (30%) under-declaration. (Emphasis and underscoring supplied)

Under the above-stated provision, the SALN is presumed correct unless there is a concurrence of the following:

a. There is under-declaration of net worth by 30%;
b. The under-declaration is established in proceedings initiated by parties other than the BIR; and

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[50] *Id*. at 151.

[51] *Id*.

[52] *Id*.

[53] *Id*. at 170.

c. The proceedings were initiated within one (1) year from the filing of the tax amnesty.

The Court of Tax Appeals ruled that petitioner is not the proper party to question the veracity of respondent's SALN. It emphasized that "the presumption of correctness of the SALN applies even against the Commissioner . . . Thus, the thirty percent (30%) threshold can be established in proceedings initiated by, or at the instance of, parties other than the B[ureau of] I[nternal] R[evenue] or its agents."[54]

The Court of Tax Appeals is correct.

We cannot disregard the plain and categorical text of Section 4. It is a basic rule of statutory construction that where the language of the law is clear and unambiguous, it should be applied as written.[55] Determining its wisdom or policy is beyond the realm of judicial power.[56]

In *CS Garment, Inc. v. Commissioner of Internal Revenue*,[57]the Court clarified that –

> The one-year period referred to in the law should . . . be considered only as a prescriptive period within which third parties, meaning 'parties other than the BIR or its agents,' can question the SALN — not as a waiting period during which the BIR may contest the SALN and the taxpayer prevented from enjoying the immunities and privileges under the law.[58]

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[54] *Id.* at 49.

[55] *Commissioner of Internal Revenue v. San Roque Power Corp.,* 703 Phil. 310, 370 (2013) [Per *J.* Carpio, *En Banc*]; *Commissioner of Internal Revenue. v. Solidbank Corp.,* 462 Phil. 96, 129 (2003) [Per *J.* Panganiban, First Division]; *Commissioner of Internal Revenue v. Court of Appeals,* 358 Phil. 562, 577(1998) [Per *J.* Panganiban, First Division].

[56] *Commissioner of Internal Revenue v. Ariete,* 624 Phil. 458, 468 (2010) [Per *J.* Carpio, Second Division].

[57] 729 Phil. 253 [Per *C.J.* Sereno, First Division].

[58] *Id.* at 271.

The Court explained that the documentary requirements and payment of the amnesty tax operate as a suspensive condition, such that completion of these requirements entitles the taxpayer-applicant to immediately enjoy the immunities and privileges under Republic Act No. 9480.

However, the Court further stated that Section 6 of the law contains a resolutory condition. Immunities and privileges will cease to apply to taxpayers who, in their SALN, were proven to have understated their net worth by 30% or more.

> This clarification, however, does not mean that the amnesty taxpayers would go scot-free in case they substantially understate the amounts of their net worth in their SALN. The 2007 Tax Amnesty Law imposes a resolutory condition insofar as the enjoyment of immunities and privileges under the law is concerned. Pursuant to Section 4 of the law, third parties may initiate proceedings contesting the declared amount of net worth of the amnesty taxpayer within one year following the date of the filing of the tax amnesty return and the SALN. Section 6 then states that "All these immunities and privileges shall not apply . . . where the amount of net worth as of December 31, 2005 is proven to be understated to the extent of thirty percent (30%) or more, in accordance with the provisions of Section 3 hereof." Accordingly, Section 10 provides that amnesty taxpayers who willfully understate their net worth shall be (a) liable for perjury under the Revised Penal Code; and (b) subject to immediate tax fraud investigation in order to collect all taxes due and to criminally prosecute those found to have willfully evaded lawful taxes due.[59]

Thus, the amnesty granted under the law is revoked once the taxpayer is proven to have under-declared his assets in his SALN by 30% or more. Pursuant to Section 10[60] of the Tax

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[59] *CS Garment, Inc. v. Commissioner of Internal Revenue,* 729 Phil. 253, 272 [Per *C.J.* Sereno, First Division].

[60] Rep. Act No. 9480, Sec. 10 provides:

> SECTION 10. Penalties. — (a) Any person who, having filed a statement or Tax Amnesty Return under this Act, willfully understates his net worth to the extent of thirty percent (30%) or more shall, upon conviction, be subject to the penalties of perjury under the Revised Penal Code.

Amnesty Law, amnesty taxpayers who wilfully understate their net worth shall not only be liable for perjury under the Revised Penal Code, but, upon conviction, also subject to immediate tax fraud investigation in order to collect all taxes due and to criminally prosecute for tax evasion.

Here, the requisites to overturn the presumption of correctness of respondent's 2005 SALN were not met.

Respondent filed its Tax Amnesty documents on January 25, 2008.[61] Since then, and up to the time of the filing of respondent's Motion to Cancel Tax Assessment on April 17, 2009, there had been no proceeding initiated to question its declared amount of net worth.[62] Petitioner never alleged, before the Court of Tax Appeals and this Court, the existence of any such proceeding to challenge respondent's 2005 SALN during this period. Indeed, petitioner first raised the possibility of under-declaration of assets only in her Opposition to respondent's

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(b) The willful failure to declare any property in the statement and/or in the Tax Amnesty Return shall be deemed a *prima facie* evidence of fraud and shall constitute a ground upon which attachment of such property may be issued in favor of the BIR to answer for the satisfaction of any judgment that may be acquired against the declarant.

In addition to the penalties provided in paragraphs (a) and (b) above, immediate tax fraud investigation shall be conducted to collect all taxes due, including increments, and to criminally prosecute those found to have willfully evaded lawful taxes due.

In the case of associations, partnerships, or corporations, the penalty shall be imposed on the partner, president, general manager, branch manager, treasurer, officer-in-charge and employees responsible for the violation.

(c) Any person who makes an unlawful divulgence of the Tax Amnesty Return or the SALN shall be penalized by a fine of not less than Fifty thousand pesos (₱50,000.00) and imprisonment of not less than six years but not more than ten (10) years.

If the offender is an officer or employee of the BIR or any government entity, he/she shall likewise suffer an additional penalty of perpetual disqualification to hold public office, to vote and to participate in any public election.

[61] *Rollo*, p. 128.

[62] *Id.* at 49.

Motion to Cancel Tax Assessment.[63] Thus, the lapse of the one-year period effectively closed the window to question respondent's 2005 SALN.

Significantly, as explained by respondent, there was no understatement in its 2005 SALN because the shares of stocks, which the BIR repeatedly referred to, were sold in 2002 or more than three (3) years prior to the tax amnesty availment.[64] This was already discussed and detailed before the Court of Tax Appeals together with proofs of the transfer of ownership.[65]

Our judicial review under Rule 45 of the Rules of Court is confined only to errors of law and does not extend to questions of fact.[66] This Court is not a trier of facts.[67] At any rate, petitioner's utter failure to refute these material points constitutes an implied admission.

WHEREFORE, the Petition is **DENIED**.

SO ORDERED.

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

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[63] *Id*. at 181-182.

[64] *Id*. at 154.

[65] *Id*. at 42.

[66] RULES OF COURT, Rule 45 provides:

Rule 45 — Appeal by *Certiorari* to the Supreme Court

Section 1. *Filing of Petition with Supreme Court.*— A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition shall raise only questions of law which must be distinctly set forth.

[67] *Southern Power Corp. v. Commissioner of Internal Revenue,* 675 Phil. 732, 741 (2011) [Per *J*. Abad, Third Division]; *Commissioner of Internal Revenue v. Benguet Corp.,* 501 Phil. 343, 352 (2005) [Per *J*. Tinga, Second Division]; *Republic v. Court of Tax Appeals,* 418 Phil. 758, 767 (2001) [Per *J*. Vitug, Third Division].

FIRST DIVISION

[G.R. No. 201326. February 8, 2017]

SITEL PHILIPPINES CORPORATION (FORMERLY CLIENTLOGIC PHILS., INC.), *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. TAXATION; NATIONAL INTERNAL REVENUE CODE (NIRC): REFUND OR TAX CREDIT OF UNUTILIZED CREDITABLE INPUT VALUE-ADDED TAX (VAT); THE JUDICIAL CLAIM FOR REFUND MAY BE FILED WITH THE COURT OF TAX APPEALS WITHIN THIRTY (30) DAYS FROM THE RECEIPT OF THE DECISION OF THE COMMISSIONER OF INTERNAL REVENUE (CIR) OR THE EXPIRATION OF THE 120-DAY PERIOD OF THE CIR TO ACT ON THE CLAIM. HOWEVER, JUDICIAL CLAIM NEED NOT AWAIT THE EXPIRATION OF THE 120-DAY PERIOD, IF SUCH WAS FILED DURING THE PERIOD FROM THE ISSUANCE OF BIR RULING NO. DA-489-03, ON DECEMBER 10, 2003, UNTIL OCTOBER 6, 2010, WHEN *AICHI* WAS PROMULGATED.— Based on the plain language of [Section 112 (c) of the NIRC] the CIR is given 120 days within which to grant or deny a claim for refund. Upon receipt of CIR's decision or ruling denying the said claim, or upon the expiration of the 120-day period without action from the CIR, the taxpayer has thirty (30) days within which to file a petition for review with the CTA. In *Aichi*, the Court ruled that the 120-day period granted to the CIR was mandatory and jurisdictional, the non-observance of which was fatal to the filing of a judicial claim with the CTA. The Court further explained that the two (2)-year prescriptive period under Section 112(A) of the NIRC pertained only to the filing of the administrative claim with the BIR; while the judicial claim may be filed with the CTA within thirty (30) days from the receipt of the decision of the CIR or the expiration of the 120-day period of the CIR to act on the claim. x x x. However, in *San Roque*, the Court clarified that the 120-day period does **not** apply to claims for refund that were prematurely

filed during the period from the issuance of BIR Ruling No. DA-489-03, on December 10, 2003, until October 6, 2010, when *Aichi* was promulgated. The Court explained that BIR Ruling No. DA-489-03, which expressly allowed the filing of judicial claims with the CTA even before the lapse of the 120-day period, provided for a valid claim of equitable estoppel because the CIR had misled taxpayers into prematurely filing their judicial claims before the CTA x x x. In this case, records show that Sitel filed its administrative and judicial claim for refund on March 28, 2006 and March 30, 2006, respectively, or after the issuance of BIR Ruling No. DA-489-03, but before the date when *Aichi* was promulgated. Thus, even though Sitel filed its judicial claim prematurely, *i.e.*, without waiting for the expiration of the 120-day mandatory period, the CTA may still take cognizance of the case because the claim was filed within the excepted period stated in *San Roque*. In other words, Sitel's judicial claim was deemed timely filed and should have not been dismissed by the CTA *En Banc*. Consequently, the October 21, 2009 Decision of the CTA Division partially granting Sitel's judicial claim for refund in the reduced amount of ₱11,155,276.59, which is not subject of the instant appeal, should be reinstated. In this regard, since the CIR did not appeal said decision to the CTA *En Banc*, the same is now considered final and beyond this Court's review.

2. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; IT IS NOT THE COURT'S FUNCTION TO ANALYZE OR WEIGH ALL OVER AGAIN THE EVIDENCE ALREADY CONSIDERED IN THE PROCEEDINGS BELOW, THE COURT'S JURISDICTION BEING LIMITED TO REVIEWING ONLY ERRORS OF LAW THAT MAY HAVE BEEN COMMITTED BY THE LOWER COURT.— Sitel wants the Court to review factual findings of the CTA Division, reexamine the evidence and determine on the basis thereof whether it should be refunded the additional amount of ₱9,839,128.57. This, however, cannot be done in the instant case for settled is the rule that this Court is not a trier of facts and does not normally embark in the evaluation of evidence adduced during trial. It is not this Court's function to analyze or weigh all over again the evidence already considered in the proceedings below, the Court's jurisdiction being limited to reviewing only errors of law that may have been committed by the lower court.

3. ID.; ID.; ID.; THE DECISIONS OF THE COURT OF TAX APPEALS ARE PRESUMED VALID IN EVERY ASPECT AND WILL NOT BE OVERTURNED ON APPEAL, UNLESS THE COURT FINDS THAT THE QUESTIONED DECISION IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE OR THERE HAS BEEN AN ABUSE OR IMPROVIDENT EXERCISE OF AUTHORITY ON THE PART OF THE TAX COURT.— [T]he Court accords findings and conclusions of the CTA with the highest respect. As a specialized court dedicated exclusively to the resolution of tax problems, the CTA has accordingly developed an expertise on the subject of taxation. Thus, its decisions are presumed valid in every aspect and will not be overturned on appeal, unless the Court finds that the questioned decision is not supported by substantial evidence or there has been an abuse or improvident exercise of authority on the part of the tax court. Upon careful review of the instant case, and directly addressing the issues raised by Sitel, the Court finds no cogent reason to reverse or modify the findings of the CTA Division.

4. TAXATION; NATIONAL INTERNAL REVENUE CODE (NIRC); REFUND OR TAX CREDIT OF UNUTILIZED CREDITABLE INPUT VALUE-ADDED TAX (VAT); A TAXPAYER CLAIMING FOR A VAT REFUND OR CREDIT ATTRIBUTABLE TO ZERO-RATED OR EFFECTIVELY ZERO-RATED SALE OF SERVICES HAS THE BURDEN TO PROVE NOT ONLY THAT THE RECIPIENT OF THE SERVICE IS A FOREIGN CORPORATION, BUT ALSO THAT SAID CORPORATION IS DOING BUSINESS OUTSIDE THE PHILIPPINES OR HAVE A CONTINUITY OF COMMERCIAL DEALINGS OUTSIDE THE PHILIPPINES.— Sitel's claim for refund is anchored on Section 112(A) of the NIRC, which allows the refund or credit of input VAT attributable to zero-rated or effectively zero-rated sales. In relation thereto, Sitel points to Section 108(B)(2) of the NIRC *[formerly Section 102(b)(2) of the NIRC of 1977, as amended]* as legal basis for treating its sale of services as zero-rated or effectively zero-rated. x x x. In *Burmeister*, the Court clarified that an essential condition to qualify for zero-rating under the aforequoted provision is that the service-recipient must be doing business outside the Philippines x x x. Following Burmeister, the Court, in *Accenture, Inc. v. Commissioner of Internal*

Revenue, (*Accenture*), emphasized that a taxpayer claiming for a VAT refund or credit under Section 108(B) has the burden to prove not only that the recipient of the service is a foreign corporation, but also that said corporation is doing business outside the Philippines. For failure to discharge this burden, the Court denied *Accenture*'s claim for refund. x x x. In the same vein, Sitel fell short of proving that the recipients of its call services were foreign corporations doing business outside the Philippines. As correctly pointed out by the CTA Division, while Sitel's documentary evidence, which includes Certifications issued by the Securities and Exchange Commission and Agreements between Sitel and its foreign clients, may have established that Sitel rendered services to foreign corporations in 2004 and received payments therefor through inward remittances, said documents failed to specifically prove that such foreign clients were doing business outside the Philippines or have a continuity of commercial dealings outside the Philippines. Thus, the Court finds no reason to reverse the ruling of the CTA Division denying the refund of ₱7,170,276.02, allegedly representing Sitel's input VAT attributable to zero-rated sales.

5. ID.; ID.; ID.; IN A CLAIM FOR TAX REFUND OR TAX CREDIT, THE APPLICANT MUST PROVE NOT ONLY ENTITLEMENT TO THE GRANT OF THE CLAIM UNDER SUBSTANTIVE LAW, BUT HE MUST ALSO SHOW SATISFACTION OF ALL THE DOCUMENTARY AND EVIDENTIARY REQUIREMENTS FOR AN ADMINISTRATIVE CLAIM FOR A REFUND OR TAX CREDIT AND COMPLIANCE WITH THE INVOICING AND ACCOUNTING REQUIREMENTS MANDATED BY THE NIRC, AS WELL AS BY REVENUE REGULATIONS IMPLEMENTING THEM.— The CTA Division also did not err when it denied the amount of ₱2,668,852.55, allegedly representing input taxes claimed on Sitel's domestic purchases of goods and services which are supported by invoices/receipts with pre-printed TIN-V. In *Western Mindanao Power Corp. v. Commissioner of Internal Revenue*, the Court ruled that in a claim for tax refund or tax credit, the applicant must prove not only entitlement to the grant of the claim under substantive law, he must also show satisfaction of all the documentary and evidentiary requirements for an administrative claim for a refund or tax credit and compliance with the invoicing and accounting requirements mandated by the NIRC, as well as by revenue

regulations implementing them. The NIRC requires that the creditable input VAT should be evidenced by a VAT invoice or official receipt, which may only be considered as such when the TIN-VAT is printed thereon, as required by Section 4.108-1 of RR 7-95. x x x. [C]onsidering that the subject invoice/official receipts are not imprinted with the taxpayer's TIN followed by the word VAT, these would not be considered as VAT invoices/official receipts and would not give rise to any creditable input VAT in favor of Sitel. At this juncture, it bears to emphasize that "[t]ax refunds or tax credits just like tax exemptions are strictly construed against taxpayers, the latter having the burden to prove strict compliance with the conditions for the grant of the tax refund or credit."

APPEARANCES OF COUNSEL

Baniqued & Baniqued for petitioner.
BIR Legal Division for respondent.

D E C I S I O N

CAGUIOA, *J.:*

This Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court filed by petitioner Sitel Philippines Corporation (Sitel) against the Commissioner of Internal Revenue (CIR) seeks to reverse and set aside the Decision dated November 11, 2011[2] and Resolution dated March 28, 2012[3] of the Court

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[1] *Rollo,* pp. 50-83.

[2] *Id*. at 88-105. Penned by Associate Justice Juanito C. Castañeda, Jr. with Associate Justices Erlinda P. Uy, Caesar A. Casanova, Olga Palanca-Enriquez and Cielito N. Mindaro-Grulla concurring and Presiding Justice Ernesto D. Acosta and Associate Justices Lovell R. Bautista, Esperanza R. Fabon-Victorino and Amelia R. Cotangco-Manalastas dissenting.

[3] *Id*. at 118-127. Penned by Associate Justice Juanito C. Castañeda, Jr. with Associate Justices Erlinda P. Uy, Olga Palanca-Enriquez, Esperanza R. Fabon-Victorino and Cielito N. Mindaro-Grulla concurring and Associate Justices Lovell R. Bautista and Amelia R. Cotangco-Manalastas dissenting. Presiding Justice Ernesto D. Acosta and Associate Justice Caesar A. Casanova were on wellness leave.

of Tax Appeals (CTA) *En Banc* in CTA EB No. 644, which denied Sitel's claim for refund of unutilized input value-added tax (VAT) for the first to fourth quarters of taxable year 2004 for being prematurely filed.

Facts

Sitel, a corporation organized and existing under the laws of the Philippines, is engaged in the business of providing call center services from the Philippines to domestic and offshore businesses. It is registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer, as well as with the Board of Investments on pioneer status as a new information technology service firm in the field of call center.[4]

For the period from January 1, 2004 to December 31, 2004, Sitel filed with the BIR its Quarterly VAT Returns as follows:

Period Covered	***Date Filed***
1st Quarter 2004	26 April 2004
2nd Quarter 2004	26 July 2004
3rd Quarter 2004	25 October 2004
4th Quarter 2004	25 January 2005[5]

Sitel's Amended Quarterly VAT Returns for the first to fourth quarters of 2004 declared as follows:

Taxable Sales (A)	Zero-Rated Sales (B)	Total Sales (C=A+B)	Input Tax for the [Quarter] (D)	Input Tax from Capital Goods (E)	Input Tax from Regular Transactions (F+D-E)	Input Tax Allocated to Taxable Sales [G=(A/C) x (F)]	Input Tax Allocated to Zero-Rated Sales [H=(B/C) x (F)]
509,799.74	180,450,030.29	180,957,830.03	3,842,714.21	2,422,090.40	1,400,623.81	3,930.40	1,396,693.41
0	142,664,271.00	142,664,271.00	3,554,922.94	2,846,225.66	708,696.58	-	708,696.58
517,736.36	205,021,590.46	205,539,326.82	9,568,047.25	7,629,734.40	1,938,312.85	4,882.45	1,933,430.40
0	334,384,766.48	334,384,766.48	6,137,028.74	3,005,573.11	3,313,455.63	-	3,313,455.63
1,025,536.10	**862,520,658.23**	**863,546,194.33**	**23,102,712.44**	**15,923,623.57**	**7,179,088.87**	**8,812.85**	**7,170,276.02**[6]

[4] *Id*. at 56, 221.

[5] *Id*. at 56, 221-222.

[6] *Id*. at 56, 222.

On March 28, 2006, Sitel filed separate formal claims for refund or issuance of tax credit with the One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance for its unutilized input VAT arising from domestic purchases of goods and services attributed to zero-rated transactions and purchases/importations of capital goods for the 1st, 2nd, 3rd and 4th quarters of 2004 in the aggregate amount of ₱23,093,899.59.[7]

On March 30, 2006, Sitel filed a judicial claim for refund or tax credit via a petition for review before the CTA, docketed as CTA Case No. 7423.

Ruling of the CTA Division

On October 21, 2009, the CTA Division rendered a Decision[8] partially granting Sitel's claim for VAT refund or tax credit, the dispositive portion of which reads as follows:

In view of the foregoing, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Petitioner is entitled to the instant claim in the reduced amount of ₱11,155,276.59 computed as follows:

Amount of Input VAT Claim		₱ 23,093,899.59
Less:	Input VAT Claim on Zero-Rated Sales	7,170,276.02
Input VAT Claim on Capital Goods Purchases		₱ 15,923,623.57
Less:	Not Properly Substantiated Input VAT Claim on Capital Goods Purchases	
	Per ICPA Report (*₱15,923,623.57 less ₱13,824,129.14)*	2,099,494.43
	Per this Court's further verification	2,668,852.55
Refundable Input VAT on Capital Goods Purchases		**₱ 11,155,276.59**

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[7] *Id*. at 57, 220 & 222.

[8] *Id*. at 220-232. Penned by Associate Justice Caesar A. Casanova, with Associate Justice Lovell R. Bautista concurring and Presiding Justice Ernesto D. Acosta dissenting.

Accordingly, respondent is **ORDERED to REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in the reduced amount of **₱11,155,276.59** representing unutilized input VAT arising from petitioner's domestic purchases of goods and services which are attributable to zero-rated transactions and purchases/importations of capital goods for the taxable year 2004.

SO ORDERED.[9]

The CTA Division denied Sitel's ₱7,170,276.02 claim for unutilized input VAT attributable to its zero-rated sales for the four quarters of 2004. Relying upon the rulings of this Court in *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*[10] (*Burmeister*), the CTA Division found that Sitel failed to prove that the recipients of its services are doing business outside the Philippines, as required under Section 108(B)(2) of the National Internal Revenue Code of 1997 (NIRC), as amended.[11]

The CTA Division also disallowed the amount of ₱2,668,852.55 representing input VAT paid on capital goods purchased for taxable year 2004 for failure to comply with the invoicing requirements under Sections 113, 237, and 238 of the NIRC of 1997, as amended, and Section 4.108-1 of Revenue Regulations No. 7-95 (RR 7-95).[12]

Aggrieved, Sitel filed a motion for partial reconsideration[13] and Supplement (To Motion for Reconsideration [of Decision dated October 21, 2009]),[14] on November 11, 2009 and March 26, 2010, respectively.

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[9] *Id*. at 231-232.

[10] 541 Phil. 119 (2007).

[11] *Rollo*, pp. 226-227.

[12] See *id*. at 228-229.

[13] *Id*. at 238-261.

[14] *Id*. at 270-277.

Prior thereto, or on January 8, 2010, Sitel filed a Motion for Partial Execution of Judgment[15] seeking the execution pending appeal of the portion of the Decision dated October 21, 2009 granting refund in the amount of ₱11,155,276.59, which portion was not made part of its motion for partial reconsideration.

On May 31, 2010, the CTA Division denied Sitel's Motion for Reconsideration and Supplement (To Motion for Reconsideration [of Decision dated October 21, 2009]) for lack of merit.[16]

Undaunted, Sitel filed a Petition for Review[17] with the CTA *En Banc* claiming that it is entitled to the amount denied by the CTA Division.

Ruling of the CTA *En Banc*

In the assailed Decision, the CTA *En Banc* reversed and set aside the ruling of the CTA Division. Citing the case of *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*[18] (*Aichi)*, the CTA *En Banc* ruled that the 120-day period for the CIR to act on the administrative claim for refund or tax credit, under Section 112(D) of the NIRC of 1997, as amended, is mandatory and jurisdictional. Considering that Sitel filed its judicial claim for VAT refund or credit without waiting for the lapse of the 120-day period for the CIR to act on its administrative claim, the CTA did not acquire jurisdiction as there was no decision or inaction to speak of.[19] Thus, the CTA *En Banc* denied Sitel's entire refund claim on the ground of prematurity. The dispositive portion of the CTA *En Banc*'s Decision reads as follows:

WHEREFORE, on the basis of the foregoing considerations, the Petition for Review *En Banc* is **DISMISSED**. Accordingly, the

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[15] *Id.* at 278-286.

[16] *Id.* at 289-295.

[17] *Id.* at 326-371.

[18] 646 Phil. 710 (2010).

[19] See *rollo*, pp. 95-102.

Decision of the CTA First Division dated October 21, 2009 and the Resolution issued by the Special First Division dated May 31, 2010, are hereby reversed and set aside. Petitioner's refund claim of ₱19,702,880.80 is **DENIED** on the ground that the judicial claim for the first to fourth quarters of taxable year 2004 was prematurely filed.

SO ORDERED.[20]

Aggrieved, Sitel moved for reconsideration,[21] but the same was denied by the Court *En Banc* for lack of merit.[22]

Hence, the instant petition raising the following issues:

x x x WHETHER OR NOT THE *AICHI RULING* PROMULGATED ON OCTOBER 6, 2010 MAY BE APPLIED RETROACTIVELY TO THE INSTANT CLAIM FOR REFUND OF INPUT VAT INCURRED IN 2004.

x x x WHETHER OR NOT THE CTA *EN BANC* CAN VALIDLY WITHDRAW AND REVOKE THE PORTION OF THE REFUND CLAIM ALREADY GRANTED TO PETITIONER IN THE AMOUNT OF ₱11,155,276.59 AFTER TRIAL ON THE MERITS, NOTWITHSTANDING THAT SUCH PORTION OF THE DECISION HAD NOT BEEN APPEALED.

x x x WHETHER OR NOT PETITIONER IS ENTITLED TO A REFUND OR TAX CREDIT OF ITS UNUTILIZED INPUT VAT ARISING FROM PURCHASES OF GOODS AND SERVICES ATTRIBUTABLE TO ZERO-RATED SALES AND PURCHASES/ IMPORTATIONS OF CAPITAL GOODS FOR THE 1ST, 2ND, 3RD, [AND] 4TH QUARTERS OF TAXABLE YEAR 2004 IN THE AGGREGATE AMOUNT OF ₱20,994,405.16.[23]

In the Resolution[24] dated July 4, 2012, the CIR was required to comment on the instant petition. In compliance thereto, the CIR filed its Comment[25] on November 14, 2012.

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[20] *Id*. at 104.

[21] *Id*. at 419-477.

[22] *Id*. at 118-127.

[23] *Id*. at 63.

[24] *Id*. at 479.

[25] *Id*. at 484-508.

On January 16, 2013, the Court issued a Resolution[26] denying Sitel's petition for failure to sufficiently show that the CTA *En Banc* committed reversible error in denying its refund claim on the ground of prematurity based on prevailing jurisprudence.

Soon thereafter, however, or on February 12, 2013, the Court *En Banc* decided the consolidated cases of *Commissioner of Internal Revenue v. San Roque Power Corporation*, *Taganito Mining Corporation v. Commissioner of Internal Revenue*, and *Philex Mining Corporation v. Commissioner of Internal Revenue*[27] (*San Roque*). In that case, the Court recognized BIR Ruling No. DA-489-03 as an exception to the mandatory and jurisdictional nature of the 120-day waiting period.

Invoking *San Roque,* Sitel filed a Motion for Reconsideration.[28]

In the Resolution[29] dated June 17, 2013, the Court granted Sitel's motion and reinstated the instant petition.

In the instant petition, Sitel claims that its judicial claim for refund was timely filed following the Court's pronouncements in *San Roque*; thus, it was erroneous for the CTA *En Banc* to reverse the ruling of the CTA Division and to dismiss its petition on the ground of prematurity. Sitel further argues that the previously granted amount for refund of ₱11,155,276.59 should be reinstated and declared final and executory, the same not being the subject of Sitel's partial appeal before the CTA *En Banc,* nor of any appeal from the CIR.

Finally, Sitel contends that insofar as the denied portion of the claim is concerned, which the CTA *En Banc* failed to pass upon with the dismissal of its appeal, speedy justice demands that the Court resolved the same on the merits and Sitel be declared entitled to an additional refund in the amount of ₱9,839,128.57.

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[26] *Id*. at 511.

[27] 703 Phil. 310 (2013).

[28] *Rollo,* pp. 512-525.

[29] *Id*. at 527.

The Court's Ruling

The Court finds the petition partly meritorious.

Sitel's Judicial Claim for VAT Refund was deemed timely filed pursuant to the Court's pronouncement in San Roque.

Section 112(C) of the NIRC, as amended, provides:

SEC. 112. *Refunds or Tax Credits of Input Tax.* —

x x x x x x x x x

(C) *Period within which Refund or Tax Credit of Input Taxes shall be Made*. – In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes **within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.**

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals. (Emphasis supplied)

Based on the plain language of the foregoing provision, the CIR is given 120 days within which to grant or deny a claim for refund. Upon receipt of CIR's decision or ruling denying the said claim, or upon the expiration of the 120-day period without action from the CIR, the taxpayer has thirty (30) days within which to file a petition for review with the CTA.

In *Aichi,* the Court ruled that the 120-day period granted to the CIR was mandatory and jurisdictional, the non-observance of which was fatal to the filing of a judicial claim with the CTA. The Court further explained that the two (2)-year prescriptive period under Section 112(A) of the NIRC pertained only to the filing of the administrative claim with the BIR; while the judicial claim may be filed with the CTA within thirty (30) days from the receipt of the decision of the CIR or the

expiration of the 120-day period of the CIR to act on the claim. Thus:

Section 112 (D) of the NIRC clearly provides that the CIR has "120 days, from the date of the submission of the complete documents in support of the application [for tax refund/credit]," within which to grant or deny the claim. In case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal before the CTA within 30 days from receipt of the decision of the CIR. However, if after the 120-day period the CIR fails to act on the application for tax refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to CTA within 30 days.

In this case, the administrative and the judicial claims were simultaneously filed on September 30, 2004. Obviously, respondent did not wait for the decision of the CIR or the lapse of the 120-day period. For this reason, we find the filing of the judicial claim with the CTA premature.

Respondent's assertion that the non-observance of the 120-day period is not fatal to the filing of a judicial claim as long as both the administrative and the judicial claims are filed within the two-year prescriptive period has no legal basis.

There is nothing in Section 112 of the NIRC to support respondent's view. Subsection (A) of the said provision states that "any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, **within two years** after the close of the taxable quarter when the sales were made, **apply for the issuance of a tax credit certificate or refund** of creditable input tax due or paid attributable to such sales." The phrase "within two (2) years x x x apply for the issuance of a tax credit certificate or refund" refers to applications for refund/credit filed with the CIR and not to appeals made to the CTA. This is apparent in the first paragraph of subsection (D) of the same provision, which states that the CIR has "120 days from the submission of complete documents in support of the **application** filed in accordance with **Subsections (A)** and (B)" within which to decide on the claim.

In fact, applying the two-year period to judicial claims would render nugatory Section 112(D) of the NIRC, which already provides for a specific period within which a taxpayer should appeal the decision or inaction of the CIR. The second paragraph of Section 112(D) of the NIRC envisions two scenarios: (1) when a decision is issued by

the CIR before the lapse of the 120-day period; and (2) when no decision is made after the 120-day period. In both instances, the taxpayer has 30 days within which to file an appeal with the CTA. As we see it then, the 120-day period is crucial in filing an appeal with the CTA.

x x x x x x x x x

In fine, the premature filing of respondent's claim for refund/credit of input VAT before the CTA warrants a dismissal inasmuch as no jurisdiction was acquired by the CTA.[30]

However, in *San Roque,* the Court clarified that the 120-day period does **not** apply to claims for refund that were prematurely filed during the period from the issuance of BIR Ruling No. DA-489-03, on December 10, 2003, until October 6, 2010, when *Aichi* was promulgated. The Court explained that BIR Ruling No. DA-489-03, which expressly allowed the filing of judicial claims with the CTA even before the lapse of the 120-day period, provided for a valid claim of equitable estoppel because the CIR had misled taxpayers into prematurely filing their judicial claims before the CTA:

There is no dispute that the 120-day period is mandatory and jurisdictional, and that the CTA does not acquire jurisdiction over a judicial claim that is filed before the expiration of the 120-day period. There are, however, two exceptions to this rule. The first exception is if the Commissioner, through a specific ruling, misleads a particular taxpayer to prematurely file a judicial claim with the CTA. Such specific ruling is applicable only to such particular taxpayer. **The second exception is where the Commissioner, *through a general interpretative rule* issued under Section 4 of the Tax Code, misleads all taxpayers into filing prematurely judicial claims with the CTA. In these cases, the Commissioner cannot be allowed to later on question the CTA's assumption of jurisdiction over such claim since equitable estoppel has set in as expressly authorized under Section 246 of the Tax Code**.

x x x x x x x x x

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[30] *Supra* note 18, at 731-732.

BIR Ruling No. DA-489-03 is a general interpretative rule because it was a response to a query made, not by a particular taxpayer, but by a government agency tasked with processing tax refunds and credits, that is, the One Stop Shop Inter-Agency Tax Credit and Drawback Center of the Department of Finance. This government agency is also the addressee, or the entity responded to, in BIR Ruling No. DA-489-03. Thus, while this government agency mentions in its query to the Commissioner the administrative claim of Lazi Bay Resources Development, Inc., the agency was in fact asking the Commissioner what to do in cases like the tax claim of Lazi Bay Resources Development, Inc., where the taxpayer did not wait for the lapse of the 120-day period.

Clearly, BIR Ruling No. DA-489-03 is a general interpretative rule. Thus, all taxpayers can rely on BIR Ruling No. DA-489-03 from the time of its issuance on 10 December 2003 up to its reversal by this Court in *Aichi* on 6 October 2010, where this Court held that the 120+30 day periods are mandatory and jurisdictional.[31] (Emphasis supplied).

In *Visayas Geothermal Power Company v. Commissioner of Internal Revenue*,[32] the Court came up with an outline summarizing the pronouncements in *San Roque,* to wit:

For clarity and guidance, the Court deems it proper to outline the rules laid down in *San Roque* with regard to claims for refund or tax credit of unutilized creditable input VAT. They are as follows:

1. When to file an administrative claim with the CIR:

    a. General rule – Section 112(A) and *Mirant*

        Within 2 years from the close of the taxable quarter when the sales were made.

    b. Exception – *Atlas*

        Within 2 years from the date of payment of the output VAT, if the administrative claim was filed from June 8, 2007 (promulgation of *Atlas*) to September 12, 2008 (promulgation of *Mirant*).

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[31] *Supra* note 27, at 373-376.

[32] 735 Phil. 321 (2014).

2. When to file a judicial claim with the CTA:

a. General rule – Section 112(D); *not* Section 229

i. Within 30 days from the full or partial denial of the administrative claim by the CIR; or

ii. Within 30 days from the expiration of the 120-day period provided to the CIR to decide on the claim. This is mandatory and jurisdictional beginning January 1, 1998 (effectivity of 1997 NIRC).

b. Exception – BIR Ruling No. DA-489-03

The judicial claim need not await the expiration of the 120-day period, if such was filed from December 10, 2003 (issuance of BIR Ruling No. DA-489-03) to October 6, 2010 (promulgation of *Aichi*).[33] (Emphasis and underscoring supplied).

In this case, records show that Sitel filed its administrative and judicial claim for refund on March 28, 2006 and March 30, 2006, respectively, or after the issuance of BIR Ruling No. DA-489-03, but before the date when *Aichi* was promulgated. Thus, even though Sitel filed its judicial claim prematurely, *i.e.*, without waiting for the expiration of the 120-day mandatory period, the CTA may still take cognizance of the case because the claim was filed within the excepted period stated in *San Roque*. In other words, Sitel's judicial claim was deemed timely filed and should have not been dismissed by the CTA *En Banc*. Consequently, the October 21, 2009 Decision[34] of the CTA Division partially granting Sitel's judicial claim for refund in the reduced amount of ₱11,155,276.59, which is not subject of the instant appeal, should be reinstated. In this regard, since the CIR did not appeal said decision to the CTA *En Banc*, the same is now considered final and beyond this Court's review.

Sitel now questions the following portions of its refund claim which the CTA Division denied: (1) ₱7,170,276.02, representing

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[33] *Id.* at 338-339.

[34] *Supra* note 8.

unutilized input VAT on purchases of goods and services attributable to zero-rated sales, which was denied because Sitel failed to prove that the call services it rendered for the year 2004 were made to non-resident foreign clients doing business outside the Philippines; and (2) ₱2,668,852.55 representing input VAT on purchases of capital goods, because these are supported by invoices and official receipts with pre-printed TIN-V instead of TIN-VAT, as required under Section 4.108-1 of RR 7-95.

Sitel claims that testimonial and documentary evidence sufficiently established that its clients were non-resident foreign corporations not doing business in Philippines. It also asserts that the input VAT on its purchases of capital goods were duly substantiated because the supporting official receipts substantially complied with the invoicing requirements provided by the rules.

In other words, Sitel wants the Court to review factual findings of the CTA Division, reexamine the evidence and determine on the basis thereof whether it should be refunded the additional amount of ₱9,839,128.57. This, however, cannot be done in the instant case for settled is the rule that this Court is not a trier of facts and does not normally embark in the evaluation of evidence adduced during trial.[35] It is not this Court's function to analyze or weigh all over again the evidence already considered in the proceedings below, the Court's jurisdiction being limited to reviewing only errors of law that may have been committed by the lower court.[36]

Furthermore, the Court accords findings and conclusions of the CTA with the highest respect.[37] As a specialized court dedicated exclusively to the resolution of tax problems, the CTA has accordingly developed an expertise on the subject of

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[35] *General Milling Corporation v. Viajar,* 702 Phil. 532, 540 (2013).

[36] *Fortune Tobacco Corp. v. Commissioner of Internal Revenue*, G.R. No. 192024, July 1, 2015, 761 SCRA 173, 181.

[37] See *Barcelon, Roxas Securities, Inc. v. Commissioner of Internal Revenue*, 529 Phil. 785, 794 (2006).

taxation.[38] Thus, its decisions are presumed valid in every aspect and will not be overturned on appeal, unless the Court finds that the questioned decision is not supported by substantial evidence or there has been an abuse or improvident exercise of authority on the part of the tax court.[39]

Upon careful review of the instant case, and directly addressing the issues raised by Sitel, the Court finds no cogent reason to reverse or modify the findings of the CTA Division.

The Court expounds.

Sitel failed to prove that the recipients of its call services are foreign corporations doing business outside the Philippines.

Sitel's claim for refund is anchored on Section 112(A)[40] of the NIRC, which allows the refund or credit of input VAT

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[38] *Rizal Commercial Banking Corp. v. Commissioner of Internal Revenue*, 672 Phil. 514, 530 (2011), citing *Commissioner of Internal Revenue v. Court of Appeals*, 363 Phil. 239, 246 (1999), citation omitted.

[39] *Id*., citing *Toshiba Information Equipment (Phils.), Inc. v. Commissioner of Internal Revenue,* 628 Phil. 430, 467-468 (2010), citations omitted.

[40] SEC. 112. *Refunds or Tax Credits of Input Tax*. —

(A) *Zero-rated or Effectively Zero-rated Sales*. — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however*, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further*, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally*, That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and nonzero-rated sales.

attributable to zero-rated or effectively zero-rated sales. In relation thereto, Sitel points to Section 108(B)(2) of the NIRC *[formerly Section 102(b)(2) of the NIRC of 1977, as amended]* as legal basis for treating its sale of services as zero-rated or effectively zero-rated. Section 108(B)(2) reads:

> SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties*. –
>
> x x x x x x x x x
>
> (B) *Transactions Subject to Zero Percent (0%) Rate*. – The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> x x x x x x x x x
>
> (2) Services other than those mentioned in the preceding paragraph **rendered to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed**, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP); (Emphasis supplied)

In *Burmeister,* the Court clarified that an essential condition to qualify for zero-rating under the aforequoted provision is that the service-recipient must be doing business outside the Philippines, to wit:

> The Tax Code not only requires that the services be other than "processing, manufacturing or repacking of goods" and that payment for such services be in acceptable foreign currency accounted for in accordance with BSP rules. Another essential condition for qualification to zero-rating under Section 102(b)(2) is that the **recipient of such services is doing business *outside* the Philippines.** x x x
>
> This can only be the logical interpretation of Section 102(b)(2). If the provider and recipient of the "other services" are both doing business in the Philippines, the payment of foreign currency is irrelevant. Otherwise, those subject to the regular VAT under Section 102(a) can avoid paying the VAT by simply stipulating payment in foreign currency inwardly remitted by the recipient of services. To interpret Section 102(b)(2) to apply to a payer-recipient of services

doing business in the Philippines is to make the payment of the regular VAT under Section 102(a) dependent on the generosity of the taxpayer. The provider of services can choose to pay the regular VAT or avoid it by stipulating payment in foreign currency inwardly remitted by the payer-recipient. Such interpretation removes Section 102(a) as a tax measure in the Tax Code, an interpretation this Court cannot sanction. A tax is a mandatory exaction, not a voluntary contribution.

x x x x x x x x x

Thus, when Section 102(b)(2) speaks of "**[s]ervices other than those mentioned in the preceding subparagraph**," the legislative intent is that only the services are different between subparagraphs 1 and 2. The requirements for zero-rating, including the essential condition that the recipient of services is doing business outside the Philippines, remain the same under both subparagraphs.

Significantly, the amended Section 108(b) [previously Section 102 (b)] of the present Tax Code clarifies this legislative intent. Expressly included among the transactions subject to 0% VAT are "[s]ervices other than those mentioned in the [first] paragraph [of Section 108(b)] rendered to a **person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines** when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP."[41]

Following *Burmeister,* the Court, in *Accenture, Inc. v. Commissioner of Internal Revenue,*[42] (*Accenture*), emphasized that a taxpayer claiming for a VAT refund or credit under Section 108(B) has the burden to prove not only that the recipient of the service is a foreign corporation, but also that said corporation is doing business outside the Philippines. For failure to discharge this burden, the Court denied *Accenture*'s claim for refund.

We rule that the recipient of the service must be doing business outside the Philippines for the transaction to qualify for zero-rating under Section 108(B) of the Tax Code.

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[41] *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc., supra* note 10, at 132-134.

[42] 690 Phil. 679 (2012).

x x x x x x x x x

The evidence presented by Accenture may have established that its clients are foreign. This fact does not automatically mean, however, that these clients were doing business outside the Philippines. After all, the Tax Code itself has provisions for a foreign corporation engaged in business within the Philippines and vice versa, to wit:

> SEC. 22. *Definitions.* — When used in this Title:
>
> x x x x x x x x x
>
> (H) The term "*resident foreign corporation*" applies to a foreign corporation engaged in trade or business within the Philippines.
>
> (I) The term '*nonresident foreign corporation*' applies to a foreign corporation not engaged in trade or business within the Philippines. (Emphasis in the original)

Consequently, to come within the purview of Section 108(B)(2), it is not enough that the recipient of the service be proven to be a foreign corporation; rather, it must be specifically proven to be a nonresident foreign corporation.

There is no specific criterion as to what constitutes "doing" or "engaging in" or "transacting" business. We ruled thus in *Commissioner of Internal Revenue v. British Overseas Airways Corporation*:

> x x x. There is no specific criterion as to what constitutes "doing" or "engaging in" or "transacting" business. Each case must be judged in the light of its peculiar environmental circumstances. The term implies a continuity of commercial dealings and arrangements, and contemplates, to that extent, the performance of acts or works or the exercise of some of the functions normally incident to, and in progressive prosecution of commercial gain or for the purpose and object of the business organization. "**In order that a foreign corporation may be regarded as doing business within a State, there must be continuity of conduct and intention to establish a continuous business, such as the appointment of a local agent, and not one of a temporary character**."

A taxpayer claiming a tax credit or refund has the burden of proof to establish the factual basis of that claim. Tax refunds, like tax exemptions, are construed strictly against the taxpayer.

Accenture failed to discharge this burden. **It alleged and presented evidence to prove *only* that its clients were foreign entities. However, as found by both the CTA Division and the CTA *En Banc,* no evidence was presented by Accenture to prove the fact that the foreign clients to whom petitioner rendered its services were clients doing business outside the Philippines**.

As ruled by the CTA *En Banc,* the Official Receipts, Intercompany Payment Requests, Billing Statements, Memo Invoices-Receivable, Memo Invoices-Payable, and Bank Statements presented by Accenture merely substantiated the existence of sales, receipt of foreign currency payments, and inward remittance of the proceeds of such sales duly accounted for in accordance with BSP rules, all of these were devoid of any evidence that the clients were doing business outside of the Philippines.[43] (Emphasis supplied; citations omitted)

In the same vein, Sitel fell short of proving that the recipients of its call services were foreign corporations doing business outside the Philippines. As correctly pointed out by the CTA Division, while Sitel's documentary evidence, which includes Certifications issued by the Securities and Exchange Commission and Agreements between Sitel and its foreign clients, may have established that Sitel rendered services to foreign corporations in 2004 and received payments therefor through inward remittances, said documents failed to specifically prove that such foreign clients were doing business outside the Philippines or have a continuity of commercial dealings outside the Philippines.

Thus, the Court finds no reason to reverse the ruling of the CTA Division denying the refund of ₱7,170,276.02, allegedly representing Sitel's input VAT attributable to zero-rated sales.

Sitel failed to strictly comply with invoicing requirements for VAT refund.

The CTA Division also did not err when it denied the amount of ₱2,668,852.55, allegedly representing input taxes claimed

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[43] *Id.* at 693, 698-700.

on Sitel's domestic purchases of goods and services which are supported by invoices/receipts with pre-printed TIN-V. In *Western Mindanao Power Corp. v. Commissioner of Internal Revenue*,[44] the Court ruled that in a claim for tax refund or tax credit, the applicant must prove not only entitlement to the grant of the claim under substantive law, he must also show satisfaction of all the documentary and evidentiary requirements for an administrative claim for a refund or tax credit and compliance with the invoicing and accounting requirements mandated by the NIRC, as well as by revenue regulations implementing them. The NIRC requires that the creditable input VAT should be evidenced by a VAT invoice or official receipt,[45] which may only be considered as such when the TIN-VAT is printed thereon, as required by Section 4.108-1 of RR 7-95.

The Court's pronouncement in *Kepco Philippines Corp. v. Commissioner of Internal Revenue*[46] is instructive:

> Furthermore, Kepco insists that Section 4.108-1 of Revenue Regulation 07-95 does not require the word "TIN-VAT" to be imprinted on a VAT-registered person's supporting invoices and official receipts and so there is no reason for the denial of its ₱4,720,725.63 claim of input tax.
>
> In this regard, Internal Revenue Regulation 7-95 (Consolidated Value-Added Tax Regulations) is clear. Section 4.108-1 thereof reads:
>
> > Only VAT registered persons are required to print their TIN followed by the word "VAT" in their invoice or receipts and this shall be considered as a "VAT" Invoice. All purchases covered by invoices other than 'VAT Invoice' shall not give rise to any input tax.

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[44] 687 Phil. 328, 340 (2012), citations omitted.

[45] *Id*., citing Section 110. *Tax Credits.* —

A. *Creditable Input Tax.* —

(1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:

x x x x x x x x x

[46] 650 Phil. 525 (2010).

Contrary to Kepco's allegation, the regulation specifically requires the VAT registered person to imprint TIN-VAT on its invoices or receipts. Thus, the Court agrees with the CTA when it wrote: "[T]o be considered a 'VAT invoice,' the TIN-VAT must be printed, and not merely stamped. Consequently, purchases supported by invoices or official receipts, wherein the TIN-VAT is not printed thereon, shall not give rise to any input VAT. Likewise, input VAT on purchases supported by invoices or official receipts which are NON-VAT are disallowed because these invoices or official receipts are not considered as 'VAT Invoices.'"[47]

In the same vein, considering that the subject invoice/official receipts are not imprinted with the taxpayer's TIN followed by the word VAT, these would not be considered as VAT invoices/official receipts and would not give rise to any creditable input VAT in favor of Sitel.

At this juncture, it bears to emphasize that "[t]ax refunds or tax credits – just like tax exemptions – are strictly construed against taxpayers, the latter having the burden to prove strict compliance with the conditions for the grant of the tax refund or credit."[48]

WHEREFORE, premises considered, the instant petition for review is **GRANTED IN PART.** The Decision dated November 11, 2011 and Resolution dated March 28, 2012 of the CTA *En Banc* in CTA EB No. 644 are hereby **REVERSED and SET ASIDE**. Accordingly, the October 21, 2009 Decision of the CTA First Division in CTA Case No. 7423 is hereby **REINSTATED**.

Respondent is hereby **ORDERED TO REFUND** or, in the alternative, **TO ISSUE A TAX CREDIT CERTIFICATE**, in favor of the petitioner in the amount of ₱11,155,276.59,

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[47] *Id.* at 540-541.

[48] *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation (now TeaM Energy Corporation)*, G.R. No. 180434, January 20, 2016, p. 9, citing *Applied Food Ingredients Company, Inc. v. Commissioner of Internal Revenue*, 720 Phil. 782, 789 (2013).

representing unutilized input VAT arising from purchases/ importations of capital goods for taxable year 2004.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 202597. February 8, 2017]

SPOUSES SERGIO C. PASCUAL and EMMA SERVILLION PASCUAL, *petitioners, vs.* **FIRST CONSOLIDATED RURAL BANK (BOHOL), INC., ROBINSONS LAND CORPORATION and ATTY. ANTONIO P. ESPINOSA, Register of Deeds, Butuan City,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; 2009 INTERNAL RULES OF THE COURT OF APPEALS; MOTIONS SENT THROUGH PRIVATE MESSENGERIAL SERVICES ARE DEEMED FILED ON THE DATE OF THE COURT OF APPEAL'S RECEIPT OF THE SAME.—** The petitioners received the assailed resolution of November 16, 2011 on November 24, 2011. Under Section 1, Rule 52 of the *Rules of Court*, they had 15 days from receipt (or until December 9, 2011) within which to move for its reconsideration or to appeal to the Supreme Court. They dispatched the *Motion for Reconsideration (on the Resolution dated 16 November 2011)* on December 9, 2011 through private courier (LBC). The CA actually received the motion on December 12, 2011. Considering that Section 1(d) of Rule III of the *2009 Internal Rules of the Court of Appeals*

provided that motions sent through private messengerial services are deemed filed on the date of the CA's *actual receipt* of the same, the motion was already filed out of time by December 12, 2011. Needless to remind, the running of the period of appeal of the final resolution promulgated on November 16, 2011 was not stopped, rendering the assailed resolution final and executory by operation of law.

2. ID.; SUMMARY JUDGMENTS; THE FILING OF THE MOTION FOR SUMMARY JUDGMENT MAY BE DONE PRIOR TO THE PRE-TRIAL.— We consider it erroneous on the part of the CA to declare that "it is only at the pre-trial that the rules allow the courts to render judgment on the pleadings and summary judgment, as provided by Section 2(g) of Rule 18 of the Rules of Court." The filing of the motion for summary judgment may be done prior to the pre-trial. Section 1, Rule 35 of the *Rules of Court* permits a party seeking to recover upon a claim, counterclaim, or cross-claim or seeking declaratory relief to file the motion for a summary judgment upon all or any part thereof in his favor (and its supporting affidavits, depositions or admissions) "*at any time after the pleading in answer thereto has been served*"; while Section 2 of Rule 35 instructs that a party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory relief is sought may file the motion for summary judgment (and its supporting affidavits, depositions or admissions) upon all or any part thereof "*at any time*." As such, the petitioners properly filed their motion for summary judgment prior to the pre-trial (assuming that they thereby complied with the requirement of supporting affidavits, depositions or admissions).

3. ID.; ID.; WHERE THE FACTS PLEADED BY THE PARTIES ARE DISPUTED OR CONTESTED, PROCEEDINGS FOR A SUMMARY JUDGMENT CANNOT TAKE THE PLACE OF A TRIAL, AND THE PARTY MOVING FOR THE SUMMARY JUDGMENT HAS THE BURDEN OF CLEARLY DEMONSTRATING THE ABSENCE OF ANY GENUINE ISSUE OF FACT.— We remind that the summary judgment is a procedural technique that is proper under Section 3, Rule 35 of the *Rules of Court* only if there is no genuine issue as to the existence of a material fact, and that the moving party is entitled to a judgment as a matter of law. It is a method intended to expedite or promptly dispose of cases

where the facts appear undisputed and certain from the pleadings, depositions, admissions, and affidavits on record. The term *genuine issue* is defined as an issue of fact that calls for the presentation of evidence as distinguished from an issue that is sham, fictitious, contrived, set up in bad faith and patently unsubstantial so as not to constitute a genuine issue for trial. The court can determine this on the basis of the pleadings, admissions, documents, affidavits, and/or counter-affidavits submitted by the parties to the court. Where the facts pleaded by the parties are disputed or contested, proceedings for a summary judgment cannot take the place of a trial. The party moving for the summary judgment has the burden of clearly demonstrating the absence of any genuine issue of fact. Upon the plaintiff rests the burden to prove the cause of action, and to show that the defense is interposed solely for the purpose of delay. After the plaintiffs burden has been discharged, the defendant has the burden to show facts sufficient to entitle him to defend.

4. ID.; ID.; THE PRE-TRIAL JUDGE CANNOT *MOTU PROPRIO* RENDER THE JUDGMENT ON THE PLEADINGS OR SUMMARY JUDGMENT.— The CA could have misconceived the text of Section 2(g), Rule 18 of the *Rules of Court* x x x. To be clear, the rule only spells out that unless the motion for such judgment has earlier been filed the pre-trial *may be* the occasion in which the court considers the propriety of rendering judgment on the pleadings or summary judgment. If no such motion was earlier filed, the pre-trial judge may then indicate to the proper party to initiate the rendition of such judgment *by filing the necessary motion*. Indeed, such motion is required by either Rule 34 (*Judgment on the Pleadings*) or Rule 35 (*Summary Judgment*) of the *Rules of Court*. The pre-trial judge cannot *motu proprio* render the judgment on the pleadings or summary judgment In the case of the motion for summary judgment, the adverse party is entitled to counter the motion.

5. ID.; PRE-TRIAL; THE INACTION ON THE PARTIES' MOTION DOES NOT JUSTIFY THEIR NON-APPEARANCE WITH THEIR COUNSEL AT THE PRE-TRIAL, AS WELL AS THEIR INABILITY TO FILE THEIR PRE-TRIAL BRIEF, AS THE APPEARANCE OF THE PARTIES AT THE PRE-TRIAL WITH THEIR COUNSEL

IS MANDATORY.— Even so, the petitioners cannot validly insist that the CA should have first resolved their *Motion for Summary Judgment* before holding the pre- trial. They could not use the inaction on their motion to justify their non-appearance with their counsel at the pre-trial, as well as their inability to file their pre-trial brief. In that regard, their appearance at the pre-trial with their counsel was mandatory. x x x. A.M. No. 03-1-09-SC (*Guidelines to be Observed by Trial Court Judges and Clerks of Court in the Conduct of Pre-Trial and Use of Deposition-Discovery Measures*) — adopted for the purpose of abbreviating court proceedings, ensuring the prompt disposition of cases, decongesting court dockets, and further implementing the pre-trial guidelines laid down in Administrative Circular No. 3-99 — similarly underscored the mandatory character of the pre-trial, and reiterated under its heading *Pre-Trial* in civil cases that, among others, the trial court could then determine "the propriety of rendering a summary judgment dismissing the case based on the disclosures made at the pre-trial or a judgment based on the pleadings, evidence identified and admissions made during pre-trial." As such, they could have urged the trial court to resolve their pending *Motion for Summary Judgment* during the pre-trial.

APPEARANCES OF COUNSEL

Froilan Montero Law Office for petitioners.

Battad Ricaforte & Rabor Law Office for respondent First Consolidated Rural Bank (Bohol).

Estrada And Associates Law Office for respondent Robinson's Land Corp.

D E C I S I O N

BERSAMIN, *J.*:

On February 14, 2011, the petitioners filed a petition for annulment of judgment in the Court of Appeals (CA) in order to nullify and set aside the decision rendered in Special Proceedings Case No. 4577 by the Regional Trial Court in Butuan City (RTC) ordering the cancellation of their notice of *lis pendens*

recorded in Transfer Certificate of Title No. RT-42190 of the Register of Deeds of Butuan City.[1]

After the responsive pleadings to the petition were filed, the CA scheduled the preliminary conference on October 4, 2011, and ordered the parties to file their respective pre-trial briefs.[2] Instead of filing their pre-trial brief, the petitioners filed a *Motion for Summary Judgment* and a *Motion to Hold Pre-Trial in Abeyance*.[3] At the scheduled preliminary conference, the petitioners and their counsel did not appear.[4]

On November 16, 2011, the CA promulgated the first assailed resolution dismissing the petition for annulment of judgment,[5] stating:

> Section 4 through 6 of Rule 18 of the Rules of Court provide, *viz:*
>
> **Sec. 4.** *Appearance of parties*. – It shall be the duty of the parties and their counsel to appear at the pre-trial. The non-appearance of a party may be excused only if a valid cause is shown therefor or if a representative shall appear in his behalf fully authorized in writing to enter into an amicable settlement, to submit to alternative modes of dispute resolution, and to enter into stipulations or admission of facts and of documents.
>
> **Sec. 5.** *Effect of failure to appear*. – The failure of the plaintiff to appear when so required pursuant to the next preceding section shall be cause for dismissal of the action. The dismissal shall be with prejudice, unless otherwise ordered by the court. A similar failure on the part of the defendant shall be cause to allow the plaintiff to present his evidence *ex parte* and the court to render judgment on the basis thereof.

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[1] *Rollo*, p. 8.

[2] *Id*.

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

[4] *Id*. at 31.

[5] *Id*. at 31-34; penned by Associate Edgardo T. Lloren and concurred in by Associate Justice Romulo V. Borja and Associate Justice Zenaida T. Galapate-Laguilles.

> **Sec. 6.** *Pre-trial brief.* – x x x
>
> Failure to file the pre-trial brief shall have the same effect as failure to appear at the pre-trial.

Petitioners, instead of complying with our order, filed the twin motions, averring that it behooves us to rule first on their motions before pre-trial could be conducted, "especially with the incompatibility of a pending *Motion for Summary Judgment* vis-à-vis the conduct of pre-trial conference."

Considering that a *Petition for Annulment of Judgment* is an original action before the Court of Appeals, pre-trial is mandatory, per Section 6 of Rule 47 of the Rules of Court, whereby the failure of the plaintiff to appear would mean dismissal of the action with prejudice. The filing of a pre-trial brief has the same import.

In fact, contrary to petitioners' assertion, it is only at the pre-trial that the rules allow the courts to render judgment on the pleadings and summary judgment, as provided by Section 2 (g) of Rule 18 of the Rules of Court, *viz*:

> **Sec. 2.** *Nature and purpose. – The pre-trial is mandatory. The court shall consider:*
>
> x x x x x x x x x
>
> (g) The propriety of rendering judgment on the pleadings, or summary judgment, or of dismissing the action should a valid ground therefor be found to exist.

Moreover, in an *Order* dated October 20, 2011, we noted petitioners and counsel's special appearance *via* a new counsel, but failed to accept the same as the latter was not armed with the appropriate documents to appear as such. Therefore, it was as if petitioners did not appear during the Preliminary Conference.

It is not for the petitioners to arrogate whether or not pre-trial may be suspended or dispensed with, or that their motions be resolved first, as the same are discretionary upon the court taking cognizance of the petition. Furthermore, their failure to furnish private respondent Robinsons Land Corporation a copy of their *Motion for Reconsideration* of our denial of their TRO and/or WPI, and to submit proof of service thereof to this court is tantamount to failure to obey lawful orders of the court.

This we cannot countenance. Strict compliance with the Rules is indispensable for the prevention of needless delays and the promotion of orderly and expeditious dispatch of judicial business. Hence, petitioners' failure to comply with our directives merits dismissal of their petition. We find support in the provision of Section 1 of Rule 50 of the Rules of Court, *viz:*

> **Sec. 1.** *Grounds for dismissal of appeal.*
>
> x x x x x x x x x
>
> (h) Failure of the appellant to appear at the preliminary conference under Rule 48, or to comply with orders, circulars, or directives of the court without justifiable cause…

The Supreme Court has invariably ruled that while "litigation is not a game of technicalities," it is equally important that every case must be prosecuted in accordance with the procedure to insure an orderly and speedy administration of justice.[6]

Aggrieved, the petitioners filed their *Motion for Reconsideration (on the Resolution dated 16 November 2011)*,[7] which the CA denied on January 9, 2012 for being filed out of time.[8] Unrelenting, they presented a *Respectful Motion for Reconsideration (on the Resolution dated 9 January 2012)*, which the CA also denied on June 20, 2012.[9]

Hence, this appeal by petition for review on *certiorari*.

Ruling of the Court

We deny the petition for review for its lack of merit.

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

[7] *Id*. at 98-106.

[8] *Id*. at 36.

[9] *Id*. at 39-41.

1.

Motions and other papers sent to the CA by private messengerial services are deemed filed on the date of the CA's actual receipt

The petitioners received the assailed resolution of November 16, 2011 on November 24, 2011.[10] Under Section 1, Rule 52 of the *Rules of Court*,[11] they had 15 days from receipt (or until December 9, 2011) within which to move for its reconsideration or to appeal to the Supreme Court. They dispatched the *Motion for Reconsideration (on the Resolution dated 16 November 2011)* on December 9, 2011 through private courier (LBC). The CA actually received the motion on December 12, 2011.[12] Considering that Section 1(d) of Rule III of the *2009 Internal Rules of the Court of Appeals* provided that motions sent through private messengerial services are deemed filed on the date of the CA's *actual receipt* of the same,[13] the motion was already filed out of time by December 12, 2011.

Needless to remind, the running of the period of appeal of the final resolution promulgated on November 16, 2011 was

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[10] *Id*. at 7.

[11] Section 1. *Period for Filing*. — A party may file a motion for reconsideration of a judgment or final resolution within fifteen (15) days from notice thereof, with proof of service on the adverse party. (n)

[12] *Rollo,* p. 36.

[13] Section 1(d) of Rule III of the *2009 Internal Rules of the Court of Appeals* provides:

x x x x x x x x x

(d) Pleadings, motions and other papers may also be filed by ordinary mail, private messengerial service or any mode other than personal delivery and registered mail as may be allowed by law or the Rules. However, **they shall be deemed filed on the date and time of receipt by the Court, which shall be legibly stamped by the receiving clerk on the first page thereof and on the envelope containing the same, and signed by him/her**. (Sec. 4, Rule 3, RIRCA[a])

not stopped, rendering the assailed resolution final and executory by operation of law.[14]

2.

Although motions for summary judgment can be filed before the pre-trial, their non-resolution prior to the pre-trial should not prevent the holding of the pre-trial

The petitioners contend that their *Motion for Summary Judgment* and *Motion to Hold Pre-Trial in Abeyance* needed to be first resolved before the pre-trial could proceed; that the CA erred in declaring that "it is only at the pre-trial that the rules allow the courts to render judgment on the pleadings and summary judgment, as provided by Section 2(g) of Rule 18 of the Rules of Court;" and that the CA overlooked their submission in their *Opposition with Explanation* to the effect that Section 2(g), Rule 18 of the *Rules of Court* was superseded by Administrative Circular No. 3-99 dated January 15, 1999 and A.M. No. 03-1-09-SC dated August 16, 2004.

The petitioners' contentions have no merit.

We consider it erroneous on the part of the CA to declare that "it is only at the pre-trial that the rules allow the courts to render judgment on the pleadings and summary judgment, as provided by Section 2(g) of Rule 18 of the Rules of Court." The filing of the motion for summary judgment may be done prior to the pre-trial. Section 1, Rule 35 of the *Rules of Court* permits a party seeking to recover upon a claim, counterclaim, or cross-claim or seeking declaratory relief to file the motion for a summary judgment upon all or any part thereof in his favor (and its supporting affidavits, depositions or admissions) "*at any time after the pleading in answer thereto has been served*;" while Section 2 of Rule 35 instructs that a party against whom a claim, counterclaim, or cross-claim is asserted or a

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[14] *Ibasco v. Private Development Corporation of the Philippines*, G.R. No. 162473, October 12, 2009, 603 SCRA 317, 320.

declaratory relief is sought may file the motion for summary judgment (and its supporting affidavits, depositions or admissions) upon all or any part thereof "*at any time*." As such, the petitioners properly filed their motion for summary judgment prior to the pre-trial (assuming that they thereby complied with the requirement of supporting affidavits, depositions or admissions).

We remind that the summary judgment is a procedural technique that is proper under Section 3, Rule 35 of the *Rules of Court* only if there is no genuine issue as to the existence of a material fact, and that the moving party is entitled to a judgment as a matter of law.[15] It is a method intended to expedite or promptly dispose of cases where the facts appear undisputed and certain from the pleadings, depositions, admissions, and affidavits on record.[16] The term *genuine issue* is defined as an issue of fact that calls for the presentation of evidence as distinguished from an issue that is sham, fictitious, contrived, set up in bad faith and patently unsubstantial so as not to constitute a genuine issue for trial. The court can determine this on the basis of the pleadings, admissions, documents, affidavits, and/or counter-affidavits submitted by the parties to the court. Where the facts pleaded by the parties are disputed or contested, proceedings for a summary judgment cannot take the place of a trial.[17] The party moving for the summary judgment has the burden of clearly demonstrating the absence of any genuine

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[15] See *Solid Manila Corporation v. Bio Hong Trading Co., Inc.*, G.R. No. 90596, April 8, 1991, 195 SCRA 748, 756; *Arradaza v. Court of Appeals*, G.R. No. 50422, February 8, 1989, 170 SCRA 12, 20; *De Leon v. Faustino*, L-15804, 110 Phil. 249, 253 (1960).

[16] *Bayang v. Court of Appeals*, G.R. No. 53564, February 27, 1987, 148 SCRA 91, 94; *Viajara v. Estenzo*, No. L-43882, April 30, 1979, 89 SCRA 685, 696.

[17] *Excelsa Industries, Inc. v. Court of Appeals*, G.R. No. 105455, August 23, 1995, 247 SCRA 560, 566; citing *Paz v. Court of Appeals*, G.R. No. 85332, January 11, 1990, 181 SCRA 26, 30; *Caderao v. Estenzo*, No. L-42408, September 21, 1984, 132 SCRA 93, 100.

issue of fact.[18] Upon the plaintiff rests the burden to prove the cause of action, and to show that the defense is interposed solely for the purpose of delay. After the plaintiff's burden has been discharged, the defendant has the burden to show facts sufficient to entitle him to defend.[19]

The CA could have misconceived the text of Section 2(g), Rule 18 of the *Rules of Court*, to wit:

> Section 2. *Nature and purpose*. — The pre-trial is mandatory. The court shall consider:
>
> x x x x x x x x x
>
> (g) The propriety of rendering judgment on the pleadings, or summary judgment, or of dismissing the action should a valid ground therefor be found to exist;
>
> x x x x x x x x x

To be clear, the rule only spells out that unless the motion for such judgment has earlier been filed the pre-trial *may be* the occasion in which the court considers the propriety of rendering judgment on the pleadings or summary judgment. If no such motion was earlier filed, the pre-trial judge may then indicate to the proper party to initiate the rendition of such judgment *by filing the necessary motion*. Indeed, such motion is required by either Rule 34[20] (*Judgment on the Pleadings*) or

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[18] *Excelsa Industries, Inc. v. Court of Appeals*, *supra* at 566-567, citing *Viajar v. Estenzo*, *supra* at 697; and *Paz v. Court of Appeals*, *supra* at 31.

[19] *Excelsa Industries, Inc. v. Court of Appeals*, *supra* at 567, citing *Estrada v. Consolacion*, No. L-40948, June 29, 1976, 71 SCRA 523, 529.

[20] Section 1. *Judgment on the pleadings*. — Where an answer fails to tender an issue, or otherwise admits the material allegations of the adverse party's pleading, the court may, **on motion of that party**, direct judgment on such pleading. However, in actions for declaration of nullity or annulment of marriage or for legal separation, the material facts alleged in the complaint shall always be proved. (1a, R19)

Rule 35[21] (*Summary Judgment*) of the *Rules of Court*. The pre-trial judge cannot *motu proprio* render the judgment on the pleadings or summary judgment. In the case of the motion for summary judgment, the adverse party is entitled to counter the motion.

Even so, the petitioners cannot validly insist that the CA should have first resolved their *Motion for Summary Judgment* before holding the pre-trial. They could not use the inaction on their motion to justify their non-appearance with their counsel at the pre-trial, as well as their inability to file their pre-trial brief. In that regard, their appearance at the pre-trial with their counsel was mandatory.

The petitioners argue that their non-appearance was not mandatory, positing that Section 2(g), Rule 18 of the *Rules of Court* had been amended by Administrative Circular No. 3-99 and A.M. No. 03-1-09-SC issued on July 13, 2004 but effective on August 16, 2004.

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[21] Section 1. *Summary judgment for claimant*. — A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory relief may, at any time after the pleading in answer thereto has been served, **move with supporting affidavits, depositions or admissions for a summary judgment** in his favor upon all or any part thereof. (1a, R34)

Sec. 2. *Summary judgment for defending party*. — A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory relief is sought **may, at any time, move with supporting affidavits, depositions or admissions for a summary judgment in his favor as to all or any part thereof**. (2a, R34)

Sec. 3. *Motion and proceedings thereon*. — **The motion shall be served at least ten (10) days before the time specified for the hearing**. The adverse party may serve opposing affidavits, depositions, or admissions at least three (3) days before the hearing. After the hearing, the judgment sought shall be rendered forthwith if the pleadings, supporting affidavits, depositions, and admissions on file, show that, except as to the amount of damages, there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. (3a, R34)

The petitioners' argument was unwarranted.

Administrative Circular No. 3-99 dated January 15, 1999 still affirmed the mandatory character of the pre-trial, to wit:

x x x x x x x x x

V. The mandatory continuous trial system in civil cases contemplated in Administrative Circular No. 4, dated 22 September 1988, and the guidelines provided for in Circular No. 1-89, dated 19 January 1989, must be effectively implemented. For expediency, these guidelines in civil cases are hereunder restated with modifications, taking into account the relevant provisions of the 1997 Rules of Civil Procedure:

A. *Pre-Trial*

x x x x x x x x x

6. Failure of the plaintiff to appear at the pre-trial shall be a cause for dismissal of the action. A similar failure of the defendant shall be a cause to allow the plaintiff to present his evidence *ex-parte* and the court to render judgment on the basis thereof. (Underlining supplied for emphasis)

A.M. No. 03-1-09-SC (*Guidelines to be Observed by Trial Court Judges and Clerks of Court in the Conduct of Pre-Trial and Use of Deposition-Discovery Measures*) – adopted for the purpose of abbreviating court proceedings, ensuring the prompt disposition of cases, decongesting court dockets, and further implementing the pre-trial guidelines laid down in Administrative Circular No. 3-99 – similarly underscored the mandatory character of the pre-trial, and reiterated under its heading *Pre-Trial* in civil cases that, among others, the trial court could then determine "the propriety of rendering a summary judgment dismissing the case based on the disclosures made at the pre-trial or a judgment based on the pleadings, evidence identified and admissions made during pre-trial."[22] As such, they could have urged the trial court to resolve their pending *Motion for Summary Judgment* during the pre-trial.

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[22] A.M. No. 03-1-09-SC, I,A,5,h.

WHEREFORE, the Court **AFFIRMS** the assailed resolutions of the Court of Appeals promulgated in CA-G.R. SP No. 04020-MIN; and **ORDERS** the petitioners to pay the costs of suit.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Reyes, Jardeleza,* and *Caguioa,*[*] *JJ.,* concur.

SECOND DIVISION

[G.R. No. 212038. February 8, 2017]

SPOUSES JESUS FERNANDO and ELIZABETH S. FERNANDO, *petitioners, vs.* **NORTHWEST AIRLINES, INC.,** *respondent.*

[G.R. No. 212043. February 8, 2017]

NORTHWEST AIRLINES, INC., *petitioner, vs.* **SPOUSES JESUS FERNANDO and ELIZABETH S. FERNANDO,** *respondents.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; COMMON CARRIERS; CONTRACT OF CARRIAGE,

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[*] Designated as additional Member of the Third Division per Special Order No. 2417 dated January 4, 2017.

DEFINED; WHEN AN AIRLINE ISSUES A TICKET TO A PASSENGER CONFIRMED FOR A PARTICULAR FLIGHT ON A CERTAIN DATE, A CONTRACT OF CARRIAGE ARISES; THE PASSENGER THEN HAS EVERY RIGHT TO EXPECT THAT HE WOULD FLY ON THAT FLIGHT AND ON THAT DATE; IF HE DOES NOT, THEN THE CARRIER OPENS ITSELF TO A SUIT FOR BREACH OF CONTRACT OF CARRIAGE.— The Fernandos' cause of action against Northwest stemmed from a breach of contract of carriage. A contract is a meeting of minds between two persons whereby one agrees to give something or render some service to another for a consideration. There is no contract unless the following requisites concur: (1) consent of the contracting parties; (2) an object certain which is the subject of the contract; and (3) the cause of the obligation which is established. A contract of carriage is defined as one whereby a certain person or association of persons obligate themselves to transport persons, things, or goods from one place to another for a fixed price. Under Article 1732 of the Civil Code, this "persons, corporations, firms, or associations engaged in the business of carrying or transporting passengers or goods or both, by land, water, or air, for compensation, offering their services to the public" is called a common carrier. Undoubtedly, a contract of carriage existed between Northwest and the Fernandos. They voluntarily and freely gave their consent to an agreement whose object was the transportation of the Fernandos from LA to Manila, and whose cause or consideration was the fare paid by the Fernandos to Northwest. In *Alitalia Airways v. CA, et al.*, We held that when an airline issues a ticket to a passenger confirmed for a particular flight on a certain date, a contract of carriage arises. The passenger then has every right to expect that he would fly on that flight and on that date. If he does not, then the carrier opens itself to a suit for breach of contract of carriage. When Northwest confirmed the reservations of the Fernandos, it bound itself to transport the Fernandos on their flight on 29 January 2002.

2. ID.; ID.; ID.; IN AN ACTION BASED ON A BREACH OF CONTRACT OF CARRIAGE, THE AGGRIEVED PARTY DOES NOT HAVE TO PROVE THAT THE COMMON CARRIER WAS AT FAULT OR WAS NEGLIGENT; ALL

THAT HE HAS TO PROVE IS THE EXISTENCE OF THE CONTRACT AND THE FACT OF ITS NON-PERFORMANCE BY THE CARRIER.— In an action based on a breach of contract of carriage, the aggrieved party does not have to prove that the common carrier was at fault or was negligent. All that he has to prove is the existence of the contract and the fact of its non-performance by the carrier. As the aggrieved party, the Fernandos only had to prove the existence of the contract and the fact of its non-performance by Northwest, as carrier, in order to be awarded compensatory and actual damages. Therefore, having proven the existence of a contract of carriage between Northwest and the Fernandos, and the fact of non-performance by Northwest of its obligation as a common carrier, it is clear that Northwest breached its contract of carriage with the Fernandos. Thus, Northwest opened itself to claims for compensatory, actual, moral and exemplary damages, attorney's fees and costs of suit.

3. **ID.; ID.; ID.; A COMMON CARRIER IS BOUND TO CARRY THE PASSENGERS SAFELY AS FAR AS HUMAN CARE AND FORESIGHT CAN PROVIDE, USING THE UTMOST DILIGENCE OF VERY CAUTIOUS PERSONS, WITH DUE REGARD FOR ALL THE CIRCUMSTANCES; FAILURE TO PROVIDE PASSENGERS THE PROPER AND ADEQUATE ASSISTANCE TO AVOID ANY DELAY AND INCONVENIENCE CONSTITUTE A BREACH OF CONTRACT OF CARRIAGE.—** Article 1733 of the New Civil Code provides that common carriers, from the nature of their business and for reasons of public policy, are bound to observe extraordinary diligence in the vigilance over the goods and for the safety of the passengers transported by them, according to all the circumstances of each case. Also, Article 1755 of the same Code states that a common carrier is bound to carry the passengers safely as far as human care and foresight can provide, using the utmost diligence of very cautious persons, with due regard for all the circumstances. We, thus, sustain the findings of the CA and the RTC that Northwest committed a breach of contract "in failing to provide the spouses with the proper assistance to avoid any inconvenience" and that the actuations of Northwest in both subject incidents "fall short of the utmost diligence of a very cautious person expected of it".

Both ruled that considering that the Fernandos are not just ordinary passengers but, in fact, frequent flyers of Northwest, the latter should have been more courteous and accommodating to their needs so that the delay and inconveniences they suffered could have been avoided. Northwest was remiss in its duty to provide the proper and adequate assistance to them.

4. ID.; ID.; ID.; BAD FAITH DOES NOT SIMPLY CONNOTE BAD JUDGMENT OR NEGLIGENCE, BUT THE SAME MEANS A BREACH OF A KNOWN DUTY THROUGH SOME MOTIVE, INTEREST OR ILL WILL THAT PARTAKES OF THE NATURE OF FRAUD, AND A FINDING THEREOF ENTITLES THE OFFENDED PARTY TO MORAL DAMAGES.— [W]e are not in accord with the common finding of the CA and the RTC when both ruled out bad faith on the part of Northwest. While We agree that the discrepancy between the date of actual travel and the date appearing on the tickets of the Fernandos called for some verification, however, the Northwest personnel failed to exercise the utmost diligence in assisting the Fernandos. The actuations of Northwest personnel in both subject incidents are constitutive of bad faith. x x x. Bad faith does not simply connote bad judgment or negligence. It imports a dishonest purpose or some moral obliquity and conscious doing of a wrong. It means breach of a known duty through some motive, interest or ill will that partakes of the nature of fraud. A finding of bad faith entitles the offended party to moral damages.

5. ID.; ID.; ID.; THE PASSENGERS ARE ENTITLED TO BE PROTECTED AGAINST PERSONAL MISCONDUCT, INJURIOUS LANGUAGE, INDIGNITIES AND ABUSES FROM THE CARRIER'S EMPLOYEES, AND ANY RUDE OR DISCOURTEOUS CONDUCT ON THE PART OF CARRIER'S EMPLOYEES TOWARDS A PASSENGER GIVES THE LATTER AN ACTION FOR DAMAGES AGAINST THE CARRIER.— Passengers do not contract merely for transportation. They have a right to be treated by the carrier's employees with kindness, respect, courtesy and due consideration. They are entitled to be protected against personal misconduct, injurious language, indignities and abuses from such employees. So it is, that any

rude or discourteous conduct on the part of employees towards a passenger gives the latter an action for damages against the carrier. In requiring compliance with the standard of extraordinary diligence, a standard which is, in fact, that of the highest possible degree of diligence, from common carriers and in creating a presumption of negligence against them, the law seeks to compel them to control their employees, to tame their reckless instincts and to force them to take adequate care of human beings and their property. Notably, after the incident, the Fernandos proceeded to a Northwest Ticket counter to verify the status of the ticket and they were assured that the ticked remained unused and perfectly valid. And, to avoid any future problems that may be encountered on the validity of the ticket, a new ticket was issued to Jesus Fernando. The failure to promptly verify the validity of the ticket connotes bad faith on the part of Northwest.

6. ID.; ID.; DAMAGES; MORAL DAMAGES; AWARDED IN BREACHES OF CONTRACT WHERE IT IS SHOWN THAT THE DEFENDANT ACTED FRAUDULENTLY OR IN BAD FAITH; IN THE AWARD OF MORAL DAMAGES, THE SOCIAL AND FINANCIAL STANDING OF A CLAIMANT MAY BE CONSIDERED IF HE OR SHE WAS SUBJECTED TO CONTEMPTUOUS CONDUCT DESPITE THE OFFENDER'S KNOWLEDGE OF HIS OR HER SOCIAL AND FINANCIAL STANDING.— Under Article 2220 of the Civil Code of the Philippines, an award of moral damages, in breaches of contract, is in order upon a showing that the defendant acted fraudulently or in bad faith. Clearly, in this case, the Femandos are entitled to an award of moral damages. The purpose of awarding moral damages is to enable the injured party to obtain means, diversion or amusement that will serve to alleviate the moral suffering he has undergone by reason of defendant's culpable action. We note that even if both the CA and the RTC ruled out bad faith on the part of Northwest, the award of "some moral damages" was recognized. Both courts believed that considering that the Fernandos are good clients of Northwest for almost ten (10) years being Elite Platinum World Perks Card holders, and are known in their business circle, they should have been given by Northwest the corresponding special treatment. They own hotels and a chain of apartelles in the country, and a parking garage building in

Indiana, USA. From this perspective, We adopt the said view. We, thus, increase the award of moral damages to the Fernandos in the amount of ₱3,000,000.00. As held in *Kierulf v. Court of Appeals*, the social and financial standing of a claimant may be considered if he or she was subjected to contemptuous conduct despite the offender's knowledge of his or her social and financial standing.

7. ID.; ID.; ID.; EXEMPLARY DAMAGES; MAY BE RECOVERED IN CONTRACTUAL OBLIGATIONS, IF DEFENDANT ACTED IN WANTON, FRAUDULENT, RECKLESS, OPPRESSIVE, OR MALEVOLENT MANNER.— Exemplary damages, which are awarded by way of example or correction for the public good, may be recovered in contractual obligations, if defendant acted in wanton, fraudulent, reckless, oppressive, or malevolent manner. They are designed by our civil law to permit the courts to reshape behavior that is socially deleterious in its consequence by creating negative incentives or deterrents against such behavior. Hence, given the facts and circumstances of this case, We hold Northwest liable for the payment of exemplary damages in the amount of ₱2,000,000.00.

8. ID.; ID.; ID.; THE CONTRACT OF AIR CARRIAGE GENERATES A RELATION ATTENDED WITH A PUBLIC DUTY; THUS NEGLECT OR MALFEASANCE OF THE CARRIER'S EMPLOYEES IS A GROUND FOR AN ACTION FOR DAMAGES.— Time and again, We have declared that a contract of carriage, in this case, air transport, is primarily intended to serve the traveling public and thus, imbued with public interest. The law governing common carriers consequently imposes an exacting standard of conduct. A contract to transport passengers is quite different in kind and degree from any other contractual relation because of the relation which an air-carrier sustains with the public. Its business is mainly with the travelling public. It invites people to avail of the comforts and advantages it offers. The contract of air carriage, therefore, generates a relation attended with a public duty. Neglect or malfeasance of the carrier's employees, naturally, could give ground for an action for damages.

9. ID.; ID.; ID.; ATTORNEY'S FEES; MAY BE AWARDED WHEN EXEMPLARY DAMAGES ARE AWARDED, OR

A PARTY IS COMPELLED TO LITIGATE OR INCUR EXPENSES TO PROTECT HIS INTEREST, OR WHERE THE DEFENDANT ACTED IN GROSS AND EVIDENT BAD FAITH IN REFUSING TO SATISFY THE PLAINTIFF'S PLAINLY VALID, JUST AND DEMANDABLE CLAIM.— As to the payment of attorney's fees, We sustain the award thereof on the ground that the Fernandos were ultimately compelled to litigate and incurred expenses to protect their rights and interests, and because the Fernandos are entitled to an award for exemplary damages. Pursuant to Article 2208 of the Civil Code, attorney's fees may be awarded when exemplary damages are awarded, or a party is compelled to litigate or incur expenses to protect his interest, or where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim. Records show that the Fernandos demanded payment for damages from Northwest even before the filing of this case in court. Clearly, the Fernandos were forced to obtain the services of counsel to enforce a just claim, for which they should be awarded attorney's fees. We deem it just and equitable to grant an award of attorney's fees equivalent to 10% of the damages awarded.

10. ID.; ID.; ID.; ID.; THE COMMENCEMENT OF AN ACTION DOES NOT *PER SE* MAKE THE ACTION WRONGFUL AND SUBJECT THE ACTION TO DAMAGES, FOR THE LAW COULD NOT HAVE MEANT TO IMPOSE A PENALTY ON THE RIGHT TO LITIGATE.— [T]he counterclaim of Northwest in its Answer is a compulsory counterclaim for damages and attorney's fees arising from the filing of the complaint. This compulsory counterclaim of Northwest arising from the filing of the complaint may not be granted inasmuch as the complaint against it is obviously not malicious or unfounded. It was filed by the Fernandos precisely to claim their right to damages against Northwest. Well-settled is the rule that the commencement of an action does not *per se* make the action wrongful and subject the action to damages, for the law could not have meant to impose a penalty on the right to litigate.

APPEARANCES OF COUNSEL

Castro Canilao & Associates for Sps. Jesus Fernando and Elizabeth Fernando.

Quisumbing Torres for Northwest Airlines, Inc.

D E C I S I O N

PERALTA, ***J.*:**

Before us are consolidated petitions for review on *certiorari* under Rule 45 of the Rules of Court assailing the Decision[1] dated August 30, 2013, and Resolution[2] dated March 31, 2014 of the Court of Appeals (*CA*) in CA-G.R. CV No. 93496 which affirmed the Decision[3] dated September 9, 2008 of the Regional Trial Court (*RTC*), Branch 97, Quezon City in Civil Case No. Q-N-02-46727 finding Northwest Airlines, Inc. (*Northwest*) liable for breach of contract of carriage.

The spouses Jesus and Elizabeth S. Fernando (*Fernandos*) are frequent flyers of Northwest Airlines, Inc. and are holders of Elite Platinum World Perks Card, the highest category given to frequent flyers of the carrier.[4] They are known in the musical instruments and sports equipments industry in the Philippines being the owners of JB Music and JB Sports with outlets all over the country. They likewise own the five (5) star Hotel Elizabeth in Baguio City and Cebu City, and the chain of Fersal Hotels and Apartelles in the country.[5]

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[1] Penned by Associate Justice Marlene Gonzales-Sison, with Associate Justices Hakim S. Abdulwahid and Edwin D. Sorongon, concurring; *rollo* (G.R No. 212038), pp. 31-57.

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

[3] Penned by Judge Bernelito R. Fernandez; *id*. at 98-112.

[4] *Rollo*, p. 33.

[5] *Id*. at 24.

The Fernandos initiated the filing of the instant case which arose from two (2) separate incidents: *first*, when Jesus Fernando arrived at Los Angeles (*LA*) Airport on December 20, 2001; *second*, when the Fernandos were to depart from the LA Airport on January 29, 2002. The factual antecedents are as follows:

Version of Spouses Jesus and Elizabeth S. Fernando:

a.) The arrival at Los Angeles Airport on December 20, 2001.

Sometime on December 20, 2001, Jesus Fernando arrived at the LA Airport *via* Northwest Airlines Flight No. NW02 to join his family who flew earlier to the said place for a reunion for the Christmas holidays.[6]

When Jesus Fernando presented his documents at the immigration counter, he was asked by the Immigration Officer to have his return ticket verified and validated since the date reflected thereon is August 2001. So he approached a Northwest personnel who was later identified as Linda Puntawongdaycha, but the latter merely glanced at his ticket without checking its status with the computer and peremptorily said that the ticket has been used and could not be considered as valid. He then explained to the personnel that he was about to use the said ticket on August 20 or 21, 2001 on his way back to Manila from LA but he could not book any seat because of some ticket restrictions so he, instead, purchased new business class ticket on the said date.[7] Hence, the ticket remains unused and perfectly valid.

To avoid further arguments, Jesus Fernando gave the personnel the number of his Elite Platinum World Perks Card for the latter to access the ticket control record with the airline's computer and for her to see that the ticket is still valid. But Linda Puntawongdaycha refused to check the validity of the ticket in the computer but, instead, looked at Jesus Fernando with

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[6] *Id*.

[7] *Id.* at 177.

contempt, then informed the Immigration Officer that the ticket is not valid because it had been used.[8]

The Immigration Officer brought Jesus Fernando to the interrogation room of the Immigration and Naturalization Services (INS) where he was asked humiliating questions for more than two (2) hours. When he was finally cleared by the Immigration Officer, he was granted only a twelve (12)-day stay in the United States (*US*), instead of the usual six (6) months.[9]

When Jesus Fernando was finally able to get out of the airport, to the relief of his family, Elizabeth Fernando proceeded to a Northwest Ticket counter to verify the status of the ticket. The personnel manning the counter courteously assisted her and confirmed that the ticket remained unused and perfectly valid. To avoid any future problems that may be encountered on the validity of the ticket, a new ticket was issued to Jesus Fernando.[10]

Since Jesus Fernando was granted only a twelve (12)-day stay in the US, his scheduled plans with his family as well as his business commitments were disrupted. He was supposed to stay with his family for the entire duration of the Christmas season because his son and daughter were then studying at Pepperton University in California. But he was forced to fly back to Manila before the twelve (12)-day stay expired and flew back to the US on January 15, 2002. The Fernandos were, likewise, scheduled to attend the Musical Instrument Trade Show in LA on January 17, 2002 and the Sports Equipment Trade Show in Las Vegas on January 21 to 23, 2002 which were both previously scheduled. Hence, Jesus Fernando had to spend additional expenses for plane fares and other related expenses, and missed the chance to be with his family for the whole duration of the Christmas holidays.[11]

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[8] *Id.* at 33-34.

[9] *Id.* at 178.

[10] *Id.* at 34.

[11] *Id.* at 35.

b.) The departure from the Los Angeles Airport on January 29, 2002.

On January 29, 2002, the Fernandos were on their way back to the Philippines. They have confirmed bookings on Northwest Airlines NW Flight No. 001 for Narita, Japan and NW 029 for Manila. They checked in with their luggage at the LA Airport and were given their respective boarding passes for business class seats and claim stubs for six (6) pieces of luggage. With boarding passes, tickets and other proper travel documents, they were allowed entry to the departure area and joined their business associates from Japan and the Philippines who attended the Musical Instrument Trade Show in LA on January 17, 2002 and the Sports Equipment Trade Show in Las Vegas on January 21 to 23, 2002. When it was announced that the plane was ready for boarding, the Fernandos joined the long queue of business class passengers along with their business associates.[12]

When the Fernandos reached the gate area where boarding passes need to be presented, Northwest supervisor Linda Tang stopped them and demanded for the presentation of their paper tickets (*coupon type*). They failed to present the same since, according to them, Northwest issued electronic tickets (attached to the boarding passes) which they showed to the supervisor.[13] In the presence of the other passengers, Linda Tang rudely pulled them out of the queue. Elizabeth Fernando explained to Linda Tang that the matter could be sorted out by simply verifying their electronic tickets in her computer and all she had to do was click and punch in their Elite Platinum World Perks Card number. But Linda Tang arrogantly told them that if they wanted to board the plane, they should produce their credit cards and pay for their new tickets, otherwise Northwest would order their luggage off-loaded from the plane. Exasperated and pressed for time, the Fernandos rushed to the Northwest Airline Ticket counter to clarify the matter. They were assisted by Northwest

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[12] *Id* at 35.

[13] *Id*. at 36.

personnel Jeanne Meyer who retrieved their control number from her computer and was able to ascertain that the Fernandos' electronic tickets were valid and they were confirmed passengers on both NW Flight No. 001 for Narita Japan and NW 029 for Manila on that day. To ensure that the Fernandos would no longer encounter any problem with Linda Tang, Jeanne Meyer printed coupon tickets for them who were then advised to rush back to the boarding gates since the plane was about to depart. But when the Fernandos reached the boarding gate, the plane had already departed. They were able to depart, instead, the day after, or on January 30, 2002, and arrived in the Philippines on January 31, 2002.[14]

Version of Northwest Airlines, Inc.:

a.) The arrival at the Los Angeles Airport on December 20, 2001.

Northwest claimed that Jesus Fernando travelled from Manila to LA on Northwest Airlines on December 20, 2001. At the LA Airport, it was revealed that Jesus Fernando's return ticket was dated August 20 or 21, 2001 so he encountered a problem in the Immigration Service. About an hour after the aircraft had arrived, Linda Puntawongdaycha, Northwest Customer Service Agent, was called by a US Immigration Officer named "Nicholas" to help verify the ticket of Jesus Fernando. Linda Puntawongdaycha then asked Jesus Fernando to "show" her "all the papers." Jesus Fernando only showed her the passenger receipt of his ticket without any ticket coupon attached to it. The passenger receipt which was labelled "Passenger Receipt" or "Customer Receipt" was dated August 2001. Linda Puntawongdaycha asked Jesus Fernando several times whether he had any other ticket, but Jesus Fernando insisted that the "receipt" was "all he has", and the passenger receipt was his ticket. He failed to show her any other document, and was not able to give any other relevant information about his return ticket. Linda Puntawongdaycha then proceeded to the Interline

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

Department and checked Jesus Fernando's Passenger Name Record (*PNR*) and his itinerary. The itinerary only showed his coming from Manila to Tokyo and Los Angeles; nothing would indicate about his flight back to Manila. She then looked into his record and checked whether he might have had an electronic ticket but she could not find any. For failure to find any other relevant information regarding Fernando's return ticket, she then printed out Jesus Fernando's PNR and gave the document to the US Immigration Officer. Linda Puntawongdaycha insisted that she did her best to help Jesus Fernando get through the US Immigration.[15]

b.) The departure from the Los Angeles Airport on January 29, 2002.

On January 29, 2002, the Fernandos took Northwest for their flight back to Manila. In the trip, the Fernandos used electronic tickets but the tickets were dated January 26, 2002 and August 21, 2001. They reached the boarding gate few minutes before departure. Northwest personnel Linda Tang was then the one assigned at the departure area. As a standard procedure, Linda Tang scanned the boarding passes and collected tickets while the passengers went through the gate. When the Fernandos presented their boarding passes, Linda Tang asked for their tickets because there were no tickets stapled on their boarding passes. She explained that even though the Fernandos had electronic tickets, they had made "several changes on their ticket over and over". And when they made the booking/reservation at Northwest, they never had any ticket number or information on the reservation.[16]

When the Fernandos failed to show their tickets, Linda Tang called Yong who was a supervisor at the ticket counter to verify whether the Fernandos had checked in, and whether there were any tickets found at the ticket counter. Upon verification, no ticket was found at the ticket counter, so apparently when the

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[15] *Id*. at 37-38.

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

Fernandos checked in, there were no tickets presented. Linda Tang also checked with the computer the reservation of the Fernandos, but again, she failed to see any electronic ticket number of any kind, and/or any ticket record. So as the Fernandos would be able to get on with the flight considering the amount of time left, she told them that they could purchase tickets with their credit cards and deal with the refund later when they are able to locate the tickets and when they reach Manila. Linda Tang believed that she did the best she could under the circumstances.[17]

However, the Fernandos did not agree with the solution offered by Linda Tang. Instead, they went back to the Northwest ticket counter and were attended to by Jeanne Meyer who was "courteous" and "was very kind enough" to assist them. Jeanne Meyer verified their bookings and "printed paper tickets" for them. Unfortunately, when they went back to the boarding gate, the plane had departed. Northwest offered alternative arrangements for them to be transported to Manila on the same day on another airline, either through Philippine Airlines or Cathay Pacific Airways, but they refused. Northwest also offered them free hotel accommodations but they, again, rejected the offer[18] Northwest then made arrangements for the transportation of the Fernandos from the airport to their house in LA, and booked the Fernandos on a Northwest flight that would leave the next day, January 30, 2002. On January 30, 2002, the Fernandos flew to Manila on business class seats.[19]

On April 30, 2002, a complaint for damages[20] was instituted by the Fernandos against Northwest before the RTC, Branch 97, Quezon City. During the trial of the case, the Fernandos testified to prove their claim. On the part of Northwest, Linda Tang-Mochizuki and Linda Puntawongdaycha testified through oral

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[17] *Id.* at 180.

[18] *Id*. at 40.

[19] *Id*.

[20] *Rollo* (G.R No. 212043), pp. 61-69.

depositions taken at the Office of the Consulate General, Los Angeles City. The Northwest Manager for HR-Legal Atty. Cesar Veneracion was also presented and testified on the investigation conducted by Northwest as a result of the letters sent by Elizabeth Fernando and her counsel prior to the filing of the complaint before the RTC.[21]

On September 9, 2008, the RTC issued a Decision, the dispositive portion of which states, thus:

> WHEREFORE, in view of the foregoing, this Court rendered judgment in favor of the plaintiffs and against defendant ordering defendant to pay the plaintiffs, the following:
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> 1. Moral damages in the amount of Two Hundred Thousand Pesos (₱200,000.00);
> 2. Actual or compensatory damages in the amount of Two Thousand US Dollars ($2,000.00) or its corresponding Peso equivalent at the time the airline ticket was purchased;
> 3. Attorney's fees in the amount of Fifty Thousand pesos (₱50,000.00); and,
> 4. Cost of suit.
>
> SO ORDERED.[22]

Both parties filed their respective appeals which were dismissed by the CA in a Decision dated August 30, 2013, and affirmed the RTC Decision.

The Fernandos and Northwest separately filed motions for a reconsideration of the Decision, both of which were denied by the CA on March 31, 2014.

The Fernandos filed a petition for review on *certiorari*[23] before this court docketed as G.R. No. 212038. Northwest followed suit and its petition[24] was docketed as G.R. No. 212043.

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[21] *Rollo* (G.R No. 212038), pp. 103-109.

[22] *Id.* at 112.

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

[24] *Rollo* (G.R. No. 212043), pp. 57-92.

Considering that both petitions involved similar parties, emanated from the same Civil Case No. Q-N-02-46727 and assailed the same CA judgment, they were ordered consolidated in a Resolution[25] dated June 18, 2014.

In G.R. No. 212038, the Fernandos raised the following issues:

WHETHER OR NOT THE ACTS OF THE PERSONNEL AND THAT OF DEFENDANT NORTHWEST ARE WANTON, MALICIOUS, RECKLESS, DELIBERATE AND OPPRESSIVE IN CHARACTER, AMOUNTING TO FRAUD AND BAD FAITH;

WHETHER OR NOT PETITIONER SPOUSES ARE ENTITLED TO MORAL DAMAGES IN AN AMOUNT MORE THAN THAT AWARDED BY THE TRIAL COURT;

WHETHER OR NOT DEFENDANT NORTHWEST IS LIABLE TO PETITIONER SPOUSES FOR EXEMPLARY DAMAGES; [AND]

WHETHER OR NOT THE PETITIONER SPOUSES ARE ENTITLED TO ATTORNEY'S FEES IN AN AMOUNT MORE THAN THAT AWARDED BY THE TRIAL COURT.[26]

In G.R. No. 212043, Northwest anchored its petition on the following assigned errors:

I

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN RULING THAT NORTHWEST COMMITTED A BREACH OF CONTRACT OF CARRIAGE;

II

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN RULING THAT NORTHWEST IS LIABLE FOR DAMAGES AND THE AWARDS FOR MORAL DAMAGES AND ATTORNEY'S FEES ARE APPROPRIATE;

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[25] *Rollo* (G.R. No. 212038), p. 317.

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

III

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN RULING THAT NORTHWEST IS NOT ENTITLED TO RECOVER ON ITS COUNTERCLAIMS.[27]

The Issues

The arguments proffered by the parties can be summed up into the following issues: (1) whether or not there was breach of contract of carriage and whether it was done in a wanton, malevolent or reckless manner amounting to bad faith; (2) whether or not Northwest is liable for the payment of moral damages and attorney's fees and whether it is liable to pay more than that awarded by the RTC; (3) whether or not Northwest is liable for the payment of exemplary damages; and (4) whether or not Northwest Airlines is entitled to recover on its counterclaim.

In their petition, the Fernandos contended that it was the personal misconduct, gross negligence and the rude and abusive attitude of Northwest employees Linda Puntawongdaycha and Linda Tang which subjected them to indignities, humiliation and embarrassment. The attitude of the aforesaid employees was wanton and malevolent allegedly amounting to fraud and bad faith. According to the Fernandos, if only Linda Puntawongdaycha had taken the time to verify the validity of the ticket in the computer, she would have not given the wrong information to the Immigration Officer because the August 2001 return ticket remained unused and valid for a period of one (1) year, or until August 2002. The wrong information given by Linda Puntawongdaycha aroused doubts and suspicions on Jesus Fernando's travel plans. The latter was then subjected to two (2) hours of questioning which allegedly humiliated him. He was even suspected of being an "illegal alien." The negligence of Linda Puntawongdaycha was allegedly so gross and reckless amounting to malice or bad faith.

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[27] *Rollo* (G.R. No. 212043), pp. 66-67.

As to the second incident, the Fernandos belied the accusation of Northwest that they did not present any tickets. They presented their electronic tickets which were attached to their boarding passes. If they had no tickets, the personnel at the check-in counter would have not issued them their boarding passes and baggage claim stubs. That's why they could not understand why the coupon-type ticket was still demanded by Northwest.

On the award of moral damages, the Fernandos referred to the testimony of Elizabeth Fernando that she could not sleep and had a fever the night after the second incident. Thus, the Fernandos demanded that they should be given more than the "token amount" granted by the RTC which was affirmed by the CA. They stated that their status in the society and in the business circle should also be considered as a factor in awarding moral damages. They averred that they are well-known in the musical instruments and sports equipment industry in the country being the owners of JB Music and JB Sports with outlets all over the country. They own hotels, a chain of apartelles and a parking garage building in Indiana, USA. And since the breach of contract allegedly amounted to fraud and bad faith, they likewise demanded for the payment of exemplary damages and attorney's fees more than the amount awarded by the RTC.

On the other hand, Northwest stated in its petition that Linda Puntawongdaycha tried her best to help Jesus Fernando get through the US Immigration. Notwithstanding that Linda Puntawongdaycha was not able to find any relevant information on Jesus Fernando's return ticket, she still went an extra mile by printing the PNR of Jesus Fernando and handling the same personally to the Immigration Officer. It pointed out that the Immigration Officer "noticed in the ticket that it was dated sometime August 20 or 21, 2001, although it was already December 2001."

As to the incident with Linda Tang, Northwest explained that she was only following Northwest standard boarding procedures when she asked the Fernandos for their tickets even if they had boarding passes. Thus, the conduct cannot be construed as bad faith. The dates indicated on the tickets did

not match the booking. Elizabeth Fernando was using an electronic ticket dated August 21, 2001, while the electronic ticket of Jesus Fernando was dated January 26, 2002. According to Northwest, even if the Fernandos had electronic tickets, the same did not discount the fact that, on the face of the tickets, they were for travel on past dates. Also, the electronic tickets did not contain the ticket number or any information regarding the reservation. Hence, the alleged negligence of the Fernandos resulted in the confusion in the procedure in boarding the plane and the eventual failure to take their flight.

Northwest averred that the award of moral damages and attorney's fees were exorbitant because such must be proportionate to the suffering inflicted. It argued that it is not obliged to give any "special treatment" to the Fernandos just because they are good clients of Northwest, because the supposed obligation does not appear in the contract of carriage. It further averred that it is entitled to its counterclaim in the amount of ₱500,000.00 because the Fernandos allegedly acted in bad faith in prosecuting the case which it believed are baseless and unfounded.

In the Comment[28] of Northwest, it insisted that assuming a mistake was committed by Linda Tang and Linda Puntawongdaycha, such mistake alone, without malice or ill will, is not equivalent to fraud or bad faith that would entitle the Fernandos to the payment of moral damages.

In the Reply[29] of the Fernandos, they asserted that it was a lie on the part of Linda Puntawongdaycha to claim that she checked the passenger name or PNR of Jesus Fernando from the computer and, as a result, she was not allegedly able to find any return ticket for him. According to Jesus Fernando, Linda Puntawongdaycha merely looked at his ticket and declared the same to be invalid. The Fernandos reiterated that after Jesus Fernando was released by the US Immigration Service, Elizabeth

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[28] *Rollo* (G.R. No. 212038), pp. 327-337.

[29] *Id.* at 371-379.

Fernando proceeded to a Northwest Ticket counter to verify the status of the ticket. The personnel manning the counter courteously assisted her and confirmed that the ticket remained unused and perfectly valid. The personnel merely punched the Elite Platinum World Perks Card number of Jesus Fernando and was able to verify the status of the ticket. The Fernandos further argued that if there was a discrepancy with the tickets or reservations, they would not have been allowed to check in, and since they were allowed to check in then they were properly booked and were confirmed passengers of Northwest.

Our Ruling

We find merit in the petition of the Spouses Jesus and Elizabeth Fernando.

The Fernandos' cause of action against Northwest stemmed from a breach of contract of carriage. A contract is a meeting of minds between two persons whereby one agrees to give something or render some service to another for a consideration. There is no contract unless the following requisites concur: (1) consent of the contracting parties; (2) an object certain which is the subject of the contract; and (3) the cause of the obligation which is established.[30]

A contract of carriage is defined as one whereby a certain person or association of persons obligate themselves to transport persons, things, or goods from one place to another for a fixed price. Under Article 1732 of the Civil Code, this "persons, corporations, firms, or associations engaged in the business of carrying or transporting passengers or goods or both, by land, water, or air, for compensation, offering their services to the public" is called a common carrier.[31] Undoubtedly, a contract of carriage existed between Northwest and the Fernandos. They voluntarily and freely gave their consent to an agreement whose

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[30] *Cathay Pacific Airways, Ltd. v. Spouses Daniel Vazquez, et al.*, 447 Phil. 306, 319 (2003).

[31] *Cathay Pacific Airways v. Juanita Reyes, et al.*, 712 Phil. 398, 413 (2013).

object was the transportation of the Fernandos from LA to Manila, and whose cause or consideration was the fare paid by the Fernandos to Northwest.[32]

In *Alitalia Airways v. CA, et al.,*[33] We held that when an airline issues a ticket to a passenger confirmed for a particular flight on a certain date, a contract of carriage arises. The passenger then has every right to expect that he would fly on that flight and on that date. If he does not, then the carrier opens itself to a suit for breach of contract of carriage.[34]

When Northwest confirmed the reservations of the Fernandos, it bound itself to transport the Fernandos on their flight on 29 January 2002. We note that the witness[35] of Northwest admitted on cross-examination that based on the documents submitted by the Fernandos, they were confirmed passengers on the January 29, 2002 flight.[36]

In an action based on a breach of contract of carriage, the aggrieved party does not have to prove that the common carrier was at fault or was negligent. All that he has to prove is the existence of the contract and the fact of its non-performance by the carrier.[37] As the aggrieved party, the Fernandos only had to prove the existence of the contract and the fact of its non-performance by Northwest, as carrier, in order to be awarded compensatory and actual damages.[38]

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[32] *Cathay Pacific Airways, Ltd. v. Spouses Daniel Vazquez, et al., supra* note 30, at 319-320.

[33] 265 Phil. 791, 798 (1990).

[34] *China Airlines, Ltd. v. Court of Appeals et al.,* 453 Phil. 959, 977 (2003).

[35] Northwest Manager for HR-Legal Atty. Cesar Veneracion.

[36] *Rollo,* p. 179 (G.R. No. 212038).

[37] *Philippine Airlines, Inc. v. Francisco Lao Lim, et al.,* 697 Phil. 497, 507 (2012).

[38] *Northwest Airlines, Inc. v. Chiong,* 567 Phil. 289, 304 (2008).

Therefore, having proven the existence of a contract of carriage between Northwest and the Fernandos, and the fact of non-performance by Northwest of its obligation as a common carrier, it is clear that Northwest breached its contract of carriage with the Fernandos. Thus, Northwest opened itself to claims for compensatory, actual, moral and exemplary damages, attorney's fees and costs of suit.[39]

Moreover, Article 1733 of the New Civil Code provides that common carriers, from the nature of their business and for reasons of public policy, are bound to observe extraordinary diligence in the vigilance over the goods and for the safety of the passengers transported by them, according to all the circumstances of each case. Also, Article 1755 of the same Code states that a common carrier is bound to carry the passengers safely as far as human care and foresight can provide, using the utmost diligence of very cautious persons, with due regard for all the circumstances.

We, thus, sustain the findings of the CA and the RTC that Northwest committed a breach of contract "in failing to provide the spouses with the proper assistance to avoid any inconvenience" and that the actuations of Northwest in both subject incidents "fall short of the utmost diligence of a very cautious person expected of it". Both ruled that considering that the Fernandos are not just ordinary passengers but, in fact, frequent flyers of Northwest, the latter should have been more courteous and accommodating to their needs so that the delay and inconveniences they suffered could have been avoided. Northwest was remiss in its duty to provide the proper and adequate assistance to them.

Nonetheless, We are not in accord with the common finding of the CA and the RTC when both ruled out bad faith on the part of Northwest. While We agree that the discrepancy between the date of actual travel and the date appearing on the tickets of the Fernandos called for some verification, however, the Northwest personnel failed to exercise the utmost diligence in

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[39] *Supra,* at 304-305.

assisting the Fernandos. The actuations of Northwest personnel in both subject incidents are constitutive of bad faith.

On the first incident, Jesus Fernando even gave the Northwest personnel the number of his Elite Platinum World Perks Card for the latter to access the ticket control record with the airline's computer for her to see that the ticket is still valid. But Linda Puntawongdaycha refused to check the validity of the ticket in the computer. As a result, the Immigration Officer brought Jesus Fernando to the interrogation room of the INS where he was interrogated for more than two (2) hours. When he was finally cleared by the Immigration Officer, he was granted only a twelve (12)-day stay in the United States (*US*), instead of the usual six (6) months.[40]

As in fact, the RTC awarded actual or compensatory damages because of the testimony of Jesus Fernando that he had to go back to Manila and then return again to LA, USA, two (2) days after requiring him to purchase another round trip ticket from Northwest in the amount of $2,000.00 which was not disputed by Northwest.[41] In ignoring Jesus Fernando's pleas to check the validity of the tickets in the computer, the Northwest personnel exhibited an indifferent attitude without due regard for the inconvenience and anxiety Jesus Fernando might have experienced.

Passengers do not contract merely for transportation. They have a right to be treated by the carrier's employees with kindness, respect, courtesy and due consideration. They are entitled to be protected against personal misconduct, injurious language, indignities and abuses from such employees. So it is, that any rude or discourteous conduct on the part of employees towards a passenger gives the latter an action for damages against the carrier.[42]

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[40] *Rollo* (G.R. No. 212038), p. 178.

[41] *Id.* at 111.

[42] *Air France v. Carrascoso,* 653 Phil. 138 (2010).

In requiring compliance with the standard of extraordinary diligence, a standard which is, in fact, that of the highest possible degree of diligence, from common carriers and in creating a presumption of negligence against them, the law seeks to compel them to control their employees, to tame their reckless instincts and to force them to take adequate care of human beings and their property.[43]

Notably, after the incident, the Fernandos proceeded to a Northwest Ticket counter to verify the status of the ticket and they were assured that the ticket remained unused and perfectly valid. And, to avoid any future problems that may be encountered on the validity of the ticket, a new ticket was issued to Jesus Fernando. The failure to promptly verify the validity of the ticket connotes bad faith on the part of Northwest.

Bad faith does not simply connote bad judgment or negligence. It imports a dishonest purpose or some moral obliquity and conscious doing of a wrong. It means breach of a known duty through some motive, interest or ill will that partakes of the nature of fraud. A finding of bad faith entitles the offended party to moral damages.[44]

As to the second incident, there was likewise fraud or bad faith on the part of Northwest when it did not allow the Fernandos to board their flight for Manila on January 29, 2002, in spite of confirmed tickets. We need to stress that they have confirmed bookings on Northwest Airlines NW Flight No. 001 for Narita, Japan and NW 029 for Manila. They checked in with their luggage at LA Airport and were given their respective boarding passes for business class seats and claim stubs for six (6) pieces of luggage. With boarding passes and electronic tickets, apparently, they were allowed entry to the departure area; and, they eventually joined the long queue of business class passengers along with their business associates.

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[43] *Zulueta v. Pan American World Airways, Inc.*, 150 Phil. 465, 489-490 (1972).

[44] *China Airlines, Ltd. v. Court of Appeals et al., supra* note 34.

However, in the presence of the other passengers, Northwest personnel Linda Tang pulled the Fernandos out of the queue and asked for paper tickets (*coupon type*). Elizabeth Fernando explained to Linda Tang that the matter could be sorted out by simply verifying their electronic tickets in her computer and all she had to do was click and punch in their Elite Platinum World Perks Card number. Again, the Northwest personnel refused to do so; she, instead, told them to pay for new tickets so they could board the plane. Hence, the Fernandos rushed to the Northwest Airline Ticket counter to clarify the matter. They were assisted by Northwest personnel Jeanne Meyer who retrieved their control number from her computer and was able to ascertain that the Fernandos' electronic tickets were valid, and they were confirmed passengers on both NW Flight No. 001 for Narita Japan and NW 029 for Manila on that day.

In *Ortigas, Jr. v. Lufthansa German Airlines*,[45] this Court declared that "(i)n contracts of common carriage, in attention and lack of care on the part of the carrier resulting in the failure of the passenger to be accommodated in the class contracted for amounts to bad faith or fraud which entitles the passengers to the award of moral damages in accordance with Article 2220 of the Civil Code."

In *Pan American World Airways, Inc. v. Intermediate Appellate Court*,[46] where a would-be passenger had the necessary ticket, baggage claim and clearance from immigration, all clearly and unmistakably showing that she was, in fact, included in the passenger manifest of said flight, and *yet was denied accommodation in said flight*, this Court did not hesitate to affirm the lower court's finding awarding her damages on the ground that the breach of contract of carriage amounted to bad faith.[47] For the indignity and inconvenience of being refused

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[45] G.R. No. L-28773, June 30, 1975, 64 SCRA 610.

[46] G.R. No. 74442, 153 SCRA 521.

[47] *Spouses Cesar v. Court of Appeals*, G.R. No. 104235, November 18, 1993.

a confirmed seat on the last minute, said passenger is entitled to an award of moral damages.[48]

In this case, We need to stress that the personnel who assisted the Fernandos even printed coupon tickets for them and advised them to rush back to the boarding gates since the plane was about to depart. But when the Fernandos reached the boarding gate, the plane had already departed. They were able to depart, instead, the day after, or on January 30, 2002.

In *Japan Airlines v. Jesus Simangan*,[49] this Court held that the acts committed by Japan Airlines against Jesus Simangan amounted to bad faith, thus:

> x x x JAL did not allow respondent to fly. **It informed respondent that there was a need to first check the authenticity of his travel documents with the U.S. Embassy**. As admitted by JAL, "the flight could not wait for Mr. Simangan because it was ready to depart."
>
> Since JAL definitely declared that the flight could not wait for respondent, it gave respondent no choice but to be left behind. The latter was unceremoniously bumped off despite his protestations and valid travel documents and notwithstanding his contract of carriage with JAL. **Damage had already been done when respondent was offered to fly the next day on July 30, 1992. Said offer did not cure JAL's default.**[50]

Similarly, in *Korean Airlines Co., Ltd. v. Court of Appeals*,[51] where private respondent was not allowed to board the plane because her seat had already been given to another passenger even before the allowable period for passengers to check in had lapsed **despite the fact that she had a confirmed ticket** and she had arrived on time, this Court held that petitioner airline acted in bad faith in violating private respondent's rights

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[48] *Alitalia Airways v. CA, et al., supra* note 33.

[49] 575 Phil. 359, 376 (2008).

[50] *Supra* at 373-374. (Emphasis ours.)

[51] G.R. No. 61418, 154 SCRA 211.

under their contract of carriage and is, therefore, liable for the injuries she has sustained as a result.[52]

Under Article 2220[53] of the Civil Code of the Philippines, an award of moral damages, in breaches of contract, is in order upon a showing that the defendant acted fraudulently or in bad faith.[54] Clearly, in this case, the Fernandos are entitled to an award of moral damages. The purpose of awarding moral damages is to enable the injured party to obtain means, diversion or amusement that will serve to alleviate the moral suffering he has undergone by reason of defendant's culpable action.[55]

We note that even if both the CA and the RTC ruled out bad faith on the part of Northwest, the award of "some moral damages" was recognized. Both courts believed that considering that the Fernandos are good clients of Northwest for almost ten (10) years being Elite Platinum World Perks Card holders, and are known in their business circle, they should have been given by Northwest the corresponding special treatment.[56] They own hotels and a chain of apartelles in the country, and a parking garage building in Indiana, USA. From this perspective, We adopt the said view. We, thus, increase the award of moral damages to the Fernandos in the amount of ₱3,000,000.00.

As held in *Kierulf v. Court of Appeals*,[57] the social and financial standing of a claimant may be considered if he or she was subjected to contemptuous conduct despite the offender's knowledge of his or her social and financial standing.

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[52] *Spouses Cesar v. Court of Appeals*, G.R. No. 104235, November 18, 1993. (Emphasis ours)

[53] *Article 2220.* Willful injury to property may be a legal ground for awarding moral damages if the court should find that, under the circumstances, such damages are justly due. The same rule applies to breaches of contract where the defendant acted fraudulently or in bad faith.

[54] *Cathay Pacific Airways v. Juanita Reyes, et al., supra* note 31.

[55] *Air France v. Gillego, supra* note 42.

[56] *Rollo* (G.R. 212038), p. 112.

[57] 336 Phil. 414, 427 (1997).

In *Trans World Airlines v. Court of Appeals*,[58] this Court considered the social standing of the aggrieved passenger:

> At the time of this unfortunate incident, the private respondent was a **practicing lawyer, a senior partner of a big law firm in Manila. He was a director of several companies and was active in civic and social organizations in the Philippines**. Considering the circumstances of this case and the **social standing of private respondent in the community**, he is entitled to the award of **moral and exemplary damages**. x x x This award should be reasonably sufficient **to indemnify private respondent for the humiliation and embarrassment that he suffered and to serve as an example to discourage the repetition of similar oppressive and discriminatory acts.**[59]

Exemplary damages, which are awarded by way of example or correction for the public good, may be recovered in contractual obligations, if defendant acted in wanton, fraudulent, reckless, oppressive, or malevolent manner.[60] They are designed by our civil law to permit the courts to reshape behavior that is socially deleterious in its consequence by creating negative incentives or deterrents against such behavior.[61] Hence, given the facts and circumstances of this case, We hold Northwest liable for the payment of exemplary damages in the amount of ₱2,000,000.00.

In the case of *Northwest Airlines, Inc. v. Chiong*,[62] Chiong was given the run-around at the Northwest check-in counter, instructed to deal with a man in *barong* to obtain a boarding pass, and eventually barred from boarding a Northwest flight to accommodate an American passenger whose name was merely

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[58] No. 78656, August 30, 1988, 165 SCRA 143.

[59] *Trans World Airlines v. Court of Appeals, supra*, at 147-148. (Emphasis ours)

[60] *Cathay Pacific Airways, Ltd. v. Spouses Daniel Vazquez, et al., supra* note 29.

[61] *Japan Airlines v. Jesus Simangan, supra* note 49.

[62] 567 Phil. 289, 304 (2008).

inserted in the Flight Manifest, and did not even personally check-in at the counter. Under the foregoing circumstances, the award of moral and exemplary damages was given by this Court.

Time and again, We have declared that a contract of carriage, in this case, air transport, is primarily intended to serve the traveling public and thus, imbued with public interest. The law governing common carriers consequently imposes an exacting standard of conduct.[63] A contract to transport passengers is quite different in kind and degree from any other contractual relation because of the relation which an air-carrier sustains with the public. Its business is mainly with the travelling public. It invites people to avail of the comforts and advantages it offers. The contract of air carriage, therefore, generates a relation attended with a public duty. Neglect or malfeasance of the carrier's employees, naturally, could give ground for an action for damages.[64]

As to the payment of attorney's fees, We sustain the award thereof on the ground that the Fernandos were ultimately compelled to litigate and incurred expenses to protect their rights and interests, and because the Fernandos are entitled to an award for exemplary damages. Pursuant to Article 2208 of the Civil Code, attorney's fees may be awarded when exemplary damages are awarded, or a party is compelled to litigate or incur expenses to protect his interest, or where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim.

Records show that the Fernandos demanded payment for damages from Northwest even before the filing of this case in court. Clearly, the Fernandos were forced to obtain the services of counsel to enforce a just claim, for which they should be awarded attorney's fees.[65] We deem it just and equitable to

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[63] *Northwest Airlines, Inc. v. Chiong, supra* note 38.

[64] *Air France v. Carrascoso, supra* note 42.

[65] CA Decision, *rollo*, p. 47; *Northwest Airlines, Inc. vs. Chiong, supra* note 40.

grant an award of attorney's fees equivalent to 10% of the damages awarded.

Lastly, the counterclaim of Northwest in its Answer[66] is a compulsory counterclaim for damages and attorney's fees arising from the filing of the complaint. This compulsory counterclaim of Northwest arising from the filing of the complaint may not be granted inasmuch as the complaint against it is obviously not malicious or unfounded. It was filed by the Fernandos precisely to claim their right to damages against Northwest. Well-settled is the rule that the commencement of an action does not *per se* make the action wrongful and subject the action to damages, for the law could not have meant to impose a penalty on the right to litigate.[67]

WHEREFORE, the Decision dated August 30, 2013 and the Resolution dated March 31, 2014 of the Court of Appeals, in CA-G.R. CV No. 93496 are hereby **AFFIRMED WITH MODIFICATION**. The award of moral damages and attorney's fees are hereby increased to ₱3,000,000.00 and ten percent (10%) of the damages awarded, respectively. Exemplary damages in the amount of ₱2,000,000.00 is also awarded. Costs against Northwest Airlines.

The total amount adjudged shall earn legal interest at the rate of twelve percent (12%) *per annum* computed from judicial demand or from April 30, 2002 to June 30 2013, and six percent (6%) *per annum* from July 1, 2013 until their full satisfaction.

SO ORDERED.

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

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[66] *Rollo* (G.R. 212043), pp. 211-218.

[67] *Japan Airlines v. Jesus Simangan, supra* note 49.

[*] Designated additional Member per Special Order No. 2416 dated January 4, 2017.

SECOND DIVISION

[G.R. No. 215293. February 8, 2017]

LAMBERTO M. DE LEON, *petitioner, vs.* **MAUNLAD TRANS, INC., SEACHEST ASSOCIATES, ET AL.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF ADMINISTRATIVE OR QUASI-JUDICIAL BODIES, INCLUDING LABOR TRIBUNALS, ARE ACCORDED MUCH RESPECT BY THE COURT AS THEY ARE SPECIALIZED TO RULE ON MATTERS FALLING WITHIN THEIR JURISDICTION ESPECIALLY WHEN THESE ARE SUPPORTED BY SUBSTANTIAL EVIDENCE; EXCEPTIONS; PRESENT.— As a general rule, only questions of law raised *via* a petition for review under Rule 45 of the Rules of Court are reviewable by this Court. Factual findings of administrative or quasi-judicial bodies, including labor tribunals, are accorded much respect by this Court as they are specialized to rule on matters falling within their jurisdiction especially when these are supported by substantial evidence. However, a relaxation of this rule is made permissible by this Court whenever any of the following circumstances is present: 1. [W]hen the findings are grounded entirely on speculations, 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 fact 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 that of the trial court; 8. when the findings are conclusions without citation of specific evidence on which they are based; 9. when the facts set forth in the petition[,] as well as in the petitioner's main and reply briefs[,] are not disputed by the respondent;' 10. when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record;

[or] 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. Whether or not petitioner's illness is compensable is essentially a factual issue. Yet, this Court can and will be justified in looking into it considering the conflicting views of the NLRC and the CA.

2. **LABOR AND SOCIAL LEGISLATION; THE LABOR CODE; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION STANDARD EMPLOYMENT CONTRACT (POEA-SEC); COMPENSABILITY OF DISABILITY; ELEMENTS.—** For disability to be compensable under Section 20(B)(4) of the POEA-SEC, two elements must concur : (1) the injury or illness must be work-related; and (2) the work-related injury or illness must have existed during the term of the seafarer's employment contract.

3. **ID.; ID.; ID.; ID.; WHILE ILLNESSES NOT MENTIONED UNDER SECTION 32 OF THE POEA-SEC ARE DISPUTABLY PRESUMED WORK-RELATED, THE CLAIMANT-SEAFARER MUST STILL PROVE BY SUBSTANTIAL EVIDENCE THAT HIS WORK CONDITIONS CAUSED OR, AT LEAST, INCREASED THE RISK OF CONTRACTING THE DISEASE.—** The POEA-SEC defines a work-related injury as "injury(ies) resulting in disability or death arising out of and in the course of employment," and a work-related illness as "any sickness resulting to disability or death as a result of an occupational disease listed under Section 32-A of this Contract with the conditions set therein satisfied." For illnesses not mentioned under Section 32, the POEA-SEC creates a disputable presumption in favor of the seafarer that these illnesses are work-related. Notwithstanding the presumption, We have held that on due process grounds, the claimant-seafarer must still prove by substantial evidence that his work conditions caused or, at least, increased the risk of contracting the disease. This is because awards of compensation cannot rest entirely on bare assertions and presumptions. In order to establish compensability of a non-occupational disease, reasonable proof of work-connection is sufficient—direct causal relation is not required. Thus, probability, not the ultimate degree of certainty, is the test of proof in compensation proceedings.

4. ID.; ID.; ID.; ID.; REQUIRED DEGREE OF PROOF OF WORK-CONNECTION MET IN CASE AT BAR.— A careful review of the findings of the NLRC and the LA show that petitioner was able to meet the required degree of proof that his illness is compensable as it is work-connected. The NLRC correctly ruled that his work conditions caused or, at least, increased the risk of contracting the disease x x x. Working on any vessel, whether it be a cruise ship or not, can still expose any employee to harsh conditions. In this case, aside from the usual conditions experienced by seafarers, such as the harsh conditions of the sea, long hours of work, stress brought about by being away from their families, petitioner, a team head waiter, also performed the duties of a "fire watch" and assigned to welding works, all of which contributed to petitioner's stress, fatigue and extreme exhaustion. To presume, therefore, that employees of a cruise ship do not experience the usual perils encountered by those working on a different vessel is utterly wrong.

5. ID.; ID.; ID.; ID.; GRANT OF DISABILITY BENEFITS AND AWARD OF ATTORNEY'S FEES, AFFIRMED.— Anent the CA's opinion that no other guests or employees suffered any illness being exposed to the same conditions as petitioner, and thus, his illness cannot be considered as work-related, such is completely erroneous because not all persons have the same health condition, stamina and physical capability to fight an illness. [T]his Court therefore affirms the compensability of petitioner's permanent disability. The US$60,000.00 (the equivalent of 120% of US$50,000.00) disability allowance is justified under Section 32 of the POEA Contract as petitioner suffered from permanent total disability. The grant of attorney's fees is likewise affirmed for being justified in accordance with Article 2208(2) of the Civil Code, since petitioner was compelled to litigate to satisfy his claim for disability benefits.

APPEARANCES OF COUNSEL

Panambo Law Office for petitioner.
Del Rosario & Del Rosario for respondents.

D E C I S I O N

PERALTA, *J.*:

This is to resolve the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, dated November 26, 2014, of petitioner Lamberto M. De Leon that seeks to reverse and set aside the Decision[1] dated October 9, 2013 and the Resolution[2] dated November 5, 2014, both of the Court of Appeals (*CA*) and prays for the reinstatement of the Decision[3] dated December 15, 2011 and Resolution[4] dated February 15, 2012 of the National Labor Relations Commission (*NLRC*) granting petitioner disability benefits in the amount of US$60,000.00 or its Philippine Peso equivalent.

The facts follow.

Petitioner was hired by respondent Maunlad Trans, Inc. as Team Headwaiter for M/S Carnival Liberty, a vessel operated by Seachest Associates/Carnival Corporation through a POEA-approved employment contract and assumed his duties for two years during which he averaged ten to twelve hours of work daily. Petitioner, on certain occasions, was also assigned as a "fire watch" while the vessel was repaired or dry-docked, exposing himself to extreme heat from welding works and unusual amount of toxic fumes from alcohol and thinner mixed with paint to be used after welding.

While on board the vessel, petitioner experienced uncontrollable blinking, shaking and difficulty in speaking and breathing for three weeks. As such, he was referred to a neurologist in Belize and underwent Magnetic Resonance

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[1] Penned by Associate Justice Stephen C. Cruz, with the concurrence of Associate Justices Magdangal M. De Leon and Myra V. Garcia-Fernandez, *rollo*, pp. 25-32.

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

[3] *Id*. at 35-44.

[4] *Id*. at 33-34.

Imaging (*MRI*) and CT Scan. He was then diagnosed with "cerebral atrophy" and was advised to seek a neurologist in Miami, Florida where the vessel was headed. Upon reaching Florida, he was confined in South Miami Hospital but due to the severity of his condition, he was advised to be repatriated.

When he arrived in the Philippines, he reported to his agency and was referred to the Metropolitan Medical Services, Inc. for treatment and when his condition did not improve, he sought treatment from Dr. May Donato-Tan, a specialist in internal medicine-cardiology who diagnosed his illness as T/C Parkinson's Disease; hypertensive atherosclerotic cardiovascular disease and declared him unfit for duty in whatever capacity as a seaman.

Respondents acknowledged that petitioner was diagnosed with Parkinson's Disease and that he underwent several medical treatments including blood count, Erythrocye Sedimentation Rate (*ESR*), Blood Urea Nitrogen (*BUN*), Serum Glutamic Pyruvate Transaminase (*SGPT*), Creatinine, Serum Glutamic Oxaloacetic Transaminase (*SGOT*), Thyroid function test (*FT4*), Thyroid Stimulating and Serum Ceruplasmine. After the filing of the complaint, petitioner received the medical opinion of their company-designated physician stating the following:

> The specialist opines that condition can be secondary to genetics, immunologic or use of anti-psychotics (non-work related) or heavy metal exposure. Unless patient has history of heavy metal exposure on board, the specialist opines that the condition does not appear to be work-related or work-aggravated.

Thus, respondents refused to give petitioner full compensability based on the above finding that the latter's illness is not work-related.

In her Decision dated September 26, 2011, Labor Arbiter Michelle Pagtalunan found petitioner's claim meritorious, thus:

> **WHEREFORE**, respondents are hereby ordered to pay complainant Lamberto M. De Leon, disability benefit in the amount of US$60,000.00 or its Philippine Peso equivalent at the time of payment and ten percent (10%) attorney's fees.

SO ORDERED.[5]

According to the Labor Arbiter, those illness not listed under Section 32 of the POEA Standard Employment Contract (*POEA-SEC*) are disputably presumed as work-related; thus, the burden is on the respondents to present substantial evidence or such relevant evidence that there is no causal connection between the nature of the seafarer's work and his illness, or that the risk of contracting the illness was not increased by his working condition. The Labor Arbiter further stated that she is not bound by the assessment of the company-designated physician because no such qualifying terms as "only" and "exclusively" in the POEA-SEC limit her judgment and that a contrary interpretation would lead to the absurdity of petitioner's disability being decided by the designated physician and not by the Labor Arbiter or the NLRC. Thus, in view of the uncertainty of the diseases' development, the Labor Arbiter held that petitioner's work as team headwaiter cannot be discounted as contributory, even to a small degree, in the development of his condition.

The NLRC, in its Decision dated December 15, 2012, affirmed the Decision of the Labor Arbiter, thus:

WHEREFORE, the judgment on appeal is AFFIRMED *in toto*.[6]

It held that the nature of the petitioner's employment is presumed to be the cause of the illness because it occurred during his stint with respondents and that his employment need not be the sole factor in the growth, development or acceleration of his illness as it is enough that it contributed to the development thereof.

After respondents' motion for reconsideration was denied, they filed a petition under Rule 65 of the Rules of Court with the CA and in its Decision dated October 9, 2013, the latter granted the petition and reversed and set aside the Decision of the NLRC, thus:

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[5] *Id*. at 55.

[6] *Id*. at 44.

WHEREFORE, premises considered, the instant petition is hereby **GRANTED**. Accordingly, the assailed Decision and Resolution of the National Labor Relations Commission (NLRC), dated December 15, 2011 and February 15, 2012, respectively, are **ANNULLED AND SET ASIDE**. No pronouncement as to costs.

SO ORDERED.[7]

According to the CA, while degenerative, Parkinson's Disease is neither listed as a disability under Sec. 32 of the POEA-SEC, nor is it considered an occupational disease under Sec. 32-A thereof. Thus, the CA held that it is imperative that petitioner establish the existence of a causal connection between his illness and the work for which he was contracted for and petitioner fell short of the standards imposed upon him by law.

Petitioner's motion for reconsideration was denied in the CA's Resolution dated November 5, 2014.

Thus, the present petition with the following grounds:

I. THE CA COMMITTED GRAVE AND SERIOUS ERROR IN ITS FINDINGS THAT THE PETITIONER'S ILLNESS IS NOT WORK RELATED; and

II. THE CA COMMITTED GRAVE AND SERIOUS ERROR IN DENYING TO PETITIONER THE PERMANENT TOTAL DISABILITY COMPENSATION AND ATTORNEY'S FEES.

It is petitioner's contention that his illness is work-related and insists that he was exposed to the harsh conditions of the elements, the perils at sea, severe stress while being away from his family and fatigue due to long hours of work onboard the vessel, 10-12 hours daily. Petitioner further argues that due to his not being able to return to the seafaring occupation because of his illness, he is entitled to permanent total disability as the Labor Arbiter and the NLRC determined.

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

In their Comment[8] dated March 20, 2015, respondents reiterated the Decision of the CA.

As a general rule, only questions of law raised *via* a petition for review under Rule 45 of the Rules of Court[9] are reviewable by this Court.[10] Factual findings of administrative or quasi-judicial bodies, including labor tribunals, are accorded much respect by this Court as they are specialized to rule on matters falling within their jurisdiction especially when these are supported by substantial evidence.[11] However, a relaxation of this rule is made permissible by this Court whenever any of the following circumstances is present:

1. [W]hen the findings are grounded entirely on speculations, 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 fact 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;

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[8] *Id.* at 62-76.

[9] Section 1, Rule 45 of the Rules of Court, as amended, provides:

Section 1. *Filing of petition with Supreme Court.* A party desiring to appeal by *certiorari* from a judgment, final order or resolution of the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, the Regional Trial Court or other courts, whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition may include an application for a writ of preliminary injunction or other provisional remedies and shall raise only questions of law, which must be distinctly set forth. The petitioner may seek the same provisional remedies by verified motion filed in the same action or proceeding at any time during its pendency.

[10] *Philippine Transmarine Carriers, Inc., et al. v. Joselito A. Cristino*, G.R. No. 188638, December 9, 2015, citing *Heirs of Pacencia Racaza v. Abay-Abay*, 687 Phil. 584, 590 (2012).

[11] *Merck Sharp and Dohme (Phils.), et al. v. Robles, et al.*, 620 Phil. 505, 512 (2009).

7. when the findings are contrary to that of the trial court;
8. when the findings are conclusions without citation of specific evidence on which they are based;
9. when the facts set forth in the petition[,] as well as in the petitioner's main and reply briefs[,] are not disputed by the respondent;'
10. when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; [or]
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.[12]

Whether or not petitioner's illness is compensable is essentially a factual issue. Yet, this Court can and will be justified in looking into it considering the conflicting views of the NLRC and the CA.[13]

For disability to be compensable under Section 20(B)(4) of the POEA-SEC, two elements must concur: (1) the injury or illness must be work-related; and (2) the work-related injury or illness must have existed during the term of the seafarer's employment contract.[14]

The POEA-SEC defines a work-related injury as "injury(ies) resulting in disability or death arising out of and in the course of employment," and a work-related illness as "any sickness resulting to disability or death as a result of an occupational disease listed under Section 32-A of this Contract with the conditions set therein satisfied."[15] For illnesses not mentioned under Section 32, the POEA-SEC creates a disputable presumption in favor of the seafarer that these illnesses are

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[12] *Co v. Vargas*, 676 Phil. 463, 471 (2011).

[13] *Bandila Shipping, Inc., et al. v. Marcos C. Abalos,* 627 Phil. 152, 156 (2010), citing *Masangcay v. Trans-Global Maritime Agency, Inc.*, 590 Phil. 611, 625 (2008).

[14] *Leonis Navigation Co., Inc., et al. v. Eduardo C. Obrero, et al.*, G.R. No. 192754, September 7, 2016, citing *Tagle v. Anglo-Eastern Crew Management, Phils., Inc.*, G.R. No. 209302, July 9, 2014, 729 SCRA 677, 694-695.

[15] POEA-SEC (2000), Definition of Terms.

work-related.[16] Notwithstanding the presumption, We have held that on due process grounds, the claimant-seafarer must still prove by substantial evidence that his work conditions caused or, at least, increased the risk of contracting the disease.[17] This is because awards of compensation cannot rest entirely on bare assertions and presumptions.[18] In order to establish compensability of a non-occupational disease, reasonable proof of work-connection is sufficient—direct causal relation is not required.[19] Thus, probability, not the ultimate degree of certainty, is the test of proof in compensation proceedings.[20]

A careful review of the findings of the NLRC and the LA show that petitioner was able to meet the required degree of proof that his illness is compensable as it is work-connected. The NLRC correctly ruled that his work conditions caused or, at least, increased the risk of contracting the disease, thus:

> Parkinson's disease is a degenerative disorder of the central nervous system. The motor symptoms of Parkinson's disease result from the death of dopamine-degenerating cells in the substantianegra, a region of the mid brain; the cause of this cell death is unknown. Early, in the course of the disease, the most obvious symptoms are movement-related, these include shaking, rigidity, slowness of movement and

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[16] POEA-SEC (2000), Sec. 20(B)(4).

[17] *Philippine Transmarine Carriers, Inc. v. Aligway*, G.R. No. 201793, September 16, 2015, 770 SCRA 609; *Dohle-Philman Manning Agency, Inc. v. Heirs of Andres G. Gazzingan*, G.R. No. 199568, June 17, 2015, 759 SCRA 209, 226; *Magsaysay Maritime Corporation v. National Labor Relations Commission (Second Division)*, 630 Phil. 352, 365 (2010).

[18] *Casomo v. Career Philippines Shipmanagement, Inc.*, 692 Phil. 326, 334 (2012). The prevailing rule is analogous to the rule under the old Workmen's Compensation Act that a preliminary link between the illness and the employment must first be shown before the presumption of work-relation can attach.

[19] *Grace Marine Shipping Corporation v. Alarcon*, G.R. No. 201536, September 9, 2015, 770 SCRA 259, 279-280.

[20] *Gabunas, Sr. v. Scanmar Maritime Services, Inc.*, 653 Phil. 457, 468 (2010); *NFD International Manning Agents, Inc. v. NLRC*, 336 Phil. 466, 474 (1997).

difficulty with walking and gait. Later, cognitive and behavioural problems may arise, with dementia; commonly occurring in the advanced stages of the disease. x x x

Many risk and protective factors have been investigated; the clearest evidence is for an increased risk of PD in people exposed to certain pesticides and a reduced risk in tobacco smokers.

It has to be noted that as Team Waiter and as a seaman, complainant was prone to smoking and to a bit of drinking to beat the cold weather they encounter in the high seas.

Further, as seaman, he, by the very nature of his work, cannot just leave his post and duty just to discharge his urine. In multiple system atrophy, the most common first sign of MSA is the appearance of an akenetic rigid syndrome. x x x Other common signs at onset include problems with balance (cerebellar ataxia) found in 22% of first presentation, followed by genito-urinary problems (9%). For men, the first sign can be erective dysfunction. Both men and women often experience problems with their bladders including urgency, frequency, incomplete bladder emptying or an inability to pass urine (reduction). About 1 in 5 MSA patients will suffer a fall in their first year of disease.

By the very nature of his work, therefore, where there is incomplete bladder emptying or inability to pass urine, has likewise contributed to complainant's present medical ailment.

As ruled in More Maritime Agencies, Inc. v. NLRC x x x it is not required that the employment be the sole factor in the growth, development or acceleration of the illness to entitle the claimant to the benefits provided therefore.

It is enough that the employment had contributed, even to a small degree, to the development of the disease and in bringing about his death.

x x x x x x x x x

Moreover, it cannot be denied that there was at least a reasonable connection between the job of a seaman and his lung infection, which eventually developed into septicemia and ultimately caused his death. As a utility man on board the vessel, he was exposed to harsh sea weather, chemical irritants, dusts, etc., all of which invariably contributed to his illness.

In the same vein, complainant was likewise exposed to harsh weather condition, chemical irritants as his job as a head waiter often led him to the kitchen where chemicals are found to keep the odor from spreading; to keep the cockroaches and other insects from spreading within the vessel, to make the mess hall a sanitary place for eating; and exposure to dust and other toxic substances though invisible to the naked eye are all contributory to the aggravation of his illness.[21]

In reversing the NLRC's decision, the CA is of the opinion that petitioner was never exposed to any toxic elements on board because the vessel was a cruise ship akin to a five star restaurant and could not have been exposed to any harsh condition thereof. Furthermore, according to the CA, no other guests or employees suffered any illness being exposed to the same work condition as petitioner, hence, his condition cannot be deemed to be work-related. Those findings, however, are flawed.

Working on any vessel, whether it be a cruise ship or not, can still expose any employee to harsh conditions. In this case, aside from the usual conditions experienced by seafarers, such as the harsh conditions of the sea, long hours of work, stress brought about by being away from their families, petitioner, a team head waiter, also performed the duties of a "fire watch" and assigned to welding works, all of which contributed to petitioner's stress, fatigue and extreme exhaustion. To presume, therefore, that employees of a cruise ship do not experience the usual perils encountered by those working on a different vessel is utterly wrong.

As aptly observed by the Labor Arbiter, petitioner's work as Team Headwaiter cannot be discounted as contributory factor, even to a small degree in the development of his illness, thus:

In fine, it can be properly said that complainant's work as Team Headwaiter cannot be discounted as contributory factor, even to a small degree in the development of the illness of the complainant. As a matter of fact, the contributory factor of complainant's work was strengthened by the fact that he already experienced in a milder state the symptoms of the disease, such as, difficulty in speaking, right hand tremor, frequent blinking and shuffling gait during his

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[21] *Rollo*, pp. 40-42.

employment contract with respondents principal prior to his last employment contract with them. That he was then seen at Cozumel and Belize and was able to recover and finish his contract.[22]

Anent the CA's opinion that no other guests or employees suffered any illness being exposed to the same conditions as petitioner, and thus, his illness cannot be considered as work-related, such is completely erroneous because not all persons have the same health condition, stamina and physical capability to fight an illness.

In view of the above disquisitions, this Court therefore affirms the compensability of petitioner's permanent disability. The US$60,000.00 (the equivalent of 120% of US$50,000.00) disability allowance is justified under Section 32 of the POEA Contract as petitioner suffered from permanent total disability. The grant of attorney's fees is likewise affirmed for being justified in accordance with Article 2208(2)[23] of the Civil Code, since petitioner was compelled to litigate to satisfy his claim for disability benefits.[24]

WHEREFORE, the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court dated November 26, 2014 of petitioner Lamberto M. De Leon is **GRANTED**. Consequently, the Decision dated October 9, 2013 and the Resolution dated November 5, 2014, both of the Court of Appeals are **REVERSED** and **SET ASIDE,** and the Decision dated December 15, 2011 and Resolution dated February 15, 2012 of the National Labor Relations Commission, granting petitioner disability benefits in the amount of US$60,000.00 or its Philippine Peso equivalent and the award of attorney's fees, are **REINSTATED**.

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[22] *Id*. at 52.

[23] Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation other than judicial costs, cannot be recovered except:

x x x x

(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;

[24] *PHILASIA Shipping Agency Corporation v. Tomacruz*, 692 Phil. 632, 651 (2012).

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 215933. February 8, 2017]

POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT CORPORATION (PSALM), *petitioner, vs.* **MAUNLAD HOMES, INC. ,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; EXECUTION, SATISFACTION AND EFFECT OF JUDGMENTS; TERCERIA; PROPER REMEDY WHERE PROPERTY OF THIRD PERSON WAS SEIZED BY A SHERIFF TO ANSWER FOR THE OBLIGATION OF THE JUDGMENT DEBTOR.— The power of the court in executing judgments extends only to properties unquestionably belonging to the judgment debtor alone. An execution can be issued only against a party and not against one who did not have his day in court. The duty of the sheriff is to levy the property of the judgment debtor not that of a third person. For, as the saying goes, one man's goods shall not be sold for another man's debts. Thus, if the property levied by virtue of a writ of execution is claimed by a third person who is not the judgment obligor, Section 16 of Rule 39 of the 1997 Rules of Civil Procedure provides for

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[*] Designated Additional Member per Special Order No. 2416, dated January 4, 2017.

the remedy of such third party claimant x x x. Under [Section 16 of Rule 39 of the 1997 Rules of Civil Procedure], the third-party claimant may execute an affidavit of his title or right to the possession of the property levied, and serve the same to the officer making the levy and a copy thereof to the judgment creditor. This remedy is known as terceria. The officer shall not be bound to keep the property, unless the judgment creditor files a bond approved by the court to indemnify the third-party claimant in a sum not less than the value of the property levied on. An action for damages may be brought against the officer within one hundred twenty (120) days from the date of the filing of the bond. The same section also provides that a third-party claimant may file a proper action to vindicate his claim to the levied property. The proper action mentioned in Section 16 would have for its object the recovery of ownership or possession of the property seized by the sheriff, as well as damages resulting from the allegedly wrongful seizure and detention thereof despite the third party claim and it may be brought against the sheriff and such other parties as may be alleged to have colluded with him in the supposedly wrongful execution proceedings, such as the judgment creditor himself. If instituted by a stranger to the suit in which execution has issued, such proper action should be a totally separate and distinct action from the former suit.

2. ID.; ID.; ID.; ID.; FOR THE REMEDY OF TERCERIA TO PROSPER, THE CLAIM OF OWNERSHIP OR RIGHT OF POSSESSION TO THE LEVIED PROPERTY BY THE THIRD-PARTY CLAIMANT MUST FIRST BE UNMISTAKABLY ESTABLISHED.— In *Spouses Sy v. Hon. Discaya*, We held that for the remedy of terceria to prosper, the claim of ownership or right of possession to the levied property by the third-party claimant must first be unmistakably established, thus: x x x A third person whose property was seized by a sheriff to answer for the obligation of the judgment debtor may invoke the supervisory power of the court which authorized such execution. Upon due application by the third person and after summary hearing, the court may command that the property be released from the mistaken levy and restored to the rightful owner or possessor. What said court can do in these instances, however, is limited to a determination of whether the sheriff has acted rightly or wrongly in the performance of

his duties in the execution of judgment, more specifically, if he has indeed taken hold of property not belonging to the judgment debtor. The court does not and cannot pass upon the question of title to the property, with any character of finality. It can treat of the matter only insofar as may be necessary to decide if the sheriff has acted correctly or not. It can require the sheriff to restore the property to the claimant's possession if warranted by the evidence. However, if the claimant's proofs do not persuade the court of the validity of his title or right of possession thereto, the claim will be denied.

3. ID.; SPECIAL CIVIL ACTIONS; PETITION FOR *CERTIORARI*; WHEN MAY BE FILED; A REMEDY IS ADEQUATE WHEN IT IS EQUALLY BENEFICIAL, SPEEDY AND SUFFICIENT, NOT MERELY A REMEDY WHICH AT SOME TIME IN THE FUTURE WILL BRING ABOUT A REVIVAL OF THE JUDGMENT OF THE LOWER COURT COMPLAINED OF IN THE *CERTIORARI* PROCEEDING, BUT A REMEDY WHICH WILL PROMPTLY RELIEVE THE PETITIONER FROM THE INJURIOUS EFFECTS OF THAT JUDGMENT AND THE ACTS OF THE INFERIOR COURT OR TRIBUNAL.— A petition for *certiorari* under Rule 65 of the Rules of Court may be filed when any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law. An adequate remedy has been defined as a remedy which is equally beneficial, speedy and sufficient, not merely a remedy which at some time in the future will bring about a revival of the judgment of the lower court complained of in the *certiorari* proceeding, but a remedy which will promptly relieve the petitioner from the injurious effects of that judgment and the acts of the inferior court or tribunal.

4. ID.; ID.; ID.; NEITHER AN APPEAL NOR A PETITION FOR *CERTIORARI* IS THE PROPER REMEDY FROM THE DENIAL OF A THIRD-PARTY CLAIM SINCE THE THIRD PARTY CLAIMANT MAY FILE A SEPARATE AND INDEPENDENT ACTION TO VINDICATE HIS CLAIM OF OWNERSHIP OR RIGHT OF POSSESSION

OF THE LEVIED PROPERTIES AGAINST THE JUDGMENT CREDITOR OR THE PURCHASER OF THE PROPERTY AT THE PUBLIC AUCTION SALE.— [P]etitioner cannot appeal from the denial of its third-party claim since it is not one of the parties in the action where the writ of execution was issued, as the unlawful detainer case was between respondent and the NPC. Also, the denial of the third-party claim is not appealable as provided under the above-quoted Section 16, Rule 39 of the Rules of Court since the remedy of a third party claimant is to file a separate and independent action to vindicate his claim of ownership or right of possession of the levied properties against the judgment creditor or the purchaser of the property at the public auction sale. It is in this separate and independent action that the issue of the third-party claimant's title to the levied properties can be resolved with finality. x x x. Hence, petitioner's claim in their jurisdictional allegations in its petition for *certiorari* filed with the CA that it was constrained to file the petition for *certiorari* under Rule 65 to protect its rights and interest over the subject properties because of the absence of a plain, speedy and adequate remedy, is contradicted by the procedure laid down under Section 16 of Rule 39, *i.e.*, the third-party claimant may file an independent action to vindicate its claim of ownership to the levied property. Where a specific remedy has been laid down by our rules for the protection or enforcement of rights, the same should be resorted to. In *Solidum* vs. *CA,* We held: We have held that neither an appeal nor a petition for *certiorari* is the proper remedy from the denial of a third-party claim, x x x. And in such separate action, the court may issue a writ of preliminary injunction against the sheriff enjoining him from proceeding with the execution sale, which is a speedy and adequate remedy to immediately relieve petitioner from the adverse effects of the lower court's judgment. Thus, the CA did not err in saying that Section 16 of Rule 39 provides a more expeditious and encompassing recourse from the denial of its third-party claim.

APPEARANCES OF COUNSEL

Office of the Government Corporate Counsel for petitioner.
Christine Francis DL Castro for respondent.

D E C I S I O N

PERALTA, *J.*:

Assailed in this petition for review on *certiorari* are the Decision[1] dated July 30, 2012 and the Resolution[2] dated December 10, 2014 issued by the Court of Appeals (CA) in CA-G.R. SP No. 118302.

The antecedent facts are as follows:

Respondent Maunlad Homes, Inc. filed with the Municipal Trial Court in Cities (MTCC), Malolos City, Bulacan, an unlawful detainer case with damages against National Power Corporation (*NPC*), raffled-off to Branch 1. After trial, the MTCC issued its Decision[3] dated October 26, 2009, ordering NPC to vacate the subject premises and surrender physical possession thereof to respondent; to pay reasonable compensation equivalent to Php20.00 per square meter per month of respondent's 25,896-sq. m. properties, reckoned from the date of demand on October 6, 2008, until complete vacation and surrender of the subject premises; and to pay Php20,000.00 as and for attorney's fees and cost of suit.

The NPC appealed the decision to the Regional Trial Court (*RTC*) of Malolos City, Bulacan, and was raffled-off to Branch 78. The RTC rendered its Decision[4] dated May 18, 2010 affirming *in toto* the MTCC decision.

Respondent filed a Motion for Execution which was opposed by the NPC. The NPC also filed a motion for reconsideration of the RTC decision. In an Order dated August 5, 2010, the

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[1] Penned by Associate Justice Jane Aurora C. Lantion, with Associate Justice Vicente S. E. Veloso and Associate Justice Edwin D. Sorongon, concurring; *rollo*, pp. 37-48.

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

[3] Per Judge Mario B. Capellan.

[4] Per Judge Gregorio S. Sampaga, Civil Case No. 21-M-2010; *rollo*, pp. 64-69.

RTC denied the NPC's motion for reconsideration and granted respondent's motion for execution. On August 25, 2010, a Writ of Execution pending appeal was issued.[5] And on September 6, 2010, the sheriff served a Notice of Demand[6] of payment to the NPC.

Respondent then filed an urgent motion for issuance of a Break Open Order since the sheriff who tried to implement the writ of execution, by serving the notice of levy on the NPC Warehouse at Barangay Lagundi, Mexico, Pampanga, was prevented by the security guards assigned therein. The NPC argued that the warehouse is being used both by it and the Power Sector Assets and Liabilities Management Corporation (herein petitioner PSALM), an entity created and existing by virtue of Republic Act No. 9136, the Electric Power Industry Reform Act of 2001 (EPIRA Law); that the said law provides that the ownership and all generation assets, IPP contracts and other NPC disposable assets are transferred to PSALM; and that as of the moment, the ownership of the said items stored in the said warehouse cannot be established with certainty as they are in the process of determining what properties may be retained by the latter.

On October 26, 2010, the RTC issued a Break Open Order[7] authorizing the sheriff and his deputies, police officers/escorts, representatives from both parties to enter/break open into the NPC's warehouse facilities located at Barangay Lagundi, Mexico, Pampanga.

On November 4, 2010, the sheriff issued a Notice of Levy[8] on execution pending appeal of personal properties/sale of seven (7) units transformer radiator fins, one (1) unit power transformer with Serial No. 77740395, and four (4) pieces angle bars.

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[5] *Id.* at 70-72.

[6] *Id*. at 73.

[7] *Id*. at 74-76.

[8] *Id*. at 77-78.

The fallo of the notice states:

NOW WHEREFORE, by virtue of said writ of execution pending appeal and in accordance with Rule 39, Section 9 of the Rules of Court, the undersigned sheriff IV will sell at public auction to the highest bidder for CASH and in Philippine Currency, on November 12, 2010 at 10:00 in the morning or soon thereafter, at No. 120 Gapan Olongapo Road, Barangay Lagundi, Mexico, Pampanga, the above-described properties to satisfy the said Writ of Execution pending Appeal.[9]

On November 9, 2010, petitioner filed an Affidavit[10] of third-party claim with the sheriff pursuant to Section 16, Rule 39 of the Rules of Court, and alleging that it is the owner of the levied properties pursuant to the EPIRA Law. On November 10, 2010, petitioner filed a Manifestation[11] with Urgent *Ex Parte* Motion for Issuance of *Status Quo* Order with the RTC arguing that it is the owner of the subject properties pulled out by the sheriff by operation of law; that it is not a party to the instant case and therefore cannot be bound by the judgment therein; that the obligation to pay respondent had not been transferred to it. Petitioner also prayed for the nullification of the levy of its properties and restoring their immediate possession to it.

On November 11, 2010, the RTC issued an Order[12] holding in abeyance the public sale of the subject levied properties until further orders.

On February 1, 2011, the RTC issued an Order,[13] the dispositive portion of which reads:

WHEREFORE, the foregoing considered, the motion for issuance of Status Quo Order is hereby DENIED. The third-party claim filed by PSALM is likewise denied.

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[9] *Id*. at 78.

[10] *Id*. at 187-189.

[11] *Id*. at 82-90.

[12] *Id*. at 93.

[13] *Id*. at 147-153.

Further PSALM's prayer to nullify the levy of seven units transformers radiator fins, one unit power transformer with serial number E-77740395 and four pieces of angle bars and restoring its immediate possession to the same is DENIED.

Accordingly, the Sheriff of this Court is DIRECTED to proceed with the implementation of the writ of execution issued in this case in accordance with law and without further delay.

SO ORDERED.[14]

On February 21, 2011, the sheriff issued a notice[15] of sale on execution of personal properties.

Petitioner filed with the CA a petition for *certiorari* assailing the October 26, 2010 Break Open Order, the November 4, 2010 notice of levy on execution pending appeal, the Order dated February 1, 2011 denying the motion for issuance of *Status Quo* Order and the third-party claim, and the February 21, 2011 notice of sale on execution of personal properties. It alleged that it has no adequate remedy available from the writs and processes issued by the RTC, and that it acted without or in excess of jurisdiction in issuing the assailed orders despite the fact that petitioner is the owner of the subject properties.

On July 30, 2012, the CA issued its assailed Decision dismissing the petition for *certiorari* for being an incorrect remedy.

The CA found, among others, that contrary to the allegation of petitioner that there exists no plain, speedy and adequate remedy obtaining under the circumstances, Section 16, Rule 39 of the Rules of Court provides a more expeditious and encompassing recourse in case a property belonging to a third person is placed under the coverage of the writ of execution and, thereafter, sold at public auction.

Petitioner filed a motion for reconsideration, which was denied by the CA in a Resolution dated December 10, 2014.

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[14] *Id*. at 153.

[15] *Id.* at 154-155.

Petitioner filed the instant petition for review on *certiorari* alleging the following:

I

THE CA, IN DISMISSING PSALM'S PETITION ON PROCEDURAL GROUNDS, OVERLOOKED PSALM'S PREVIOUSLY FILED THIRD PARTY CLAIM.

II

PSALM OWNS THE PROPERTIES SUBJECT MATTER OF THE ORDERS OF JUDGE SAMPAGA ISSUED AND THE PROCESSES SHERIFF ESGUERRA ISSUED.

III

THE JUDGMENT OBLIGATION IS NOT AMONG THE OBLIGATIONS PSALM ASSUMED.

IV

PSALM WAS NOT A PARTY TO THE CASE IN WHICH THE DECISION THEREIN IS THE SUBJECT OF THE EXECUTION PROCEEDINGS.[16]

Petitioner claims that the CA erred in overlooking the fact that it filed a third party claim as provided under Section 16 of Rule 39 of the 1997 Rules of Civil Procedure. Petitioner contends that the CA should have taken consideration of the substantive issues raised in its petition reiterating its ownership of the levied properties. It claims that upon the effectivity of the EPIRA law on June 26, 2001, the ownership of all existing generation assets, IPP contracts, real estate and all other disposable assets of NPC were transferred to it; and that all existing liabilities and outstanding financial obligations of NPC as of June 26, 2001 arising from loans, issuance of bonds, securities and other instrument of indebtedness were then and there likewise legally transferred and assumed by it. However, since respondent's claim is not among those existing obligations that were transferred to it upon the effectivity of the EPIRA law, it cannot be held

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[16] *Id*. at 17.

liable for the claim even if it were made a party in the case. It contends that there is sufficient ground to annul the levy and sale made by the sheriff since it is not a party in the case, and therefore, not bound by the judgment rendered.

The pivotal issue for resolution is whether the CA erred in dismissing petitioner's petition for certiorari assailing the denial of the latter's third party claim for being a wrong remedy.

We find no merit in the petition.

The power of the court in executing judgments extends only to properties unquestionably belonging to the judgment debtor alone.[17] An execution can be issued only against a party and not against one who did not have his day in court.[18] The duty of the sheriff is to levy the property of the judgment debtor not that of a third person. For, as the saying goes, one man's goods shall not be sold for another man's debts.[19] Thus, if the property levied by virtue of a writ of execution is claimed by a third person who is not the judgment obligor, Section 16 of Rule 39 of the 1997 Rules of Civil Procedure provides for the remedy of such third party claimant, to wit:

> Sec. 16. Proceedings where property claimed by third person. – If the property levied on is claimed by any person other than the judgment obligor or his agent, and such person makes an affidavit of his title thereto or right to the possession thereof, stating the grounds of such right or title, and serves the same upon the officer making the levy and a copy thereof upon the judgment obligee, the officer shall not be bound to keep the property, unless such judgment obligee, on demand of the officer, files a bond approved by the court to indemnify the third-party claimant in a sum not less than the value of the property levied on. In case of disagreement as to such value, the same shall be determined by the court issuing the writ of execution.

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[17] *Villasi v. Garcia*, G.R. No. 190106, January 15, 2014, 713 SCRA 629.

[18] *Id.*

[19] *Id.,* citing *Corpus v. Pascua,* A.M. No. P-11-2972, September 28, 2011, 658 SCRA 239, 248.

No claim for damages for the taking or keeping of the property may be enforced against the bond unless the action therefor is filed within one hundred twenty (120) days from the date of the filing of the bond.

The officer shall not be liable for damages for the taking or keeping of the property, to any third-party claimant if such bond is filed. Nothing herein contained shall prevent such claimant or any third person from vindicating his claim to the property in a separate action, or prevent the judgment obligee from claiming damages in the same or a separate action against a third-party claimant who filed a frivolous or plainly spurious claim.

When the writ of execution is issued in favor of the Republic of the Philippines, or any officer duly representing it, the filing of such bond shall not be required, and in case the sheriff or levying officer is sued for damages as a result of the levy, he shall be represented by the Solicitor General and if held liable therefor, the actual damages adjudged by the court shall be paid by the National Treasurer out of such funds as may be appropriated for the purpose.

Under the above-quoted provision, the third-party claimant may execute an affidavit of his title or right to the possession of the property levied, and serve the same to the officer making the levy and a copy thereof to the judgment creditor. This remedy is known as terceria.[20] The officer shall not be bound to keep the property, unless the judgment creditor files a bond approved by the court to indemnify the third-party claimant in a sum not less than the value of the property levied on. An action for damages may be brought against the officer within one hundred twenty (120) days from the date of the filing of the bond. The same section also provides that a third-party claimant may file a proper action to vindicate his claim to the levied property. The proper action mentioned in Section 16 would have for its object the recovery of ownership or possession of the property seized by the sheriff, as well as damages resulting from the allegedly wrongful seizure and detention thereof despite the third party claim and it may be brought against the sheriff and such other parties as may be alleged to have colluded with him

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[20] *Naguit v. CA*. G.R. No. 137675, December 5, 2000, 347 SCRA 60.

in the supposedly wrongful execution proceedings, such as the judgment creditor himself. If instituted by a stranger to the suit in which execution has issued, such proper action should be a totally separate and distinct action from the former suit.[21]

In this case, petitioner had filed an affidavit of third-party claim with the sheriff and a motion for issuance of *status quo* order with the RTC to prevent the sale of the levied properties at public auction, nullification of the levy and restoration of the subject properties to it, which were denied by the RTC and, consequently, the sheriff was directed to proceed with the implementation of the issued writ of execution.

The RTC denied the third-party claim as follows:

> As to the third-party claim by movant PSALM, this Court also resolves to deny the same for lack of merit.
>
> Section 16 of Rule 39 of the Rules of Court provides:
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> x x x x x x x x x
>
> In this present case, aside from serving said affidavit of third-party claim to the Sheriff of this Court, claimant PSALM also filed this instant motion for issuance of *status quo* order to prevent the sale of the levied properties at public auction, nullification of the levy and restoration of the subject properties in the possession of PSALM. In effect, instead of the Sheriff requiring the plaintiff-obligee to file an indemnity bond, the Court is constrained to resolve the merit of the third-party claim filed by PSALM.
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> However, it must be emphasized that the resolution of this Court is limited only to a determination of whether the Sheriff acted correctly in the performance of his duties. It cannot pass upon the question of title to the property, with any character of finality. It only treats of that matter in so far as may be necessary to decide if the sheriff acted correctly or not.

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[21] *Id*., citing *Estonina v. Court of Appeals*, G.R. No. 111547, January 27, 1997, 266 SCRA 627; *Consolidated Bank and Trust Corp. v. Court of Appeals,* G.R. No. 80063, January 23, 1991, 193 SCRA 159; *Sy v. Discaya,* G.R. No. 86301, January 23, 1990, 181 SCRA 378; *Ong v. Tating*, G.R. No. 61042, April 15, 1987, 149 SCRA 265.

After giving an opportunity to vindicate their claim and after a judicious examination of the arguments posed by all of the parties, this Court finds that PSALM has not been able to satisfactorily establish their claim of ownership over the subject properties.

First, claimant PSALM has not presented sufficient proof of ownership over the said levied properties. It merely claimed that the subject properties were transferred by operation of law in view of the passage of EPIRA in 2001. It did not submit any document evidencing ownership. It even failed to present any document that the levied property is among those included in the inventoried property of PSALM. The doctrine of "Ei incumbit probatio qui dicit, non qui negat" or "He who asserts, not he who denies, must prove" is applicable in this present case.

Second, a careful perusal of EPIRA, particularly Sections 49, 50, 51 and 56, in relation to Section 1 of Rule 21 of its Implementing Rules and Regulations, would show that ownership of NPC's assets, herein levied properties included, is not *ipso jure* or by operation of law as there is the need to execute certain documents evidencing transfer of ownership and possession. This Court agrees with the plaintiff-appellee that these documents are conditions precedent that are needed to be performed and executed in order to have a valid transfer.

Section 1, Rule 21 of the IRR provides:

NPC and PSALM shall take such measures and execute such documents to effect the transfer of ownership and possession of all assets, rights and privileges, liabilities required by the Act to be transferred by NPC to PSALM.

Third, even if the transfer is by operation of law, it would be an injustice and inequitable, to say the least, to interpret the aforesaid provision as to effect the transfer only of the assets and properties of NPC but not its obligation and liabilities. The assets and properties transferred should also account for the liabilities and obligations incurred by NPC. In fact, Section 49 of the said law explicitly states that PSALM should not only assume and take ownership of all existing NPC generations assets, liabilities and IPP contracts, real estate and other disposable assets.

In the instant case, plaintiff Maunlad Homes, Inc. is already on the stage of reaping the fruits of its labor after it had judiciously battled the case with the court *a quo* and this Court. Injustice is manifest

if they would not be awarded what is due them merely on the ground of technicalities and evasive measures undertaken by its adversary.[22]

In Spouses *Sy v. Hon. Discaya*,[23] We held that for the remedy of terceria to prosper, the claim of ownership or right of possession to the levied property by the third-party claimant must first be unmistakably established, thus:

> x x x A third person whose property was seized by a sheriff to answer for the obligation of the judgment debtor may invoke the supervisory power of the court which authorized such execution. Upon due application by the third person and after summary hearing, the court may command that the property be released from the mistaken levy and restored to the rightful owner or possessor. What said court can do in these instances, however, is limited to a determination of whether the sheriff has acted rightly or wrongly in the performance of his duties in the execution of judgment, more specifically, if he has indeed taken hold of property not belonging to the judgment debtor. The court does not and cannot pass upon the question of title to the property, with any character of finality. It can treat of the matter only insofar as may be necessary to decide if the sheriff has acted correctly or not. It can require the sheriff to restore the property to the claimant's possession if warranted by the evidence. However, if the claimant's proofs do not persuade the court of the validity of his title or right of possession thereto, the claim will be denied.[24]

Independent of the above-stated recourse, a third-party claimant may also avail of the remedy known as *"terceria,"* provided in Section 17, Rule 39, by serving on the officer making the levy an affidavit of his title and a copy thereof upon the judgment creditor. The officer shall not be bound to keep the property, unless such judgment creditor or his agent, on demand of the officer, indemnifies the officer against such claim by a bond in a sum not greater than the value of the property levied on. An action for damages may be brought against the sheriff within one hundred twenty (120) days from the filing of the bond.

The aforesaid remedies are nevertheless without prejudice to "any proper action" that a third-party claimant may deem suitable to

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[22] *Rollo*, pp. 150-152.

[23] G.R. No. 86301, January 23, 1990, 181 SCRA 378.

[24] *Id.* at 382-383.

vindicate "his claim to the property." Such a "proper action" is, obviously, entirely distinct from that explicitly prescribed in Section 17 of Rule 39, which is an action for damages brought by a third-party claimant against the officer within one hundred twenty (120) days from the date of the filing of the bond for the taking or keeping of the property subject of the "*terceria*."

Since the RTC denied the third-party claim for failure of petitioner to satisfactorily establish its claim of ownership over the subject properties, the latter filed with the CA a petition for *certiorari* assailing such denial and claimed that there is no plain, speedy and adequate remedy in the ordinary course of law. The petition for *certiorari* was dismissed by the CA for being a wrong remedy.

We affirm the dismissal.

A petition for *certiorari* under Rule 65 of the Rules of Court may be filed when any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law. An adequate remedy has been defined as a remedy which is equally beneficial, speedy and sufficient, not merely a remedy which at some time in the future will bring about a revival of the judgment of the lower court complained of in the *certiorari* proceeding, but a remedy which will promptly relieve the petitioner from the injurious effects of that judgment and the acts of the inferior court or tribunal.[25]

Notably, petitioner cannot appeal from the denial of its third-party claim since it is not one of the parties in the action where the writ of execution was issued,[26] as the unlawful detainer case was between respondent and the NPC. Also, the denial of the third-party claim is not appealable as provided under the

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[25] *Conti v. CA*, G.R. No. 134441, May 19, 1999, 307 SCRA 486, 495, citing *Silvestre vs. Torres*, 57 Phil. 885 (1933)

[26] *Solidum v. CA*, G.R. No. 161647, June 22, 2006, 492 SCRA 261.

above-quoted Section 16, Rule 39 of the Rules of Court since the remedy of a third party claimant is to file a separate and independent action to vindicate his claim of ownership or right of possession of the levied properties against the judgment creditor or the purchaser of the property at the public auction sale. It is in this separate and independent action that the issue of the third-party claimant's title to the levied properties can be resolved with finality.

In *Queblar v. Garduño*,[27] we declared:

> The appeal interposed by the third-party claimant-appellant is improper, because she was not one of the parties in the action who were exclusively Venancio Queblar as plaintiff and Leonardo Garduño as defendant. Considering the provisions of said Section 451 of the Code of Civil Procedure, as amended by Act No. 4108,[28] the appealed order was not appealable. The appeal that should have been interposed by her, if the term "appeal" may properly be employed, is a separate reinvidicatory action against the execution creditor or the purchaser of her property after the sale at public auction, or a complaint for damages to be charged against the bond filed by the judgment creditor in favor of the sheriff.[29]

Hence, petitioner's claim in their jurisdictional allegations in its petition for *certiorari* filed with the CA that it was constrained to file the petition for *certiorari* under Rule 65 to protect its rights and interest over the subject properties because of the absence of a plain, speedy and adequate remedy, is contradicted by the procedure laid down under Section 16 of Rule 39, *i.e.*, the third-party claimant may file an independent action to vindicate its claim of ownership to the levied property. Where a specific remedy has been laid down by our rules for the protection or enforcement of rights, the same should be resorted to. In *Solidum v. CA*,[30] We held:

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[27] 67 Phil. 316 (1939).

[28] Section 16, Rule 39.

[29] *Queblar v. Garduño, supra* note 26, at 319-320.

[30] *Id.* at 26.

We have held that neither an appeal nor a petition for *certiorari* is the proper remedy from the denial of a third-party claim. In the case of Northern Motors, Inc. v. Coquia, the petitioner filed, among others, a third-party claim which was denied by the respondent judge in the disputed resolution. Northern Motors, Inc. thereafter filed a petition for *certiorari* to nullify the resolution and order of the respondent judge. In resolving whether the respondent judge acted with grave abuse of discretion in denying petitioner's third-party claim, the Court held:

Pursuant to [Section 17, Rule 39 of the Revised Rules of Court], a third-party claimant has two remedies, such as, an action for damages against the sheriff to be brought within 120 days from the filing of the bond, and a separate and independent action to vindicate his claim to the property. In the case at bar, petitioner's and intervenor's remedy against the bond proved to be unavailing because of the disputed order of the respondent Judge canceling the indemnity bond. Such an order as well as the order denying a motion to reconsider the same in effect discarded or quashed the third-party claims. What then would the remedy be of the third-party claimants?

In the recent case of *Serra vs. Rodriguez*, xxx this Court (First Division), thru Mr. Justice Makasiar, ruled:

> From the denial of a third-party claim to defeat the attachment caused to be levied by a creditor, neither an appeal nor a petition for certiorari is the proper remedy. The remedy of petitioner would be to file a separate and independent action to determine the ownership of the attached property or to file a complaint for damages chargeable against the bond filed by the judgment creditor in favor of the provincial sheriff.

In Lara vs. Bayona, L-7920, May 10, 1955, this Court, thru Mr. Justice Concepcion, later Chief Justice, in denying the petition for certiorari to set aside the order of the lower court quashing the third-party claim of a chattel mortgagee, held:

> Pursuant to this provision, nothing contained therein shall prevent petitioner "from vindicating his claim to the property by any proper action." Neither does the order complained of deprive petitioner herein of the opportunity to enforce his alleged rights by appropriate proceedings. In short, he has another "plain, speedy and adequate remedy in the ordinary course of law," and, hence is not entitled either to a writ of certiorari or to a writ of prohibition.

The Court further held that since the third-party claimant is not one of the parties to the action, he could not, strictly speaking, appeal from the order denying its claim, but should file a separate reinvidicatory action against the execution creditor or a complaint for damages against the bond filed by the judgment creditor in favor of the sheriff. The rights of a third-party claimant should be decided in a separate action to be instituted by the third person. In fine, the appeal that should be interposed, if the term appeal may be properly employed, is a separate reinvidicatory action against the execution creditor or complaint for damages to be charged against the bond filed by the judgment creditor in favor of the sheriff.[31]

And in such separate action, the court may issue a writ of preliminary injunction against the sheriff enjoining him from proceeding with the execution sale,[32] which is a speedy and adequate remedy to immediately relieve petitioner from the adverse effects of the lower court's judgment. Thus, the CA did not err in saying that Section 16 of Rule 39 provides a more expeditious and encompassing recourse from the denial of its third-party claim.

Considering our foregoing discussions, We need not address the other issues raised by petitioner regarding its right to ownership and possession of the levied properties.

WHEREFORE, the petition is **DENIED**. The Decision dated July 30, 2012 and the Resolution dated December 10, 2014 issued by the Court of Appeals in CA-G.R. SP No. 118302 are hereby **AFFIRMED.**

SO ORDERED.

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

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[31] *Solidum v. CA, supra* at 270-271.

[32] *Ong v. Tating*, G.R. No. 61042, April 15, 1987, 149 SCRA 265, citing *Abiera v. Court of Appeals*, G.R. No. L-26294, May 31, 1972, 45 SCRA 314; *Bayer Phil. v. Agana*, G.R. No. L-38701, April 8, 1975, 63 SCRA 355.

[*] Designated Additional Member per Special Order No. 2416 dated January 4, 2017.

THIRD DIVISION

[G.R. No. 225035. February 8, 2017]

CARSON REALTY & MANAGEMENT CORPORATION, *petitioner, vs.* **RED ROBIN SECURITY AGENCY and MONINA C. SANTOS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SUMMONS; SUBSTITUTED SERVICE OF SUMMONS; REQUIREMENTS.— In actions *in personam*, such as the present case, the court acquires jurisdiction over the person of the defendant through personal or substituted service of summons. However, because substituted service is in derogation of the usual method of service and personal service of summons is preferred over substituted service, parties do not have unbridled right to resort to substituted service of summons. Before substituted service of summons is resorted to, the parties must: (a) indicate the impossibility of personal service of summons within a reasonable time; (b) specify the efforts exerted to locate the defendant; and (c) state that the summons was served upon a person of sufficient age and discretion who is residing in the address, or who is in charge of the office or regular place of business of the defendant.

2. ID.; ID.; ID.; ID.; RESORT TO SUBSTITUTED SERVICE IS WARRANTED WHERE THE IMPOSSIBILITY OF PERSONAL SERVICE IS CLEARLY APPARENT, AS SHOWN BY THE DEFENDANT'S EVIDENT AVOIDANCE TO RECEIVE THE SUMMONS PERSONALLY DESPITE THE PROCESS SERVER'S DILIGENT EFFORTS TO EFFECT PERSONAL SERVICE UPON HIM.— In *Sagana v. Francisco*, the substituted service of summons was questioned for non-compliance with the Rules, since the summons was not allegedly served at defendant's residence or left with any person who was authorized to receive it on behalf of the defendant. We upheld the validity of the substituted service of summons due to the defendant's evident avoidance to receive

the summons personally despite the process server's diligent efforts to effect personal service upon him. x x x. Similarly, given the circumstances in the case at bench, We find that resort to substituted service was warranted since the impossibility of personal service is clearly apparent. x x x. Indeed, the Return established the impossibility of personal service to Carson's officers, as shown by the efforts made by Process Server Pajila to serve the September 8, 2008 alias Summons on Carson's President/General Manager. In particular, several attempts to serve the summons on these officers were made on four separate occasions: October 2, 2008, October 16, 2008, October 27, 2008, and October 28, 2008, but to no avail. x x x. Based on the facts, there was a deliberate plan of Carson's for its officers not to receive the Summons. It is a legal maneuver that is in derogation of the rules on Summons. We cannot tolerate that. The facts now show that the responsible officers did not intend to receive the alias Summons through substituted service. The Summons is considered validly served.

3. ID.; ID.; ID.; VOLUNTARY APPEARANCE; FILING OF A MOTION FOR ADDITIONAL TIME TO FILE ITS RESPONSIVE PLEADING IS CONSIDERED VOLUNTARY SUBMISSION OF THE PARTY TO THE JURISDICTION OF THE COURT.— [E]ven if We concede the invalidity of the substituted service, such is of little significance in view of the fact that the RTC had already acquired jurisdiction over Carson early on due to its voluntary submission to the jurisdiction of the court. Courts acquire jurisdiction over the plaintiffs upon the filing of the complaint. On the other hand, jurisdiction over the defendants in a civil case is acquired either through the service of summons upon them or through their voluntary appearance in court and their submission to its authority, as provided in Section 20, Rule 14 of the Rules of Court. x x x. We have, time and again, held that the filing of a motion for additional time to file answer is considered voluntary submission to the jurisdiction of the court. If the defendant knowingly does an act inconsistent with the right to object to the lack of personal jurisdiction as to him, like voluntarily appearing in the action, he is deemed to have submitted himself to the jurisdiction of the court. Seeking an affirmative relief is

inconsistent with the position that no voluntary appearance had been made, and to ask for such relief, without the proper objection, necessitates submission to the Court's jurisdiction. Carson voluntarily submitted to the jurisdiction of the RTC when it filed, through Atty. Roxas, the Appearance and Motion dated April 25, 2007 acknowledging Carson's receipt of the Summons dated April 11, 2007 and seeking additional time to file its responsive pleading. As noted by the CA, Carson failed to indicate therein that the Appearance and Motion was being filed by way of a conditional appearance to question the regularity of the service of summons. Thus, by securing the affirmative relief of additional time to file its responsive pleading, Carson effectively voluntarily submitted to the jurisdiction of the RTC.

4. ID.; ID.; DEFAULT ORDER; DEFAULT ORDER DECLARED VALID FOR FAILURE OF THE PETITIONER TO FILE ITS RESPONSIVE PLEADING DESPITE ITS VOLUNTARY SUBMISSION TO THE JURISDICTION OF THE TRIAL COURT RECKONED FROM ITS FILING OF THE APPEARANCE AND MOTION.— Section 3, Rule 9 of the Rules of Court states when a party may be properly declared in default and the remedy available in such case x x x. Carson moved to dismiss the complaint instead of submitting a responsive pleading within fifteen (15) days from April 27, 2007 as prayed for in its Appearance and Motion. Clearly, Carson failed to answer within the time allowed for by the RTC. At this point, Carson could have already been validly declared in default. However, believing that it has yet to acquire jurisdiction over Carson, the RTC issued the September 24, 2007 and September 9, 2008 alias Summons. This culminated in the issuance of the assailed June 29, 2009 Order declaring Carson in default on the basis of the substituted service of the September 9, 2008 alias Summons. While Carson filed its Urgent Motion to Lift Order of Default, the CA found that the same failed to comply with the requirement under Sec. 3(b) that the motion be under oath. It bears noting that the propriety of the default order stems from Carson's failure to file its responsive pleading despite its voluntary submission to the jurisdiction of the trial court reckoned from its filing of the Appearance and Motion, and not due to

its failure to file its answer to the September 8, 2008 alias Summons. xxx. [T]he erroneous basis cited in the June 29, 2009 Order, due to the RTC's mistaken belief that the substituted service vested it with jurisdiction over Carson, does not render the pronouncement invalid in view of the existence of a lawful ground therefor.

APPEARANCES OF COUNSEL

Tomas Z. Roxas, Jr., for petitioner.
Alquin B. Manguera for respondents.

D E C I S I O N

VELASCO, JR., *J.*:

Nature of the Case

This is a petition for review under Rule 45 of the Rules of Court, which seeks to reverse and set aside the August 20, 2015 Decision[1] and June 8, 2016 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 121983.

Factual Antecedents

The facts according to the CA are as follows:

On March 23, 2007, respondent Monina C. Santos (Santos) filed a Complaint for Sum of Money and Damages against petitioner Carson Realty & Management Corp. (Carson) with the Quezon City Regional Trial Court (RTC), Branch 216. As per the Officer's Return dated April 12, 2007 of Process Server Jechonias F. Pajila, Jr. (Process Server Pajila), a copy of the

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[1] *Rollo*, pp. 94-113. Penned by Associate Justice Zenaida T. Galapate-Laguilles and concurred in by Associate Justices Mariflor P. Punzalan Castillo and Florito S. Macalino.

[2] *Id*. at 114-115.

Summons dated April 11, 2007, together with the Complaint and its annexes, was served upon Carson at its business address at Unit 601 Prestige Tower Condominium, Emerald Avenue, Ortigas Center, Pasig City, through its "corporate secretary," Precilla S. Serrano.[3]

Thereafter, the appointed Corporate Secretary and legal counsel of Carson, Atty. Tomas Z. Roxas, Jr. (Atty. Roxas), filed an Appearance and Motion dated April 25, 2007 with the court wherein the latter entered his appearance and acknowledged that the Summons was served and received by one of the staff assistants of Carson. Atty. Roxas prayed for an extension of fifteen (15) days from April 27, 2007 within which to file a responsive pleading. The RTC, in its Order dated May 3, 2007, noted the appearance of Atty. Roxas as counsel for Carson and granted his request for extension of time to file a responsive pleading.[4]

Instead of filing a responsive pleading, Atty. Roxas moved to dismiss the complaint, alleging that the Summons dated April 11, 2007 was not served on any of the officers and personnel authorized to receive summons under the Rules of Court.[5]

In her Comment, Santos countered that while the Summons was initially received by Serrano, who as it turned out was a staff assistant and not the corporate secretary of Carson, the corporation acknowledged receipt of the Summons when Atty. Roxas alleged in his Appearance and Motion that he may not be able to comply with the 15-day prescribed period stated in the Summons within which to file a responsive pleading. Thus, when Carson sought for an affirmative relief of a 15-day extension from April 27, 2007 to file its pleading, it already voluntarily submitted itself to the jurisdiction of the RTC.[6]

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[3] *Id*. at 95.

[4] *Id*. at 96.

[5] *Id*.

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

The RTC denied Carson's Motion to Dismiss and directed the issuance of an alias summons to be served anew upon the corporation. On November 9, 2007, Process Server Pajila submitted his Officer's Report stating in essence that he attempted to serve the alias Summons dated September 24, 2007 on the President and General Manager of Carson, as well as on the Board of Directors and Corporate Secretary, but they were not around. Hence, he was advised by a certain Lorie Fernandez, the "secretary" of the company, to bring the alias Summons to the law office of Atty. Roxas. Process Server Pajila attempted to serve the alias Summons at the law office of Atty. Roxas twice, but to no avail. This prompted him to resort to substituted service of the alias Summons by leaving a copy thereof with a certain Mr. JR Taganila, but the latter also refused to acknowledge receipt of the alias Summons.[7]

Atty. Roxas filed a Manifestation stating that the alias Summons was again improperly and invalidly served as his law office was not empowered to receive summons on behalf of Carson. In relation thereto, Atty. Roxas maintained that substituted service is not allowed if the party defendant is a corporation. Thus, Atty. Roxas manifested his intention of returning the alias Summons to the RTC.

On December 10, 2007, Santos filed a Motion to Declare Defendant in Default. Finding that there was an improper service of summons on Carson, the RTC denied the motion.

Thereafter, Santos requested the RTC for the issuance of another alias Summons. The RTC granted this request and issued an alias Summons dated September 9, 2008. Process Server Pajila submitted his Officer's Return dated October 28, 2008 on the services of the alias Summons, quoted hereunder in full:

THIS IS TO CERTIFY that on October 2, 2008 at around 12:51 in the afternoon, when a copy of Alias Summons dated September

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[7] *Id*. at 97.

9, 2008 issued in the above-entitled case together with a copy of the complaint and annexes attached thereto was brought for service to the President/General Manager of CARSON REALTY & MANAGEMENT CORP., in the person of Marcial M. Samson and/or Nieva A. Cabrera at its office address at Unit 601 Prestige Tower Condominium, Emerald Avenue, Ortigas Center, 1605 Pasig City, undersigned was informed by the secretary of the company in the person of Ms. Vina Azonza that the abovementioned persons were not around and there was no one in the company authorized to receive the aforesaid summons. That the undersigned went back to the said office on October 16, 2008 at around 3:08 in the afternoon and was entered by Ms. Lorie Fernandez, also an employee of the company who is authorized to receive the said process. On October 27, 2008, at around 2:23 in the afternoon, undersigned tried again to serve the same process to the President/General Manager of Carson Realty & Management Corp. but with the same result.

Finally, on October 28, 2008 at around 1:03 in the afternoon, the undersigned went back to the said company to personally serve the Alias Summons together with the other pertinent documents, just the same, the President/General Manager of the company was not around, hence, substituted service of summons was resorted to by leaving the copy of the Alias Summons at the company's office through its employee, MS. LORIE FERNANDEZ, however, she refused to acknowledge receipt of the process.

Loreta M. Fernandez (Fernandez), the receptionist who received the September 9, 2008 alias Summons, filed a Manifestation before the RTC signifying her intention of returning the alias Summons, together with the Complaint. Fernandez posited that, as a mere receptionist, she had no authority to receive the said documents and that there was an improper service of summons.

Santos filed a second Motion to Declare Defendant in Default in January 2009. The RTC granted the motion and allowed her to present her evidence *ex-parte* in its Order dated June 29, 2009.[8]

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[8] *Id*. at 209-211.

On August 27, 2009, Carson filed an Urgent Motion to Set Aside Order of Default[9] alleging that the RTC has yet to acquire jurisdiction over its person due to improper service of summons. The RTC denied the same in its December 4, 2009 Order.[10]

Carson filed an Urgent Motion for Reconsideration and for Leave of Court to Admit Responsive Pleading on March 17, 2010, appending thereto its Answer with Counterclaims. This was opposed by Santos in her Comment/Opposition. In the meantime, Santos filed an Ex-Parte Motion to Set for Hearing and for Reception of Evidence Before the Branch Clerk of Court.[11] On November 22, 2010, the RTC rendered an Order[12] denying Carson's Urgent Motion for Reconsideration and granting Santos' Ex-Parte Motion to Set Case for Hearing and for Reception of Evidence Before the Branch Clerk.[13]

Carson filed a Motion for Clarification and prayed for the annulment of the Orders dated June 29, 2009, December 4, 2009, and November 22, 2010. The RTC, however, maintained its stance and denied the motion in its Order[14] dated September 9, 2011.

Thus, Carson filed a Petition for Certiorari[15] dated November 9, 2011 under Rule 65 of the Rules of Court with the CA, imputing grave abuse of discretion amounting to lack or excess of jurisdiction to the RTC for issuing the Orders dated June 29, 2009, December 4, 2009, November 22, 2010, and September 9, 2011. Carson essentially questioned the validity of the service of the second alias Summons dated September 9, 2008, received

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[9] *Id.* at 100.

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

[11] *Id.* at 100.

[12] *Id.* at 308-312.

[13] *Id.* at 100.

[14] *Id.* at 329-330.

[15] *Id.* at 337-394.

by Fernandez, who is a receptionist assigned at its office in Ortigas.

Ruling of the Court of Appeals

The CA denied the petition and ruled that the RTC had properly acquired jurisdiction over Carson due to its voluntary appearance in court. In ruling thus, the CA considered Carson's act of requesting additional time to file its responsive pleading as voluntary submission to the jurisdiction of the trial court.

Even on the assumption that Carson did not voluntarily submit to the RTC's jurisdiction, the CA maintained that the RTC still acquired jurisdiction over it due to the substituted service of the alias Summons dated September 9, 2008. The appellate court reasoned that Fernandez is a competent person charged with authority to receive court documents on behalf of the corporation.[16] Consequently, the CA upheld the Order dated June 29, 2009 declaring Carson in default.

Carson moved for reconsideration but was denied by the CA in its Resolution dated June 8, 2016. Hence, this petition.

Carson, in the main, argues that the trial court did not acquire jurisdiction over its person because the summons was not properly served upon its officers as mandated under Section 11,[17] Rule 14 of the Rules of Court. Thus, Carson posits, the RTC improperly declared it in default and should not have allowed Santos to present her evidence *ex-parte*.

Issues

The pertinent issues for the resolution of this Court can be summarized, as follows:

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[16] *Id*. at 108.

[17] SECTION 11. Service upon domestic private juridical entity. – When the defendant is a corporation, partnership or association organized under the laws of the Philippines with a juridical personality, service may be made on the president, managing partner, general manager, corporate secretary, treasurer, or in-house counsel.

(1) Whether the RTC acquired jurisdiction over Carson.

(2) Whether Carson was properly declared in default.

Our Ruling

The petition is bereft of merit.

In actions *in personam*, such as the present case, the court acquires jurisdiction over the person of the defendant through personal or substituted service of summons. However, because substituted service is in derogation of the usual method of service and personal service of summons is preferred over substituted service, parties do not have unbridled right to resort to substituted service of summons. Before substituted service of summons is resorted to, the parties must: (a) indicate the impossibility of personal service of summons within a reasonable time; (b) specify the efforts exerted to locate the defendant; and (c) state that the summons was served upon a person of sufficient age and discretion who is residing in the address, or who is in charge of the office or regular place of business of the defendant.[18]

In relation to the foregoing, *Manotoc v. Court of Appeals*[19] provides an exhaustive discussion on what constitutes valid resort to substituted service of summons:

(1) Impossibility of Prompt Personal Service

The party relying on substituted service or the sheriff must show that defendant cannot be served promptly or there is impossibility of prompt service. Section 8, Rule 14 provides that the plaintiff or the sheriff is given a "reasonable time" to serve the summons to the defendant in person, but no specific time frame is mentioned. "Reasonable time" is defined as "so much time as is necessary under the circumstances for a reasonably prudent and diligent man to do, conveniently, what the contract or duty requires that should be done, having a regard for the rights and possibility of loss, if any, to the

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[18] *Prudential Bank v. Magdamit, Jr., et. al.*, G.R. No. 183795, November 12, 2014. (citations omitted)

[19] G.R. No. 130974, August 16, 2006, 499 SCRA 21.

other party." Under the Rules, the service of summons has no set period.

However, when the court, clerk of court, or the plaintiff asks the sheriff to make the return of the summons and the latter submits the return of summons, then the validity of the summons lapses. The plaintiff may then ask for an alias summons if the service of summons has failed. What then is a reasonable time for the sheriff to effect a personal service in order to demonstrate impossibility of prompt service? To the plaintiff, "reasonable time" means no more than seven (7) days since an expeditious processing of a complaint is what a plaintiff wants. To the sheriff, "reasonable time" means 15 to 30 days because at the end of the month, it is a practice for the branch clerk of court to require the sheriff to submit a return of the summons assigned to the sheriff for service. The Sheriff's Return provides data to the Clerk of Court, which the clerk uses in the Monthly Report of Cases to be submitted to the Office of the Court Administrator within the first ten (10) days of the succeeding month. Thus, one month from the issuance of summons can be considered "reasonable time" with regard to personal service on the defendant.

Sheriffs are asked to discharge their duties on the service of summons with due care, utmost diligence, and reasonable promptness and speed so as not to prejudice the expeditious dispensation of justice. Thus, they are enjoined to try their best efforts to accomplish personal service on defendant. On the other hand, since the defendant is expected to try to avoid and evade service of summons, the sheriff must be resourceful, persevering, canny, and diligent in serving the process on the defendant. For substituted service of summons to be available, there must be several attempts by the sheriff to personally serve the summons within a reasonable period [of one month] which eventually resulted in failure to prove impossibility of prompt service. "Several attempts" means at least three (3) tries, preferably on at least two different dates. In addition, the sheriff must cite why such efforts were unsuccessful. It is only then that impossibility of service can be confirmed or accepted.

(2) Specific Details in the Return

The sheriff must describe in the Return of Summons the facts and circumstances surrounding the attempted personal service. The efforts made to find the defendant and the reasons behind the failure must be clearly narrated in detail in the Return. The date and time of the attempts on personal service, the inquiries made to locate the defendant,

the name/s of the occupants of the alleged residence or house of defendant and all other acts done, though futile, to serve the summons on defendant must be specified in the Return to justify substituted service. The form on Sheriff's Return of Summons on Substituted Service prescribed in the Handbook for Sheriffs published by the Philippine Judicial Academy requires a narration of the efforts made to find the defendant personally and the fact of failure. Supreme Court Administrative Circular No. 5 dated November 9, 1989 requires that "impossibility of prompt service should be shown by stating the efforts made to find the defendant personally and the failure of such efforts," which should be made in the proof of service.

(3) A Person of Suitable Age and Discretion

If the substituted service will be effected at defendant's house or residence, it should be left with a person of "suitable age and discretion then residing therein." A person of suitable age and discretion is one who has attained the age of full legal capacity (18 years old) and is considered to have enough discernment to understand the importance of a summons. "Discretion" is defined as "the ability to make decisions which represent a responsible choice and for which an understanding of what is lawful, right or wise may be presupposed". Thus, to be of sufficient discretion, such person must know how to read and understand English to comprehend the import of the summons, and fully realize the need to deliver the summons and complaint to the defendant at the earliest possible time for the person to take appropriate action. Thus, the person must have the "relation of confidence" to the defendant, ensuring that the latter would receive or at least be notified of the receipt of the summons. The sheriff must therefore determine if the person found in the alleged dwelling or residence of defendant is of legal age, what the recipient's relationship with the defendant is, and whether said person comprehends the significance of the receipt of the summons and his duty to immediately deliver it to the defendant or at least notify the defendant of said receipt of summons. These matters must be clearly and specifically described in the Return of Summons.

(4) A Competent Person in Charge

If the substituted service will be done at defendant's office or regular place of business, then it should be served on a competent person in charge of the place. Thus, the person on whom the substituted service will be made must be the one managing the office or business of defendant, such as the president or manager; and such individual

must have sufficient knowledge to understand the obligation of the defendant in the summons, its importance, and the prejudicial effects arising from inaction on the summons. Again, these details must be contained in the Return.

The substituted service of summons is valid

While Our pronouncement in *Manotoc* has been strictly applied to several succeeding cases, We do not cling to such strictness in instances where the circumstances justify substantial compliance with the requirements laid down therein. It is the spirit of the procedural rules, not their letter, that governs.[20]

In *Sagana v. Francisco*,[21] the substituted service of summons was questioned for non-compliance with the Rules, since the summons was not allegedly served at defendant's residence or left with any person who was authorized to receive it on behalf of the defendant. We upheld the validity of the substituted service of summons due to the defendant's evident avoidance to receive the summons personally despite the process server's diligent efforts to effect personal service upon him. We explained:

We do not intend this ruling to overturn jurisprudence to the effect that statutory requirements of substituted service must be followed strictly, faithfully, and fully, and that any substituted service other than that authorized by the Rules is considered ineffective. However, an overly strict application of the Rules is not warranted in this case, as it would clearly frustrate the spirit of the law as well as do injustice to the parties, who have been waiting for almost 15 years for a resolution of this case. We are not heedless of the widespread and flagrant practice whereby defendants actively attempt to frustrate the proper service of summons by refusing to give their names, rebuffing requests to sign for or receive documents, or eluding officers of the court. Of course it is to be expected that defendants try to avoid service of summons, prompting this Court to declare that, "the sheriff must be resourceful, persevering, canny, and diligent in serving the process on the defendant." However, sheriffs are not expected to

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[20] *Macasaet v. Co, Jr.*, G.R. No. 156759, June 5, 2013, 697 SCRA 187.

[21] G.R. No.161952, October 2, 2009.

be sleuths, and cannot be faulted where the defendants themselves engage in deception to thwart the orderly administration of justice.

Similarly, given the circumstances in the case at bench, We find that resort to substituted service was warranted since the impossibility of personal service is clearly apparent.

A perusal of the Officer's Return dated October 28, 2008 detailing the circumstances surrounding the service of the second alias Summons dated September 9, 2008 shows that the foregoing requirements for a valid substituted service of summons were substantially complied with.

Indeed, the Return established the impossibility of personal service to Carson's officers, as shown by the efforts made by Process Server Pajila to serve the September 8, 2008 alias Summons on Carson's President/General Manager. In particular, several attempts to serve the summons on these officers were made on four separate occasions: October 2, 2008, October 16, 2008, October 27, 2008, and October 28, 2008, but to no avail.

On his fourth and final attempt, Process Server Pajila served the summons on Fernandez, Carson's receptionist, due to the unavailability and difficulty to locate the company's corporate officers. The pertinent portion of the Return states:

> [S]ubstituted service of summons was resorted to by leaving the copy of the Alias Summons at the company's office through its employee, MS. LORIE FERNANDEZ, however, she refused to acknowledge receipt of the process.

Based on the facts, there was a deliberate plan of Carson's for its officers not to receive the Summons. It is a legal maneuver that is in derogation of the rules on Summons. We cannot tolerate that.

The facts now show that the responsible officers did not intend to receive the alias Summons through substituted service. The Summons is considered validly served.

The RTC acquired jurisdiction over Carson

In any event, even if We concede the invalidity of the substituted service, such is of little significance in view of the fact that the RTC had already acquired jurisdiction over Carson early on due to its voluntary submission to the jurisdiction of the court.

Courts acquire jurisdiction over the plaintiffs upon the filing of the complaint. On the other hand, jurisdiction over the defendants in a civil case is acquired either through the service of summons upon them or through their voluntary appearance in court and their submission to its authority,[22] as provided in Section 20,[23] Rule 14 of the Rules of Court.

On this score, *Philippine Commercial International Bank v. Spouses Dy*[24] instructs that:

> As a general proposition, one who seeks an affirmative relief is deemed to have submitted to the jurisdiction of the court. It is by reason of this rule that we have had occasion to declare that the filing of motions to admit answer, for additional time to file answer, for reconsideration of a default judgment, and to lift order of default with motion for reconsideration, is considered voluntary submission to the court's jurisdiction. This, however, is tempered only by the concept of conditional appearance, such that a party who makes a special appearance to challenge, among others, the court's jurisdiction over his person cannot be considered to have submitted to its authority. Prescinding from the foregoing, it is thus clear that:
>
> (1) Special appearance operates as an exception to the general rule on voluntary appearance;

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[22] *Chu v. Mach Asia Trading Corporation*, G.R. No. 184333, April 1, 2013, citing *Kukan International Corporation v. Reyes*, G.R. No.182729, September 29, 2010, 631 SCRA 596.

[23] Sec. 20. *Voluntary appearance*. – The defendant's voluntary appearance in the action shall be equivalent to service of summons. The inclusion in a motion to dismiss of other grounds aside from lack of jurisdiction over the person shall not be deemed a voluntary appearance.

[24] G.R. No. 171137, June 5, 2009, 588 SCRA 612.

(2) Accordingly, objections to the jurisdiction of the court over the person of the defendant must be explicitly made, i.e., set forth in an unequivocal manner; and

(3) Failure to do so constitutes voluntary submission to the jurisdiction of the court, especially in instances where a pleading or motion seeking affirmative relief is filed and submitted to the court for resolution. (underscoring supplied)

We have, time and again, held that the filing of a motion for additional time to file answer is considered voluntary submission to the jurisdiction of the court.[25] If the defendant knowingly does an act inconsistent with the right to object to the lack of personal jurisdiction as to him, like voluntarily appearing in the action, he is deemed to have submitted himself to the jurisdiction of the court.[26] Seeking an affirmative relief is inconsistent with the position that no voluntary appearance had been made, and to ask for such relief, without the proper objection, necessitates submission to the Court's jurisdiction.[27]

Carson voluntarily submitted to the jurisdiction of the RTC when it filed, through Atty. Roxas, the Appearance and Motion dated April 25, 2007 acknowledging Carson's receipt of the Summons dated April 11, 2007 and seeking additional time to file its responsive pleading. As noted by the CA, Carson failed to indicate therein that the Appearance and Motion was being filed by way of a conditional appearance to question the regularity of the service of summons. Thus, by securing the affirmative relief of additional time to file its responsive pleading, Carson effectively voluntarily submitted to the jurisdiction of the RTC.

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[25] *Palma v. Galvez,* G.R. No. 165273, March 10, 2010, 615 SCRA 86, 99; *Hongkong and Shanghai Banking Corporation Limited v. Catalan* and *HSBC International Trustee Limited v. Catalan*, G.R. Nos. 159590 and 159591, October 18, 2004, 440 SCRA 499, 515.

[26] *Macasaet v. Co, Jr.*, *supra* note 20, citing *La Naval Drug Corporation v. Court of Appeals*, G.R. No. 103200, August 31, 1994, 236 SCRA 78.

[27] *Reicon Realty Builders Corporation v. Diamond Dragon Realty and Management, Inc.*, G.R. No. 204796, February 4, 2015.

Carson was properly declared in default

Section 3, Rule 9 of the Rules of Court states when a party may be properly declared in default and the remedy available in such case:

> SEC. 3. Default; declaration of.— If the defending party fails to answer within the time allowed therefor, the court shall, upon motion of the claiming party with notice to the defending party, and proof of such failure, declare the defending party in default. Thereupon, the court shall proceed to render judgment granting the claimant such relief as his pleading may warrant, unless the court in its discretion requires the claimant to submit evidence. Such reception of evidence may be delegated to the clerk of court.
>
> (a) Effect of order of default. — A party in default shall be entitled to notice of subsequent proceedings but not to take part in the trial.
>
> (b) Relief from order of default.— A party declared in default may at any time after notice thereof and before judgment file a motion under oath to set aside the order of default upon proper showing that his failure to answer was due to fraud, accident, mistake or excusable negligence and that he has a meritorious defense. In such case, the order of default may be set aside on such terms and conditions as the judge may impose in the interest of justice. (emphasis supplied)

Carson moved to dismiss the complaint instead of submitting a responsive pleading within fifteen (15) days from April 27, 2007 as prayed for in its Appearance and Motion. Clearly, Carson failed to answer within the time allowed for by the RTC. At this point, Carson could have already been validly declared in default. However, believing that it has yet to acquire jurisdiction over Carson, the RTC issued the September 24, 2007 and September 9, 2008 alias Summons. This culminated in the issuance of the assailed June 29, 2009 Order declaring Carson in default on the basis of the substituted service of the September 9, 2008 alias Summons. While Carson filed its Urgent Motion to Lift Order of Default, the CA found that the same failed to comply with the requirement under Sec. 3(b) that the motion be under oath.

It bears noting that the propriety of the default order stems from Carson's failure to file its responsive pleading despite its voluntary submission to the jurisdiction of the trial court reckoned from its filing of the Appearance and Motion, and not due to its failure to file its answer to the September 8, 2008 alias Summons. This conclusion finds support in *Atiko Trans, Inc. and Cheng Lie Navigation Co., Ltd. v. Prudential Guarantee and Assurance, Inc.*,[28] wherein We upheld the trial court's order declaring petitioner Atiko Trans, Inc. (Atiko) in default despite the invalid service of summons upon it. In this case, respondent Prudential Guarantee and Assurance Inc. (Prudential) moved to declare Atiko in default due to the latter's failure to file its responsive pleading despite receipt of the summons. Acting on Prudential's motion, the trial court declared Atiko in default. In affirming the validity of the default order, We took note that the trial court acquired jurisdiction over Atiko due to its voluntary submission to the jurisdiction of the court by filing numerous pleadings seeking affirmative relief, and not on the strength of the invalidly served summons.

In a similar vein, the erroneous basis cited in the June 29, 2009 Order, due to the RTC's mistaken belief that the substituted service vested it with jurisdiction over Carson, does not render the pronouncement invalid in view of the existence of a lawful ground therefor.

WHEREFORE, the petition is **DENIED**. The Decision dated August 20, 2015 and Resolution dated June 8, 2016 of the Court of Appeals in CA-G.R. SP No. 121983 are **AFFIRMED**.

SO ORDERED.

Bersamin, Reyes, Jardeleza, and *Caguioa,*[*] *JJ.,* concur.

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[28] G.R. No. 167545, August 17, 2011.

[*] Designated as Fifth Member of the Third Division per Special Order No. 2417 dated January 4, 2017.

FIRST DIVISION

[G.R. No. 190809. February 13, 2017]

DE LA SALLE ARANETA UNIVERSITY, *petitioner, vs.* **JUANITO C. BERNARDO,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; 1992 MANUAL OF REGULATIONS FOR PRIVATE SCHOOLS; REGULAR EMPLOYMENT; TO ACQUIRE PERMANENT STATUS, A PRIVATE SCHOOL TEACHER MUST BE A FULL-TIME TEACHER, HAS RENDERED THREE CONSECUTIVE YEARS OF SERVICE, AND SUCH SERVICE MUST HAVE BEEN SATISFACTORY; THUS A PART-TIME EMPLOYEE WOULD NOT ATTAIN PERMANENT STATUS NO MATTER HOW LONG HE HAD SERVED THE SCHOOL.— There is no dispute that Bernardo was a part-time lecturer at DLS-AU, with a fixed-term employment. As a part-time lecturer, Bernardo did not attain permanent status. Section 93 of the 1992 Manual of Regulations for Private Schools provided: Sec. 93. *Regular or Permanent Status*. — Those who have served the probationary period shall be made regular or permanent. Full-time teachers who have satisfactorily completed their probationary period shall be considered regular or permanent. Per Section 92 of the same Regulations, probationary period for academic personnel "shall not be more than three (3) consecutive years of satisfactory service for those in the elementary and secondary levels, six (6) consecutive regular semesters of satisfactory service for those in the tertiary level, and nine (9) consecutive trimesters of satisfactory service for those in the tertiary level where collegiate courses are offered on the trimester basis." Thus, jurisprudence identified the requisites which should concur for a private school teacher to acquire permanent status, *viz.*: (1) the teacher is a full-time teacher; (2) the teacher must have rendered three consecutive years of service; and (3) such service must have been satisfactory. Considering the foregoing requirements, a part-time employee would not attain permanent status no matter how long he had served the school. Bernardo

did not become a permanent employee of DLS-AU despite teaching there as a part-time lecturer for a total of 27 years.

2. ID.; THE LABOR CODE; NEW RETIREMENT LAW (REPUBLIC ACT No. 7641); GENERAL COVERAGE; EXEMPTIONS. — Republic Act No. 7641 is a curative social legislation. It precisely intends to give the minimum retirement benefits to employees not entitled to the same under collective bargaining and other agreements. It also applies to establishments with existing collective bargaining or other agreements or voluntary retirement plans whose benefits are less than those prescribed in said law. x x x. Republic Act No. 7641 states that "any employee may be retired upon reaching the retirement age x x x"; and "[i]n case of retirement, the employee shall be entitled to receive such retirement benefits as he may have earned under existing laws and any collective bargaining agreement and other agreements." The Implementing Rules provide that Republic Act No. 7641 applies to "all employees in the private sector, regardless of their position, designation or status and irrespective of the method by which their wages are paid, except to those specifically exempted x x x." And Secretary Quisumbing's Labor Advisory further clarifies that the employees covered by Republic Act No. 7641 shall "include part-time employees, employees of service and other job contractors and domestic helpers or persons in the personal service of another." The only exemptions specifically identified by Republic Act No. 7641 and its Implementing Rules are: (1) employees of the National Government and its political subdivisions, including government-owned and/or controlled corporations, if they are covered by the Civil Service Law and its regulations; and (2) employees of retail, service and agricultural establishments or operations regularly employing not more than 10 employees.

3. ID.; ID.; ID.; PART-TIME EMPLOYEES ARE ENTITLED TO RETIREMENT BENEFITS.— Based on Republic Act No. 7641, its Implementing Rules, and Secretary Quisumbing's Labor Advisory, Bernardo, as a part-time employee of DLS-AU, is entitled to retirement benefits. The general coverage of Republic Act No. 7641 is broad enough to encompass all private sector employees, and part-time employees are not among those specifically exempted from the law. The provisions of Republic Act No. 7641 and its Implementing Rules are plain, direct, unambiguous, and need no further elucidation. Any doubt is dispelled by the unequivocal statement in Secretary

Quisumbing's Labor Advisory that Republic Act No. 7641 applies to even part-time employees. Under the rule of statutory construction of *expressio unius est exclusio alterius*, Bernardo's claim for retirement benefits cannot be denied on the ground that he was a part-time employee as part-time employees are not among those specifically exempted under Republic Act No. 7641 or its Implementing Rules. x x x The NLRC and the Court of Appeals did not err in relying on the Implementing Rules of Republic Act No. 7641 in their respective judgments which favored Bernardo.

4. ID.; ID.; ID.; LEGALITY AND VALIDITY OF THE RULES IMPLEMENTING THE NEW RETIREMENT LAW AND THE SECRETARY OF LABOR'S ADVISORY, UPHELD.— Congress, through Article 5 of the Labor Code, delegated to the Department of Labor and Employment (DOLE) and other government agencies charged with the administration and enforcement of said Code the power to promulgate the necessary implementing rules and regulations. It was pursuant to Article 5 of the Labor Code that then Secretary of Labor Ma. Nieves R. Confesor issued on January 7, 1993 the Rules Implementing the New Retirement Law, which became Rule II of Book VI of the Rules Implementing the Labor Code. In ruling that Bernardo, as part-time employee, is entitled to retirement benefits, we do no less and no more than apply Republic Act No. 7641 and its Implementing Rules issued by the DOLE under the authority given to it by the Congress. Needless to stress, the Implementing Rules partake the nature of a statute and are binding as if written in the law itself. They have the force and effect of law and enjoy the presumption of constitutionality and legality until they are set aside with finality in an appropriate case by a competent court. Moreover, as a matter of contemporaneous interpretation of law, Secretary Quisumbing's Labor Advisory has persuasive effect. It is undisputed that in administrative law, contemporaneous and practical interpretation of law by administrative officials charged with its administration and enforcement carries great weight and should be respected, unless contrary to law or manifestly erroneous. We further find that the Implementing Rules and Secretary Quisumbing's Labor Advisory are consistent with Article 4 of the Labor Code, which expressly mandates that "all doubts in the implementation and interpretation of the provisions of this Code, including its

implementing rules and regulations, shall be resolved in favor of labor." There being no compelling argument herein to convince us otherwise, we uphold the legality and validity of the Implementing Rules and Secretary Quisumbing's Labor Advisory, and likewise apply the same to Bernardo's case.

5. **ID.; ID.; ID.; TO AVAIL OF THE RETIREMENT BENEFITS UNDER THE LAW, THE EMPLOYEE MUST HAVE REACHED THE AGE OF 60 YEARS FOR OPTIONAL RETIREMENT OR 65 YEARS FOR COMPULSORY RETIREMENT, HAS SERVED AT LEAST FIVE YEARS IN THE ESTABLISHMENT, AND THERE IS NO RETIREMENT PLAN OR OTHER APPLICABLE AGREEMENT PROVIDING FOR RETIREMENT BENEFITS OF EMPLOYEES IN THE ESTABLISHMENT; MET.—** For the availment of the retirement benefits under Article 302 [287] of the Labor Code, as amended by Republic Act No. 7641, the following requisites must concur: (1) the employee has reached the age of 60 years for optional retirement or 65 years for compulsory retirement; (2) the employee has served at least five years in the establishment; and (3) there is no retirement plan or other applicable agreement providing for retirement benefits of employees in the establishment. Bernardo — being 75 years old at the time of his retirement, having served DLS-AU for a total of 27 years, and not being covered by the grant of retirement benefits in the CBA — is unquestionably qualified to avail himself of retirement benefits under said statutory provision, *i.e.*, equivalent to one-half month salary for every year of service, a fraction of at least six months being considered as one whole year.

6. **ID.; ID.; ID.; RESPONDENT'S CAUSE OF ACTION FOR RETIREMENT BENEFITS ONLY ACCRUED UPON THE TERMINATION OF HIS EXTENDED EMPLOYMENT, NOT WHEN HE REACHED HIS COMPULSORY RETIREMENT AGE.—** A cause of action has three elements, to wit, (1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (2) an obligation on the part of the named defendant to respect or not to violate such right; and (3) an act or omission on the part of such defendant violative of the right of the plaintiff or constituting a breach of the obligation of the defendant to the plaintiff. Bernardo's right to retirement benefits and the obligation of DLS-AU to pay

such benefits are already established under Article 302 [287] of the Labor Code, as amended by Republic Act No. 7641. However, there was a violation of Bernardo's right only after DLS-AU informed him on November 8, 2003 that the university no longer intended to offer him another contract of employment, and already accepting his separation from service, Bernardo sought his retirement benefits, but was denied by DLS-AU. Therefore, the cause of action for Bernardo's retirement benefits only accrued after the refusal of DLS-AU to pay him the same, clearly expressed in Dr. Bautista's letter dated February 12, 2004. Hence, Bernardo's complaint, filed with the NLRC on February 26, 2004, was filed within the three-year prescriptive period provided under Article 291 of the Labor Code.

7. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF AND PRESUMPTIONS; EQUITABLE ESTOPPEL; PRINCIPLE; APPLICABLE.— Even granting *arguendo* that Bernardo's cause of action already accrued when he reached 65 years old, we cannot simply overlook the fact that DLS-AU had repeatedly extended Bernardo's employment even when he already reached 65 years old. DLS-AU still knowingly offered Bernardo, and Bernardo willingly accepted, contracts of employment to teach for semesters and summers in the succeeding 10 years. Since DLS-AU was still continuously engaging his services even beyond his retirement age, Bernardo deemed himself still employed and deferred his claim for retirement benefits, under the impression that he could avail himself of the same upon the actual termination of his employment. The equitable doctrine of estoppel is thus applicable against DLS-AU. x x x. DLS-AU, in this case, not only kept its silence that Bernardo had already reached the compulsory retirement age of 65 years old, but even continuously offered him contracts of employment for the next 10 years. It should not be allowed to escape its obligation to pay Bernardo's retirement benefits by putting entirely the blame for the deferred claim on Bernardo's shoulders.

APPEARANCES OF COUNSEL

Pagunsan And Ty Law Offices for petitioner.
Public Attorney's Office for respondent.
Estrada & Aquino for Intervenor CEAP.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Before Us is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court filed by De La Salle-Araneta University (DLS-AU) seeking the annulment and reversal of the Decision[1] dated June 29, 2009 and Resolution[2] dated January 4, 2010 of the Court of Appeals in CA-G.R. SP No. 106399, which affirmed *in toto* the Decision[3] of the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 043416-05. The NLRC reversed and set aside the Labor Arbiter's Decision[4] dated December 13, 2004 in NLRC NCR Case No. 00-02-02729-04 and found that respondent Juanito C. Bernardo (Bernardo) was entitled to retirement benefits.

On February 26, 2004, Bernardo filed a complaint against DLS-AU and its owner/manager, Dr. Oscar Bautista (Dr. Bautista), for the payment of retirement benefits. Bernardo alleged that he started working as a part-time professional lecturer at DLS-AU (formerly known as the Araneta University Foundation) on June 1, 1974 for an hourly rate of ₱20.00. Bernardo taught for two semesters and the summer for the school year 1974-1975. Bernardo then took a leave of absence from June 1, 1975 to October 31, 1977 when he was assigned by the Philippine Government to work in Papua New Guinea. When Bernardo came back in 1977, he resumed teaching at DLS-AU until October 12, 2003, the end of the first semester for school year 2003-2004. Bernardo's teaching contract was renewed at the start of every semester and summer. However, on November 8, 2003, DLS-AU informed Bernardo through a telephone call that he could not teach at the school anymore as

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[1] *Rollo*, pp. 38-49; penned by Associate Justice Ricardo R. Rosario with Associate Justices Jose L. Sabio, Jr. and Vicente S. E. Veloso concurring.

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

[3] *Id*. at 176-182.

[4] *Id*. at 147-156.

the school was implementing the retirement age limit for its faculty members. As he was already 75 years old, Bernardo had no choice but to retire. At the time of his retirement, Bernardo was being paid ₱246.50 per hour.[5]

Bernardo immediately sought advice from the Department of Labor and Employment (DOLE) regarding his entitlement to retirement benefits after 27 years of employment. In letters dated January 20, 2004[6] and February 3, 2004,[7] the DOLE, through its Public Assistance Center and Legal Service Office, opined that Bernardo was entitled to receive benefits under Republic Act No. 7641, otherwise known as the "New Retirement Law," and its Implementing Rules and Regulations.

Yet, Dr. Bautista, in a letter[8] dated February 12, 2004, stated that Bernardo was not entitled to any kind of separation pay or benefits. Dr. Bautista explained to Bernardo that as mandated by the DLS-AU's policy and Collective Bargaining Agreement (CBA), only full-time permanent faculty of DLS-AU for at least five years immediately preceeding the termination of their employment could avail themselves of the post-employment benefits. As part-time faculty member, Bernardo did not acquire permanent employment under the Manual of Regulations for Private Schools, in relation to the Labor Code, regardless of his length of service.

Aggrieved by the repeated denials of his claim for retirement benefits, Bernardo filed before the NLRC, National Capital Region, a complaint for non-payment of retirement benefits and damages against DLS-AU and Dr. Bautista.

DLS-AU and Dr. Bautista averred that DLS-AU is a non-stock, non-profit educational institution duly organized under Philippine laws, and Dr. Bautista was then its Executive Vice-

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[5] NLRC *rollo*, pp. 22-23.

[6] *Id*. at 29.

[7] *Id.* at 30.

[8] *Id.* at 32.

President. DLS-AU and Dr. Bautista countered that Bernardo was hired as a part-time lecturer at the Graduate School of DLS-AU to teach Recent Advances in Animal Nutrition for the first semester of school year 2003-2004. As stated in the Contract for Part-Time Faculty Member Semestral, Bernardo bound himself to teach "for the period of one semester beginning June 9, 2003 to October 12, 2003." The contract also provided that "this Contract shall automatically expire unless expressly renewed in writing."[9] Prior contracts entered into between Bernardo and DLS-AU essentially contained the same provisions. On November 8, 2003, DLS-AU informed Bernardo that his contract would no longer be renewed. DLS-AU and Dr. Bautista were surprised when they received a letter from Bernardo on February 18, 2004 claiming retirement benefits and Summons dated February 26, 2004 from the NLRC in relation to Bernardo's complaint.[10]

DLS-AU and Dr. Bautista maintained that Bernardo, as a part-time employee, was not entitled to retirement benefits. The contract between DLS-AU and Bernardo was for a fixed term, *i.e.*, one semester. Contracts of employment for a fixed term are not proscribed by law, provided that they had been entered into by the parties without any force, duress, or improper pressure being brought to bear upon the employee and absent any other circumstance vitiating consent. That DLS-AU no longer renewed Bernardo's contract did not necessarily mean that Bernardo should be deemed retired from service.

DLS-AU and Dr. Bautista also contended that Bernardo, as a part-time employee, was not entitled to retirement benefits pursuant to any retirement plan, CBA, or employment contract. Neither was DLS-AU mandated by law to pay Bernardo retirement benefits. The compulsory retirement age under Article 302 [287] of the Labor Code, as amended, is 65 years old. When the employee reaches said age, his/her employment is deemed terminated. The matter of extension of the employee's service

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[9] *Id.* at 20.

[10] *Id.* at 11.

is addressed to the sound discretion of the employer; it is a privilege only the employer can grant. In this case, Bernardo was effectively separated from the service upon reaching the age of 65 years old. DLS-AU merely granted Bernardo the privilege to teach by engaging his services for several more years after reaching the compulsory retirement age. Assuming arguendo that Bernardo was entitled to retirement benefits, he should have claimed the same upon reaching the age of 65 years old. Under Article 291 of the Labor Code, as amended, all money claims arising from employer-employee relations shall be filed within three years from the time the cause of action accrues.

Still according to DLS-AU and Dr. Bautista, Bernardo had no cause of action against Dr. Bautista because the latter was only acting on behalf of DLS-AU as its Executive Vice-President. It is a well-settled rule that a corporation is a juridical entity with a legal personality separate and distinct from the people comprising it and those acting for and on its behalf. There was no showing that Dr. Bautista acted deliberately or maliciously in refusing to pay Bernardo his retirement benefits, so as to make Dr. Bautista personally liable for any corporate obligations of DLS-AU to Bernardo.

Finally, DLS-AU asserted that Bernardo failed to establish the factual and legal bases for his claims for actual, moral, and exemplary damages, and attorney's fees. There was no proof of the alleged value of the profits or any other loss suffered by Bernardo because of the non-payment of his retirement benefits. There was likewise no evidence of bad faith or fraud on the part of DLS-AU in refusing to grant Bernardo retirement benefits.

On December 13, 2004, the Labor Arbiter rendered its Decision dismissing Bernardo's complaint on the ground of prescription, thus:

> [T]he age of sixty-five (65) is declared as the compulsory retirement age under Article 287 of the Labor Code, as amended. When the compulsory retirement age is reached by an employee or official, he is thereby effectively separated from the service (*UST Faculty Union v. National Labor Relations Commission, University of Santo Tomas*,

G.R. No. 89885, August 6, 1990). As mentioned earlier, [Bernardo] is already seventy-five (75) years old, and is way past the compulsory retirement age. If he were indeed entitled to receive his retirement pay/benefits, he should have claimed the same ten (10) years ago upon reaching the age of sixty-five (65).

In this connection, it would be worthy to mention that the Labor Code contains a specific provision that deals with money claims arising out of employer-employee relationships. Article 291 of the Labor Code as amended clearly provides:

> *"ART. 291. MONEY CLAIMS. – All money claims arising from employer-employee relations accruing during the effectivity of this Code shall be filed within three (3) years from the time the cause of action accrued; otherwise they shall forever be barred.*
>
> x x x x x x x x x

The prescriptive period referred to in Article 291 of the Labor Code, as amended applies to all kinds of money claims arising from employer-employee relations including claims for retirement benefits.

The ruling of the Supreme Court in *De Guzman v. Court of Appeals,* (G.R. No. 132257, October 12, 1998), squarely applies to the instant case:

> *"The language of Article 291 of the Labor Code does not limit its application only to "money claims specifically recoverable under said Code," but covers all money claims arising from employer-employee relations. Since petitioners' demand for unpaid retirement/separation benefits is a money claim arising from their employment by private respondent, Article 291 of the Labor Code is applicable. Therefore, petitioners' claim should be filed within three years from the time their cause of action accrued, or forever barred by prescription."*

It cannot be denied that the claim for retirement benefits/pay arose out of employer-employee relations. In line with the decision of the Supreme Court in *De Guzman*, it should be treated as a money claim that must be claimed within three years from the time the cause of action accrued.

Thus, upon reaching the compulsory retirement age of sixty-five (65), [Bernardo] was effectively separated from the service. Clearly, such was the time when his cause of action accrued. He should have sought the payment of such benefits/pay within three (3) years from such time. It cannot be denied that [Bernardo] belatedly sought the payment of his retirement benefits/pay considering that he filed the instant Complaint only ten (10) years after his cause of action accrued. For failure to claim the retirement benefits/pay to which he claims to be entitled within three (3) years from the time he reached the age of sixty-five (65), his claim should be forever barred.[11]

The Labor Arbiter decreed:

WHEREFORE, premises considered, judgment is hereby rendered DISMISSING the instant Complaint on the ground that the claim for retirement benefits/pay is already barred by prescription.[12]

Bernardo appealed the foregoing Labor Arbiter's Decision to the NLRC, arguing that since he continuously worked for DLS-AU and Dr. Bautista until October 12, 2003, he was considered retired and the cause of action for his retirement benefits accrued only on said date. There was clearly an agreement between Bernardo and DLS-AU that the former would continue teaching even after reaching the compulsory retirement age of 65 years. In addition, under Republic Act No. 7641, part-time workers are entitled to retirement pay of one-half month salary for every years of service, provided that the following conditions are present: (a) there is no retirement plan between the employer and employees; (b) the employee has reached the age of 60 years old for optional retirement or 65 years old for compulsory retirement; and (c) the employee should have rendered at least five years of service with the employer. Bernardo avowed that all these conditions were extant in his case.

The NLRC, in its Decision dated June 30, 2008, reversed the Labor Arbiter's ruling and found that Bernardo timely filed

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[11] *Rollo*, pp. 153-156.

[12] *Id*. at 156.

his complaint for retirement benefits. The NLRC pointed out that DLS-AU and Dr. Bautista, knowing fully well that Bernardo already reached the compulsory age of retirement of 65 years old, still extended Bernardo's employment. Thus, Bernardo's cause of action for payment of his retirement benefits accrued only on November 8, 2003, when he was informed by DLS-AU that his contract would no longer be renewed and he was deemed separated from employment. The principle of estoppel was also applicable against DLS-AU and Dr. Bautista who could not validly claim prescription when they were the ones who permitted Bernardo to work beyond retirement age. As to Bernardo's entitlement to retirement benefits, the NLRC held:

> Equally untenable is the contention that [Bernardo], being a part time employee, is not entitled to retirement benefits under Republic Act No. 7641. Indeed, a perusal of the retirement law does not exclude a part time employee from enjoying retirement benefits. On this score, Republic Act No. 7641 explicitly provides as within its coverage "all employees in the private sector, regardless of their position, designation, or status, and irrespective of the method by which their wages are paid" (Section 1, Rules Implementing the New Retirement Law) (Underlined for emphasis). The only exceptions are employees covered by the Civil Service Law; domestic helpers and persons in the personal service of another; and employees in retail, service and agricultural establishments or operations regularly employing not more than ten employees (ibid). Clearly, [Bernardo] does not fall under any of the exceptions.
>
> Lastly, it is axiomatic that retirement law should be construed liberally in favor of the employee, and all doubts as to the intent of the laws should be resolved in favor of the retiree to achieve its humanitarian purpose (Re: Gregorio G. Pineda, 187 SCRA 469, 1990). A contrary ruling would inevitably defy such settled rule.[13]

In the end, the NLRC adjudged:

> WHEREFORE, judgment is hereby rendered REVERSING and SETTING ASIDE the appealed decision of the Labor Arbiter. Accordingly, a new one is issued finding [Bernardo] entitled to

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[13] *Id*. at 181.

retirement benefits under Republic Act No. 7641 and ordering [DLS-AU and Dr. Bautista] to pay [Bernardo] his retirement benefits equivalent to at least one-half (½) month of his latest salary for every year of his service. Other claims are hereby denied for lack of merit.[14]

In a Resolution dated September 15, 2008, the NLRC denied the Motion for Reconsideration of DLS-AU and Dr. Bautista for lack of merit.

DLS-AU filed before the Court of Appeals a Petition for *Certiorari* and Prohibition, imputing grave abuse of discretion on the part of the NLRC for (1) holding that Bernardo was entitled to retirement benefits despite the fact that he was a mere part-time employee; and (2) not holding that Bernardo's claim for retirement benefits was barred by prescription.

The Court of Appeals promulgated its Decision on June 29, 2009, affirming *in toto* the NLRC judgment. The Court of Appeals ruled that the coverage of, as well as the exclusion from, Republic Act No. 7641 are clearly delineated under Sections 1 and 2 of the Implementing Rules of Book VI, Rule II of the Labor Code, as well as the Labor Advisory on Retirement Pay Law; and part-time employees are not among those excluded from enjoying retirement benefits. Labor and social laws, being remedial in character, should be liberally construed in order to further their purpose. The appellate court also declared that the NLRC did not err in relying on the Implementing Rules of Republic Act No. 7641 because administrative rules and regulations issued by a competent authority remain valid unless shown to contravene the Constitution or used to enlarge the power of the administrative agency beyond the scope intended.

The Court of Appeals additionally determined that Bernardo's cause of action accrued only upon his separation from employment and the subsequent denial of his demand for retirement benefits. To the appellate court, the NLRC was correct in applying the equitable doctrine of estoppel since the continuous extension of Bernardo's employment, despite him being well

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[14] *Id.* at 181-182.

over the statutory compulsory age of retirement, prevented him from already claiming his retirement benefits for he was under the impression that he could avail himself of the same eventually upon the termination of his employment.

The dispositive portion of the Decision of the Court of Appeals reads:

> **WHEREFORE**, the petition is **DISMISSED** for lack of merit. The assailed Decision of the National Labor Relations Commission, dated 30 June 2008, is hereby **AFFIRMED** *in toto*. [Bernardo's] application for the issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction is accordingly **DENIED**.[15]

The Motion for Reconsideration of DLS-AU was denied by the Court of Appeals in its Resolution dated January 4, 2010.

Hence, DLS-AU lodged the present petition before us, raising the following issues:

> I
>
> WHETHER OR NOT PART-TIME EMPLOYEES ARE EXCLUDED FROM THE COVERAGE OF THOSE ENTITLED TO RETIREMENT BENEFITS UNDER REPUBLIC ACT NO. [7641].
>
> II.
>
> WHETHER OR NOT A CLAIM FOR RETIREMENT BENEFITS FILED BEYOND THE PERIOD PROVIDED FOR UNDER ART. 291 OF THE LABOR CODE HAS PRESCRIBED.[16]

We find the instant petition bereft of merit.

Bernardo is not questioning the termination of his employment, but only asserting his right to retirement benefits.

There is no dispute that Bernardo was a part-time lecturer at DLS-AU, with a fixed-term employment. As a part-time lecturer,

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[15] *Id*. at 48.

[16] *Id*. at 17.

Bernardo did not attain permanent status. Section 93 of the 1992 Manual of Regulations for Private Schools provided:

> Sec. 93. *Regular or Permanent Status*. – Those who have served the probationary period shall be made regular or permanent. Full-time teachers who have satisfactorily completed their probationary period shall be considered regular or permanent.

Per Section 92 of the same Regulations, probationary period for academic personnel "shall not be more than three (3) consecutive years of satisfactory service for those in the elementary and secondary levels, six (6) consecutive regular semesters of satisfactory service for those in the tertiary level, and nine (9) consecutive trimesters of satisfactory service for those in the tertiary level where collegiate courses are offered on the trimester basis."

Thus, jurisprudence identified the requisites which should concur for a private school teacher to acquire permanent status, *viz.*: (1) the teacher is a full-time teacher; (2) the teacher must have rendered three consecutive years of service; and (3) such service must have been satisfactory.[17]

Considering the foregoing requirements, a part-time employee would not attain permanent status no matter how long he had served the school.[18] Bernardo did not become a permanent employee of DLS-AU despite teaching there as a part-time lecturer for a total of 27 years.

Our jurisprudence had likewise settled the legitimacy of fixed-term employment. In the landmark case of *Brent School, Inc. v. Zamora*,[19] the Court pronounced:

> From the premise – that the duties of an employee entail "activities which are usually necessary or desirable in the usual business or trade of the employer" – the conclusion does not necessarily follow that the employer and employee should be forbidden to stipulate

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[17] *St. Mary's University v. Court of Appeals*, 493 Phil. 232, 237 (2005).

[18] *Id.* at 239.

[19] 260 Phil. 747, 756-757, 763-764 (1990).

any period of time for the performance of those activities. There is nothing essentially contradictory between a definite period of an employment contract and the nature of the employee's duties set down in that contract as being "usually necessary or desirable in the usual business or trade of the employer." The concept of the employee's duties as being "usually necessary or desirable in the usual business or trade of the employer" is not synonymous with or identical to employment with a fixed term. Logically, the decisive determinant in the term employment should not be the activities that the employee is called upon to perform, but the day certain agreed upon by the parties for the commencement and termination of their employment relationship, a day certain being understood to be "that which must necessarily come, although it may not be known when." Seasonal employment, and employment for a particular project are merely instances of employment in which a period, where not expressly set down, is necessarily implied.

x x x x x x x x x

Accordingly, and since the entire purpose behind the development of legislation culminating in the present Article 280 of the Labor Code clearly appears to have been, as already observed, to prevent circumvention of the employee's right to be secure in his tenure, the clause in said article indiscriminately and completely ruling out all written or oral agreements conflicting with the concept of regular employment as defined therein should be construed to refer to the substantive evil that the Code itself has singled out: agreements entered into precisely to circumvent security of tenure. It should have no application to instances where a fixed period of employment was agreed upon knowingly and voluntarily by the parties, without any force, duress or improper pressure being brought to bear upon the employee and absent any other circumstances vitiating his consent, or where it satisfactorily appears that the employer and employee dealt with each other on more or less equal terms with no moral dominance whatever being exercised by the former over the latter. Unless thus limited in its purview, the law would be made to apply to purposes other than those explicitly stated by its framers; it thus becomes pointless and arbitrary, unjust in its effects and apt to lead to absurd and unintended consequences.

Such interpretation puts the seal on [*Bibiso v. Victorias Milling Co., Inc.*] upon the effect of the expiry of an agreed period of employment as still good rule – a rule reaffirmed in the recent case of *Escudero v. Office of the President* (G.R. No. 57822, April 26,

1989) where, in the fairly analogous case of a teacher being served by her school a notice of termination following the expiration of the last of three successive fixed-term employment contracts, the Court held:

> "Reyes' (the teacher's) argument is not persuasive. It loses sight of the fact that her employment was probationary, contractual in nature, and one with a definitive period. At the expiration of the period stipulated in the contract, her appointment was deemed terminated and the letter informing her of the non-renewal of her contract is not a condition *sine qua non* before Reyes may be deemed to have ceased in the employ of petitioner UST. The notice is a mere reminder that Reyes' contract of employment was due to expire and that the contract would no longer be renewed. It is not a letter of termination. The interpretation that the notice is only a reminder is consistent with the court's finding in *Labajo, supra*. x x x."

Bernardo's employment with DLS-AU had always been for a fixed-term, *i.e.*, for a semester or summer. Absent allegation and proof to the contrary, Bernardo entered into such contracts of employment with DLS-AU knowingly and voluntarily. Hence, Bernardo's contracts of employment with DLS-AU for a fixed term were valid, legal, and binding. Bernardo's last contract of employment with DLS-AU ended on October 12, 2003, upon the close of the first semester for school year 2003-2004, without DLS-AU offering him another contract for the succeeding semester.

Nonetheless, that Bernardo was a part-time employee and his employment was for a fixed period are immaterial in this case. Bernardo is not alleging illegal dismissal nor claiming separation pay. Bernardo is asserting his right to retirement benefits given the termination of his employment with DLS-AU when he was already 75 years old.

As a part-time employee with fixed-term employment, Bernardo is entitled to retirement benefits.

The Court declared in *Aquino v. National Labor Relations Commission*[20] that retirement benefits are intended to help the

[20] 283 Phil. 1, 6 (1992).

employee enjoy the remaining years of his life, lessening the burden of worrying for his financial support, and are a form of reward for his loyalty and service to the employer. Retirement benefits, where not mandated by law, may be granted by agreement of the employees and their employer or as a voluntary act on the part of the employer.

In the present case, DLS-AU, through Dr. Bautista, denied Bernardo's claim for retirement benefits because only full-time permanent faculty of DLS-AU are entitled to said benefits pursuant to university policy and the CBA. Since Bernardo has not been granted retirement benefits under any agreement with or by voluntary act of DLS-AU, the next question then is, can Bernardo claim retirement benefits by mandate of any law?

We answer in the affirmative.

Republic Act No. 7641 is a curative social legislation. It precisely intends to give the minimum retirement benefits to employees not entitled to the same under collective bargaining and other agreements. It also applies to establishments with existing collective bargaining or other agreements or voluntary retirement plans whose benefits are less than those prescribed in said law.[21]

Article 302 [287] of the Labor Code, as amended by Republic Act No. 7641, reads:

> Art. 302 [287]. *Retirement.* – **Any employee may be retired upon reaching the retirement age** established in the collective bargaining agreement or other applicable employment contract.
>
> In case of retirement, the employee shall be entitled to receive such retirement benefits as he may have earned under existing laws and any collective bargaining agreement and other agreements: *Provided however,* That an employee's retirement benefits under any collective bargaining and other agreement shall not be less than those provided herein.

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[21] *MLQU v. National Labor Relations Commission*, 419 Phil. 776, 783 (2001).

In the absence of retirement plan or agreement providing for retirement benefits of employees in the establishment, an employee upon reaching the age of sixty (60) years or more, but not beyond sixty five (65) years which is hereby declared the compulsory retirement age, who has served at least five (5) years in said establishment, may retire and shall be entitled to retirement pay equivalent to at least one-half (½) month salary for every year of service, a fraction of at least six (6) months being considered as one whole year.

Unless the parties provide for broader inclusions, the term one-half month salary shall mean fifteen (15) days plus one twelfth (1/12) of the 13th month pay and the cash equivalent of not more than five (5) days of service incentive leaves.

x x x x x x x x x

Retail, service and agricultural establishments or operations employing not more than ten (10) employees or workers are exempted from the coverage of this provision.

Violation of this provision is hereby declared unlawful and subject to the penal provisions provided under Article 288 of this Code. (Emphases ours.)

Book VI, Rule II of the Rules Implementing the Labor Code clearly describes the coverage of Republic Act No. 7641 and specifically identifies the exemptions from the same, to wit:

Sec. 1. *General Statement on Coverage*. – This Rule shall apply to **all employees in the private sector, regardless of their position, designation or status and irrespective of the method by which their wages are paid, except to those specifically exempted under Section 2 hereof**. As used herein, the term "Act" shall refer to Republic Act No. 7641, which took effect on January 7, 1993.

Section 2. ***Exemptions.*** – This Rule shall not apply to the following employees:

2.1 **Employees of the National Government and its political subdivisions, including Government-owned and/or controlled corporations, if they are covered by the Civil Service Law and its regulations**.

2.2 Domestic helpers and persons in the personal service of another. (Deleted by Department Order No. 20 issued by Secretary Ma. Nieves R. Confessor on May 31, 1994.)

2.3. **Employees of retail, service and agricultural establishments or operations regularly employing not more than ten (10) employees. As used in this sub-section:**

(a) *"Retail establishment"* is one principally engaged in the sale of goods to end-users for personal or household use. It shall lose its retail character qualified for exemption if it is engaged in both retail and wholesale of goods.

(b) *"Service establishment"* is one principally engaged in the sale of service to individuals for their own or household use and is generally recognized as such.

(c) *"Agricultural establishment/operation"* refers to an employer which is engaged in agriculture. This term refers to all farming activities in all its branches and includes, among others, the cultivation and tillage of the soil, production, cultivation, growing and harvesting of any agricultural or horticultural commodities, dairying, raising of livestock or poultry, the culture of fish and other aquatic products in farms or ponds, and any activities performed by a farmer or on a farm as an incident to or in conjunctions with such farming operations, but does not include the manufacture and/or processing of sugar, coconut, abaca, tobacco, pineapple, aquatic or other farm products. (Emphases ours.)

Through a Labor Advisory dated October 24, 1996, then Secretary of Labor, and later Supreme Court Justice, Leonardo A. Quisumbing (Secretary Quisumbing), provided Guidelines for the Effective Implementation of Republic Act No. 7641, The Retirement Pay Law, addressed to all employers in the private sector. Pertinent portions of said Labor Advisory are reproduced below:

A. COVERAGE

RA 7641 or the Retirement Pay Law shall apply to all employees in the private sector, regardless of their position, designation or status and irrespective of the method by which their wages are paid. **They shall include part-time employees, employees of service and other job contractors and domestic helpers or persons in the personal service of another**.

The law does not cover employees of retail, service and agricultural establishments or operations employing not more than [ten] (10)

employees or workers and employees of the National Government and its political subdivisions, including Government-owned and/or controlled corporations, if they are covered by the Civil Service Law and its regulations.

x x x x x x x x x

C. SUBSTITUTE RETIREMENT PLAN

Qualified workers shall be entitled to the retirement benefit under RA 7641 in the absence of any individual or collective agreement, company policy or practice. x x x (Emphasis ours.)

Republic Act No. 7641 states that "any employee may be retired upon reaching the retirement age x x x;" and "[i]n case of retirement, the employee shall be entitled to receive such retirement benefits as he may have earned under existing laws and any collective bargaining agreement and other agreements." The Implementing Rules provide that Republic Act No. 7641 applies to "all employees in the private sector, regardless of their position, designation or status and irrespective of the method by which their wages are paid, except to those specifically exempted x x x." And Secretary Quisumbing's Labor Advisory further clarifies that the employees covered by Republic Act No. 7641 shall "include part-time employees, employees of service and other job contractors and domestic helpers or persons in the personal service of another."

The only exemptions specifically identified by Republic Act No. 7641 and its Implementing Rules are: (1) employees of the National Government and its political subdivisions, including government-owned and/or controlled corporations, if they are covered by the Civil Service Law and its regulations; and (2) employees of retail, service and agricultural establishments or operations regularly employing not more than 10 employees.

Based on Republic Act No. 7641, its Implementing Rules, and Secretary Quisumbing's Labor Advisory, Bernardo, as a part-time employee of DLS-AU, is entitled to retirement benefits. The general coverage of Republic Act No. 7641 is broad enough to encompass all private sector employees, and part-time employees are not among those specifically exempted from the

law. The provisions of Republic Act No. 7641 and its Implementing Rules are plain, direct, unambiguous, and need no further elucidation. Any doubt is dispelled by the unequivocal statement in Secretary Quisumbing's Labor Advisory that Republic Act No. 7641 applies to even part-time employees.

Under the rule of statutory construction of *expressio unius est exclusio alterius*, Bernardo's claim for retirement benefits cannot be denied on the ground that he was a part-time employee as part-time employees are not among those specifically exempted under Republic Act No. 7641 or its Implementing Rules. Said rule of statutory construction is explained thus:

> It is a settled rule of statutory construction that the express mention of one person, thing, or consequence implies the exclusion of all others. The rule is expressed in the familiar maxim, *expressio unius est exclusio alterius*.
>
> The rule of *expressio unius est exclusio alterius* is formulated in a number of ways. One variation of the rule is the principle that what is expressed puts an end to that which is implied. *Expressum facit cessare tacitum*. Thus, where a statute, by its terms, is expressly limited to certain matters, it may not, by interpretation or construction, be extended to other matters.
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> x x x x x x x x x
>
> The rule of *expressio unius est exclusio alterius* and its variations are canons of restrictive interpretation. They are based on the rules of logic and the natural workings of the human mind. They are predicated upon one's own voluntary act and not upon that of others. They proceed from the premise that the legislature would not have made specified enumeration in a statute had the intention been not to restrict its meaning and confine its terms to those expressly mentioned.[22]

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[22] *Malinias v. Commission on Elections*, 439 Phil. 319, 335-336 (2002), citing Ruben E. Agpalo, *Statutory Construction*, (1990), pp. 160-161, which, in turn, cited *People v. Aquino*, 83 Phil. 614 (1949); *Lerum v. Cruz*, 87 Phil. 652 (1950); *Canlas v. Republic*, 103 Phil. 712 (1958); *Lao Oh Kim v. Reyes*, 103 Phil. 1139 (1958); *Manila Lodge No. 761 v. Court of Appeals*, 165 Phil. 161 (1976); *Escribano v. Judge Avila*, 174 Phil. 490 (1978); *Santos v. Court of Appeals*, 185 Phil. 331 (1980); *Velazco v. Blas*, 201 Phil. 122 (1982).

The NLRC and the Court of Appeals did not err in relying on the Implementing Rules of Republic Act No. 7641 in their respective judgments which favored Bernardo.

Congress, through Article 5 of the Labor Code, delegated to the Department of Labor and Employment (DOLE) and other government agencies charged with the administration and enforcement of said Code the power to promulgate the necessary implementing rules and regulations. It was pursuant to Article 5 of the Labor Code that then Secretary of Labor Ma. Nieves R. Confesor issued on January 7, 1993 the Rules Implementing the New Retirement Law, which became Rule II of Book VI of the Rules Implementing the Labor Code.

In ruling that Bernardo, as part-time employee, is entitled to retirement benefits, we do no less and no more than apply Republic Act No. 7641 and its Implementing Rules issued by the DOLE under the authority given to it by the Congress. Needless to stress, the Implementing Rules partake the nature of a statute and are binding as if written in the law itself. They have the force and effect of law and enjoy the presumption of constitutionality and legality until they are set aside with finality in an appropriate case by a competent court.[23]

Moreover, as a matter of contemporaneous interpretation of law, Secretary Quisumbing's Labor Advisory has persuasive effect. It is undisputed that in administrative law, contemporaneous and practical interpretation of law by administrative officials charged with its administration and enforcement carries great weight and should be respected, unless contrary to law or manifestly erroneous.[24]

We further find that the Implementing Rules and Secretary Quisumbing's Labor Advisory are consistent with Article 4 of the Labor Code, which expressly mandates that "all doubts in the implementation and interpretation of the provisions of this

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[23] *Samson v. Restrivera*, 662 Phil. 45, 60 (2011).

[24] *Amores v. Acting Chairman, Commission on Audit*, 291-A Phil. 445, 450 (1993).

Code, including its implementing rules and regulations, shall be resolved in favor of labor." There being no compelling argument herein to convince us otherwise, we uphold the legality and validity of the Implementing Rules and Secretary Quisumbing's Labor Advisory, and likewise apply the same to Bernardo's case.

For the availment of the retirement benefits under Article 302 [287] of the Labor Code, as amended by Republic Act No. 7641, the following requisites must concur: (1) the employee has reached the age of 60 years for optional retirement or 65 years for compulsory retirement; (2) the employee has served at least five years in the establishment; and (3) there is no retirement plan or other applicable agreement providing for retirement benefits of employees in the establishment. Bernardo – being 75 years old at the time of his retirement, having served DLS-AU for a total of 27 years, and not being covered by the grant of retirement benefits in the CBA – is unquestionably qualified to avail himself of retirement benefits under said statutory provision, *i.e.*, equivalent to one-half month salary for every year of service, a fraction of at least six months being considered as one whole year.[25]

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[25] Under Book VI, Rule II, Section 5.2 of the Rules Implementing the Labor Code, the "one-half month salary" shall include all of the following:

(a) Fifteen (15) days salary of the employee based on his latest salary rate. As used herein, the term "salary" includes all remunerations paid by an employer to his employees for services rendered during normal working days and hours, whether such payments are fixed or ascertained on a time, task, piece of commission basis, or other method of calculating the same, and includes the fair and reasonable value, as determined by the Secretary of Labor and Employment, of food, lodging or other facilities customarily furnished by the employer to his employees. The term does not include cost of living allowances, profit-sharing payments and other monetary benefits which are not considered as part of or integrated into the regular salary of the employees.

(b) The cash equivalent of not more than five (5) days of service incentive leave.

(c) One-twelfth of the 13th month pay due the employee.

(d) All other benefits that the employer and employee may agree upon that should be included in the employee's retirement pay.

Bernardo's employment was extended beyond the compulsory retirement age and the cause of action for his retirement benefits accrued only upon the termination of his extended employment with DLS-AU.

Article 306 [291] of the Labor Code mandates:

> Art. 306 [291]. *Money claims*. – All money claims arising from employer-employee relations accruing during the effectivity of this Code shall be filed within three years from the time the cause of action accrued; otherwise they shall be forever barred.

DLS-AU invokes *UST Faculty Union v. National Labor Relations Commission*,[26] wherein it was held that when an employee or official has reached the compulsory retirement age, he is thereby effectively separated from the service. And so, DLS-AU maintains that Bernardo's cause of action for his retirement benefits, which is patently a money claim, accrued when he reached the compulsory retirement age of 65 years old, and had already prescribed when Bernardo filed his complaint only 10 years later, when he was already 75 years old.

We are not persuaded.

The case of *UST Faculty Union* is not in point as the issue involved therein was the right of a union to intervene in the extension of the service of a retired employee. Professor Tranquilina J. Marilio (Prof. Marilio) already reached the compulsory retirement age of 65 years old, but was granted by the University of Sto. Tomas (UST) an extension of two years tenure. We ruled in said case that UST no longer needed to consult the union before refusing to further extend Prof. Marilio's tenure.

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[26] 266 Phil. 441, 448 (1990).

A cause of action has three elements, to wit, (1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (2) an obligation on the part of the named defendant to respect or not to violate such right; and (3) an act or omission on the part of such defendant violative of the right of the plaintiff or constituting a breach of the obligation of the defendant to the plaintiff.[27]

Bernardo's right to retirement benefits and the obligation of DLS-AU to pay such benefits are already established under Article 302 [287] of the Labor Code, as amended by Republic Act No. 7641. However, there was a violation of Bernardo's right only after DLS-AU informed him on November 8, 2003 that the university no longer intended to offer him another contract of employment, and already accepting his separation from service, Bernardo sought his retirement benefits, but was denied by DLS-AU. Therefore, the cause of action for Bernardo's retirement benefits only accrued after the refusal of DLS-AU to pay him the same, clearly expressed in Dr. Bautista's letter dated February 12, 2004. Hence, Bernardo's complaint, filed with the NLRC on February 26, 2004, was filed within the three-year prescriptive period provided under Article 291 of the Labor Code.

Even granting *arguendo* that Bernardo's cause of action already accrued when he reached 65 years old, we cannot simply overlook the fact that DLS-AU had repeatedly extended Bernardo's employment even when he already reached 65 years old. DLS-AU still knowingly offered Bernardo, and Bernardo willingly accepted, contracts of employment to teach for semesters and summers in the succeeding 10 years. Since DLS-AU was still continuously engaging his services even beyond his retirement age, Bernardo deemed himself still employed and deferred his claim for retirement benefits, under the impression that he could avail himself of the same upon the actual termination of his employment. The equitable doctrine of estoppel is thus applicable against DLS-AU. In *Planters*

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[27] *Auto Bus Transport System Inc. v. Bautista*, 497 Phil. 863, 875 (2005).

Development Bank v. Spouses Lopez,[28] we expounded on the principle of estoppels as follows:

> Section 2, Rule 131 of the Rules of Court provides that whenever a party has, by his own declaration, act, or omission, intentionally and deliberately led another to believe that a particular thing is true, and to act upon such belief, he cannot, in any litigation arising out of such declaration, act or omission, be permitted to falsify it.
>
> The concurrence of the following requisites is necessary for the principle of equitable estoppel to apply: (a) conduct amounting to false representation or concealment of material facts or at least calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (b) intent, or at least expectation that this conduct shall be acted upon, or at least influenced by the other party; and (c) knowledge, actual or constructive, of the actual facts.
>
> Inaction or silence may under some circumstances amount to a misrepresentation, so as to raise an equitable estoppel. When the silence is of such a character and under such circumstances that it would become a fraud on the other party to permit the party who has kept silent to deny what his silence has induced the other to believe and act on, it will operate as an estoppel. This doctrine rests on the principle that if one maintains silence, when in conscience he ought to speak, equity will debar him from speaking when in conscience he ought to remain silent.

DLS-AU, in this case, not only kept its silence that Bernardo had already reached the compulsory retirement age of 65 years old, but even continuously offered him contracts of employment for the next 10 years. It should not be allowed to escape its obligation to pay Bernardo's retirement benefits by putting entirely the blame for the deferred claim on Bernardo's shoulders.

WHEREFORE, premises considered, the instant Petition is **DISMISSED** for lack of merit. The Decision dated June 29, 2009 and Resolution dated January 4, 2010 of the Court of Appeals in CA-G.R. SP No. 106399 are **AFFIRMED**.

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[28] 720 Phil. 426, 441-442 (2013).

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 203514. February 13, 2017]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **ST. LUKE'S MEDICAL CENTER, INC.,** *respondent.*

SYLLABUS

1. TAXATION; NATIONAL INTERNAL REVENUE CODE OF 1997 (REPUBLIC ACT NO. 8424, AS AMENDED); APPLYING THE DOCTRINE OF *STARE DECISIS*, THE COURT FINDS THAT A PROPRIETARY NON-PROFIT HOSPITAL IS SUBJECT TO 10% INCOME TAX INSOFAR AS ITS REVENUE FROM PAYING PATIENTS ARE CONCERNED; CASE AT BAR.— The issue of whether SLMC is liable for income tax under Section 27(B) of the 1997 NIRC insofar as its revenues from paying patients are concerned has been settled in G.R. Nos. 195909 and 195960 (*Commissioner of Internal Revenue v. St. Luke's Medical Center, Inc.*), where the Court ruled that: x x x We hold that Section 27(B) of the NIRC does not remove the income tax exemption of proprietary non-profit hospitals under Section 30(E) and (G). Section 27(B) on one hand, and Section 30(E) and (G) on the other hand, can be construed together without the removal of such tax exemption. The effect of the introduction of Section 27(B) is to subject the taxable income of two specific institutions, namely, proprietary non-profit educational institutions and proprietary non-profit hospitals, among the institutions covered by Section 30, to the 10% preferential rate under Section 27(B) instead of

the ordinary 30% corporate rate under the last paragraph of Section 30 in relation to Section 27(A)(1). Section 27(B) of the NIRC imposes a 10% preferential tax rate on the income of (1) proprietary non-profit educational institutions and (2) proprietary non-profit hospitals. The only qualifications for hospitals are that they must be proprietary and non-profit. x x x A careful review of the pleadings reveals that there is no countervailing consideration for the Court to revisit its aforequoted ruling in G.R. Nos. 195909 and 195960 (*Commissioner of Internal Revenue v. St. Luke's Medical Center, Inc.*). Thus, under the doctrine of *stare decisis*, which states that "[o]nce a case has been decided in one way, any other case involving exactly the same point at issue xxx should be decided in the same manner," the Court finds that SLMC is subject to 10% income tax insofar as its revenues from paying patients are concerned. To be clear, for an institution to be completely exempt from income tax, Section 30(E) and (G) of the 1997 NIRC requires said institution to operate exclusively for charitable or social welfare purpose. But in case an exempt institution under Section 30(E) or (G) of the said Code earns income from its for-profit activities, it will not lose its tax exemption. However, its income from for-profit activities will be subject to income tax at the preferential 10% rate pursuant to Section 27(B) thereof.

2. ID.; ID.; SURCHARGES AND INTEREST; WHERE THE SURCHARGES AND INTEREST WERE DELETED ON THE BASIS OF THE TAXPAYER'S GOOD FAITH AND HONEST BELIEF THAT IT IS NOT SUBJECT TO TAX, THE SAID TAXPAYER IS NOT LIABLE TO PAY COMPROMISE PENALTY.— As to whether SLMC is liable for compromise penalty under Section 248(A) of the 1997 NIRC for its alleged failure to file its quarterly income tax returns, this has also been resolved in G.R. Nos. 195909 and 195960 (*Commissioner of Internal Revenue v. St. Luke's Medical Center, Inc.*), where the imposition of surcharges and interest under Sections 248 and 249 of the 1997 NIRC were deleted on the basis of good faith and honest belief on the part of SLMC that it is not subject to tax. Thus, following the ruling of the Court in the said case, SLMC is not liable to pay compromise penalty under Section 248(A) of the 1997 NIRC.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Quasha Ancheta Peña & Nolasco Law Offices for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

The doctrine of *stare decisis* dictates that "absent any powerful countervailing considerations, like cases ought to be decided alike."[1]

This Petition for Review on *Certiorari*[2] under Rule 45 of the Rules of Court assails the May 9, 2012 Decision[3] and the September 17, 2012 Resolution[4] of the Court of Tax Appeals (CTA) in CTA EB Case No. 716.

Factual Antecedents

On December 14, 2007, respondent St. Luke's Medical Center, Inc. (SLMC) received from the Large Taxpayers Service-Documents Processing and Quality Assurance Division of the Bureau of Internal Revenue (BIR) Audit Results/Assessment Notice Nos. QA-07-000096[5] and QA-07-000097,[6] assessing

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[1] *Ty v. Banco Filipino Savings & Mortgage Bank,* 511 Phil. 510, 520 (2005).

[2] *Rollo,* pp. 13-34.

[3] *Id*. at 39-51; penned by Associate Justice Lovell R. Bautista and concurred in by Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda, Jr., Caesar A. Casanova, Olga Palanca-Enriquez, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, and Amelia R. Cotangco-Manalastas; Associate Justice Erlinda P. Uy on leave.

[4] *Id*. at 52-55; penned by Associate Justice Lovell R. Bautista and concurred in by Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda, Jr., Caesar A. Casanova, Olga Palanca-Enriquez, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, and Amelia R. Cotangco-Manalastas; Associate Justice Erlinda P. Uy took no part.

[5] CTA *rollo* (Division), pp. 32-33.

[6] *Id*. at 34-35.

respondent SLMC deficiency income tax under Section 27(B)[7] of the 1997 National Internal Revenue Code (NIRC), as amended, for taxable year 2005 in the amount of ₱78,617,434.54 and for taxable year 2006 in the amount of ₱57,119,867.33.

On January 14, 2008, SLMC filed with petitioner Commissioner of Internal Revenue (CIR) an administrative protest[8] assailing the assessments. SLMC claimed that as a non-stock, non-profit charitable and social welfare organization under Section 30(E) and (G)[9] of the 1997 NIRC, as amended, it is exempt from paying income tax.

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[7] SEC. 27. *Rates of Income Tax on Domestic Corporations.* —

x x x x x x x x x

(B) Proprietary Educational Institutions and Hospitals. — **Proprietary educational institutions and hospitals which are non-profit shall pay a tax of ten percent (10%) on their taxable income** except those covered by Subsection (D) hereof: *Provided,* That if the gross income from unrelated trade, business or other activity exceeds fifty percent (50%) of the total gross income derived by such educational institutions or hospitals from all sources, the tax prescribed in Subsection (A) hereof shall be imposed on the entire taxable income. For purposes of this Subsection, the term 'unrelated trade, business or other activity means any trade, business or other activity,' the conduct of which is not substantially related to the exercise or performance by such educational institution or hospital of its primary purpose or function. A 'proprietary educational institution' is any private school maintained and administered by private individuals or groups with an issued permit to operate from the Department of Education, Culture and Sports (DECS), or the Commission on Higher Education (CHED), or the Technical Education and Skills Development Authority (TESDA), as the case may be, in accordance with existing laws and regulations. (Emphasis supplied)

[8] CTA *rollo* (Division), pp. 36-46.

[9] SEC. 30. *Exemptions from Tax on Corporations.* — The following organizations shall not be taxed under this Title in respect to income received by them as such:

x x x x x x x x x

(E) **Nonstock corporation** or association **organized and operated exclusively for** religious, **charitable**, scientific, athletic, or cultural **purposes**, or for the rehabilitation of veterans, **no part of its net income or asset shall belong to or inure to the benefit of any member, organizer, officer or any specific person**;

x x x x x x x x x

On April 25, 2008, SLMC received petitioner CIR's Final Decision on the Disputed Assessment[10] dated April 9, 2008 increasing the deficiency income for the taxable year 2005 tax to ₱82,419,522.21 and for the taxable year 2006 to ₱60,259,885.94, computed as follows:

For Taxable Year 2005:

ASSESSMENT NO. QA-07-000096

PARTICULARS	AMOUNT
Sales/Revenues/Receipts/Fees	₱3,623,511,616.00
Less: Cost of Sales/Services	2,643,049,769.00
Gross Income From Operation	980,461,847.00
Add: Non-Operating & Other Income	-
Total Gross Income	980,461,847.00
Less: Deductions	481,266,883.00
Net Income Subject to Tax	499,194,964.00
X Tax Rate	10%
Tax Due	49,919,496.40
Less: Tax Credits	-
Deficiency Income Tax	49,919,496.40
Add: Increments	
25% Surcharge	12,479,874.10
20% Interest Per Annum (4/15/06-4/15/08)	19,995,151.71
Compromise Penalty for Late Payment	25,000.00
Total increments	32,500,025.81
Total Amount Due	₱82,419,522.21

(G) Civic league or organization not organized for profit but **operated exclusively** for the promotion of social welfare;

x x x x x x x x x

Notwithstanding the provisions in the preceding paragraphs, **the income of whatever kind and character of the foregoing organizations** from any of their properties, real or personal, or **from any of their activities conducted for profit regardless of the disposition made of such income, shall be subject to tax** imposed under this Code. (Emphasis supplied)

[10] CTA *rollo* (Division), pp. 47-50.

For Taxable Year 2006:

ASSESSMENT NO. QA-07-000097

PARTICULARS	[AMOUNT]
Sales/Revenues/Receipts/Fees	₱3,815,922,240.00
Less: Cost of Sales/Services	2,760,518,437.00
Gross Income From Operation	1,055,403,803.00
Add: Non-Operating & Other Income	-
Total Gross Income	1,055,403,803.00
Less: Deductions	640,147,719.00
Net Income Subject to Tax	415,256,084.00
X Tax Rate	10%
Tax Due	41,525,608.40
Less: Tax Credits	-
Deficiency Income Tax	41,525,608.40
Add: Increments	-
25% Surcharge	10,381,402.10
20% Interest Per Annum (4/15/07-4/15/08)	8,327,875.44
Compromise Penalty for Late Payment	25,000.00
Total increments	18,734,277.54
Total Amount Due	₱60,259,885.94[11]

Aggrieved, SLMC elevated the matter to the CTA *via* a Petition for Review,[12] docketed as CTA Case No. 7789.

Ruling of the Court of Tax Appeals Division

On August 26, 2010, the CTA Division rendered a Decision[13] finding SLMC not liable for deficiency income tax under Section 27(B) of the 1997 NIRC, as amended, since it is exempt from

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[11] *Id*. at 47-48.

[12] *Id*. at 1-31.

[13] *Id*. at 1059-1079; penned by Associate Justice Cielito N. Mindaro-Grulla and concurred in by Associate Justices Juanito C. Castañeda, Jr. and Caesar A. Casanova.

paying income tax under Section 30(E) and (G) of the same Code. Thus:

> WHEREFORE, premises considered, the Petition for Review is hereby GRANTED. Accordingly, Audit Results/Assessment Notice Nos. QA-07-000096 and QA-07-000097, assessing petitioner for alleged deficiency income taxes for the taxable years 2005 and 2006, respectively, are hereby CANCELLED and SET ASIDE.
>
> SO ORDERED.[14]

CIR moved for reconsideration but the CTA Division denied the same in its December 28, 2010 Resolution.[15]

This prompted CIR to file a Petition for Review[16] before the CTA *En Banc*.

Ruling of the Court of Tax Appeals En Banc

On May 9, 2012, the CTA *En Banc* affirmed the cancellation and setting aside of the Audit Results/Assessment Notices issued against SLMC. It sustained the findings of the CTA Division that SLMC complies with all the requisites under Section 30(E) and (G) of the 1997 NIRC and thus, entitled to the tax exemption provided therein.[17]

On September 17, 2012, the CTA *En Banc* denied CIR's Motion for Reconsideration.

Issue

Hence, CIR filed the instant Petition under Rule 45 of the Rules of Court contending that the CTA erred in exempting SLMC from the payment of income tax.

Meanwhile, on September 26, 2012, the Court rendered a Decision in G.R. Nos. 195909 and 195960, entitled *Commissioner*

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[14] *Id*. at 1079.

[15] *Id*. at 1117-1125 (last page missing).

[16] CTA *rollo (En Banc),* pp. 1-8.

[17] *Rollo*, pp. 47-49.

of Internal Revenue v. St. Luke's Medical Center, Inc.,[18] finding SLMC not entitled to the tax exemption under Section 30(E) and (G) of the NIRC of 1997 as it does not operate exclusively for charitable or social welfare purposes insofar as its revenues from paying patients are concerned. Thus, the Court disposed of the case in this manner:

> WHEREFORE, the petition of the Commissioner of Internal Revenue in G.R. No. 195909 is PARTLY GRANTED. The Decision of the Court of Tax Appeals *En Banc* dated 19 November 2010 and its Resolution dated 1 March 2011 in CTA Case No. 6746 are MODIFIED. St. Luke's Medical Center, Inc. is ORDERED TO PAY the deficiency income tax in 1998 based on the 10% preferential income tax rate under Section 27(B) of the National Internal Revenue Code. However, it is not liable for surcharges and interest on such deficiency income tax under Sections 248 and 249 of the National Internal Revenue Code. All other parts of the Decision and Resolution of the Court of Tax Appeals are AFFIRMED.
>
> The petition of St. Luke's Medical Center, Inc. in G.R. No. 195960 is DENIED for violating Section I, Rule 45 of the Rules of Court.
>
> SO ORDERED.[19]

Considering the foregoing, SLMC then filed a Manifestation and Motion[20] informing the Court that on April 30, 2013, it paid the BIR the amount of basic taxes due for taxable years 1998, 2000-2002, and 2004-2007, as evidenced by the payment confirmation[21] from the BIR, and that it did not pay any surcharge, interest, and compromise penalty in accordance with the above-mentioned Decision of the Court. In view of the payment it made, SLMC moved for the dismissal of the instant case on the ground of mootness.

CIR opposed the motion claiming that the payment confirmation submitted by SLMC is not a competent proof of

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[18] 695 Phil. 867 (2012).

[19] *Id*. at 895.

[20] *Rollo*, pp. 80-82.

[21] *Id*. at 83.

payment as it is a mere photocopy and does not even indicate the quarter/s and/or year/s said payment covers.[22]

In reply,[23] SLMC submitted a copy of the Certification[24] issued by the Large Taxpayers Service of the BIR dated May 27, 2013, certifying that, "[a]s far as the basic deficiency income tax for taxable years 2000, 2001, 2002, 2004, 2005, 2006, 2007 are concerned, this Office considers the cases closed due to the payment made on April 30, 2013." SLMC likewise submitted a letter[25] from the BIR dated November 26, 2013 with attached Certification of Payment[26] and application for abatement,[27] which it earlier submitted to the Court in a related case, G.R. No. 200688, entitled *Commissioner of Internal Revenue v. St. Luke's Medical Center, Inc*.[28]

Thereafter, the parties submitted their respective memorandum.

CIR's Arguments

CIR argues that under the doctrine of *stare decisis* SLMC is subject to 10% income tax under Section 27(B) of the 1997 NIRC.[29] It likewise asserts that SLMC is liable to pay compromise penalty pursuant to Section 248(A)[30]of

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[22] *Id*. at 99-106.

[23] *Id*. at 112-116.

[24] *Id*. at 118.

[25] *Id*. at 119.

[26] *Id*. at 121.

[27] *Id*. at 123-129.

[28] G.R. No. 200688 (Notice), April 15, 2015.

[29] *Rollo*, pp. 186-193.

[30] Section 248. *Civil Penalties*. —

(A) There shall be imposed, in addition to the tax required to be paid, a penalty equivalent to twenty-five percent (25%) of the amount due, in the following cases:

(1) Failure to file any return and pay the tax due thereon as required under the provisions of this Code or rules and regulations on the date prescribed; or

the 1997 NIRC for failing to file its quarterly income tax returns.[31]

As to the alleged payment of the basic tax, CIR contends that this does not render the instant case moot as the payment confirmation submitted by SLMC is not a competent proof of payment of its tax liabilities.[32]

SLMC's Arguments

SLMC, on the other hand, begs the indulgence of the Court to revisit its ruling in G.R. Nos. 195909 and 195960 (*Commissioner of Internal Revenue v. St. Luke's Medical Center, Inc.*)[33] positing that earning a profit by a charitable, benevolent hospital or educational institution does not result in the withdrawal of its tax exempt privilege.[34] SLMC further claims that the income it derives from operating a hospital is not income from "activities conducted for profit."[35] Also, it maintains that in accordance with the ruling of the Court in G.R. Nos. 195909 and 195960 (*Commissioner of Internal Revenue v. St. Luke's Medical Center, Inc.*),[36] it is not liable for compromise penalties.[37]

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(2) Unless otherwise authorized by the Commissioner, filing a return with an internal revenue officer other than those with whom the return is required to be filed; or

(3) Failure to pay the deficiency tax within the time prescribed for its payment in the notice of assessment; or

(4) Failure to pay the full or part of the amount of tax shown on any return required to be filed under the provisions of this Code or rules and regulations, or the full amount of tax due for which no return is required to be filed, on or before the date prescribed for its payment.

x x x x x x x x x

[31] *Rollo*, p. 193.

[32] *Id*. at 193-194.

[33] *Supra* note 19.

[34] *Rollo*, pp. 150-155.

[35] *Id*. at 155-156.

[36] *Supra* note 19.

[37] *Rollo,* pp. 158-160.

In any case, SLMC insists that the instant case should be dismissed in view of its payment of the basic taxes due for taxable years 1998, 2000-2002, and 2004-2007 to the BIR on April 30, 2013.[38]

Our Ruling

SLMC is liable for income tax under Section 27(B) of the 1997 NIRC insofar as its revenues from paying patients are concerned.

The issue of whether SLMC is liable for income tax under Section 27(B) of the 1997 NIRC insofar as its revenues from paying patients are concerned has been settled in G.R. Nos. 195909 and 195960 (*Commissioner of Internal Revenue v. St. Luke's Medical Center, Inc.*),[39] where the Court ruled that:

> x x x We hold that Section 27(B) of the NIRC does not remove the income tax exemption of proprietary non-profit hospitals under Section 30(E) and (G). Section 27(B) on one hand, and Section 30(E) and (G) on the other hand, can be construed together without the removal of such tax exemption. The effect of the introduction of Section 27(B) is to subject the taxable income of two specific institutions, namely, proprietary non-profit educational institutions and proprietary non-profit hospitals, among the institutions covered by Section 30, to the 10% preferential rate under Section 27(B) instead of the ordinary 30% corporate rate under the last paragraph of Section 30 in relation to Section 27(A)(1).
>
> Section 27(B) of the NIRC imposes a 10% preferential tax rate on the income of (1) proprietary non-profit educational institutions and (2) proprietary non-profit hospitals. The only qualifications for hospitals are that they must be proprietary and non-profit. 'Proprietary' means private, following the definition of a 'proprietary educational institution' as 'any private school maintained and administered by private individuals or groups' with a government permit. 'Non-profit' means no net income or asset accrues to or benefits any member or

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[38] *Id*. at 160-162.

[39] *Supra* note 19.

specific person, with all the net income or asset devoted to the institution's purposes and all its activities conducted not for profit.

'Non-profit' does not necessarily mean 'charitable.' In *Collector of Internal Revenue v. Club Filipino, Inc. de Cebu*, this Court considered as non-profit a sports club organized for recreation and entertainment of its stockholders and members. The club was primarily funded by membership fees and dues. If it had profits, they were used for overhead expenses and improving its golf course. The club was non-profit because of its purpose and there was no evidence that it was engaged in a profit-making enterprise.

The sports club in *Club Filipino, Inc. de Cebu* may be non-profit, but it was not charitable. The Court defined 'charity' in *Lung Center of the Philippines v. Quezon City* as 'a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their minds and hearts under the influence of education or religion, by assisting them to establish themselves in life or [by] otherwise lessening the burden of government.' A non-profit club for the benefit of its members fails this test. An organization may be considered as non-profit if it does not distribute any part of its income to stockholders or members. However, despite its being a tax exempt institution, any income such institution earns from activities conducted for profit is taxable, as expressly provided in the last paragraph of Section 30.

To be a charitable institution, however, an organization must meet the substantive test of charity in *Lung Center.* The issue in *Lung Center* concerns exemption from real property tax and not income tax. However, it provides for the test of charity in our jurisdiction. Charity is essentially a gift to an indefinite number of persons which lessens the burden of government. In other words, charitable institutions provide for free goods and services to the public which would otherwise fall on the shoulders of government. Thus, as a matter of efficiency, the government forgoes taxes which should have been spent to address public needs, because certain private entities already assume a part of the burden. This is the rationale for the tax exemption of charitable institutions. The loss of taxes by the government is compensated by its relief from doing public works which would have been funded by appropriations from the Treasury.

Charitable institutions, however, are not *ipso facto* entitled to a tax exemption. The requirements for a tax exemption are specified by the law granting it. The power of Congress to tax implies the

power to exempt from tax. Congress can create tax exemptions, subject to the constitutional provision that '[n]o law granting any tax exemption shall be passed without the concurrence of a majority of all the Members of Congress.' The requirements for a tax exemption are strictly construed against the taxpayer because an exemption restricts the collection of taxes necessary for the existence of the government.

The Court in *Lung Center* declared that the Lung Center of the Philippines is a charitable institution for the purpose of exemption from real property taxes. This ruling uses the same premise as *Hospital de San Juan* and *Jesus Sacred Heart College* which says that receiving income from paying patients does not destroy the charitable nature of a hospital.

> As a general principle, a charitable institution does not lose its character as such and its exemption from taxes simply because it derives income from paying patients, whether out-patient, or confined in the hospital, or receives subsidies from the government, so long as the money received is devoted or used altogether to the charitable object which it is intended to achieve; and no money inures to the private benefit of the persons managing or operating the institution.

For real property taxes, the incidental generation of income is permissible because the test of exemption is the use of the property. The Constitution provides that '[c]haritable institutions, churches and personages or convents appurtenant thereto, mosques, non-profit cemeteries, and all lands, buildings, and improvements, actually, directly, and exclusively used for religious, charitable, or educational purposes shall be exempt from taxation.' The test of exemption is not strictly a requirement on the intrinsic nature or character of the institution. The test requires that the institution use the property in a certain way, *i.e.*, for a charitable purpose. Thus, the Court held that the Lung Center of the Philippines did not lose its charitable character when it used a portion of its lot for commercial purposes. The effect of failing to meet the use requirement is simply to remove from the tax exemption that portion of the property not devoted to charity.

The Constitution exempts charitable institutions only from real property taxes. In the NIRC, Congress decided to extend the exemption to income taxes. However, the way Congress crafted Section 30(E) of the NIRC is materially different from Section 28(3), Article VI of the Constitution. Section 30(E) of the NIRC defines the corporation

or association that is exempt from income tax. On the other hand, Section 28(3), Article VI of the Constitution does not define a charitable institution, but requires that the institution 'actually, directly and exclusively' use the property for a charitable purpose.

Section 30(E) of the NIRC provides that a charitable institution must be:

(1) A non-stock corporation or association;
(2) Organized exclusively for charitable purposes;
(3) Operated exclusively for charitable purposes; and
(4) No part of its net income or asset shall belong to or inure to the benefit of any member, organizer, officer or any specific person.

Thus, both the organization and operations of the charitable institution must be devoted 'exclusively' for charitable purposes. The organization of the institution refers to its corporate form, as shown by its articles of incorporation, by-laws and other constitutive documents. Section 30(E) of the NIRC specifically requires that the corporation or association be non-stock, which is defined by the Corporation Code as 'one where no part of its income is distributable as dividends to its members, trustees, or officers' and that any profit 'obtain[ed] as an incident to its operations shall, whenever necessary or proper, be used for the furtherance of the purpose or purposes for which the corporation was organized.' However, under *Lung Center*, any profit by a charitable institution must not only be plowed back 'whenever necessary or proper,' but must be 'devoted or used altogether to the charitable object which it is intended to achieve.'

The operations of the charitable institution generally refer to its regular activities. Section 30(E) of the NIRC requires that these operations be exclusive to charity. There is also a specific requirement that 'no part of [the] net income or asset shall belong to or inure to the benefit of any member, organizer, officer or any specific person.' The use of lands, buildings and improvements of the institution is but a part of its operations.

There is no dispute that St. Luke's is organized as a non-stock and non-profit charitable institution. However, this does not automatically exempt St. Luke's from paying taxes. This only refers to the organization of St. Luke's. Even if St. Luke's meets the test of charity, a charitable institution is not *ipso facto* tax exempt. To be exempt from real property taxes, Section 28(3), Article VI of the Constitution requires that a charitable institution use the property 'actually, directly and exclusively' for charitable purposes. To be

exempt from income taxes, Section 30(E) of the NIRC requires that a charitable institution must be 'organized and operated exclusively' for charitable purposes. Likewise, to be exempt from income taxes, Section 30(G) of the NIRC requires that the institution be 'operated exclusively' for social welfare.

However, the last paragraph of Section 30 of the NIRC qualifies the words 'organized and operated exclusively' by providing that:

> Notwithstanding the provisions in the preceding paragraphs, the income of whatever kind and character of the foregoing organizations from any of their properties, real or personal, or from any of their activities conducted for profit regardless of the disposition made of such income, shall be subject to tax imposed under this Code.

In short, the last paragraph of Section 30 provides that if a tax exempt charitable institution conducts 'any' activity for profit, such activity is not tax exempt even as its not-for-profit activities remain tax exempt. This paragraph qualifies the requirements in Section 30(E) that the '[n]on-stock corporation or association [must be] organized and operated exclusively for . . . charitable . . . purposes . . . .' It likewise qualifies the requirement in Section 30(G) that the civic organization must be 'operated exclusively' for the promotion of social welfare.

Thus, even if the charitable institution must be 'organized and operated exclusively' for charitable purposes, it is nevertheless allowed to engage in 'activities conducted for profit' without losing its tax exempt status for its not-for-profit activities. The only consequence is that the 'income of whatever kind and character' of a charitable institution 'from any of its activities conducted for profit, regardless of the disposition made of such income, shall be subject to tax.' Prior to the introduction of Section 27(B), the tax rate on such income from for-profit activities was the ordinary corporate rate under Section 27(A). With the introduction of Section 27(B), the tax rate is now 10%.

In 1998, St. Luke's had total revenues of ₱1,730,367,965 from services to paying patients. It cannot be disputed that a hospital which receives approximately 1.73 billion from paying patients is not an institution 'operated exclusively' for charitable purposes. Clearly, revenues from paying patients are income received from 'activities conducted for profit.' Indeed, St. Luke's admits that it derived profits

from its paying patients. St. Luke's declared ₱1,730,367,965 as 'Revenues from Services to Patients' in contrast to its 'Free Services' expenditure of ₱218,187,498. In its Comment in G.R. No. 195909, St. Luke's showed the following 'calculation' to support its claim that 65.20% of its 'income after expenses was allocated to free or charitable services' in 1998.

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In *Lung Center*, this Court declared:

> '[e]xclusive' is defined as possessed and enjoyed to the exclusion of others; debarred from participation or enjoyment; and 'exclusively' is defined, 'in a manner to exclude; as enjoying a privilege exclusively.' . . . The words 'dominant use' or 'principal use' cannot be substituted for the words 'used exclusively' without doing violence to the Constitution and the law. Solely is synonymous with exclusively.

The Court cannot expand the meaning of the words 'operated exclusively' without violating the NIRC. Services to paying patients are activities conducted for profit. They cannot be considered any other way. There is a 'purpose to make profit over and above the cost' of services. The ₱1.73 billion total revenues from paying patients is not even incidental to St. Luke's charity expenditure of ₱218,187,498 for non-paying patients.

St. Luke's claims that its charity expenditure of ₱218,187,498 is 65.20% of its operating income in 1998. However, if a part of the remaining 34.80% of the operating income is reinvested in property, equipment or facilities used for services to paying and non-paying patients, then it cannot be said that the income is 'devoted or used altogether to the charitable object which it is intended to achieve.' The income is plowed back to the corporation not entirely for charitable purposes, but for profit as well. In any case, the last paragraph of Section 30 of the NIRC expressly qualifies that income from activities for profit is taxable 'regardless of the disposition made of such income.'

Jesus Sacred Heart College declared that there is no official legislative record explaining the phrase 'any activity conducted for profit.' However, it quoted a deposition of Senator Mariano Jesus Cuenco, who was a member of the Committee of Conference for the Senate, which introduced the phrase 'or from any activity conducted for profit.'

P. Cuando ha hablado de la Universidad de Santo Tomas que tiene un hospital, no cree Vd. que es una actividad esencial dicho hospital para el funcionamiento del colegio de medicina de dicha universidad?

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R. Si el hospital se limita a recibir enformos pobres, mi contestación seria afirmativa; pero considerando que el hospital tiene cuartos de pago, y a los mismos generalmente van enfermos de buena posición social económica, lo que se paga por estos enfermos debe estar sujeto a 'income tax', y es una de las razones que hemos tenido para insertar las palabras o frase '*or* from any activity conducted for profit.'

The question was whether having a hospital is essential to an educational institution like the College of Medicine of the University of Santo Tomas. Senator Cuenco answered that if the hospital has paid rooms generally occupied by people of good economic standing, then it should be subject to income tax. He said that this was one of the reasons Congress inserted the phrase 'or any activity conducted for profit.'

The question in *Jesus Sacred Heart College* involves an educational institution. However, it is applicable to charitable institutions because Senator Cuenco's response shows an intent to focus on the activities of charitable institutions. Activities for profit should not escape the reach of taxation. Being a non-stock and non-profit corporation does not, by this reason alone, completely exempt an institution from tax. An institution cannot use its corporate form to prevent its profitable activities from being taxed.

The Court finds that St. Luke's is a corporation that is not 'operated exclusively' for charitable or social welfare purposes insofar as its revenues from paying patients are concerned. This ruling is based not only on a strict interpretation of a provision granting tax exemption, but also on the clear and plain text of Section 30(E) and (G). Section 30(E) and (G) of the NIRC requires that an institution be 'operated exclusively' for charitable or social welfare purposes to be completely exempt from income tax. An institution under Section 30(E) or (G) does not lose its tax exemption if it earns income from its for-profit activities. Such income from for-profit activities, under the last paragraph of Section 30, is merely subject to income tax, previously at the ordinary corporate rate but now at the preferential 10% rate pursuant to Section 27(B).

A tax exemption is effectively a social subsidy granted by the State because an exempt institution is spared from sharing in the expenses of government and yet benefits from them. Tax exemptions for charitable institutions should therefore be limited to institutions beneficial to the public and those which improve social welfare. A profit-making entity should not be allowed to exploit this subsidy to the detriment of the government and other taxpayers.

St. Luke's fails to meet the requirements under Section 30(E) and (G) of the NIRC to be completely tax exempt from all its income. However, it remains a proprietary non-profit hospital under Section 27(B) of the NIRC as long as it does not distribute any of its profits to its members and such profits are reinvested pursuant to its corporate purposes. St. Luke's, as a proprietary non-profit hospital, is entitled to the preferential tax rate of 10% on its net income from its for-profit activities.

St. Luke's is therefore liable for deficiency income tax in 1998 under Section 27(B) of the NIRC. However, St. Luke's has good reasons to rely on the letter dated 6 June 1990 by the BIR, which opined that St. Luke's is 'a corporation for *purely* charitable and social welfare purposes' and thus exempt from income tax. In *Michael J. Lhuillier, Inc. v. Commissioner of Internal Revenue,* the Court said that 'good faith and honest belief that one is not subject to tax on the basis of previous interpretation of government agencies tasked to implement the tax law, are sufficient justification to delete the imposition of surcharges and interest.'[40]

A careful review of the pleadings reveals that there is no countervailing consideration for the Court to revisit its aforequoted ruling in G.R. Nos. 195909 and 195960 (*Commissioner of Internal Revenue v. St. Luke's Medical Center, Inc*.). Thus, under the doctrine of stare decisis, which states that "[o]nce a case has been decided in one way, any other case involving exactly the same point at issue x x x should be decided in the same manner,"[41] the Court finds that SLMC is subject to 10% income tax insofar as its revenues from paying patients are concerned.

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[40] *Id*. at 885-895.

[41] *Chinese Young Men's Christian Association of the Philippine Islands v. Remington Steel Corporation*, 573 Phil. 320, 337 (2008).

To be clear, for an institution to be completely exempt from income tax, Section 30(E) and (G) of the 1997 NIRC requires said institution to operate exclusively for charitable or social welfare purpose. But in case an exempt institution under Section 30(E) or (G) of the said Code earns income from its for-profit activities, it will not lose its tax exemption. However, its income from for-profit activities will be subject to income tax at the preferential 10% rate pursuant to Section 27(B) thereof.

SLMC is not liable for Compromise Penalty.

As to whether SLMC is liable for compromise penalty under Section 248(A) of the 1997 NIRC for its alleged failure to file its quarterly income tax returns, this has also been resolved in G.R. Nos. 195909 and 195960 (*Commissioner of Internal Revenue v. St. Luke's Medical Center, Inc.*),[42] where the imposition of surcharges and interest under Sections 248[43] and

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[42] *Supra* note 19.

[43] Section 248. *Civil Penalties.* —

(A) There shall be imposed, in addition to the tax required to be paid, a penalty equivalent to twenty-five percent (25%) of the amount due, in the following cases:

(1) Failure to file any return and pay the tax due thereon as required under the provisions of this Code or rules and regulations on the date prescribed; or

(2) Unless otherwise authorized by the Commissioner, filing a return with an internal revenue officer other than those with whom the return is required to be filed; or

(3) Failure to pay the deficiency tax within the time prescribed for its payment in the notice of assessment; or

(4) Failure to pay the full or part of the amount of tax shown on any return required to be filed under the provisions of this Code or rules and regulations, or the full amount of tax due for which no return is required to be filed, on or before the date prescribed for its payment.

(B) In case of willful neglect to file the return within the period prescribed by this Code or by rules and regulations, or in case a false or fraudulent return is willfully made, the penalty to be imposed shall be fifty percent (50%) of the tax or of the deficiency tax, in case, any payment has been made on the basis of such return before the discovery of the falsity or fraud:

249[44] of the 1997 NIRC were deleted on the basis of good faith and honest belief on the part of SLMC that it is not subject to tax. Thus, following the ruling of the Court in the said case, SLMC is not liable to pay compromise penalty under Section 248(A) of the 1997 NIRC.

Provided, That a substantial underdeclaration of taxable sales, receipts or income, or a substantial overstatement of deductions, as determined by the Commissioner pursuant to the rules and regulations to be promulgated by the Secretary of Finance, shall constitute *prima facie* evidence of a false or fraudulent return: Provided, further, That failure to report sales, receipts or income in an amount exceeding thirty percent (30%) of that declared per return, and a claim of deductions in an amount exceeding (30%) of actual deductions, shall render the taxpayer liable for substantial underdeclaration of sales, receipts or income or for overstatement of deductions, as mentioned herein.

[44] Section 249. *Interest*. —

(A) In General. — There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) per annum, or such higher rate as may be prescribed by rules and regulations, from the date prescribed for payment until the amount is fully paid.

(B) Deficiency Interest. — Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof.

(C) Delinquency Interest. — In case of failure to pay:

(1) The amount of the tax due on any return to be filed, or

(2) The amount of the tax due for which no return is required, or

(3) A deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner, there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax.

(D) Interest on Extended Payment. — If any person required to pay the tax is qualified and elects to pay the tax on installment under the provisions of this Code, but fails to pay the tax or any installment hereof, or any part of such amount or installment on or before the date prescribed for its payment, or where the Commissioner has authorized an extension of time within which to pay a tax or a deficiency tax or any part thereof, there shall be assessed and collected interest at the rate hereinabove prescribed on the tax or deficiency tax or any part thereof unpaid from the date of notice and demand until it is paid.

The Petition is rendered moot by the payment made by SLMC on April 30, 2013.

However, in view of the payment of the basic taxes made by SLMC on April 30, 2013, the instant Petition has become moot.

While the Court agrees with the CIR that the payment confirmation from the BIR presented by SLMC is not a competent proof of payment as it does not indicate the specific taxable period the said payment covers, the Court finds that the Certification issued by the Large Taxpayers Service of the BIR dated May 27, 2013, and the letter from the BIR dated November 26, 2013 with attached Certification of Payment and application for abatement are sufficient to prove payment especially since CIR never questioned the authenticity of these documents. In fact, in a related case, G.R. No. 200688, entitled *Commissioner of Internal Revenue v. St. Luke's Medical Center, Inc.*,[45] the Court dismissed the petition based on a letter issued by CIR confirming SLMC's payment of taxes, which is the same letter submitted by SLMC in the instant case.

In fine, the Court resolves to dismiss the instant Petition as the same has been rendered moot by the payment made by SLMC of the basic taxes for the taxable years 2005 and 2006, in the amounts of ₱49,919,496.40 and ₱41,525,608.40, respectively.[46]

WHEREFORE, the Petition is hereby **DISMISSED**.

SO ORDERED.

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

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[45] *Supra* note 28.

[46] *Rollo*, p. 120.

SECOND DIVISION

[G.R. No. 211120. February 13, 2017]

MEDEL ARNALDO B. BELEN, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; LIBEL; PUBLICATION IN LIBEL MEANS MAKING THE DEFAMATORY MATTER, AFTER IT HAS BEEN WRITTEN, KNOWN TO SOMEONE OTHER THAN THE PERSON TO WHOM IT HAS BEEN WRITTEN.— Publication in libel means making the defamatory matter, after it has been written, known to someone other than the person to whom it has been written. A communication of the defamatory matter to the person defamed alone cannot injure his reputation though it may wound his self-esteem, for a man's reputation is not the good opinion he has of himself, but the estimation in which other hold him. In the same vein, a defamatory letter contained in a closed envelope addressed to another constitutes sufficient publication if the offender parted with its possession in such a way that it can be read by person other than the offended party. If a sender of a libelous communication knows or has good reasons to believe that it will be intercepted before reaching the person defamed, there is sufficient publication. The publication of a libel, however, should not be presumed from the fact that the immediate control thereof is parted with unless it appears that there is reasonable probability that it is hereby exposed to be read or seen by third persons.

2. ID.; ID.; ID.; DOCTRINE OF ABSOLUTELY PRIVILEGED COMMUNICATION, AS A DEFENSE; PLEADINGS IN JUDICIAL PROCEEDINGS ARE CONSIDERED PRIVILEGED NOT ONLY BECAUSE THEY HAVE BECOME PART OF PUBLIC RECORDS, BUT ALSO BECAUSE THEY ARE PRESUMED TO CONTAIN ALLEGATIONS AND ASSERTIONS LAWFUL AND LEGAL IN NATURE, APPROPRIATE TO RESOLVE ISSUES VENTILATED BEFORE THE COURTS FOR PROPER ADMINISTRATION OF JUSTICE AND,

THEREFORE, OF GENERAL PUBLIC CONCERN.— A communication is absolutely privileged when it is not actionable, even if the author has acted in bad faith. This class includes allegations or statements made by parties or their counsel in pleadings or motions or during the hearing of judicial and administrative proceedings, as well as answers given by the witness in reply to questions propounded to them in the course of said proceedings, provided that said allegations or statements are relevant to the issues, and the answers are responsive to the questions propounded to said witnesses. The reason for the rule that pleadings in judicial proceedings are considered privileged is not only because said pleadings have become part of public record open to the public to scrutinize, but also to the undeniable fact said pleadings are presumed to contain allegations and assertions lawful and legal in nature, appropriate to the disposition of issues ventilated before the courts for proper administration of justice and, therefore, of general public concern. Moreover, pleadings are presumed to contain allegations substantially true because they can be supported by evidence in good faith, the contents of which would be under scrutiny of courts and, therefore, subject to be purged of all improprieties and illegal statements contained therein. In fine, the privilege is granted in aid and for the advantage of the administration of justice.

3. **ID.; ID.; ID.; ID.; THE ABSOLUTE PRIVILEGE REMAINS REGARDLESS OF DEFAMATORY TENOR AND THE PRESENCE OF MALICE, IF THE SAME ARE RELEVANT, PERTINENT OR MATERIAL TO THE CAUSE IN OR SUBJECT OF THE INQUIRY.—** The absolute privilege remains regardless of the defamatory tenor and the presence of malice, if the same are relevant, pertinent or material to the cause in and or subject of the inquiry. Sarcastic, pungent and harsh allegations in a pleading although tending to detract from the dignity that should characterize proceedings in courts of justice, are absolutely privileged, if relevant to the issues. As to the degree of relevancy or pertinency necessary to make the alleged defamatory matter privileged, the courts are inclined to be liberal. The matter to which the privilege does not extend must be so palpably wanting in relation to the subject matter of the controversy that no reasonable man can doubt its irrelevancy and impropriety. In order that a matter alleged in the pleading may be privileged, it need not, in any case, be

material to the issue presented by the pleadings; however, it must be legitimately related thereto or so pertinent to the subject of the controversy that it may become the subject of inquiry in the course of the trial. What is relevant or pertinent should be liberally considered to favor the writer, and the words are not be scrutinized with microscopic intensity, as it would defeat the protection which the law throws over privileged communication. x x x If the pleader goes beyond the requirements of the statute, and alleges an irrelevant matter which is libelous, he loses his privilege. The reason for this is that without the requirement of relevancy, pleadings could be easily diverted from their original aim to succinctly inform the court of the issues in litigation and pervaded into a vehicle for airing charges motivated by a personal rancor. Granted that lawyers are given great latitude or pertinent comment in furtherance of the causes they uphold, and for the felicity of their clients, they may be pardoned some infelicities of language, petitioner would do well to recall that the Code of Professional Responsibility ordains that a lawyer shall not, in his professional dealings use language which is abusive, offensive or otherwise improper. After all, a lawyer should conduct himself with courtesy, fairness and candor toward his professional colleagues, and use only such temperate but strong language in his pleadings or arguments befitting an advocate. x x x It bears emphasis that while the relevancy of the statement is a requisite of the defense of absolutely privileged communication, it is not one of the elements of libel. Thus, the absence of an allegation to the effect that the questioned statement is irrelevant or impertinent does not violate the right of the accused to be informed of the nature and cause of the accusation against him. As the party raising such defense, petitioner has the burden of proving that his statements are relevant to the subject of his Omnibus Motion.

4. ID.; ID.; ID.; ELEMENTS OF LIBEL, CITED.— For its part, the prosecution only has to prove beyond reasonable doubt the presence of all the elements of libel as defined in Article 353 of the Revised Penal Code, namely: (1) imputation of a crime, vice or defect, real or imaginary, or any act, omission, condition status or circumstance; (2) publicity or publication; (3) malice; (4) direction of such imputation at a natural or juridical person; and (5) tendency to cause the dishonour, discredit or contempt of the person defamed. x x x In *Buatis, Jr. v. People,* the Court stated the twin rule for the purpose of determining the meaning

of any publication alleged to be libelous: (1) that construction must be adopted which will give to the matter such a meaning as is natural and obvious in the plain and ordinary sense in which the public would naturally understand what was uttered; and (2) the published matter alleged to libelous must be construed as a whole. "In applying these rules to the language of an alleged libel, the court will disregard any subtle or ingenious explanation offered by the publisher on being called to account. The whole question being the effect the publication had upon the minds of the readers, and they not having been assisted by the offered explanation in reading the article, it comes too late to have the effect of removing the sting, if any there be from the words used in the publication."

5. REMEDIAL LAW; EVIDENCE; TESTIMONY OF WITNESSES; AS A RULE, OPINION EVIDENCE OF A WITNESS IS INADMISSIBLE BECAUSE A WITNESS CAN TESTIFY ONLY TO THOSE FACTS WHICH HE KNOWS OF HIS OWN PERSONAL KNOWLEDGE AND IT IS FOR THE COURT TO DRAW CONCLUSIONS FROM THE FACTS TESTIFIED TO; EXCEPTION IN CASE AT BAR.— As a rule, the opinion of a witness is inadmissible because a witness can testify only to those facts which he knows of his own personal knowledge and it is for the court to draw conclusions from the facts testified to. Opinion evidence or testimony refers to evidence of what the witness thinks, believes or infers in regard to facts in dispute, as distinguished from his personal knowledge of the facts themselves. In this case, however, prosecution witnesses Michael, Flores and Enseo barely made a conclusion on the defamatory nature of the statements in petitioner's Omnibus Motion, but merely testified on their own understanding of what they had read. x x x As the persons who, aside from ACP Suñega-Lagman, had also read the Omnibus Motion, prosecution witnesses Michael, Flores and Enseo are competent to testify on their own understanding of the questioned statements, and their testimonies are relevant to the trial court's determination of the defamatory character of such statements.

6. CRIMINAL LAW; REVISED PENAL CODE; LIBEL; ADMINISTRATIVE CIRCULAR NO. 08-2008; THE ADMINISTRATIVE CIRCULAR SETS DOWN THE RULE OF PREFERENCE ON THE MATTER OF IMPOSITION

OF PENALTIES FOR THE CRIME OF LIBEL; PRINCIPLES, CITED.— *Apropos* is Administrative Circular No. 08-2008, or the *Guidelines in the Observance of a Rule of Preference in the Imposition of Penalties in Libel Cases*, where the Supreme Court cited cases of libel, indicating an emergent rule of preference for the imposition of fine only rather than imprisonment in such cases under the circumstances therein specified. The Administrative Circular sets down the rule of preference on the matter of imposition of penalties for the crime of libel bearing in mind the following principles: 1. This Administrative Circular does not remove imprisonment as an alternative penalty for the crime of libel under Article 355 of the Revised Penal Code; 2. The Judges concerned may, in the exercise of sound discretion, and taking into consideration the peculiar circumstances of each case, determine whether the imposition of a fine alone would best serve the interests of justice or whether forbearing to impose imprisonment would depreciate the seriousness of the offense, work violence on the social order, or otherwise be contrary to the imperative of justice; 3. Should only a fine be imposed and the accused be unable to pay the fine, there is no legal obstacle to the application of the *Revised Penal Code* provision on subsidiary imprisonment.

7. ID.; ID.; ID.; IMPOSABLE PENALTY; INCREASED PENALTY FROM THREE THOUSAND PESOS (₱3,000.00) TO SIX THOUSAND PESOS (₱6,000.00), JUSTIFIED.— The penalty for the crime of libel under Article 355 of the Revised Penal Code, as amended, is *prision correccional* in its minimum and medium periods or a fine ranging from ₱200.00 to ₱6,000.00, or both, in addition to the civil action which may be brought by the offended party. The Court finds it appropriate to increase the fine imposed upon petitioner from Three Thousand Pesos (₱3,000.00) to Six Thousand Pesos (₱6,000.00), considering the following peculiar circumstances of the case: (1) then a practicing lawyer himself, petitioner ignored the rules that in his professional dealings, a lawyer shall not use language which is abusive, offensive or otherwise improper, and should treat other lawyers with courtesy, fairness and candor; (2) the barrage of defamatory statements in his Omnibus Motion are utterly irrelevant to his prayers for a reconsideration of the dismissal of his estafa case and for the disqualification of ACP Suñega-Lagman from further acting thereon; (3) the baseless and

scurrilous personal attacks in such public document do nothing but damage the integrity and reputation of ACP Suñega-Lagman, as well as undermine the faith and confidence of litigants in the prosecutorial service; and (4) the lack of remorse on his part, as shown by his unfounded claim that he filed the Omnibus Motion in self-defense to ACP Suñega-Lagman's supposed imputation of falsification against him without due process of law.

LEONEN, *J., dissenting opinion*:

1. **CRIMINAL LAW; REVISED PENAL CODE; LIBEL; LIBEL, DEFINED.—** Libel, as defined in the Revised Penal Code, consists of any writing or printed form that has been made public and that maliciously imputes to a person a crime, vice, defect, or any act or circumstance tending to cause him or her dishonor, discredit, or contempt.

2. **ID.; ID.; ID.; ELEMENTS, CITED.—** Conviction for libel requires proof of facts beyond reasonable doubt of: (a) the allegation of a discreditable act or condition concerning another; (b) publication of the allegation; (c) identity of the person defamed; and (d) malice. For libel to prosper, the accused must be shown to have publicly alleged facts that can be proven to be true or false. Statements of opinion—being impressions subjective to the person—are not criminally actionable. Furthermore, malice is an essential element for criminal libel. x x x Malice exists when a defamatory statement is made without any reason other than to unjustly injure the person defamed. There must be an intention to annoy and injure, motivated by ill will or personal spite. Generally, malice is presumed in every defamatory statement. The prosecution need not prove the element of malice to convict an accused.

3. **ID.; ID.; ID.; PRIVILEGED COMMUNICATION, AS A DEFENSE; IN ABSOLUTELY PRIVILEGED COMMUNICATIONS, NO STATEMENT CAN BE CONSIDERED LIBELOUS EVEN THOUGH IT IS DEFAMATORY AND MALICIOUSLY MADE.—** There are two (2) types of privileged communications: (i) absolutely privileged communications; and (ii) qualifiedly privileged communications. In absolutely privileged communications, no statement can be considered libelous even though it is defamatory

and maliciously made. Qualifiedly privileged communications, on the other hand, are statements the malice of which must be proven by the prosecution before an accused is convicted. x x x Examples of absolutely privileged communications include: (i) statements in official legislative proceedings by members of the Congress; and (ii) *statements made during judicial proceedings, including answers given by witnesses in reply to questions propounded to them during proceedings.*

4. ID.; ID.; ID.; ID.; THE ABSOLUTE PRIVILEGE OF COMMUNICATIONS IN JUDICIAL PROCEEDINGS EXTENDS TO PRELIMINARY INVESTIGATION; RATIONALE.—The absolute privilege of communications in judicial proceedings extends to preliminary investigations. Preliminary investigations are inquisitorial proceedings to determine probable cause—whether there is "sufficient ground to engender a well-founded belief that a crime has been committed and that the respondent is probably guilty thereof, and should be held for trial." In conducting a preliminary investigation, the prosecutor exercises powers akin to those of a court, although he or she is an officer of the executive department. x x x This doctrine applies, although the statements are not directed against the opposing party. The only qualification to the doctrine of absolutely privileged communications is that the statements must be relevant to the issues or are responsive or pertinent to the questions propounded. x x x When the statements are made to protect one's interests in the case—however caustic and severe the language used may be—they are considered absolutely privileged.

5. ID.; ID.; ID.; ID.; QUALIFIEDLY PRIVILEGED COMMUNICATIONS, ALTHOUGH DEFAMATORY AND OFFENSIVE, ARE LIBELOUS ONLY WHEN MALICE IS PROVEN.— Qualifiedly privileged communications, although defamatory and offensive, are libelous only when actual malice is proven. Statutorily, qualifiedly privileged communications are provided for under Article 354 of the Revised Penal Code: x x x This enumeration, however, is not exclusive. Other communications may be deemed qualifiedly privileged when considered in light of the public policy to protect the right to freedom of speech. x x x From this parameter of protecting freedom of speech, this Court has consistently ruled that defamatory statements relating to public officials and the

> discharge of their official duties are considered qualifiedly privileged communications. x x x Statements relating to acts of public officers and of those who exercise judicial functions fall under qualifiedly privileged communications. Belen's statements were his criticism of a public official. Public officers and those who exercise judicial functions must not be so onion-skinned. Intemperate language is an occupational hazard. Many times, such statements reflect more on the speaker than the subject.

APPEARANCES OF COUNSEL

Office of the Solicitor General for respondent.

D E C I S I O N

PERALTA, *J.*:

This is a Petition for Review under Rule 45 of the Rules of Court, seeking to reverse and set aside the Decision[1] dated April 12, 2013 of the Court of Appeals, which affirmed the Decision[2] dated June 2, 2009 of the Regional Trial Court of San Pablo City, Branch 32, in Criminal Case No. 15332-SP, convicting petitioner Medel Arnaldo B. Belen of the crime of libel.

On March 12, 2004, petitioner, then a practicing lawyer and now a former Judge,[3] filed a criminal complaint for estafa against his uncle, Nezer D. Belen, Sr. before the Office of the City Prosecutor (*OCP*) of San Pablo City, which was docketed as I.S. No. 04-312 and assigned to then Assistant City Prosecutor

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[1] Penned by Associate Justice Michael P. Elbinias (now deceased), with Associate Justices Isaias P. Dicdican, Mariflor P. Punzalan Castillo and Eduardo B. Peralta Jr., concurring, and Nina G. Antonio-Valenzuela, dissenting.

[2] Penned by Judge Agripino G. Morga.

[3] Dismissed from service for grave abuse of authority and gross ignorance of the law in *State Prosecutor Comilang, et al. v. Judge Belen*, 689 Phil. 134 (2012).

(*ACP*) Ma. Victoria Suñega-Lagman for preliminary investigation. With the submission of the parties' and their respective witnesses' affidavits, the case was submitted for resolution.

In order to afford himself the opportunity to fully present his cause, petitioner requested for a clarificatory hearing. Without acting on the request, ACP Suñega-Lagman dismissed petitioner's complaint in a Resolution dated July 28, 2004. Aggrieved by the dismissal of his complaint, petitioner filed an Omnibus Motion (for Reconsideration & Disqualify),[4] the contents of which later became the subject of this libel case.

Petitioner furnished copies of the Omnibus Motion to Nezer and the Office of the Secretary of Justice, Manila. The copy of the Omnibus Motion contained in a sealed envelope and addressed to the Office of the City Prosecutor of San Pablo City was received by its Receiving Section on August 27, 2004. As a matter of procedure, motions filed with the said office are first received and recorded at the receiving section, then forwarded to the records section before referral to the City Prosecutor for assignment to the handling Investigating Prosecutor.

ACP Suñega-Lagman first learned of the existence of the Omnibus Motion from Michael Belen, the son of Nezer who is the respondent in the estafa complaint. She was also informed about the motion by Joey Flores, one of the staff of the OCP of San Pablo City. She then asked the receiving section for a copy of the said motion, and requested a photocopy of it for her own reference.

On September 20, 2004, ACP Suñega-Lagman filed against petitioner a criminal complaint for libel on the basis of the allegations in the Omnibus Motion (for Reconsideration & Disqualify). The complaint was docketed as I.S. No. 04-931 before the OCP of San Pablo City.

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[4] *Rollo*, pp. 68-75.

Since ACP Suñega-Lagman was then a member of its office, the OCP of San Pablo City voluntarily inhibited itself from conducting the preliminary investigation of the libel complaint and forwarded all its records to the Office of the Regional State Prosecutor.

On September 23, 2004, the Regional State Prosecutor issued an Order designating State Prosecutor II Jorge D. Baculi as Acting City Prosecutor of San Pablo City in the investigation of the libel complaint.

On December 6, 2004, State Prosecutor Baculi rendered a Resolution finding probable cause to file a libel case against petitioner. On December 8, 2004, he filed an Information charging petitioner with the crime of libel, committed as follows:

That on or about August 31, 2004, in the City of San Pablo, Philippines and within the jurisdiction of this Honorable Court, the said accused, a member of the Philippine Bar with Attorney Roll No. 32322, did then and there willfully, unlawfully and feloniously, and with malicious intent of impeaching, defaming and attacking the honesty, competence, integrity, virtue and reputation of Ma. Victoria Suñega-Lagman as an Assistant City Prosecutor of the Office of the City Prosecutor of San Pablo City and for the further purpose of dishonoring, injuring, defaming and exposing said Ma. Victoria Suñega-Lagman to public hatred, contempt, insult, calumny and ridicule, wrote, correspond, published and filed with the Office of the City Prosecutor of San Pablo City an undated "OMNIBUS MOTION (FOR RECONSIDERATION & DISQUALIFY) in the case entitled "MEDEL B. BELEN, Complainant vs. NEZER D. BELEN SR., Respondent, "for Estafa docketed as I.S. No. 04-312, the pertinent and relevant portions are quoted hereunder, to wit:

> In the instant case, however, the **Investigating Fiscal was not impartial and exhibited manifest bias for 20,000 reasons**. The reasons were not legal or factual. These **reasons were based on her malicious and convoluted perceptions. If she was partial, then she is stupid.** The **Investigating Fiscal's stupidity was clearly manifest in her moronic resolution** to dismiss the complaint because she reasoned out that: (1) the lease started in 1983 as the number 9 was handwritten over the figure "8" in the lease contract; (2) no support for accounting

was made for the first five (5) years; and (3) the dismissal of IS No. 03-14-12 covered the same subject matter in the instant case. Thus, the instant complaint should be dismissed.

Unfortunately, the **Investigating Fiscal's wrongful assumption were tarnished with silver ingots**. **She is also an intellectually infirm or stupidly blind.** Because it was just a matter of a more studious and logical appraisal and examination of the documents and affidavits submitted by respondent's witnesses to establish that the lease started in 1993. All respondent's supporting affidavits of Mrs. Leyna Belen-Ang; Mr. Demetrio D. Belen and Mr. Silvestre D. Belen (all admitted that the lease started in 1993). Secondly, had she not always been absent in the preliminary investigation hearings and conducted a clarificatory questioning as requested by herein complainant, as her secretary was the only one always present and accepted the exhibits and affidavits, there would have been a clear deliverance from her corrupted imagination. Firstly, complainant was married to his wife on August 15, 1987. Thus, it would be physically and chronologically inconceivable that the lease for the subject lanzones be entered by complainant and his wife, whom he met only in 1987, with respondent and his siblings in 1983. Secondly, the payments were made in 1993 and 1994, these were admitted by respondent's witnesses in their affidavits. Thus, it would be a height of stupidity for respondent and his witnesses to allow complainant to take possession and harvest the lanzones from 1983 to 2002 without any payment. Lastly, the only defense raised in the respondents witnesses' affidavits was the lease period was only from 1993 to 1998. Thus, this is a clear admission that the lease started in 1993. Despite all these matters and documents, the moronic resolution insisted that the lease started in 1983. **For all the 20,000 reasons of the Investigating Fiscal, the slip of her skirt shows a corrupted and convoluted frame of mind – a manifest partiality and stupendous stupidity in her resolution.**

Furthermore, Investigating Fiscal's 2nd corrupted reason was the failure of complainant to render an accounting on the 5-year harvest from 1993 to 1998. Sadly, the Investigating Fiscal was manifestly prejudiced and manifestly selective in her rationale. Firstly, the issue of non-presentation of accounting for the first 5 years was not raised in any of the witnesses' affidavits. A careful perusal of all their affidavits clearly shows

that the issue of accounting for the first 5-year (1993-1999) harvest was never a defense because respondent and his witnesses knew and were informed that the lanzones harvest from 1993 to 1999 was less than 200,000. Secondly, during the respondent's 2002 visit from USA in a meeting at the house of Mrs. Leyna Belen Agra, complainant advised respondent of this matter and respondent acknowledged the fact that the 5-year harvest from 1993 to 1998 was abundantly inadequate to pay the principal sum of 300,000. Thirdly, all the numbers and figures in the Lease Contract indicated 1993 and/or 1994 – a clear indicia that the transaction covered by the instrument started in 1993. Fourthly, the correction was made by respondent or one of his siblings, which can easily be shown by the penmanship. Lastly, the letters of complainant to respondent clearly advised of the non-payment of the principal and interest for the 1st 5-year. For this reason, complainant had repeatedly agreed to the request of respondent's wife, Lourdes B. Belen and younger son, Nezer Belen, Jr. in 2003 for meetings for resolution of the matter. But respondent's wife and younger son repeatedly cancelled these meetings. All these factual circumstances are undeniable but were presented because the issue of accounting was never raised.

Lastly, **the invocation of the dismissal of I.S. No. 03-1412 was a nail in the coffin for the idiocy and imbecility of the Investigating Fiscal.** It was her fallacious rationale that because No. 03-14-12 covered the same subject, the instant case should also be dismissed. Unfortunately, she showed her glaring ignorance of the law. Firstly, there is no res judicata in a preliminary reinvestigation. Secondly, the dismissal of a complaint shall not bar filing of another complaint because upon completion of the necessary documentary exhibits and affidavits to establish probable cause another case could be filed. Thirdly, the cause of action in the instant case is totally different *vis-à-vis* that in I.S. No. 03-1412. Fourthly, the complainant is filing the instant case in his own personal capacity as "lessee" over the entire property from 1993 to 2013. In other words, the **Investigating Fiscal's invocation of the dismissal of I.S. No. 03-1412 was clearly imbecilic and idiotic.**

All these matters could have been easily established. **All the idiotic and corrupted reason of the Investigating Fiscal manifestly exposed,** had the Investigating Fiscal exercised

the cold partiality of a judge and calendared the instant case for clarificatory questions. In fact, she deliberately ignored complainant's request for such setting despite the established doctrine in preliminary investigation that the "propounding of clarificatory questions is an important component of preliminary investigation, more so where it is requested in order to shed light on the affidavits >>>" (Mondia v. Deputy Ombudsman/ Visayas Are, 346 SCRA 365) **Unfortunately, the Investigating Fiscal, despite the letter-request for clarificatory question to shed lights of all the transaction and facts under investigation, chose to be guided by her manifest partiality and stupendous stupidity**. As a reminder to the Investigating Fiscal, Justice Oscar Herrera, Sr., in his treatise, I Remedial Law 2000 ed., succinctly explained the underlying principle of fair play and justice in the just determination of every action and proceedings is that the rules of procedure should be viewed as mere tools designed to aid the Courts in the speedy, just and inexpensive determination of cases before the court.

In totality, the dismissal of the instant case was based on reasons that were never raised by the respondent. Reasons dictate and due process of law mandates that complainant be afforded opportunity to rebut issues raised. In the instant case, manifestly established is the corrupted penchant of the Investigating Fiscal to assume matters and presume issues not raised and decide, without affording complainant the due process, matters totally extraneous and not raised. Thus, contrary to the due process requirement of law, the Investigating Fiscal rendered a resolution on a matter not raised. The question, therefore, is her reason in adjudicating without affording complainant the opportunity of rebuttal, a matter not raised. She never ever asked these questions. She deliberately and fraudulently concealed her biased reasoning to prevent complainant to rebut this matter. She sideswiped complainant on matters not raised in the pleading. She was a partial and interested investigator with clear intent to dismiss the case. This is an implied lawyering for the respondent. Thus, **she should resign from the prosecutorial arm of the government and be a defense counsel. Then her infirmed intellectual prowess and stupid assumptions be exposed in trial on the merits under which complainant is afforded the due process requirement of the law. At that stage of trial, she would be exposed as a fraud and a quack bereft of any intellectual ability and mental honesty.**

> It is a sad day for a colleague in the practice of law to call for a disqualification of an Investigating Fiscal. The circumstances of the instant case, leave no recourse for complainant but the option, in his quest for justice and fair play and not for corrupted and convoluted 20,000 reasons, to strongly ask for the disqualification of Fiscal Suñega-Lagman in the resolution of the instant motion.
>
> In the resolution for this motion for reconsideration, the sole issue is whether based on the affidavits and evidence adduced by the complainant probable cause exist to file a case against respondent. The answer is YES because, all law students and lawyers, except Fiscal Suñega-Lagman, know " >>> the preliminary investigation should determine whether there is a sufficient ground to engender a well-founded belief that a crime has been committed and that the respondent is probably guilty thereof, and should be held for trial. (Webb vs. Visconde, August 23, 1995, 63 SCAD 916, 247 SCRA 652) And if the evidence so warrants, the investigating prosecutor is duty bound to file the corresponding information. (Meralco vs. Court of Appeals, G.R. No. 115835, July 5, 1996, 71 SCAD 712, 258 SCRA 280). Thus, preliminary investigation is not a trial of the case on the merits and has no purpose except that of determining whether there is probable cause to believe that the accused is guilty thereof. A probable cause merely implies probability of guilt and should be determined in a summary manner…"

That the article in question had for its object to appear and made it understood, as was in effect understood and interpreted by the public or person/s who read it, that Ma. Victoria Suñega-Lagman is an inept, ignorant, dishonest, corrupt, undeserving, unjust, unfair and incompetent prosecutor of the Office of the City Prosecutor of San Pablo City.

CONTRARY TO LAW.[5]

Upon arraignment, petitioner refused to make a plea; hence, the trial court entered a plea of "NOT GUILTY." Trial on the

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[5] *Id.* at 86-89. (Emphasis added)

merits ensued. The prosecution presented four (4) witnesses, namely: (1) complainant ACP Suñega-Lagman, (2) Michael Belen, the son and representative of respondent Nezer in the estafa complaint; and (3) Joey R. Flores and Gayne Gamo Enseo, who are part of the administrative staff of the OCP of San Pablo City. For its part, the defense presented the accused petitioner as its sole witness.

After trial, the trial court found petitioner guilty of libel and sentenced him to pay a fine of ₱3,000.00, with no pronouncement as to damages on account of ACP Suñega-Lagman's reservation to file an independent civil action against him.

The trial court stressed that the following allegations and utterances against ACP Suñega-Lagman in petitioner's Omnibus Motion are far detached from the controversy in the estafa case, thereby losing its character as absolutely privileged communication: (1) "manifest bias for 20,000 reasons"; (2) "the Investigating Fiscal's wrongful assumptions were tarnished in silver ingots"; (3) "the slip of her skirt shows a corrupted and convoluted frame of mind"; (4) "corrupted and convoluted 20,000 reasons"; (5) "moronic resolution"; (6) "intellectually infirm or stupid blind"; (7) "manifest partiality and stupendous stupidity"; (8) "idiocy and imbecility of the Investigating Fiscal"; and (9) "a fraud and a quack bereft of any intellectual ability and mental honesty." On the element of publication, the trial court noted that the Omnibus Motion was not sent straight to ACP Suñega-Lagman, but passed through and exposed to be read by third persons, namely: prosecution witnesses Flores and Enseo who are the staff in the receiving section of the OCP of San Pablo City, as well as Michael Belen, the son and representative of Nezer in the estafa case.

On appeal, the CA affirmed the trial court's decision. On the claimed lack of publication, the CA pointed out that the defamatory matter was made known to third persons because prosecution witnesses Flores and Enseo, who are the staff in the OCP of San Pablo City, were able to read the Omnibus Motion filed by petitioner, as well as Michael, son and representative of Nezer in the estafa case then being investigated

by ACP Suñega-Lagman, was furnished copy of the motion. Anent the applicability of the rule on absolutely privileged communication, the CA ruled in the negative because the subject statements were unnecessary or irrelevant in determining whether the dismissal of the estafa case filed by petitioner against Nezer was proper, and they were defamatory remarks on the personality, reputation and mental fitness of ACP Suñega-Lagman.

In her Dissenting Opinion, Justice Nina G. Antonio-Valenzuela stated that petitioner could not be convicted of libel because the statements in his Omnibus Motion, while couched in intemperate, acrid and uncalled-for language, are relevant to the dismissal of his estafa case, and thus falls under the concept of absolutely privileged communication. She also said that the element of publication is absent, because with respect to Nezer, Michael is not a "third person," *i.e.,* a person other than the person to whom the defamatory statement refers, but a "representative of his father." She added that while Flores and Enseo, who are staff of the OCP of San Pablo City, had read the Omnibus Motion, they are not "third persons" since they had a legal duty to perform with respect to the said motion filed in their office.

In a Resolution dated January 10, 2014, the CA denied petitioner's motion for reconsideration. Hence, this petition for review on *certiorari.*

In seeking his acquittal of the crime charged, petitioner argues that the CA erred (1) in finding him guilty of libel despite the absence of the element of publication; (2) in ruling that the privileged communication rule is inapplicable; and (3) in relying on the opinion of ordinary witnesses to show the presence of malicious imputations.[6]

The petition lacks merit.

On the absence of the element of publication, petitioner contends that in serving and filing the Omnibus Motion enclosed

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[6] *Id.* at 7.

in sealed envelopes, he did not intend to expose it to third persons, but only complied with the law on how service and filing of pleadings should be done. He asserts that the perusal of the said motion by Michael, the duly authorized representative and son of the respondent in the estafa case, as well as the two staff of the OCP — Flores and Enseo — did not constitute publication within the meaning of the law on libel because they cannot be considered as "third persons to whom copies of the motion were disseminated." With respect to Flores and Enseo, petitioner insists that they were both legal recipients as personnel in the OCP where the motion was addressed and had to be filed. Stating that the absence of publication negates malice, petitioner posits that he could not have intended to injure the reputation of ACP Suñega-Lagman with the filing of the Omnibus Motion since it was never published, but was sent to its legal recipients.

Publication in libel means making the defamatory matter, after it has been written, known to someone other than the person to whom it has been written.[7] A communication of the defamatory matter to the person defamed alone cannot injure his reputation though it may wound his self-esteem, for a man's reputation is not the good opinion he has of himself, but the estimation in which other hold him.[8] In the same vein, a defamatory letter contained in a closed envelope addressed to another constitutes sufficient publication if the offender parted with its possession in such a way that it can be read by person other than the offended party.[9] If a sender of a libelous communication knows or has good reasons to believe that it will be intercepted before reaching the person defamed, there is sufficient publication.[10] The publication of a libel, however, should not be presumed from the fact that the immediate control thereof is parted with unless

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[7] *Novicio v. Aggabao*, 463 Phil. 510, 517 (2003).

[8] *Ledesma v. CA*, 344 Phil. 207, 239 (1997), citing *Alonzo v. CA*, G.R. No. 110088, February 1, 1995, 241 SCRA 51, 60-61.

[9] *People v. De la Vega-Cayetano*, 52 O.G. 240. (1956), citing *People v. Adamos*, 35 O.G. 496.

[10] *Lane v. Schilling*, 130 Or 119, 279 P. 267, 65 ALR 2042.

it appears that there is reasonable probability that it is hereby exposed to be read or seen by third persons.[11]

In claiming that he did not intend to expose the Omnibus Motion to third persons, but only complied with the law on how service and filing of pleadings should be done, petitioner conceded that the defamatory statements in it were made known to someone other than the person to whom it has been written. Despite the fact that the motion was contained in sealed envelopes, it is not unreasonable to expect that persons other than the one defamed would be able to read the defamatory statements in it, precisely because they were filed with the OCP of San Pablo City and copy furnished to Nezer, the respondent in the estafa complaint, and the Office of the Secretary of Justice in Manila. Then being a lawyer, petitioner is well aware that such motion is not a mere private communication, but forms part of public record when filed with the government office. Inasmuch as one is disputably presumed to intend the natural and probable consequence of his act,[12] petitioner cannot brush aside the logical outcome of the filing and service of his Omnibus Motion. As aptly noted by the trial court:

> x x x The Omnibus Motion although contained in a sealed envelope was addressed to the Office of the City Prosecutor, San Pablo City. As such, the accused fully well knows that the sealed envelope will be opened at the receiving section, and will be first read by the staff of the Office before the private complainant gets hold of a copy thereof. In fine, the Omnibus Motion was not sent straight to the private complainant — the person [to] whom it is written, but passed through other persons in the Office of the City Prosecutor. At the time the accused mailed the sealed envelope containing the Omnibus Motion addressed to the Office of the City Prosecutor, he knew that there exists not only a reasonable but strong probability that it will be exposed to be read or seen by third persons.[13]

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[11] *Lopez v. Delgado*, 8 Phil. 26, 28 (1907).

[12] Section 3(c), Rule 131 of the Rules of Court.

[13] *Rollo*, pp. 139-140; RTC Decision pp. 49-50.

It is not amiss to state that generally, the requirement of publication of defamatory matters is not satisfied by a communication of such matters to an agent of the defamed person.[14] In this case, however, the defamatory statement was published when copy of the Omnibus Motion was furnished to and read by Michael, the son and representative of respondent Nezer in the estafa complaint, who is clearly not an agent of the defamed person, ACP Suñega-Lagman.

Petitioner then argues that there is no publication as to Flores and Enseo, the staff of the OCP of San Pablo City, who had read the contents of the Omnibus Motion. In support thereof, he cites the settled rule that "when a public officer, in the discharge of his or her official duties, sends a communication to another officer or to a body of officers, who have a duty to perform with respect to the subject matter of the communication, such communication does not amount to publication."[15] Petitioner's argument is untenable. As mere members of the administrative staff of the OCP of San Pablo City, Flores and Enseo cannot be said to have a duty to perform with respect to the subject matter of his motion, which is to seek reconsideration of the dismissal of his Estafa complaint and to disqualify ACP Suñega-Lagman from the preliminary investigation of the case. Their legal duty pertains only to the clerical procedure of transmitting the motions filed with the OCP of San Pablo City to the proper recipients.

Petitioner also avers that the alleged defamatory statements in his Omnibus Motion passed the test of relevancy, hence, covered by the doctrine of absolutely privileged communication. He asserts that the statements contained in his motion are relevant and pertinent to the subject of inquiry, as they were used only to highlight and emphasize the manifestly reversible errors and irregularities that attended the resolution rendered by ACP Suñega-Lagman.

Petitioner's contentions fail to persuade.

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[14] 50 Am Jur 2d § 244, Libel and Slander.

[15] *Alcantara v. Ponce*, 545 Phil. 677, 683 (2007).

A communication is absolutely privileged when it is not actionable, even if the author has acted in bad faith. This class includes allegations or statements made by parties or their counsel in pleadings or motions or during the hearing of judicial and administrative proceedings, as well as answers given by the witness in reply to questions propounded to them in the course of said proceedings, provided that said allegations or statements are relevant to the issues, and the answers are responsive to the questions propounded to said witnesses.[16]

The reason for the rule that pleadings in judicial proceedings are considered privileged is not only because said pleadings have become part of public record open to the public to scrutinize, but also to the undeniable fact said pleadings are presumed to contain allegations and assertions lawful and legal in nature, appropriate to the disposition of issues ventilated before the courts for proper administration of justice and, therefore, of general public concern. Moreover, pleadings are presumed to contain allegations substantially true because they can be supported by evidence in good faith, the contents of which would be under scrutiny of courts and, therefore, subject to be purged of all improprieties and illegal statements contained therein.[17] In fine, the privilege is granted in aid and for the advantage of the administration of justice.[18]

While Philippine law is silent on the question of whether the doctrine of absolutely privileged communication extends to statements in preliminary investigations or other proceedings preparatory to trial, the Court found as persuasive in this jurisdiction the U.S. case of *Borg v. Boas*[19] which categorically declared the existence of such protection:

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[16] *Orfanel v. People*, 141 Phil. 519, 523 (1969); *Malit v. People*, 199 Phil. 532 (1982).

[17] *Cuenco v. Cuenco*, 162 Phil. 299, 332 (1976).

[18] *Malit v. People*, *supra* note 16, at 536.

[19] 231 F 2d 788 (1956).

It is hornbook learning that the actions and utterances in judicial proceedings so far as the actual participants therein are concerned and **preliminary steps leading to judicial action of an official nature have been given absolute privilege**. Of particular interest are proceedings leading up to prosecutions or attempted prosecutions for crime xxx [A] written charge or information filed with the prosecutor or the court is not libelous although proved false and unfounded. Furthermore, the information given to a prosecutor by a private person for the purpose of initiating a prosecution is protected by the same cloak of immunity and cannot be used as a basis for an action for defamation.[20]

The absolute privilege remains regardless of the defamatory tenor and the presence of malice, if the same are relevant, pertinent or material to the cause in and or subject of the inquiry.[21] Sarcastic, pungent and harsh allegations in a pleading although tending to detract from the dignity that should characterize proceedings in courts of justice, are absolutely privileged, if relevant to the issues.[22] As to the degree of relevancy or pertinency necessary to make the alleged defamatory matter privileged, the courts are inclined to be liberal. The matter to which the privilege does not extend must be so palpably wanting in relation to the subject matter of the controversy that no reasonable man can doubt its irrelevancy and impropriety.[23] In order that a matter alleged in the pleading may be privileged, it need not, in any case, be material to the issue presented by the pleadings; however, it must be legitimately related thereto or so pertinent to the subject of the controversy that it may become the subject of inquiry in the course of the trial.[24] What is relevant or pertinent should be liberally considered to favor the writer, and the words

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[20] *Alcantara v. Ponce*, *supra* note 15, at 684. (Emphasis in the original)

[21] *Navarette v. Court of Appeals*, 382 Phil. 427, 434 (2000), citing *Deles v. Aragona, Jr.*, G.R. No. A.C. No. 598, March 28, 1969, 27 SCRA 633, 641.

[22] *Sison v. David*, 110 Phil. 662, 679 (1960).

[23] *Malit v. People*, *supra* note 16, at 535.

[24] *Gonzales v. Alvarez*, 122 Phil. 238, 242 (1965).

are not be scrutinized with microscopic intensity,[25] as it would defeat the protection which the law throws over privileged communication.[26]

The statements in petitioner's Omnibus Motion filed before the OCP of San Pablo City as a remedy for the dismissal of his estafa complaint during preliminary investigation, fall short of the test of relevancy. An examination of the motion shows that the following defamatory words and phrases used, even if liberally construed, are hardly material or pertinent to his cause, which is to seek a reconsideration of the dismissal of his estafa complaint and the disqualification of ACP Suñega-Lagman from further acting on the case: (1) **"manifest bias for 20,000 reasons"**; (2) **"the Investigating Fiscal's wrongful assumptions were tarnished in silver ingots"**; (3) **"the slip of her skirt shows a corrupted and convoluted frame of mind"**; (4) **"corrupted and convoluted 20,000 reasons"**; (5) **"moronic resolution"**; (6) **"intellectually infirm or stupid blind"**; (7) **"manifest partiality and stupendous stupidity"**; (8) **"idiocy and imbecility of the Investigating Fiscal"**; and (9) **"a fraud and a quack bereft of any intellectual ability and mental honesty."** These statements are neither relevant grounds for a motion for reconsideration nor valid and justifiable reasons for disqualification. These diatribes pertain to ACP Suñega-Lagman's honor, reputation, mental and moral character, and are no longer related to the discharge of her official function as a prosecutor. They are devoid of any relation to the subject matter of petitioner's Omnibus Motion that no reasonable man can doubt their irrelevancy, and may not become the subject of inquiry in the course of resolving the motion. As fittingly ruled by the trial court:

> This Court has no problem with legitimate criticisms of the procedures taken during the preliminary investigation and accused's comments pointing out flaws in the ruling of the private complainant.

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[25] *Navarette v. Court of Appeals*, *supra* note 21, at 436 citing, *People v. Aquino*, G.R. No. L-23908, October 29, 1966, 18 SCRA 555 (1966).

[26] *U.S. v. Bustos*, 37 Phil. 731, 743 (1918).

They should ever be constructive and should pave the way at correcting the supposed errors in the Resolution and/or convincing the private complainant to inhibit, as she did, from the case. Unfortunately, the Omnibus Motion, or the questioned allegations contained therein, are not of this genre. On the contrary, the accused has crossed the lines as his statements are baseless, scurrilous attacks on the person of the private complainant. The attacks did nothing but damage the integrity and reputation of the private complainant. In fact, the attacks undermined in no small measure the faith and confidence of the litigants in the prosecutorial service.[27]

Petitioner should bear in mind the rule that the pleadings should contain but the plain and concise statements of material facts and not the evidence by which they are to be proved. If the pleader goes beyond the requirements of the statute, and alleges an irrelevant matter which is libelous, he loses his privilege.[28] The reason for this is that without the requirement of relevancy, pleadings could be easily diverted from their original aim to succinctly inform the court of the issues in litigation and pervaded into a vehicle for airing charges motivated by a personal rancor.[29] Granted that lawyers are given great latitude or pertinent comment in furtherance of the causes they uphold, and for the felicity of their clients, they may be pardoned some infelicities of language,[30] petitioner would do well to recall that the Code of Professional Responsibility[31] ordains that a lawyer shall not, in his professional dealings use language which is abusive, offensive or otherwise improper. After all, a lawyer should conduct himself with courtesy, fairness and candor toward his professional colleagues,[32] and use only such temperate but strong language in his pleadings or arguments befitting an advocate.

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[27] *Rollo*, p. 136; RTC Decision, p. 46.

[28] *Gutierrez v. Abila, et al.* 197 Phil. 616, 621-622 (1982), citing *Anonymous v. Trenkman*, 48 F.2d 571, 574.

[29] *Tolentino v. Balylosis*, 110 Phil. 1010, 1015 (1961).

[30] *Dorado v. Pilar*, 104 Phil. 743, 748 (1958).

[31] Canon 8, Rule 8.01 of the Code of Professional Responsibility.

[32] *Id.*

There is also no merit in petitioner's theory that the test of relevancy should be liberally construed in his favor, especially because "in the information for libel, there was no allegation of irrelevancy or impertinency of the questioned statements to the cause"[33] or the subject of the inquiry, the estafa complaint in I.S. No. 04-312. It bears emphasis that while the relevancy of the statement is a requisite of the defense of absolutely privileged communication, it is not one of the elements of libel. Thus, the absence of an allegation to the effect that the questioned statement is irrelevant or impertinent does not violate the right of the accused to be informed of the nature and cause of the accusation against him. As the party raising such defense, petitioner has the burden of proving that his statements are relevant to the subject of his Omnibus Motion. For its part, the prosecution only has to prove beyond reasonable doubt the presence of all the elements of libel as defined in Article 353 of the Revised Penal Code, namely: (1) imputation of a crime, vice or defect, real or imaginary, or any act, omission, condition status or circumstance; (2) publicity or publication; (3) malice; (4) direction of such imputation at a natural or juridical person; and (5) tendency to cause the dishonour, discredit or contempt of the person defamed.[34]

Meanwhile, petitioner's reliance on *People v. Andres*[35] is misplaced. In that case, the prosecution argued that the trial court erred in dismissing the case on a mere motion to quash, contending that the judge's conclusion on the face of the information that the defendant was prompted only by good motives assumes a fact to be proved, and that the alleged privileged nature of defendant's publication is a matter of defense and is not a proper ground for dismissal of the libel complaint. The Court sustained the trial court in dismissing the libel case on a mere motion to quash in this wise:

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[33] *Rollo*, p. 27.

[34] *Alcantara v. Ponce*, *supra* note 15, at 681.

[35] 107 Phil. 1046 (1960).

While there is some point in this contention, yet when in the information itself it appears, as it does in the present case, that the communication alleged to be libelous is contained in an appropriate pleading in a court proceeding, the privilege becomes at once apparent and defendant need to wait until trial and produce evidence before he can raise the question of privilege. And if added to this, the questioned imputations appear, as they seem, in this case, to be really pertinent and relevant to defendant's plea for reconsideration based on complainant's supposed partiality and abuse of power from which defendant has a right to seek relief in vindication of his client's interest as a litigant in complainant's court, it would become evident that the fact thus alleged in the information would not constitute an offense of libel.

As has already been said by this Court: "As to the degree of relevancy or pertinency necessary to make an alleged defamatory matter privileged, the courts are inclined to be liberal. The matter to which the privilege does not extend must be so palpably wanting in relation to the subject matter of the controversy that no reasonable man can doubt its irrelevancy and impropriety." Having this in mind, it can not be said that the trial court committed reversible error in this case in finding that the allegations in the information itself present a case of an absolutely privileged communication justifying the dismissal of the case. Note that the information does not contain any allegation of irrelevancy and impertinency to counteract the quotations from the motion for reconsideration in question.[36]

In stark contrast to *People v. Andres*, even on the face of the allegations in the information, the defamatory statements in petitioner's Omnibus Motion fail the test of relevancy in order to be considered an absolutely privileged communication, because they are neither relevant grounds for a motion for reconsideration nor valid or justifiable reasons for disqualification of ACP Suñega-Lagman.

Finally, petitioner argues that the reliance of the CA on the statements of ordinary witnesses like Michael, Flores and Enseo is contrary to Sections 48[37] and

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[36] *People v. Andres, supra,* at 1051.

[37] SEC. 48. *General rule.* – The opinion of a witness is not admissible, except as indicated in the following sections.

50[38] of Rule 130 of the Rules of Court, because they are incompetent to testify on whether the statements against ACP Suñega-Lagman in the Omnibus Motion constituted malicious imputations against her person.

As a rule, the opinion of a witness is inadmissible because a witness can testify only to those facts which he knows of his own personal knowledge[39] and it is for the court to draw conclusions from the facts testified to. Opinion evidence or testimony refers to evidence of what the witness thinks, believes or infers in regard to facts in dispute, as distinguished from his personal knowledge of the facts themselves.[40] In this case, however, prosecution witnesses Michael, Flores and Enseo barely made a conclusion on the defamatory nature of the statements in petitioner's Omnibus Motion, but merely testified on their own understanding of what they had read.

In *Buatis, Jr. v. People,*[41] the Court stated the twin rule for the purpose of determining the meaning of any publication alleged to be libelous: (1) that construction must be adopted which will give to the matter such a meaning as is natural and obvious in the plain and ordinary sense in which the public would naturally understand what was uttered; and (2) the published matter alleged to libelous must be construed as a whole. "In applying these rules to the language of an alleged libel, the court will disregard any subtle or ingenious explanation offered by the publisher on being called to account. The whole question

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[38] SEC. 50. *Opinion of ordinary witnesses.* – The opinion of a witness for which proper basis is given may be received in evidence regarding –

(a) the identity of a person whom he has adequate knowledge;
(b) a handwriting with which he has sufficient familiarity; and
(c) the mental sanity of a person with whom he is sufficiently acquainted.

The witness may also testify on his impressions of the emotion, behaviour, condition or appearance of a person.

[39] Section 36, Rule 130 of the Rules of Court.

[40] *Black's Law Dictionary*, 5th Edition, West Publishing Co. (1979).

[41] 520 Phil. 149, 161 (2006), citing *Jimenez v. Reyes,* 27 Phil. 52 (1914).

being the effect the publication had upon the minds of the readers, and they not having been assisted by the offered explanation in reading the article, it comes too late to have the effect of removing the sting, if any there be from the words used in the publication."[42] As the persons who, aside from ACP Suñega-Lagman, had also read the Omnibus Motion, prosecution witnesses Michael, Flores and Enseo are competent to testify on their own understanding of the questioned statements, and their testimonies are relevant to the trial court's determination of the defamatory character of such statements.

At any rate, even if petitioner's objections to the admissibility of the testimonies of the prosecution witnesses as to their supposed opinions on his statements against ACP Suñega-Lagman were to be sustained, the trial court still correctly determined the statements to be defamatory based on its own reading of the plain and ordinary meanings of the words and phrases used in the Omnibus Motion, thus:

> Based on the above testimonies of the prosecution witnesses and on this Court's own assessment, the statements above-quoted disturb one's sensibilities. There is evident imputation of the crime of bribery to the effect that the private complainant may have received money in exchange for the dismissal of the accused's complaint against his uncle Nezer Belen. There is likewise an imputation against the private complainant as an "idiot," "imbecile" and with "stupendous stupidity." An "idiot" as defined in Meriam-Webster Collegiate Thesaurus, 1988 Edition, p. 380, as a "fool", "moron, "stupid", "nincompoop", "ignoramus," "simpleton," "dummy," or "imbecile." On the other hand, an "imbecile" means "retarded," "dull" or "feeble minded. "Stupid" means lacking in or exhibiting a lack of power to absorb ideas or impressions, or dumb. "Stupendous" means marvelous, astounding, monstrous, monumental and tremendous. Thus, "stupendous stupidity" simply means tremendous or monstrous dumbness. Indeed, accused's characterization of the private complainant is unkind, to say the least, which should not be found a pleading written by a lawyer."[43]

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[42] *Buatis, Jr. v. People, supra.*

[43] *Rollo*, pp. 135-136; RTC Decision, p. 45.

Given the settled rule that an appeal in a criminal case throws the whole case open for review, and it becomes the duty of the appellate court to correct such errors as may be found in the judgment appealed from, whether or not they are made the subject of assignment of errors,[44] the Court finds it proper to modify the penalty of fine of Three Thousand Pesos (₱3,000.00) imposed upon petitioner.

Apropos is Administrative Circular No. 08-2008, or the *Guidelines in the Observance of a Rule of Preference in the Imposition of Penalties in Libel Cases*,[45] where the Supreme Court cited cases[46] of libel, indicating an emergent rule of

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[44] *People v. Pangilinan,* 676 Phil. 16, 26 (2011).

[45] Dated January 25, 2008.

[46] In *Fernando Sazon v. Court of Appeals and People of the Philippines* [325 Phil. 1053, 1068 (1996)], the Court modified the penalty imposed upon petitioner, an officer of a homeowners' association, for the crime of libel from imprisonment and fine in the amount of ₱200.00, to fine only of ₱3,000.00, with subsidiary imprisonment in case of insolvency, for the reason that he wrote the libelous article merely to defend his honor against the malicious messages that earlier circulated around the subdivision, which he thought was the handiwork of the private complainant.

In *Quirico Mari v. Court of Appeals and People of the Philippines* [388 Phil. 269, 279 (2000)], where the crime involved is slander by deed, the Court modified the penalty imposed on the petitioner, an ordinary government employee, from imprisonment to fine of ₱1,000.00, with subsidiary imprisonment in case of insolvency, on the ground that the latter committed the offense in the heat of anger and in reaction to a perceived provocation.

In *Brillante v. Court of Appeals* [511 Phil. 96, 99 (2005)], the Court deleted the penalty of imprisonment imposed upon petitioner, a local politician, but maintained the penalty of fine of ₱4,000.00, with subsidiary imprisonment in case of insolvency, in each of the (5) cases of libel, on the ground that the intensely feverish passions evoked during the election period in 1988 must have agitated petitioner into writing his open letter; and that incomplete privileged communication should be appreciated in favor of petitioner, especially considering the wide latitude traditionally given to defamatory utterances against public officials in connection with or relevant to their performance of official duties or against public figures in relation to matters of public interest involving them.

In *Buatis, Jr. v. People of the Philippines* [520 Phil. 149, 166 (2006)], the Court opted to impose upon petitioner, a lawyer, the penalty of fine

preference for the imposition of fine only rather than imprisonment in such cases under the circumstances therein specified. The Administrative Circular sets down the rule of preference on the matter of imposition of penalties for the crime of libel bearing in mind the following principles:

1. This Administrative Circular does not remove imprisonment as an alternative penalty for the crime of libel under Article 355 of the Revised Penal Code;[47]
2. The Judges concerned may, in the exercise of sound discretion, and taking into consideration the peculiar circumstances of each case, determine whether the imposition of a fine alone would best serve the interests of justice or whether forbearing to impose imprisonment would depreciate the seriousness of the offense, work violence on the social order, or otherwise be contrary to the imperative of justice;
3. Should only a fine be imposed and the accused be unable to pay the fine, there is no legal obstacle to the application of the *Revised Penal Code* provision on subsidiary imprisonment.

The penalty for the crime of libel under Article 355 of the Revised Penal Code, as amended, is *prisión correccional* in its minimum and medium periods or a fine ranging from ₱200.00 to ₱6,000.00, or both, in addition to the civil action which may be brought by the offended party. The Court finds it appropriate to increase the fine imposed upon petitioner from Three Thousand Pesos (₱3,000.00) to Six Thousand Pesos (₱6,000.00), considering the following peculiar circumstances of the case: (1) then a practicing lawyer himself, petitioner ignored the rules

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only for the crime of libel considering that it was his first offense and he was motivated purely by his belief that he was merely exercising a civic or moral duty to his client when he wrote the defamatory letter to private complainant.

[47] ARTICLE 355. *Libel by Means of Writing or Similar Means*. — A libel committed by means of writing, printing, lithography, engraving, radio, phonograph, painting, theatrical exhibition, cinematographic exhibition, or any similar means, shall be punished by *prisión correccional* in its minimum and medium periods or a fine ranging from ₱200 to ₱6,000 pesos, or both, in addition to the civil action which may be brought by the offended party.

that in his professional dealings, a lawyer shall not use language which is abusive, offensive or otherwise improper, and should treat other lawyers with courtesy, fairness and candor; (2) the barrage of defamatory statements in his Omnibus Motion are utterly irrelevant to his prayers for a reconsideration of the dismissal of his estafa case and for the disqualification of ACP Suñega-Lagman from further acting thereon; (3) the baseless and scurrilous personal attacks in such public document do nothing but damage the integrity and reputation of ACP Suñega-Lagman, as well as undermine the faith and confidence of litigants in the prosecutorial service; and (4) the lack of remorse on his part, as shown by his unfounded claim that he filed the Omnibus Motion in self-defense to ACP Suñega-Lagman's supposed imputation of falsification against him without due process of law.

WHEREFORE, premises considered, the petition for review on *certiorari* is **DENIED**, and the Decision dated April 12, 2013 and the Resolution dated January 10, 2014 of the Court of Appeals in CA-G.R. CR No. 32905, are **AFFIRMED** with **MODIFICATION**, increasing the penalty imposed upon petitioner Medel Arnaldo B. Belen to Six Thousand Pesos (₱6,000.00), with subsidiary imprisonment in case of insolvency.

SO ORDERED.

Carpio (*Chairperson*), *Mendoza,* and *Reyes,*[*] *JJ.,* concur.

Leonen, J., see separate dissenting opinion.

DISSENTING OPINION

LEONEN, *J.*:

Medel Arnaldo B. Belen has indeed made callous, acerbic, and intemperate comments through his motions before the

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[*] Designated Additional Member per Special Order No. 2416-F, dated January 4, 2017.

prosecutor. His comments betray a lack of empathy for another human being. They also reveal his sense of undeserved superiority, which is as empty as it is comical.

However, in my view, he cannot be criminally liable for libel.

In his Omnibus Motion (for Reconsideration & Disqualify)[1] filed before the Office of the City Prosecutor of San Pablo City in an estafa case,[2] Medel Arnaldo B. Belen (Belen) stated:

> In the instant case, however, the investigating Fiscal was not impartial and exhibited manifest bias for 20,000 reasons. These reasons were not legal or factual. These reasons were based on her malicious and convoluted perceptions. If she was partial, then she is stupid. The Investigating Fiscal's stupidity was clearly manifest in her moronic resolution to dismiss the complaint because she reasoned out that. . . .
>
> Unfortunately, the investigating Fiscal's wrongful assumption were [sic] tarnished with silver ingots. She is also an intellectually infirm [sic] or stupidly blind. Because it was just a matter of a more studious and logical appraisal and examination of the documents and affidavits submitted by respondent's witnesses to establish that the lease started in 1993. . . . For all the 20,000 reasons of the Investigating Fiscal, the slip of her skirt shows a corrupted and convoluted frame of mind – manifest partiality and stupendous stupidity in her resolution.
>
> . . . . . .
>
> Lastly, the invocation of the dismissal of I.S. No. 03-1412 was a nail in the coffin for the idiocy and imbecility of the Investigating Fiscal. It was her fallacious rationale that because No. 03-1412 covered the same subject, the instant case should also be dismissed. . . . In other words, the Investigating Fiscal's invocation of the dismissal of I.S. No. 03-1412 was clearly imbecilic and idiotic.
>
> All these matters could have been easily established. All the idiotic and corrupted reason [sic] of the Investigating Fiscal manifestly exposed, had the Investigating Fiscal exercised the cold partiality of judge and calendared the instant case for clarificatory questions. . .

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[1] *Rollo,* pp. 68-75.

[2] The estafa case was docketed as I.S. No. 04-312 and entitled *Medel B. Belen v. Nezer D. Belen, Sr.*

Unfortunately, the Investigating Fiscal despite the letter-request for clarificatory question to shed lights [sic] of all the transaction [sic] and facts under investigation, chose to be guided by her manifest partiality and stupendous stupidity.

. . . Thus, she should resign from the prosecutorial arm of the government and be a defense counsel. Then her infirmed intellectual prowess and stupid assumptions be exposed in trial on the merits under which complainant is afforded the due process requirement of the law. At that stage of trial, she would be exposed as a fraud and a quack bereft of any intellectual ability and mental honesty.[3]

Libel, as defined in the Revised Penal Code, consists of any writing or printed form that has been made public and that maliciously imputes to a person a crime, vice, defect, or any act or circumstance tending to cause him or her dishonor, discredit, or contempt.[4]

Conviction for libel requires proof of facts beyond reasonable doubt of: (a) the allegation of a discreditable act or condition concerning another; (b) publication of the allegation; (c) identity of the person defamed; and (d) malice.[5]

For libel to prosper, the accused must be shown to have publicly alleged facts that can be proven to be true or false. Statements of opinion—being impressions subjective to the person—are not criminally actionable.

Furthermore, malice is an essential element for criminal libel.

I

Malice exists when a defamatory statement is made without any reason other than to unjustly injure the person defamed.[6]

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[3] *Rollo*, pp. 69-73.

[4] REV. PEN. CODE, Arts. 353 and 355.

[5] *Vasquez v. Court of Appeals,* 373 Phil. 238, 248 (1999) [Per *J.* Mendoza, *En Banc*].

[6] *Yuchengco v. Manila Chronicle Publishing Corp.*, 620 Phil. 697, 716 (2009) [Per *J.* Chico-Nazario, Third Division].

There must be an intention to annoy and injure, motivated by ill will or personal spite.[7]

Generally, malice is presumed in every defamatory statement.[8] The prosecution need not prove the element of malice to convict an accused.

This is not true with privileged communications.

There are two (2) types of privileged communications: (i) absolutely privileged communications; and (ii) qualifiedly privileged communications.[9]

In absolutely privileged communications, no statement can be considered libelous even though it is defamatory and maliciously made.[10] Qualifiedly privileged communications, on the other hand, are statements the malice of which must be proven by the prosecution before an accused is convicted.[11]

II

Belen's statements fall under absolutely privileged communications. In absolutely privileged communications, the accused cannot be criminally liable for libel although he or she has made defamatory statements proven to be malicious.[12]

Examples of absolutely privileged communications include: (i) statements in official legislative proceedings by members of the Congress; and (ii) *statements made during judicial proceedings, including answers given by witnesses in reply to questions propounded to them during proceedings*.[13]

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[7] *Id*.

[8] REV. PEN. CODE, Art. 354.

[9] *Flor v. People*, 494 Phil. 439, 449 (2005) [Per *J*. Chico-Nazario, Second Division].

[10] *Id*.

[11] *Id*. at 450.

[12] *Id*. at 449.

[13] *Flor v. People*, 494 Phil. 439, 449 (2005) [Per *J*. Chico-Nazario, Second Division]; *Yuchengco v. Manila Chronicle Publishing Corp.*, 620 Phil. 697, 728 (2009) [Per *J*. Chico-Nazario, Third Division]; *People v. Sesbreno*,

People v. Sesbreno[14] discusses the rationale for exempting absolutely privileged communications:

> The doctrine of privileged communication that utterances made in the course of judicial proceedings, including *all kinds of pleadings, petitions and motions, belong to the class of communications that are absolutely privileged* has been expressed in a long line of cases. . . . *The doctrine of privileged communication rests upon public policy, which looks to the free and unfettered administration of justice, though, as an incidental result it may in some instances afford an immunity to the evil disposed and malignant slanderer.* While the doctrine is liable to be abused, and its abuse may lead to great hardships, yet to give legal action to such libel suits would give rise to greater hardships. The privilege is not intended so much for the protection of those engaged in the public service and in the enactment and administration of law, as for the promotion of the public welfare, *the purpose being that members of the legislature, judges of courts, jurors, lawyers, and witnesses may speak their minds freely and exercise their respective functions without incurring the risk of a criminal prosecution or an action for the recovery of damages.* Lawyers, most especially, should be allowed a great latitude of pertinent comment in the furtherance of the causes they uphold, and for the felicity of their clients, they may be pardoned some infelicities of language.[15] (Emphasis supplied, citations omitted)

The absolute privilege of communications in judicial proceedings extends to preliminary investigations.

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215 Phil. 411, 416 (1984) [Per *J*. Gutierrez, Jr., First Division]. *See also U.S. v. Bustos*, 37 Phil. 731 (1918) [Per *J*. Malcolm, First Division]; *Gilmer v. Hilliard*, 43 Phil. 180 (1922) [Per *J*. Johns, First Division]; *Santiago v. Calvo*, 48 Phil. 919 (1926) [Per *J*. Malcolm, *En Banc*]; *Smith Bell and Co. v. Ellis*, 48 Phil. 475 (1925) [Per *J*. Johns, *En Banc*]; *People v. Valerio Andres*, 107 Phil. 1046 (1960) [Per *J*. Barrera, *En Banc*]; *Sison v. David*, 110 Phil. 662 (1961) [Per *J*. Concepcion, *En Banc*]; *Tolentino v. Baylosis*, 110 Phil. 1010 (1961) [Per *J*. J.B.L. Reyes, *En Banc*]; *Cuenco v. Cuenco*, 162 Phil. 299 (1976) [Per *J*. Esguerra, First Division]; *Elizalde v. Gutierrez*, 167 Phil. 192 (1977) [Per *J*. Fernando, Second Division]; and *PCIB v. Philnabank Employees' Association*, 192 Phil. 581 (1981) [Per *J*. Fernando, Second Division].

[14] 215 Phil. 411 (1984) [Per *J*. Gutierrez, Jr., First Division].

[15] *Id*. at 416.

Preliminary investigations are inquisitorial proceedings to determine probable cause—whether there is "sufficient ground to engender a well-founded belief that a crime has been committed and that the respondent is probably guilty thereof, and should be held for trial."[16] In conducting a preliminary investigation, the prosecutor exercises powers akin to those of a court, although he or she is an officer of the executive department.[17]

In *Alcantara v. Ponce*:[18]

> Since the newsletter was presented during the preliminary investigation, it was vested with a privileged character. While Philippine law is silent on the question of *whether the doctrine of absolute privilege extends to statements made in preliminary investigations or other proceedings preparatory to the actual trial*, the U.S. case of *Borg v. Boas* makes a categorical declaration of the existence of such protection:
>
> > It is hornbook learning that the actions and utterances in judicial proceedings so far as the actual participants therein are concerned and *preliminary steps leading to judicial action of an official nature have been given absolute privilege. Of particular interest are proceedings leading up to prosecutions or attempted prosecutions for crime*. . . . [A] written charge or information filed with the prosecutor or the court is not libelous although proved to be false and unfounded. Furthermore, the information given to a prosecutor by a private person for the purpose of initiating a prosecution is protected by the same cloak of immunity and cannot be used as a basis for an action for defamation.[19] (Emphasis supplied, citations omitted)

This doctrine applies, although the statements are not directed against the opposing party. The only qualification to the doctrine of absolutely privileged communications is that the statements

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[16] RULES OF COURT, Rule 112, Sec. 1, par. 1.

[17] *Santos v. Go,* 510 Phil. 137, 147 (2005) [Per *J.* Quisumbing, First Division].

[18] 545 Phil. 677 (2007) [Per *J.* Corona, First Division].

[19] *Id.* at 384.

must be relevant to the issues or are responsive or pertinent to the questions propounded.[20]

In *Sesbreno*, the accused called the opposing counsel an "irresponsible person, cannot be trusted, like Judas, a liar and irresponsible childish prankster."[21] In discussing the test of relevancy, this Court held:

> However, this doctrine [of absolutely privileged communication] is not without qualification. Statements made in the course of judicial proceedings are absolutely privileged — that is, privileged regardless of defamatory tenor and of the presence of malice — if the same are *relevant, pertinent, or material to the cause in hand or subject of inquiry*. A pleading must meet the test of relevancy to avoid being considered libelous.
>
> As to the degree of relevancy or pertinency necessary to make alleged defamatory matters privileged, the courts are inclined to be *liberal. The matter to which the privilege does not extend must be so palpably wanting in relation to the subject matter of the controversy that no reasonable man can doubt its irrelevance and impropriety.* In order that a matter alleged in a pleading may be privileged, *it need not be in every case material to the issues presented by the pleadings. It must, however, be legitimately related thereto, or so pertinent to the subject of the controversy that it may become the subject of the inquiry in the course of the trial.*
>
> . . . . . .
>
> *. . . Although the language used by defendant-appellee in the pleading in question was undoubtedly strong, since it was made in legitimate defense of his own and of his client's interest, such remarks must be deemed absolutely privileged and cannot be the basis of an action for libel*.[22] (Emphasis supplied, citations omitted)

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[20] *Yuchengco v. Manila Chronicle Publishing Corp.*, 620 Phil. 697, 728 (2009) [Per *J.* Chico-Nazario, Third Division].

[21] *People v. Sesbreno*, 215 Phil. 411, 415 (1984) [Per *J.* Gutierrez, Jr., First Division].

[22] *Id.* at 417-418.

When the statements are made to protect one's interests in the case—however caustic and severe the language used may be—they are considered absolutely privileged.

Belen's acerbic statements were made in an Omnibus Motion, a pleading filed before the Office of the Prosecutor in an estafa case. His statements constitute his justifications for filing his Motion. They include lengthy explanations on why the prosecutor erred in dismissing his estafa case. Although the statements were misguided and callous, to Belen it was necessary that he alleged them for his prayer to be granted. Belen made the statements as a means to protect his own interests as he believed that his estafa case was unjustly dismissed.

Necessarily, the statements are absolutely privileged.

III

Assuming that the communications are not absolutely privileged, the statements are, at the very least, qualifiedly privileged.

Qualifiedly privileged communications, although defamatory and offensive, are libelous only when actual malice is proven.[23]

Statutorily, qualifiedly privileged communications are provided for under Article 354 of the Revised Penal Code:

> ARTICLE 354. *Requirement for Publicity.* — Every defamatory imputation is presumed to be malicious, even if it be true, if no good intention and justifiable motive for making it is shown, except in the following cases:
>
> 1. A private communication made by any person to another in the performance of any legal, moral or social duty; and
>
> 2. A fair and true report, made in good faith, without any comments or remarks, of any judicial, legislative or other official proceedings which are not of confidential nature, or of any statement, report or speech delivered in said proceedings, or of any other act performed by public officers in the exercise of their functions.

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[23] *Flor v. People*, 494 Phil. 439, 450 (2005) [Per *J*. Chico-Nazario, Second Division].

This enumeration, however, is not exclusive. Other communications may be deemed qualifiedly privileged when considered in light of the public policy to protect the right to freedom of speech.[24]

In *Flor v. People*:[25]

> In the case, however, of *Borjal v. Court of Appeals*, this Court recognized that the enumeration stated in Article 354 of the Revised Penal Code is not exclusive but is rendered more expansive by the constitutional guarantee of freedom of the press, thus:
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> > . . . ***To be sure, the enumeration under Art. 354 is not an exclusive list of qualifiedly privileged communications since fair commentaries on matters of public interest are likewise privileged.*** The rule on privileged communications had its genesis not in the nation's penal code but in the Bill of Rights of the Constitution guaranteeing freedom of speech and of the press. As early as 1918, in *United States v. Cañete*, this Court ruled that publications which are privileged for reasons of public policy are protected by the constitutional guaranty of freedom of speech. This constitutional right cannot be abolished by the mere failure of the legislature to give it express recognition in the statute punishing libels.[26] (Emphasis supplied, citations omitted)

From this parameter of protecting freedom of speech, this Court has consistently ruled that defamatory statements relating to public officials and the discharge of their official duties are considered qualifiedly privileged communications.[27]

In *Disini, Jr. v. Secretary of Justice,*[28] I had the occasion to trace the development of this doctrine from the American case of *New York Times Co. v. Sullivan*:[29]

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[24] *Id*.

[25] 494 Phil. 439 (2005) [Per *J*. Chico-Nazario, Second Division].

[26] *Id*. at 450.

[27] *Id*.

[28] 727 Phil. 28 (2014) [Per *J*. Abad, *En Banc*].

[29] 376 U.S. 254 (1964).

It was in the American case of *New York Times Co. v. Sullivan*, which this court adopted later on, that the "actual malice" requirement was expounded and categorically required for cases of libel involving public officers. In resolving the issue of "whether . . . an action brought by a public official against critics of his official conduct, abridges the freedom of speech and of the press that is guaranteed by the First and Fourteenth Amendments", the *New York Times* case required that actual malice should be proven when a case for defamation "includes matters of public concern, public men, and candidates for office." Thus:

> Like insurrection, contempt, advocacy of unlawful acts, breach of the peace, obscenity, solicitation of legal business, and the various other formulae for the repression of expression that have been challenged in this Court, ***libel can claim no talismanic immunity from constitutional limitations.*** It must be measured by standards that satisfy the First Amendment.
>
> The general proposition that freedom of expression upon public questions is secured by the First Amendment has long been settled by our decisions. The constitutional safeguard, we have said, "was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people."
>
> The maintenance of the opportunity for free political discussion to the end that government may be responsive to the will of the people and that changes may be obtained by lawful means, an opportunity essential to the security of the Republic, is a fundamental principle of our constitutional system.
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> . . . . . .
>
> ***Injury to official reputation affords no more warrant for repressing speech that would otherwise be free than does factual error. Where judicial officers are involved, this Court has held that concern for the dignity and reputation of the courts does not justify the punishment as criminal contempt of criticism of the judge or his decision. This is true even though the utterance contains "half-truths" and "misinformation."*** Such repression can be justified, if at all, only by a clear and present danger of the obstruction of justice. If judges are to be treated as "men of fortitude, able to thrive in a hardy climate," surely the same must be true of other government officials,

such as elected city commissioners. ***Criticism of their official conduct does not lose its constitutional protection merely because it is effective criticism, and hence diminishes their official reputations***.[30] (Emphasis supplied, citations omitted)

In *United States v. Bustos,*[31] a justice of the peace was charged with malfeasance in office:

The interest of society and the maintenance of good government demand a full discussion of public affairs. Complete liberty to comment on the conduct of public men is a scalpel in the case of free speech. The sharp incision of its probe relieves the abscesses of officialdom. Men in public life may suffer under a hostile and an unjust accusation; the wound can be assuaged with the balm of a clear conscience. *A public officer must not be too thin-skinned with reference to comment upon his official acts. Only thus can the intelligence and dignity of the individual be exalted.* Of course, criticism does not authorize defamation. Nevertheless, as the individual is less than the State, so must expected criticism be born for the common good. Rising superior to any official, or set of officials, to the Chief Executive, to the Legislature, to the Judiciary — to any or all the agencies of Government — public opinion should be the constant source of liberty and democracy.

The guaranties of a free speech and a free press include the right to criticize judicial conduct. The administration of the law is a matter of vital public concern. Whether the law is wisely or badly enforced is, therefore, a fit subject for proper comment. If the people cannot criticize a justice of the peace or a judge the same as any other public officer, public opinion will be effectively muzzled. Attempted terrorization of public opinion on the part of the judiciary would be tyranny of the basest sort. The sword of Damocles in the hands of a judge does not hang suspended over the individual who dares to assert his prerogative as a citizen and to stand up bravely before any official. On the contrary, it is a duty which every one owes to society or to the State to assist in the investigation of any alleged misconduct. It is further the duty of all know of any official dereliction on the part of a magistrate or the wrongful act of any public officer

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[30] *J.* Leonen, Dissenting Opinion in *Disini, Jr. v. Secretary of Justice*, 727 Phil. 28, 369-370 (2014) [Per *J.* Abad, *En Banc*].

[31] 37 Phil. 731 (1918) [Per *J.* Malcolm, First Division].

to bring the facts to the notice of those whose duty it is to inquire into and punish them. In the words of Mr. Justice Gayner, who contributed so largely to the law of libel. "The people are not obliged to speak of the conduct of their officials in whispers or with bated breath in a free government, but only in a despotism."[32] (Emphasis supplied, citations omitted)

Statements relating to acts of public officers and of those who exercise judicial functions fall under qualifiedly privileged communications. Belen's statements were his criticism of a public official.

IV

For qualifiedly privileged communications to be considered libelous, actual malice must be proven.

To prove actual malice, it must be shown that the statement was made with the knowledge that it is false or with reckless disregard for the truth.[33]

In *Vasquez v. Court of Appeals*:[34]

In denouncing the barangay chairman in this case, petitioner and the other residents of the Tondo Foreshore Area were not only acting in their self-interest but engaging in the performance of a civic duty to see to it that public duty is discharged faithfully and well by those on whom such duty is incumbent. The recognition of this right and duty of every citizen in a democracy is inconsistent with any requirement placing on him the burden of proving that he acted with good motives and for justifiable ends.

For that matter, *even if the defamatory statement is false, no liability can attach if it relates to official conduct, unless the public official concerned proves that the statement was made with actual malice — that is, with knowledge that it was false or with reckless disregard of whether it was false or not*. This is the gist of the ruling in the

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[32] *Id.* at 740-742.

[33] *Yuchengco v. Manila Chronicle Publishing Corp.*, 620 Phil. 697, 732 (2009) [Per *J.* Chico-Nazario, Third Division].

[34] 373 Phil. 238 (1999) [Per *J.* Mendoza, *En Banc*].

landmark case of *New York Times v. Sullivan*, which this Court has cited with approval in several of its own decisions. This is the rule of "actual malice." In this case, the prosecution failed to prove not only that the charges made by petitioner were false but also that petitioner made them with knowledge of their falsity or with reckless disregard of whether they were false or not.

A rule placing on the accused the burden of showing the truth of allegations of official misconduct and/or good motives and justifiable ends for making such allegations would not only be contrary to Art. 361 of the Revised Penal Code. It would, above all, infringe on the constitutionally guaranteed freedom of expression. Such a rule would deter citizens from performing their duties as members of a self-governing community. Without free speech and assembly, discussions of our most abiding concerns as a nation would be stifled. As Justice Brandeis has said, "public discussion is a political duty" and the "greatest menace to freedom is an inert people."[35] (Emphasis supplied)

To be considered to have reckless disregard for the truth, the false statements must have been made with a definite awareness that they are untrue.[36] That the accused was negligent of the facts is not enough.[37] The accused must have doubted the veracity of the statements that he or she was making.[38] Thus, errors and inaccuracies may be excused so long as they were made with the belief that what was being stated is true.[39]

Here, what Belen expressed is, first and foremost, an opinion, not a fact. It is an inference drawn from the refusal of the prosecutor to allow a clarificatory hearing and the dismissal of the estafa complaint. That the prosecutor is "intellectually infirm and stupidly blind"[40] is an estimation that may or may not be

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[35] *Id.* at 254-255.

[36] *Flor v. People*, 494 Phil. 439, 452 (2005)[Per *J.* Chico-Nazario, Second Division].

[37] *Id.*

[38] *Id.*

[39] *Id.*

[40] *Rollo,* p. 69.

mistaken, but nonetheless one that does not detract from its nature as a mere opinion that reflects more on the speaker than the subject.

Moreover, the statements relating to partiality and bias constitute Belen's justifications for filing his Motion. His statements include lengthy explanations on why the prosecutor erred in dismissing his estafa case. The statements were made to protect his interests as he believed that his estafa case was unjustly dismissed.

There is no showing that he did not believe his allegations. There is likewise no showing that he made those statements with the knowledge that they were false. There is no showing that the statements were made with reckless disregard for the truth.

Public officers and those who exercise judicial functions must not be so onion-skinned. Intemperate language is an occupational hazard. Many times, such statements reflect more on the speaker than the subject.

V

I reiterate my view that libel ought to be decriminalized. It is inconsistent with the constitutionally protected right to freedom of speech. There is no state interest served in criminalizing libel. Civil actions for defamation are sufficient to address grievances without threatening the public's fundamental right to free speech.

The libel provisions in the Revised Penal Code are now overbroad. They do not embody the entire doctrine of principles that this Court for decades has expounded on under the free speech principles to which the State adheres.[41]

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[41] As I discussed in my Dissenting Opinion in *Disini, Jr. v. Secretary of Justice* (727 Phil. 28, 301-430 (2014) [Per *J.* Abad, *En Banc*]), jurisprudence has developed our criminal laws on libel to accommodate our free speech values.

The history of the criminalization of libel in the Philippines shows that libel started as a legal tool of the Spaniards and the Americans to protect government and the status quo.[42] It was promulgated to regulate speech that criticized foreign rule.[43] Jurisprudence has expanded and qualified the bare text of the law to give way to the fundamental right to expression.[44]

Thus, in theory, only private parties ought to be protected from defamatory utterances.[45] However, in practice, notable personalities who are powerful and influential—including electoral candidates and public officers—are the usual parties who pursue libel cases.[46] The limitations set out in jurisprudence have not been enough to protect free speech.[47] Clearly, the libel laws are used to deter speech and silence detractors.[48]

The libel provisions under the Revised Penal Code invade a constitutionally protected freedom. Imposing both criminal and civil liabilities to the exercise of free speech produces a chilling effect.

I maintain that free speech and the public's participation in matters of interest are of greater value and importance than the imprisonment of a private person who has made intemperate statements against another.[49] This is especially so when there are other remedies to prevent abuse and unwarranted attacks on a person's reputation and character.[50]

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[42] *J.* Leonen, Dissenting Opinion in *Disini, Jr. v. Secretary of Justice*, 727 Phil. 28, 386 (2014) [Per *J.* Abad, *En Banc*].

[43] *Id.* at 385.

[44] *Id.* at 386.

[45] *Id.*

[46] *Id.* at 387.

[47] *Id.* at 388.

[48] *Id.*

[49] *Id.* at 375.

[50] CIVIL CODE, Arts. 19, 20 and 21.

Civil actions do not endanger the right to free speech, such that they produce an unnecessary chilling effect on critical comments against public officers or policies.[51] Thus:

> In a civil action, the complainant decides what to allege in the complaint, how much damages to request, whether to proceed or at what point to compromise with the defendant. Whether reputation is tarnished or not is a matter that depends on the toleration, maturity, and notoriety of the person involved. Varying personal thresholds exists. Various social contexts will vary at these levels of toleration. Sarcasm, for instance, may be acceptable in some conversations but highly improper in others.
>
> In a criminal action, on the other hand, the offended party does not have full control of the case. He or she must get the concurrence of the public prosecutor as well as the court whenever he or she wants the complaint to be dismissed. The state, thus, has its own agency. It will decide for itself through the prosecutor and the court.
>
> Criminalizing libel imposes a standard threshold and context for the entire society. It masks individual differences and unique contexts. Criminal libel, in the guise of protecting reputation, makes differences invisible.
>
> Libel as an element of civil liability makes defamation a matter between the parties. Of course, because trial is always public, it also provides for measured retribution for the offended person. The possibility of being sued also provides for some degree of deterrence.
>
> The state's interest to protect private defamation is better served with laws providing for civil remedies for the affected party. It is entirely within the control of the offended party. The facts that will

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

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

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

[51] *J.* Leonen, Dissenting Opinion in *Disini, Jr. v. Secretary of Justice*, 727 Phil. 28, 389 (2014) [Per *J.* Abad, *En Banc*].

constitute the cause of action will be narrowly tailored to address the perceived wrong. The relief, whether injunctive or in damages, will be appropriate to the wrong.

Declaring criminal libel as unconstitutional, therefore, does not mean that the state countenances private defamation. It is just consistent with our democratic values.[52]

ACCORDINGLY, I vote to **GRANT** the Petition.

SECOND DIVISION

[G.R. No. 226145. February 13, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, *vs.* **ROMEO D. CALINAWAN *a.k.a.* "MEO,"** *accused-appellant*.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; PROOF BEYOND REASONABLE DOUBT; REQUIREMENT THAT THE IDENTITY OF THE ACCUSED MUST BE ESTABLISHED WITH MORAL CERTAINTY; THE IDENTIFICATION OF ACCUSED IS CREDIBLE EVEN IF WITNESS WAS NOT ABLE TO CLEARLY SEE HIS FACE BUT SAW THE NOTABLE FEATURE THAT SET HIM APART FROM OTHERS .— In *People v. Caliso,* the Court explained that in criminal prosecution, the identity of the accused must be established with moral certainty, but this did not necessarily require that the witness must have seen the face of the accused. x x x Succinctly put, it suffices that the witness recognized the accused through identifying marks which would make the latter

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[52] *Id.* at 391-392.

unmistakeably stand out from other individuals. In the case at bench, Marigor's family and Calinawan had been neighbors for a long time. Hence, she was very familiar with the latter's unique physical characteristics, particularly his amputated fingers. Through this distinct physical feature of Calinawan, Marigor was able to identify him in open court as the one who stabbed her mother. Thus, her identification of him was credible, even if she was not able to clearly see his face, but saw the notable feature of his hand, which set him apart from others.

2. ID.; ID.; RULES OF ADMISSIBILITY; HEARSAY RULE; EXCEPTIONS; DYING DECLARATION; REQUISITES.— Marigor's positive identification was further bolstered by the statement of Janice to Jonathan that it was Calinawan who stabbed her. The courts *a quo* considered the said statement as an admissible dying declaration. For a dying declaration to be deemed an exception to the hearsay rule, the following conditions must concur: (a) the declaration must concern the cause and surrounding circumstances of the declarant's death; (b) that at the time the declaration was made, the declarant was conscious of his impending death; (c) the declarant was competent as a witness; and (d) the declaration is offered in a criminal case for Homicide, Murder, or Parricide where the declarant is the victim.

3. ID.; ID.; ID.; ID.; ID.; STATEMENT AS PART OF *RES GESTAE*; ELEMENTS.— In this case, the Court notes that in her affidavit, Janice said that she thought she could survive the attack. She never thought that she was dying. In fact, she was optimistic of her recovery. In view of this, there seems to be a doubt whether she was aware of her impending death. Granting there is such doubt, Janice's statement, nevertheless, is admissible as an exception to the hearsay rule for being part of *res gestae*. In order for a statement to be considered part of *res gestae*, the following elements must concur: (a) the principal act, the *res gestae*, is a startling occurrence; (b) the statement was made before the declarant had time to contrive or devise; and (c) the statement concerns the occurrence in question and its immediately attending circumstances. All the foregoing elements are present in the case at bench. x x x Thus, Calinawan's denial and alibi have no leg to stand. They are inherently weak as defenses, especially when faced with the positive and credible testimony of the prosecution witnesses identifying the accused as the perpetrator of the crime.

4. CRIMINAL LAW; MURDER; QUALIFYING CIRCUMSTANCES; TREACHERY; ELEMENTS.— "There is treachery when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make." The following elements must be established before the existence of treachery may be appreciated: (a) at the time of the attack, the victim was not in a position to defend himself; and (b) the accused consciously and deliberately adopted the particular means, methods, or forms of attack employed by him. The suddenness or unexpectedness alone, however, of the attack is insufficient to support the finding of treachery.

5. ID.; ID.; ID.; ID.; TREACHERY MUST BE PROVED BY CLEAR AND CONVINCING EVIDENCE.— In *People v. Silva*, the Court ruled that treachery could not be presumed and must be proved by clear and convincing evidence or as conclusively as the killing itself, x x x In short, the evidence of the prosecution must be able to present the whole scenario to establish to exact manner of the killing, for treachery to be appreciated. In the case at bench, it was only Marigor who witnessed Calinawan stabbing her mother. x x x Other than Marigor's first-hand account, no other witness actually saw the stabbing incident. Obviously, her narration of the events that unfolded was crucial in determining how the killing was perpetrated because she was the only one who actually saw its execution. Her testimony, however, was lacking in details; thus, it is insufficient to conclude that the killing was attended with treachery. Absent clear and convincing evidence on how the attack was perpetrated, the conclusion that there was treachery is nothing more but an assumption.

6. ID.; HOMICIDE; PENALTY.— Under Article 249 of the RPC, the crime of homicide is punishable by *reclusion temporal*. Calinawan's prison sentence shall then be subject to the rules provided in the Indeterminate Sentence Law. Thus, the maximum term should be that which could be properly imposed in view of the attending circumstances, and the minimum should be within the range of the penalty next lower to that prescribed by the RPC. Here, no aggravating or mitigating circumstance can be appreciated. When there are neither aggravating nor

mitigating circumstances, the penalty prescribed by law shall be imposed in its medium period. The aggravating circumstance of nighttime cannot be factored in because there was no showing that Calinawan especially sought the same or took advantage of it, or that it had facilitated the commission of the crime by insuring his immunity from identification or capture. It is noteworthy that the attack occurred in the kitchen of the house of Janice, which was sufficiently lighted, enabling Marigor to identify him as the assailant. Therefore, the sentence should be within the range of *prision mayor*, as minimum, to *reclusion temporal* in its medium period, as maximum. Also, to conform with the prevailing jurisprudence, the award of civil indemnity and moral damages should be decreased from ₱75,000.00 to ₱50,000.00. Absent any aggravating circumstance, the award of exemplary damages should be removed. The award of temperate damages in the amount of ₱50,000.00 is also in order.

APPEARANCES OF COUNSEL

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

D E C I S I O N

MENDOZA, *J.*:

This is an appeal from the January 30, 2015 Decision[1] of the Court of Appeals *(CA)* in CA-G.R. CR.-H.C. No. 04593, which affirmed the July 21, 2010 Decision[2] of the Regional Trial Court, Branch 41, Dagupan City *(RTC),* in Criminal Case No. 2007-0672-D, convicting accused-appellant Romeo D. Calinawan a.k.a "Meo" *(Calinawan)* of murder, defined and penalized under Article 248 of the Revised Penal Code *(RPC).*

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[1] *Rollo*, pp. 2-16. Penned by Associate Justice Myra V. Garcia-Fernandez, with Associate Justices Noel G. Tijam and Mario V. Lopez, concurring.

[2] CA *rollo,* 57-67. Penned by Judge Emma M. Torio.

In an Information, dated October 24, 2007, Calinawan was charged with murder for killing Janice Nevado Silan *(Janice).* During his arraignment, he entered a plea of "Not Guilty." After the pre-trial was terminated, trial ensued.[3]

The Version of the Prosecution

At around midnight on September 26, 2007, Marigor Silan *(Marigor)*, Janice's seven (7)-year old daughter, saw Calinawan stabbing her mother in their kitchen. Thereafter, Calinawan quickly fled the scene. Meanwhile, Jonathan Nevado *(Jonathan),* Janice's brother and neighbor, was awakened by shouts coming from his sister's house. He rushed to her house and saw her children crying. After bringing her children to his house, he went looking for Janice whom he saw outside a neighbor's house pleading for help. Seeing her bloodied, he carried her and asked her who stabbed her, and she answered it was Calinawan who did it. Then, Jonathan brought Janice to the hospital. When Darwin Silan, Janice's husband, arrived at the hospital, he also asked her who stabbed her and she reiterated that it was Calinawan. After three (3) days, Janice died in spite of the medical treatment at the hospital.[4]

The Version of the Defense

On September 26, 2007, Calinawan went to his mother's house in Cablong, Sta. Barbara, Pangasinan, and arrived there at around 7:30 o'clock in the evening. From 8:00 o'clock to 9:00 o' clock in the evening, he was drinking with his older brother. At around 2:00 o'clock in the morning of the following day, Calinawan was awakened by police officers asking him about the killing of Janice. He replied that he knew nothing about it, but he was still invited by the police to go with them. At the police station, Calinawan was asked if he had with him the dress worn by Janice which was soaked in blood. He presented the dress to the police but it had no bloodstain. Thereafter, he

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[3] *Id*. at 57.

[4] *Rollo*, pp. 3-4.

was released by the police and he went directly to his mother's house.[5]

The RTC Ruling

In its May 14, 2012 decision, the RTC convicted Calinawan for murder. The trial court noted that Marigor positively and categorically identified him as the one who stabbed her mother. It noted that she was able to identify him because of his amputated fingers. In addition, the trial court pointed out that the dying declaration of Janice to Jonathan corroborated Marigor's statement that Calinawan killed her mother. The RTC stated that his positive identification trumped his denial and alibi, which were considered as inherently weak defenses.[6]

Further, the trial court found that the killing of Janice was attended by treachery. It stressed that the killing was carried out during nighttime when Janice was defenseless. Thus, the RTC concluded that given the circumstances surrounding the stabbing, Calinawan consciously adopted the method and form of attack to insure its execution. The dispositive portion of the RTC decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered finding accused Romeo Calinawan @ Meo GUILTY beyond reasonable doubt of the crime of Murder defined and penalized under Article 248 of the Revised Penal Code, and pursuant to law, he is sentenced to suffer the penalty of RECLUSION PERPETUA, and to indemnify the legal heirs of the victim, ₱50,000.00 as actual damages, ₱100,000.00 as moral damages, and to pay the cost of suit.
>
> SO ORDERED.[7]

Aggrieved, Calinawan appealed before the CA.

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[5] CA *rollo*, pp. 14-15.

[6] *Id*. at 16-21.

[7] *Id*. at 23.

The CA Ruling

In its January 30, 2015 Decision, the CA sustained Calinawan's conviction but modified the award of damages. The appellate court agreed that the killing was attended with treachery. It noted that Calinawan was a frequent visitor of Janice; and that he took advantage of his knowledge that her husband was working at night and that she was only accompanied by her children. The CA was of the view that the sudden and unexpected attack against an unarmed victim constituted treachery.[8]

Moreover, the CA stated that Calinawan's denial and alibi could not prosper in light of the positive identification by the witness. It pointed out that Marigor's identification of him, despite his hooded jacket, was sufficient because she identified him on the basis of his physical deformity. The CA observed that he was the neighbor of the victim for a long time and so, Marigor was familiar with the former's physique - particularly his amputated fingers. It added that the dying declaration of Janice corroborated Marigor's identification of Calinawan. Thus, it disposed:

> WHEREFORE, in view of all the foregoing, the decision of the Regional Trial Court, Branch 41, Dagupan City, in Criminal Case No. 2007-0672-D, finding accused-appellant Romeo Calinawan @ "Meo" guilty beyond reasonable doubt of the crime of murder and sentencing him to suffer the penalty of reclusion perpetua, is AFFIRMED with MODIFICATION. Accused-appellant Romeo Calinawan @ "Meo" is ordered to pay the heirs of the deceased the amounts of ₱75,000.00 as civil indemnity for death, ₱75,000.00 for moral damages and ₱30,000.00 for exemplary damages as well as interest on all these damages assessed at the legal rate of 6% from date of finality of this decision until fully paid.
>
> SO ORDERED.[9]

Hence, this appeal.

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[8] *Rollo*, pp. 8-9.

[9] *Id*. at 15-16.

ISSUES

I

WHETHER CALINAWAN WAS POSITIVELY IDENTIFIED AS THE ASSAILANT.

II

WHETHER THE KILLING OF JANICE WAS ATTENDED WITH TREACHERY.

Calinawan argues that Marigor's identification of him was unreliable because she admitted she never saw the face of her assailant as it was covered by a black hood and that she closed her eyes during the commotion. He claims that treachery was not established and that the trial court merely made a general assumption that the victim was defenseless because it was night time. He insists that there was no evidence to show that he consciously and deliberately adopted the means, method or form of attack.

The Court's Ruling

The Court finds that Calinawan is criminally liable for the killing of Janice.

The defense of Denial and Alibi fails in light of Positive Identification

Calinawan challenges Marigor's identification of him on the basis of her statement that she never saw the face of the assailant because the latter was wearing a hooded jacket. He fails to persuade.

In *People v. Caliso*,[10] the Court explained that in criminal prosecution, the identity of the accused must be established with moral certainty, but this did not necessarily require that the witness must have seen the face of the accused. Thus it ruled:

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[10] 675 Phil. 742 (2011).

x x x In every criminal prosecution, no less than moral certainty is required in establishing the identity of the accused as the perpetrator of the crime. xxx The test to determine the moral certainty of an identification is its imperviousness to skepticism on account of its distinctiveness. **To achieve such distinctiveness, the identification evidence should encompass *unique* physical features or characteristics, like the face, the voice, the dentures, the distinguishing marks or tattoos on the body, fingerprints, DNA, or any other physical facts that set the individual apart from the rest of humanity.**[11] [Emphasis supplied]

Succinctly put, it suffices that the witness recognized the accused through identifying marks which would make the latter unmistakeably stand out from other individuals. In the case at bench, Marigor's family and Calinawan had been neighbors for a long time. Hence, she was very familiar with the latter's unique physical characteristics, particularly his amputated fingers. Through this distinct physical feature of Calinawan, Marigor was able to identify him in open court as the one who stabbed her mother. Thus, her identification of him was credible, even if she was not able to clearly see his face, but saw the notable feature of his hand, which set him apart from others.

Dying Declaration;
Rule on Res Gestae

Marigor's positive identification was further bolstered by the statement of Janice to Jonathan that it was Calinawan who stabbed her.

The courts *a quo* considered the said statement as an admissible dying declaration. For a dying declaration to be deemed an exception to the hearsay rule, the following conditions must concur: (a) the declaration must concern the cause and surrounding circumstances of the declarant's death; (b) that at the time the declaration was made, the declarant was conscious of his impending death; (c) the declarant was competent as a

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[11] *Id*. at 756.

witness; and (d) the declaration is offered in a criminal case for Homicide, Murder, or Parricide where the declarant is the victim.[12]

In this case, the Court notes that in her affidavit, Janice said that she thought she could survive the attack. She never thought that she was dying. In fact, she was optimistic of her recovery. In view of this, there seems to be a doubt whether she was aware of her impending death.

Granting there is such doubt, Janice's statement, nevertheless, is admissible as an exception to the hearsay rule for being part of *res gestae*. In order for a statement to be considered part of *res gestae*, the following elements must concur: (a) the principal act, the *res gestae*, is a startling occurrence; (b) the statement was made before the declarant had time to contrive or devise; and (c) the statement concerns the occurrence in question and its immediately attending circumstances.[13] All the foregoing elements are present in the case at bench.

First, the stabbing incident constituted the startling occurrence. *Second*, Janice never had the opportunity to fabricate a statement implicating Calinawan because she immediately identified him as her attacker when Jonathan saw her shortly after the assault took place. *Lastly*, the statement of Janice concerned the circumstances surrounding her stabbing.

Thus, Calinawan's denial and alibi have no leg to stand. They are inherently weak as defenses, especially when faced with the positive and credible testimony of the prosecution witnesses identifying the accused as the perpetrator of the crime.[14]

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[12] *People v. Palanas*, G.R. No. 214453, June 17, 2015, 759 SCRA 318, 319.

[13] *People v. Guting*, G.R. No. 205412, September 9, 2015.

[13] *People v. Lastrollo*, G.R. No. 212631, November 7, 2016.

[14] *Id*.

Killing is Homicide only if Not Attended by Qualifying Circumstances

The courts *a quo* convicted Calinawan of murder because they were of the view that the killing was qualified by treachery considering that the attack on Janice was so sudden that it rendered her defenseless.

"There is treachery when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make."[15]

The following elements must be established before the existence of treachery may be appreciated: (a) at the time of the attack, the victim was not in a position to defend himself; and (b) the accused consciously and deliberately adopted the particular means, methods, or forms of attack employed by him.[16] The suddenness or unexpectedness alone, however, of the attack is insufficient to support the finding of treachery.[17]

In *People v. Silva*,[18] the Court ruled that treachery could not be presumed and must be proved by clear and convincing evidence or as conclusively as the killing itself, to wit:

> The trial court reasoned that the killing was attended by treachery because the suddenness of the attack caught Leo offguard thus preventing him from putting up any defense. **We ruled in a litany of cases that treachery cannot be presumed; it must be proved by clear and convincing evidence or as conclusively as the killing itself. The same degree of proof to dispel any reasonable doubt is required before treachery may be considered either as an aggravating or qualifying circumstance**. Further, treachery must

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[15] Article 14(16) of the RPC.

[16] *Rustia v. People*, G.R. No. 208351, October 5, 2016.

[17] *People v. Vilbar*, 680 Phil.767, 785 (2012).

[18] 372 Phil. 1267 (1999).

be based on some positive conclusive proof and not only upon hypothetical facts or on mere suppositions or presumptions.

The trial court erred when it presumed that the killing was qualified by treachery although the record shows that the witness did not see the commencement of the assault. x x x

x x x x x x x x x

In her earlier testimony, Estelita explained that it was the first shot that prompted her to turn her head and it was only then that she saw Gerry Silva pointing his gun at her son who was already bloodied. These statements are fraught with possibilities.

Nagging doubts would crop up as to how the three (3) assailants started the assault considering that there was an interval of time from the moment Estelita's back was towards Leo until she heard the first shot. Before that she did not notice the presence of accused-appellants. One can argue that between the time when Estelita's back was turned from the victim after she had taken about two (2) steps away and the first shot, there was a lapse of more or less four (4) seconds. No other logical conclusion then could be drawn but that the attack was sudden and unexpected. But this is not that simple. **Where all *indicia* tend to support the conclusion that the attack was sudden and unexpected but there are no precise data on this point, treachery cannot be taken into account.** It can in no way be established from mere suppositions, drawn from the circumstances prior to the moment of the aggression, that the accused perpetrated the killing with treachery.[19] [Emphases supplied]

In short, the evidence of the prosecution must be able to present the whole scenario to establish to exact manner of the killing, for treachery to be appreciated. In the case at bench, it was only Marigor who witnessed Calinawan stabbing her mother. Her testimony is as follows:

On direct examination

Prosecutor Catungal
Q: Why do you say that your mother is already in heaven?

Witness
A: She is already dead, sir.

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[19] *Id*. at 1276.

Q: You mean your mother is already dead, do you know why she died?
A: Yes, sir.

Q: If yes, will tell the Hon. Court why she died?
A: She was stabbed, sir.

x x x x x x x x x

Q: Can you still recall the time whether it is day time or night when the incident took place?
A: Yes, sir.

Q: Can you please tell the Hon. Court if it is day time or night time?
A: It is night time, sir.

Q: You said that your mother was stabbed, where did you see your mother when she was stabbed?
A: In the kitchen, sir.

Q: When you said you saw your mother was stabbed in the kitchen was she alone or had someone?
A: She has companion, sir.

Q: Who is this person with her?
A: It was Meo, sir.

Q: You mean Meo again?
A: Yes, sir.

Q: Did you actually see <u>how</u> Meo stab your mother?
A: Yes, sir.

Q: You said that you saw your mother and Meo in the kitchen, and you said you saw Meo stabbed your mother, was the kitchen room with light?
A: Yes, sir.

Q: After you saw Meo stabbed your mother, what did Meo do next, if any?
A: He ran away, sir.

x x x x x x x x x

On cross examination

Atty. Carpizo

Q: You said earlier Marigor that you saw Meo and your mother in the kitchen on September 26, 2007 in the midnight of said date?
A: Yes, sir.

Q: What were they doing at that time?
A: My mother was stabbed, sir.[20] [Emphases supplied]

Other than Marigor's first-hand account, no other witness actually saw the stabbing incident. Obviously, her narration of the events that unfolded was crucial in determining how the killing was perpetrated because she was the only one who actually saw its execution. Her testimony, however, was lacking in details; thus, it is insufficient to conclude that the killing was attended with treachery.

Absent clear and convincing evidence on how the attack was perpetrated, the conclusion that there was treachery is nothing more but an assumption. It is unfortunate that the particular means, manner or method of attack was never clearly illustrated in her testimony leaving the evidence for murder wanting.

Under Article 249[21] of the RPC, the crime of homicide is punishable by *reclusion temporal*. Calinawan's prison sentence shall then be subject to the rules provided in the Indeterminate Sentence Law.[22] Thus, the maximum term should be that which could be properly imposed in view of the attending circumstances, and the minimum should be within the range of the penalty next lower to that prescribed by the RPC.

Here, no aggravating or mitigating circumstance can be appreciated. When there are neither aggravating nor mitigating circumstances, the penalty prescribed by law shall be imposed in its medium period.[23]

The aggravating circumstance of nighttime cannot be factored in because there was no showing that Calinawan especially sought

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[20] TSN, dated November 19, 2008, pp 2-8.

[21] Any person who, not falling within the provisions of Article 246, shall kill another without the attendance of any of the circumstances enumerated in the next preceding article, shall be deemed guilty of homicide and be punished by *reclusion temporal*.

[22] Act No. 4103, as amended.

[23] Article 64(1) of the RPC.

the same or took advantage of it, or that it had facilitated the commission of the crime by insuring his immunity from identification or capture.[24] It is noteworthy that the attack occurred in the kitchen of the house of Janice, which was sufficiently lighted, enabling Marigor to identify him as the assailant. Therefore, the sentence should be within the range of *prision mayor*, as minimum, to *reclusion temporal* in its medium period, as maximum.

Also, to conform with the prevailing jurisprudence,[25] the award of civil indemnity and moral damages should be decreased from ₱75,000.00 to ₱50,000.00. Absent any aggravating circumstance, the award of exemplary damages should be removed. The award of temperate damages in the amount of ₱50,000.00 is also in order.

WHEREFORE, the January 30, 2015 Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 04593 is hereby **MODIFIED**, in that, accused-appellant Romeo D. Calinawan a.k.a Meo is found guilty of Homicide and sentenced 1] to suffer an indeterminate penalty of Eleven (11) Years of *prision mayor*, as minimum, to Fourteen (14) Years, Eight (8) Months and One (1) Day of *reclusion temporal,* as maximum; and 2] to pay the heirs of Janice Nevado Silan the amounts of ₱50,000.00 as civil indemnity; ₱50,000.00 as moral damages; and ₱50,000.00 as temperate damages, plus interest on all damages awarded at the rate of 6% per annum from the date of the finality of this decision until fully paid.

SO ORDERED.

Carpio (*Chairperson*), *Peralta*, *Perlas-Bernabe*,[*] and *Leonen*, *JJ*., concur.

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[24] *People v. Cortes*, 413 Phil. 386, 392 (2001).

[25] *People v. Jugueta*, G.R. No. 202124, April 5, 2016.

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

EN BANC

[A.M. No. RTJ-09-2183. February 14, 2017]

CONCERNED LAWYERS OF BULACAN, *complainant, vs.* **PRESIDING JUDGE VICTORIA VILLALON-PORNILLOS, *ETC.*,** *respondent.*

RE: PETITION FOR JUDICIAL CLEMENCY OF THEN JUDGE VICTORIA VILLALON-PORNILLOS.

SYLLABUS

1. **REMEDIAL LAW; DISCIPLINE OF JUDGES; JUDICIAL CLEMENCY; JUDICIAL CLEMENCY, AS AN ACT OF MERCY REMOVING ANY DISQUALIFICATION, SHOULD BE BALANCED WITH THE PRESERVATION OF PUBLIC CONFIDENCE IN THE COURTS.—** Judicial clemency is an act of mercy removing any disqualification from the erring judge. It can be granted only if there is a showing that it is merited; **thus, proof of reformation and a showing of potential and promise are indispensable**. x x x The Court, in numerous cases, has come down hard and wielded the rod of discipline against members of the judiciary who have fallen short of the exacting standards of judicial conduct. Judicial clemency is not a privilege or a right that can be availed of at any time, as the Court will grant it only if there is a showing that it is merited. Verily, clemency, as an act of mercy removing any disqualification, should be balanced with the preservation of public confidence in the courts.

2. **ID.; ID.; ID.; REQUIREMENTS FOR THE GRANT OF JUDICIAL CLEMENCY, CITED.—** Proof of remorse and reformation is one of the requirements to grant judicial clemency. As held by the Court in *Re: Letter of Judge Augustus C. Diaz, Metropolitan Trial Court of Quezon City, Branch 37, Appealing for Judicial Clemency*: 1. There must be **proof of remorse and reformation**. These shall include but should not be limited to certifications or testimonials of the officer(s) or chapter(s) of the Integrated Bar of the Philippines, judges or judges associations and prominent members of the community with proven integrity and probity. A subsequent finding of guilt in

an administrative case for the same or similar misconduct will give rise to a strong presumption of non-reformation. 2. Sufficient time must have lapsed from the imposition of the penalty to ensure a period of reformation. 3. The age of the person asking for clemency must show that he still has productive years ahead of him that can be put to good use by giving him a chance to redeem himself. 4. There must be a showing of promise (such as intellectual aptitude, learning or legal acumen or contribution to legal scholarship and the development of the legal system or administrative and other relevant skills), as well as potential for public service. 5. There must be other relevant factors and circumstances that may justify clemency.

APPEARANCES OF COUNSEL

Causing Sabarre Castro Pelagio for respondent.

R E S O L U T I O N

***PER CURIAM*:**

For resolution is a petition for judicial clemency filed by Victoria Villalon-Pornillos (respondent), former Presiding Judge of the Regional Trial Court, Branch 10, Malolos City, Bulacan, through a letter[1] dated December 28, 2016.

The Facts

On July 7, 2009, the Court rendered a Decision,[2] dismissing respondent from service, after having been found guilty of gross misconduct, *i.e.*, borrowing money from a lawyer in a case pending before her court, aggravated by undue delay in rendering decisions or orders, and violation of Supreme Court rules, directives, and circulars. The dispositive portion of the subject Decision reads:

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[1] *Rollo,* pp. 192-196.

[2] *Id*. at 2-23.

WHEREFORE, Judge Victoria Villalon-Pornillos, Presiding Judge of Branch 10 of the Regional Trial Court of Malolos City, is found guilty of violating paragraph 7, Section 8, Rule 140 of the Rules of Court (borrowing money from a lawyer in a case pending before her court) which is also a gross misconduct constituting violation of the Code of Judicial Conduct, aggravated by, *inter alia*, undue delay in rendering decision or orders, and violation of Supreme Court rules, directives and circulars. She is **DISMISSED** from the service, with forfeiture of all retirement benefits, except accrued leave credits, with prejudice to re-employment in any government agency or instrumentality. Immediately upon service on her of this decision, she is deemed to have vacated her office and her authority to act as judge is considered automatically terminated.

SO ORDERED.[3]

On August 8, 2016, respondent filed a Petition for Absolute Pardon from 'Dismissal from the Service Sentence'[4] accompanied by a letter[5] dated August 4, 2016 addressed to the Office of the President (OP), which was referred to the Office of the Court Administrator (OCA), for appropriate action.[6] In a Resolution[7] dated November 8, 2016, the Court denied the said petition for being an improper pleading.

Meanwhile, on November 3, 2016, respondent also filed a letter[8] addressed to the OCA, informing the OP's transmittal of her petition for judicial clemency to the Court, and requesting that the same be subject for judicial review and, consequently, the subject Decision be reversed in her favor. The Court, in a Resolution[9] dated November 29, 2016, noted the said letter without action.

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[3] *Id*. at 22.

[4] *Id*. at 119-134.

[5] *Id*. at 136-146.

[6] See letter dated September 5, 2016 of Acting Deputy Executive Secretary for Legal Affairs Ryan Alvin R. Acosta; *id*. at 44.

[7] *Id*. at 115.

[8] *Id*. at 117.

[9] *Id*. at 189-190.

On December 28, 2016, respondent filed another letter,[10] reiterating her plea for judicial clemency. Respondent insists that she has endured almost eight (8) years of unfounded punishment as the charges and findings against her were based on mere gossip.[11] Likewise, she cites the Court's exoneration of former President Gloria Macapagal Arroyo, begging that the same privilege be extended to her in the spirit of Christmas.[12]

The Court's Ruling

Judicial clemency is an act of mercy removing any disqualification from the erring judge.[13] It can be granted only if there is a showing that it is merited; **thus, proof of reformation and a showing of potential and promise are indispensable**.[14]

Proof of remorse and reformation is one of the requirements to grant judicial clemency. As held by the Court in *Re: Letter of Judge Augustus C. Diaz, Metropolitan Trial Court of Quezon City, Branch 37, Appealing for Judicial Clemency*:[15]

> 1. There must be **proof of remorse and reformation.** These shall include but should not be limited to certifications or testimonials of the officer(s) or chapter(s) of the Integrated Bar of the Philippines, judges or judges associations and prominent members of the community with proven integrity and probity. A subsequent finding of guilt in an administrative case for the same or similar misconduct will give rise to a strong presumption of non-reformation.

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[10] *Id*. at 192-196.

[11] See *id*. at 192, 194-195.

[12] *Id*. at 194-195.

[13] See Resolution in *OCA v. Caballero*, A.M. No. P-05-2064, January 12, 2016.

[14] *Re: Letter of Judge Augustus C. Diaz, MTC-QC, Br. 37, Appealing for Judicial Clemency*, 560 Phil. 1, 5 (2007); emphasis and underscoring supplied.

[15] *Id*.

2. Sufficient time must have lapsed from the imposition of the penalty to ensure a period of reformation.

3. The age of the person asking for clemency must show that he still has productive years ahead of him that can be put to good use by giving him a chance to redeem himself.

4. There must be a showing of promise (such as intellectual aptitude, learning or legal acumen or contribution to legal scholarship and the development of the legal system or administrative and other relevant skills), as well as potential for public service.

5. There must be other relevant factors and circumstances that may justify clemency.[16] (Emphasis supplied)

In this case, records are bereft of showing that respondent has exhibited remorse for her past misdeeds, which occurred more than eight (8) years ago. Apart from respondent's submission to the Court's disciplinary authority, there were no signs of repentance showing that at the very least, she accepted the judgment of the Court in her case. In fact, she even sees nothing wrong with her actions. In her petition, respondent narrates that she "stood her ground against offers of bribery for her to agree to issue orders that would give a go signal to the anomalous Bullet Train Project of Gloria Macapagal Arroyo."[17] She even touts herself as a judge who committed "honest acts and deeds,"[18] and submits that the only way to give her justice is through absolute pardon.[19] In this relation, she firmly insists that she was unduly deprived of her fundamental rights under the constitution when she was unceremoniously disrobed, raising doubts as to the integrity and impartiality of the court process.

Likewise, respondent points out that the charge of borrowing money from a litigant, for which she was dismissed, occurred

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[16] *Id.* at 5-6, citations omitted.

[17] *Rollo*, p. 46.

[18] *Id.*

[19] *Id.* at 59.

more than fourteen (14) years ago and, at that time, she had a very "slim chance"[20] of borrowing money since: (*a*) her "salary as a judge was substantially big enough compared against other employees or lawyers or businessman";[21] and (*b*) both her parents are lawyers who left her "substantial real and personal property that would easily be sufficient for her and her children to live for a lifetime."[22] She claims the same of her late husband who was "well-off" and landed thus, making the act imputed against her unbelievable.[23]

Far from exhibiting remorse and reformation, the tenor of respondent's petition only demonstrates her attitude of impenitence, self-righteousness, and even, vindictiveness, which unquestionably renders her undeserving of judicial clemency. Neither did she show compliance with the other requisites for judicial clemency as cited above. Accordingly, there is no quibble that the instant petition should be denied.

The Court, in numerous cases, has come down hard and wielded the rod of discipline against members of the judiciary who have fallen short of the exacting standards of judicial conduct.[24] Judicial clemency is not a privilege or a right that can be availed of at any time,[25] as the Court will grant it only if there is a showing that it is merited.[26] Verily, clemency, as an act of mercy removing any disqualification, should be balanced with the preservation of public confidence in the courts.[27]

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[20] *Id.* at 50.

[21] *Id.*

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

[23] *Id.* at 51.

[24] *Ali v. Pacalna*, 722 Phil. 112, 117 (2013).

[25] See Resolution in *OCA v. Caballero*, *supra* note 13.

[26] *Ali v. Pacalna*, *supra* note 24, at 118.

[27] *Id.*

WHEREFORE, the petition for judicial clemency is **DENIED**.

SO ORDERED.

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

Velasco, Jr., J., no part, prior action as Court Administrator.

Leonardo-de Castro, J., no part.

SECOND DIVISION

[A.M. No. MTJ-17-1891. February 15, 2017]
(Formerly OCA IPI No. 15-2792-MTJ)

DOMINADOR BIADO, MAMERTO BIADO, CARLITO DELA CRUZ, NORMA DELA CRUZ, DANILO DELA CRUZ, ROMULO MARANO SR., FRANCISCO PADILLA, LOLITA ABLIR AND SONNY TONGCALO, *complainants, vs.* **HON. MARIETTA S. BRAWNER-CUALING, PRESIDING JUDGE, MUNICIPAL CIRCUIT TRIAL COURT [MCTC], TUBA-SABLAN, BENGUET,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; DISCIPLINARY PROCEEDINGS; AN ADMINISTRATIVE COMPLAINT IS NOT THE APPROPRIATE REMEDY FOR EVERY ACT OF A JUDGE DEEMED ABERRANT OR IRREGULAR WHERE A JUDICIAL REMEDY EXISTS AND IS AVAILABLE.— "[A]n administrative complaint is not the

appropriate remedy for every act of a Judge deemed aberrant or irregular where a judicial remedy exists and is available[.]" It must be underscored that "the acts of a judge in his judicial capacity are not subject to disciplinary action." He cannot be civilly, criminally, or administratively liable for his official acts, "no matter how erroneous," provided he acts in good faith. In this case, it is apparent that the assailed orders relate to respondent judge's acts in her judicial capacity. These alleged errors, therefore, cannot be the proper subject of an administrative proceeding, but is only correctible through judicial remedies. Hence, what complainants should have done was to appeal the assailed orders to the higher court for review and not to file an administrative complaint against respondent judge. "Disciplinary proceedings and criminal actions do not complement, supplement or substitute judicial remedies, whether ordinary or extraordinary." x x x An issue of jurisdiction is a judicial matter, which can only be decided upon through judicial remedies. A party's recourse, if prejudiced by a judge's orders in the course of a trial, is with the proper reviewing court and not with the Office of the Court Administrator, through an administrative complaint.

2. **ID.; ID.; JUDGES; TO BE LIABLE FOR GROSS IGNORANCE OF THE LAW, THE ASSAILED ORDERS OF A JUDGE, WHO ACTS IN HIS OFFICIAL CAPACITY, SHOULD NOT ONLY BE ERRONEOUS BUT IT MUST BE ESTABLISHED THAT HIS ACTUATION WAS ATTENDED BY BAD FAITH, DISHONESTY, HATRED, OR OTHER SIMILAR MOTIVE.—** "Gross ignorance transcends a simple error in the application of legal provisions. In the absence of fraud, dishonesty or corruption, the acts of a judge in his judicial capacity are generally not subject to disciplinary action, even though such acts are erroneous." To be liable for gross ignorance of the law, the assailed orders of a judge, who acts in his official capacity, should not only be erroneous; it must be established that his actuation was attended by "bad faith, dishonesty, hatred" or other similar motive. In this case, complainants failed to do establish this.

3. **ID.; ID.; ID.; A MERE IMPUTATION OF BIAS AND PARTIALITY AGAINST A JUDGE IS INSUFFICIENT BECAUSE BIAS AND PARTIALITY CAN NEVER BE PRESUMED.—** Manifest partiality pertains to "a clear,

notorious or plain inclination or predilection to favor one side rather than the other." Thus, a mere imputation of bias and partiality against a judge is insufficient because "bias and partiality can never be presumed." Since "bad faith or malice cannot be inferred simply because the judgment is adverse to a party," it is incumbent upon the complainants to prove that respondent judge was manifestly partial against them. Their failure to prove this is fatal to their cause. Apart from their bare allegations, complainants offered no other independent proof to validate this allegation. Complainants' failure to substantiate their claims in an administrative proceeding can cause the dismissal of the case for lack of merit. "In the absence of evidence to the contrary, the presumption that a judge has regularly performed his duties will prevail."

R E S O L U T I O N

LEONEN, *J.*:

An administrative complaint is not the proper remedy for every action of a judge considered "aberrant or irregular" especially when a judicial remedy exists.[1]

This is an administrative complaint[2] for gross ignorance of the law and manifest partiality relative to an ejectment case and damages docketed as Civil Case No. 302 against Judge Marietta S. Brawner-Cualing (respondent judge) of the Municipal Circuit Trial Court of Tuba- Sablan, Benguet. Complainants insist that respondent judge should be faulted for her cognizance of the civil case and her subsequent issuance of the assailed decision and writ of execution despite lack of jurisdiction.[3]

In their Joint Complaint Affidavit[4] dated September 11, 2015 filed before the Office of the Court Administrator, Dominador

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[1] *Santos v. Orlino* (Resolution) 357 Phil. 102, 108 (1998) [Per Chief Justice Narvasa, Third Division].

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

[3] *Id*. at 99.

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

Biado, Mamerto Biado, Carlito Dela Cruz, Norma Dela Cruz, Danilo Dela Cruz, Romulo Marano Sr., Francisco Padilla, Lolita Ablir and Sonny Tongcalo (complainants) stated that they were the defendants in Civil Case No. 302 entitled *Heirs of Cariño Sioco v. Dominador Biado et. al.*[5] filed before the 5th Municipal Circuit Trial Court of Tuba-Sablan, Benguet,[6] over which respondent judge presided.

On December 9, 2011, respondent judge issued a Decision[7] in favor of the Heirs of Cariño Sioco.[8] In her decision, respondent judge found that all the elements of unlawful detainer were present in the case.[9] She directed the complainants to vacate the disputed lot and to "turn over the possession to the plaintiffs."[10] She also ordered them to pay monthly rental fees to the heirs until they vacated the premises.[11]

Complainants appealed before the Regional Trial Court of La Trinidad, Benguet.[12] However, their appeal was dismissed due to their "failure to appear and participate in it."[13] Since there was no further appeal made, respondent judge's decision became final and executory.[14]

On December 14, 2012, through motion of the prevailing party, respondent Judge issued an Order granting the Heirs of Cariño Sioco's Motion for Execution.[15] Similarly, she issued

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[5] *Id*. at 99.

[6] *Id*. at 2.

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

[8] *Id*. at 2.

[9] *Id*. at 99, OCA Report and Recommendation.

[10] *Id*.

[11] *Id*.

[12] *Id*.

[13] *Id*. at 97, Court of Appeals Resolution.

[14] *Id*. at 99.

[15] *Id*.

a Writ for Execution[16] ordering the sheriff to cause the immediate implementation of the Decision.[17]

Complainants opposed the assailed decision and Writ of Execution, and claimed that respondent judge had no jurisdiction over the case.[18] They insisted that the disputed property was not within the jurisdiction of Tuba-Sablan, Benguet but within Pangasinan.[19] Moreover, there was an "existing boundary dispute between Pangasinan and Benguet."[20] They asserted that they had already brought this matter to respondent judge's attention and "sought deferment on the case pending the resolution of the boundary issue."[21] To bolster their claim, they even allegedly presented the Municipal Index Map of San Manuel, Pangasinan and the Land Clarification of Benguet and

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[16] *Id.* at 16-18.

. . . . . .

WHEREAS, on December 12, 2012, a MOTION FOR EXECUTION was received by the Court

WHEREAS, on December 14, 2012, an Order was issued by Hon. Marietta S. Brawner-Cualing, which states:

"Filed by plaintiff through counsel is a Motion for Execution stating that the Regional Trial Court, Branch 63, La Trinidad, Benguet issued an Order dated August 28, 2012, dismissing the Appeal of the defendants. Said Order of Dismissal was not appealed further by the Defendants.Considering however that this case is for ejectment and damages and defendants did not file any Supersedeas Bond to stay the execution, the Motion for Execution is hereby granted. Issue Writ of Execution.

SO ORDERED."

NOW THEREFORE, you are hereby commanded to cause immediately the execution of the Decision dated December 9, 2012, and to seize the goods and chattels of the said defendants, except such as by law are exempt and cause to be made the aforementioned sum together with your lawful fees.

[17] *Id.* at 99.

[18] *Id.*

[19] *Id.* at 100.

[20] *Id.*

[21] *Id.*

Pangasinan.[22] However, these were ignored by the respondent judge.[23]

Complainants averred that respondent judge should have at least "inquired by herself" on the exact location of the disputed property to determine if she had jurisdiction over the case.[24] Respondent judge showed her gross ignorance of the law and her manifest partiality against them for her failure to know the exact location of the disputed property.[25] For this reason, they were prompted to file this administrative case against her.

In her Comment[26] dated November 23, 2015, respondent judge denied the accusations relative to her alleged manifest partiality and gross ignorance of the law.[27] She claimed that this administrative complaint was a "mere ploy to divert the implementation of the decision in Civil Case No. 302,"[28] which already attained finality as of September 17, 2012, per Entry of Judgment dated January 23, 2013.[29] A Writ of Execution had already been issued, which complainants ignored.[30] A Writ of Demolition has likewise been issued after complainants failed to willingly remove their constructions.[31] Instead of obeying the writ, complainants filed a Petition for Annulment of Judgment before the Court of Appeals docketed as CA-

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[22] *Id*.

[23] *Id*.

[24] *Id*.

[25] *Id*.

[26] *Id*. at 22-33.

[27] *Id*. at 100.

[28] *Id*.

[29] *Id*. at 94.

[30] *Id*. at 100.

[31] *Id*.

G.R. SP. No. 131838.[32] Their petition, however, was dismissed[33] on October 4, 2013.

Due to complainants' "obstinate refusal" to comply with the Municipal Circuit Trial Court's order, the Heirs of Cariño Sioco filed a Petition for Indirect Contempt against them docketed as Special Civil Action Case No. 03, which has been pending resolution.[34]

Respondent judge maintained that she had jurisdiction to rule over the case.[35] She relied on the plaintiff's complaint and the respondent's answer, which "categorically stated that both parties were residents and/or occupants of the parcels of land located at Barangay Ansangan, Tuba, Benguet,"[36] Several other documents[37] submitted by the complainants, showed that

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[32] *Id*.

[33] *Id*. at 95-98. The Resolution was penned by Associate Justice Ramon A. Cruz and concurred in by Associate Justices Noel G. Tijam and Romeo F. Barza of the Seventh Division, Court of Appeal Manila.

The Decision states:

Even assuming that the remedy of annulment is proper, still the same will fail. The well-settled rule is that an annulment of judgment is not a relief to be granted indiscriminately by the courts. It is a recourse equitable in character, allowed only in exceptional cases as where there is no available or other adequate remedy. Therefore, one important condition for the availment of this remedy is that the petitioner failed to move for new trial in, or appeal from, or file a petition for relief against, or take other appropriate remedies assailing the questioned judgment or final order or resolution through no fault attributable to him. The records reveal that petitioners interposed an appeal before the RTC of La Trinidad, Benguet, Branch 63 which was dismissed because of their failure to appear and participate in it. Obviously, petitioners can no longer avail of this remedy.

[34] *Id*. at 100.

[35] *Id*.

[36] *Id*.

[37] *Id*. at 100-101. Including complainants' Pre-Trial Brief, Final Loan Agreement with the NIA and Certificate System Acceptance

they acknowledged the fact that the disputed property was in Benguet and not in San Manuel, Pangasinan.[38]

Contrary to complainants' assertion that they immediately raised the issue of lack of jurisdiction as soon as they learned about it, "it was only in their position paper, by way of a motion to dismiss, that complainants for the first time, questioned the court's lack of jurisdiction."[39] Also, respondent judge maintained that she did not ignore this issue and even ruled on the matter in her assailed decision.[40]

The Office of the Court Administrator, through a Report dated June 28, 2016, recommended the dismissal of this case for being judicial in nature and for lack of merit.[41]

We affirm the recommendation.

I

This administrative complaint is due to respondent judge's cognizance of Civil Case No. 302 and her consequent issuance of the assailed Decision dated December 9, 2011 as well as the Writ of Execution. Complainants assert that these decisions were tainted with manifest partiality[42] and that respondent judge's conduct constitutes gross ignorance of the law since she ruled on the case even though she had no jurisdiction over it.[43]

"[A]n administrative complaint is not the appropriate remedy for every act of a Judge deemed aberrant or irregular where a judicial remedy exists and is available[.]"[44] It must be underscored

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[38] *Id*. at 101.

[39] *Id*. at 101.

[40] *Id*.

[41] *Id*. at 103.

[42] *Id*. at 102.

[43] *Id*.

[44] *Santos v. Orlino* (357 Phil. 102, 108 (1998) [Per Chief Justice Narvasa, Third Division].

that "the acts of a judge in his judicial capacity are not subject to disciplinary action."[45] He cannot be civilly, criminally, or administratively liable for his official acts, "no matter how erroneous," provided he acts in good faith.[46]

In this case, it is apparent that the assailed orders relate to respondent judge's acts in her judicial capacity. These alleged errors, therefore, cannot be the proper subject of an administrative proceeding, but is only correctible through judicial remedies. Hence, what complainants should have done was to appeal the assailed orders to the higher court for review and not to file an administrative complaint against respondent judge. "Disciplinary proceedings and criminal actions do not complement, supplement or substitute judicial remedies, whether ordinary or extraordinary."[47]

It is to be emphasized that the complainants initially filed a Petition for Annulment of Judgment before the Court of Appeals relative to the assailed orders. As correctly observed by the Office of the Court Administrator, this act showed complainants' recognition that the issues they were raising against respondent judge required judicial determination. Thus,

> Finally, it must be pointed out that complainants elevated the alleged erroneous decision of herein respondent judge to the Court of Appeals by way of a Petition for Annulment of Judgment, which the appellate court dismissed in a Resolution dated 4 October 2013. To us, such actuation *is an indication that complainants indeed recognized that the issue that they were raising against respondent judge was one that was appropriate for judicial determination.* Also noteworthy is the fact that after their petition for annulment of judgment was dismissed by the Court of Appeals, complainants sought recourse. On 17 September 2015, they filed an administrative complaint before this Office... (Emphasis supplied)

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[45] *Estrada Jr. v. Himalaloan*, 512 Phil. 1, 7 (2005) [Per Justice Callejo Sr., Second Division].

[46] *Id.*

[47] *Id.*

An issue of jurisdiction is a judicial matter,[48] which can only be decided upon through judicial remedies. A party's recourse, if prejudiced by a judge's orders in the course of a trial, is with the proper reviewing court and not with the Office of the Court Administrator, through an administrative complaint.[49]

II

The complainants' imputation of gross ignorance of the law must also fail. "Gross ignorance transcends a simple error in the application of legal provisions. In the absence of fraud, dishonesty or corruption, the acts of a judge in his judicial capacity are generally not subject to disciplinary action, even though such acts are erroneous."[50]

To be liable for gross ignorance of the law, the assailed orders of a judge, who acts in his official capacity, should not only be erroneous; it must be established that his actuation was attended by "bad faith, dishonesty, hatred" or other similar motive.[51] In this case, complainants failed to do establish this. In their Joint-Complaint Affidavit, they merely claimed that:

> 11. It is very clear that MCTC-Tuba has no jurisdiction over the Subject Property. As a judge, Judge Brawner-Cualing should know this very well.
>
> 12. As an Officer of the Court charged with duty to dispense justice, Judge Brawner-Cualing should have proceeded with outmost(sic) care and diligence with the aforesaid ejectment case considering that her jurisdiction over the Subject Property is being disputed. At the very least, she should have inquired by herself as to the territorial jurisdiction or exact location of the Subject Property. But instead of doing this, Judge

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[48] *Rollo*, p. 102.

[49] *Hilario v. Ocampo III,* 422 Phil. 593, 606 (2001) [Per Justice Panganiban, Third Division].

[50] *Luna v. Mirafuente.* 508 Phil. 1, 7 (2005) [Per Justice Carpio-Morales, Third Division].

[51] *Id.* at 8.

Brawner-Cualing proceeded in deciding the case with recklessness.

13. In deciding the case, despite the fact that MCTC-Tuba has no jurisdiction to try and hear the aforesaid ejectment case, Judge Brawner-Cualing has clearly showed gross partiality in favor of the plaintiffs.

14. We have executed this joint complaint-affidavit in order to attest to the truth of all the foregoing and to formally file a complaint against Judge Marietta S. Brawner-Cualing for gross ignorance of the law.[52]

In her Comment, respondent judge asserts that contrary to complainants' assertion that they immediately raised the issue of lack of jurisdiction as soon as they learned about it, "it was only in their position paper, by way of a motion to dismiss, that complainants for the first time, questioned the court's lack of jurisdiction."[53] Thus,

12. It would also be erroneous for the petitioners herein to state in paragraph 5[54] of their Joint Complaint Affidavit that it was only during the pendency of the ejectment case that they found out and verified that the subject property was located in San Manuel, Pangasinan and not in Tuba, Benguet because as early as August 26, 2010 in compliance by the plaintiffs in Civil Case No. 302, it would appear that they have already been raising the apparent location of the subject property to be in Pangasinan and not in Tuba, Benguet in an earlier Malicious Mischief case filed against them by Ruby Giron ... Nothing therefore would have precluded petitioners herein from amending their Answer to the Complaint in Civil Case No. 302 to raise at the start the issue that the Court Lacked any jurisdiction over the same because of the location of the subject property. It was therefore too late in the proceeding for the petitioners to raise ground in their Position

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[52] *Rollo*, p. 3.

[53] *Id*. at 101.

[54] *Id*. at 2.

1. During the pendency of the said ejectment case is a parcel of land located at **Barangay Ansagan, Municipality of San Manuel, Province of Pangasinan** (the "Subject Property") (Emphasis on the original)

Paper. **It would also be to the prejudice of the respondent to be declared gross ignorance of the law based on the ground that was never first place raised by petitioners.**[55] (Emphasis on the original)

Complainants oppose the assailed decision and Writ of Execution and claim that respondent judge has no jurisdiction over the case.[56] The disputed property is allegedly not within the jurisdiction of Tuba-Sablan, Benguet but in Pangasinan.[57] Complainants assert that while they have already brought the matter to respondent judge's attention, they were nevertheless ignored.[58]

Contrary to complainants' claim, this issue was explicitly addressed by respondent judge in her December 9, 2011 Decision which read:

> As a final note, defendant's claim that this case should be dismissed as it would appear that the subject parcel of land falls within the territorial jurisdiction of the Province of Pangasinan[.]
>
> The Court however could not uphold this claim by the defendants because from the previous pleadings as well as their dealings entered into in connection with the property they are possessing, they have been representing themselves to be residents of Ansagan, Tuba, Benguet. Because of this representation, defendants were able to secure loan from NIA-CAR or from the Province of Benguet (Exhibits "1", "2", "3" and "4"). Defendants could not therefore state that they are under the territorial jurisdiction of the Province of Pangasinan considering that with the dismissal of this case, it would greatly favor them.
>
> Moreover, the Land Classification Map appended to Exhibit "13" clearly states therein that "Municipal boundaries are not established nor located on the ground but are merely indicated hereon as taken from available references. Such political boundaries are for purposes of determining Administrative Jurisdiction of Forest District affected."

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[55] *Id*. at 27.

[56] *Rollo*, p. 99.

[57] *Id*. at 100.

[58] *Id*. at 100.

Clearly, to claim that the subject property is within the territorial jurisdiction of the Province of Pangasinan concluding only on a map classifying the forest areas therein could not be accepted by the Court without any further evidence to that effect."[59]

Though there are opposing claims in this case, it is to be emphasized that in administrative proceedings, the burden of proof lies with the complainants.[60] Hence, the allegations in their complaints should be proven by substantial evidence.[61] Thus,

> While the Court will never tolerate or condone any conduct, act, or omission that would violate the norm of public accountability or diminish the people's faith in the judiciary, the quantum of proof necessary for a finding of guilt in administrative cases is substantial evidence or such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."[62]

III.

Similarly, complainants' assertion of respondent judge's manifest partiality against them cannot prosper. Manifest partiality pertains to "a clear, notorious or plain inclination or predilection to favor one side rather than the other."[63] Thus, a mere imputation of bias and partiality against a judge is insufficient because "bias and partiality can never be presumed."[64]

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[59] *Id.* at 14.

[60] *Umali, Jr. v. Hernandez*, IPI No. 15-35-SB-J, February 23, 2016, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/february2016/15-35-SB-J.pdf> 4 [Per Justice Brion, *En Banc*].

[61] *Id.*

[62] *Id.*

[63] *3-D Industries, Inc. v. Roxas,* 646 Phil. 422, 431 (2010) [Per Justice Carpio-Morales, *En Banc*].

[64] *People v. Aure,* 590 Phil. 848, 884 (2008) [Per Justice Chico-Nazario, Third Division].

Since "bad faith or malice cannot be inferred simply because the judgment is adverse to a party,"[65] it is incumbent upon the complainants to prove that respondent judge was manifestly partial against them. Their failure to prove this is fatal to their cause. Apart from their bare allegations, complainants offered no other independent proof to validate this allegation.[66]

Complainants' failure to substantiate their claims in an administrative proceeding can cause the dismissal of the case for lack of merit.[67] "In the absence of evidence to the contrary, the presumption that a judge has regularly performed his duties will prevail."[68]

WHEREFORE, this administrative complaint against Judge Marietta S. Brawner-Cualing is **DISMISSED** for lack of merit.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 186339. February 15, 2017]

VIVENCIO, EUGENIO, JOJI AND MYRNA, ALL SURNAMED MATEO, *petitioners, vs.* **DEPARTMENT OF AGRARIAN REFORM, LAND BANK OF THE PHILIPPINES AND MARIANO T. RODRIGUEZ, *ET AL.*,** *respondents.*

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[65] *Salcedo v. Bollozos,* 637 Phil. 27, 43 (2010) [Per Justice Brion, Third Division].

[66] *Rollo,* p. 102.

[67] *Monticalbo v. Judge Maraya, Jr.,* 664 Phil. 1, 10 (2011) [Per Justice Mendoza, Second Division].

[68] *Id.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES; WHILE THE COURT RECOGNIZES THE PRIMACY OF THE DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES IN OUR JUDICIAL SYSTEM, THE PRINCIPLE ADMITS EXCEPTIONS, AMONG WHICH IS WHEN THERE IS UNREASONABLE DELAY OR OFFICIAL INACTION THAT IRRETRIEVABLY PREJUDICES A COMPLAINANT; CASE AT BAR.— Section 50 of R.A. No. 6657, in part, provides that the DAR is vested with *"primary jurisdiction to determine and adjudicate agrarian reform matters"* and *"exclusive original jurisdiction over all matters involving the implementation of agrarian reform"* except those falling under the jurisdiction of the Department of Agriculture (DA) and the Department of Environment and Natural Resources. Section 57, on the other hand, confers *"special"* and *"original and exclusive"* jurisdiction to the SAC over all petitions of landowners for the determination of just compensation. x x x While the Court recognizes the primacy of the doctrine of exhaustion of administrative remedies in our judicial system, it bears emphasizing that the principle admits of exceptions, among which is when there is unreasonable delay or official inaction that irretrievably prejudices a complainant. This *exception* is attendant herein where the LBP and the DAR *entered* the property of the Mateos sometime in 1994, but deposited cash and Agrarian Reform Bonds as payment therefor only on December 13, 1996 and February 11, 1997. The LBP and the DAR were indisputably aware that the Mateos rejected the price offered as just compensation for the subject property. Still, at the time the Mateos filed their suit before the SAC, no summary administrative proceeding was yet initiated by the DAR to make further valuation. The SAC even had to issue no less than three *orders* dated November 12, 1997, January 7, 1998 and March 18, 1998 for the DAR to conduct the necessary proceedings. DAR's delay and inaction had unjustly prejudiced the Mateos and precluding them from filing a complaint before the SAC shall result in an injustice, which the law never intends. x x x The doctrine of exhaustion of administrative remedies finds no application in the instant case where the DAR took no initiative and inordinately delayed the conduct of summary

administrative proceedings, and where during the pendency of the case before the SAC, the DARAB rendered decisions affirming the LBP's prior valuations of the subject property.

2. LABOR AND SOCIAL LEGISLATION; REPUBLIC ACT NO. 6657 (COMPREHENSIVE AGRARIAN REFORM PROGRAM [CARP] LAW OF 1988); JUST COMPENSATION; IN APPLYING THE BASIC FORMULA PRESCRIBED BY THE DEPARTMENT OF AGRARIAN REFORM (DAR) IN DETERMINING JUST COMPENSATION, IT IS IMPORTANT THAT THE VALUES TO BE USED ARE DOCUMENTED, VERIFIED AND ACCURATE; CASE AT BAR.— Repetitive as it may be, the SAC (Special Agrarian Court) is reminded that the valuation shall be based at the time of taking of the subject property, not the date of the filing of or period of pendency of the suit, or the rendition of judgment. While the valuation may prove outdated, it should be stressed that the purpose of payment is not to reward the owners for the property taken but to compensate them for the loss thereof. In applying the basic formula prescribed by the DAR in determining just compensation, it is important that the values to be used are documented, verified and accurate. In considering CNI (Capitalized Net Income) as a factor, information obtained from government agencies such as the DA and the Philippine Coconut Authority, tasked to regulate or monitor agricultural production, shall be useful. Anent the determination of MV (Market Value per Tax Declaration) and CS (Comparable Sales), the parties' mere allegations, without substantiation, do not suffice. Moreover, since the Mateos were deprived of the subject property without prompt payment of just compensation, if indeed as alleged the transfers to the farmer beneficiaries were made in 1994, the DAR, as the institution tasked to initiate the summary administrative valuation proceedings, violated proprietary rights. Hence, the Mateos should be entitled to actual or compensatory damages, which in this case should be the legal interest on the value of the subject property at the time of taking up to full payment. x x x The Court has allowed the grant of legal interest in expropriation cases where there is delay in the payment since the just compensation due to the landowners was deemed to be an effective forbearance on the part of the State. Legal interest shall be pegged at the rate of 12% interest *per annum* from the time of taking until June 30, 2013 only. Thereafter, or beginning

July 1, 2013, until fully paid, interest shall be at six percent (6%) *per annum* in line with the amendment introduced by Bangko Sentral ng Pilipinas-Monetary Board Circular No. 799, series of 2013.

APPEARANCES OF COUNSEL

Garcia Regino Arceo and Associates Law Offices for petitioners.

LBP Legal Services Group, CARP Legal Services Department for respondent.

D E C I S I O N

REYES, *J.*:

For review[1] is the Decision[2] rendered on August 4, 2008 and Resolution[3] issued on January 28, 2009 by the Court of Appeals (CA) in CA-G.R. CV No. 79581. The CA granted the appeal filed by the herein respondents, Department of Agrarian Reform (DAR), Land Bank of the Philippines (LBP)[4] and Mariano T. Rodriguez, et al., seeking to reverse the Decision[5] dated July 4, 2002 of the Regional Trial Court (RTC) of Sorsogon City, Sorsogon, Branch 52, sitting as Special Agrarian Court (SAC), in Civil Case No. 97-6331, a complaint for determination of just compensation filed by the herein petitioners, Vivencio Mateo (Vivencio), Eugenio Mateo, Joji Mateo Morales and Myrna Mateo Santos

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[1] *Rollo*, pp. 10-50.

[2] Penned by Associate Justice Ricardo R. Rosario, with Associate Justices Rebecca De Guia-Salvador and Vicente S.E. Veloso concurring; *id*. at 51-63.

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

[4] As "*financial intermediary*" in the implementation of the land reform program pursuant to Section 64 of Republic Act No. 6657.

[5] Rendered by Executive Judge Honesto A. Villamor; *rollo*, pp. 120-127.

(collectively, the Mateos). The SAC ordered the LBP to pay the Mateos the amount of ₱71,143,623.00 as just compensation for 112.3112 hectares of coconut and rice lands (subject property) covered by Transfer Certificate of Title (TCT) No. T-22822, which was expropriated by the DAR for distribution to farmer-beneficiaries under the provisions of Republic Act (R.A.) No. 6657,[6] otherwise known as the Comprehensive Agrarian Reform Program (CARP) Law of 1988.

Antecedents

The CA aptly summed up the facts of the case before the rendition of the SAC decision as follows:

> [The Mateos] were the registered owners of [coconut and rice lands] with [a total area] of 1,323,112 square meters situated at Fabrica, Bacon, Sorsogon and [were] covered by TCT No. T-22822. A portion of the land[s] was brought under the coverage of the [CARP] of the government and for this reason[,] the [DAR] entered the premises sometime in June 1994. [LBP] valued [the Mateos'] land at fifty-two thousand pesos (₱52,000.00) per [ha]. [The Mateos,] however[,] rejected the LBP's valuation.
>
> On April 30, 1997, [the Mateos] filed a complaint against LBP, [DAR], and the farmer beneficiaries of the land for just compensation. The case was docketed as Civil Case No. 97-6331 and raffled to the [SAC], presided by respondent Judge Honesto A. Villamor.[7]

The LBP and DAR filed their respective answers arguing that since no summary administrative proceedings to determine the amount of just compensation had been conducted yet, the complaint of the Mateos was premature.[8]

Pre-trial ensued and was terminated. The SAC granted the request of the parties for the appointment of two commissioners,

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[6] Effective June 15, 1988.

[7] *Rollo*, p. 54.

[8] Please *see* LBP's Answer, *id*. at 114-117, and DAR's Answer, *id*. at 95-99.

namely, Mr. Jesus Empleo and Engr. Florencio Dino (Engr. Dino), to represent the LBP and the Mateos, respectively.[9]

Among the evidence offered by the Mateos during the trial were: (a) the testimonies of their father, Dr. Eleseo Mateo, Engr. Dino, farmer Manuel Docot and caretaker Danilo Federio; (b) TCT No. T-22822; (c) Memorandum of Valuation (MoV), Claim Folder Profile and Valuation Summary of Agricultural Land; (d) deeds of sale covering two parcels of land less than two ha in size in Sorsogon, which were purchased for ₱300,000.00 and ₱400,000.00 per ha; (e) newspaper clipping of Eduardo Cojuangco, who was selling his land in Sorsogon for ₱350,000.00 per ha; (f) Engr. Dino's Report; and (g) deed of sale of a lot in Cabi-an, Sorsogon bought by the government for ₱245,000.00 per ha.[10]

On the other hand, the DAR presented: (a) the testimonies of agriculturist Romeo Brotamante, government employee Ireneo Defeo and farmer Cresenciano Lagajeno; (b) a Field Investigation Report dated March 29, 1996; (c) ledger cards bearing dates from December 2, 1994 to June 9, 1997; and (d) two pass books, the second of which indicated withdrawals in the total amount of ₱601,789.97.[11] The LBP, on its part, offered (a) the testimony of Monita Balde, and (b) a Claims Valuation and Processing Form.[12]

Ruling of the SAC

The decretal portion of the SAC Decision[13] dated July 4, 2002 reads:

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[9] *Id.* at 121.

[10] *Id.*

[11] *Id.* at 121-122.

[12] *Id.* at 122.

[13] *Id.* at 120-127.

WHEREFORE, premises considered, judgment is hereby rendered:

1. Fixing the amount of SEVENTY-ONE MILLION, ONE HUNDRED FORTY-THREE THOUSAND, SIX HUNDRED TWENTY-THREE ([₱]71,143,623.00) Pesos, Philippine currency[,] to be the just compensation for the 112[.]3112 [has] of agricultural land situated at Fabrica, District of Bacon, City of Sorsogon covered by TCT No. T-22822 owned by the [Mateos] which property was taken by the government pursuant to the [CARP] of the government [as] provided by R.A. N[o]. 6657.

2. Ordering the [LBP] to pay the [Mateos] the amount of Seventy-One Million, one Hundred forty-three thousand[,] six hundred twenty-three (₱71,143,623.00) Pesos[,] Philippine currency[,] in the manner provided by R.A. No. 6657 by way of full payment of the said just compensation after deducting whatever amount [was] previously received by the [Mateos] from the [LBP] as part of the just compensation.

3. Without pronouncement as to cost.

SO ORDERED.[14]

In rendering its judgment, the SAC rationalized as follows:

Under R.A. No. 6657, it provides that in determining the just compensation, the initial determination thereof may be agreed upon by the [LBP], the official entity made responsible under Executive Order No. 405, series of 1990 to determine the valuation and compensation of agricultural landholdings made under the coverage of the CARP and the [l]andowner. In the event of disagreement, the matter is referred to the DAR Adjudication Board for further determination. If no agreement is reached, the landowner may elevate the matter for judicial determination.

Initially, the [DAR] Adjudicat[ion] Board x x x valued the property in question adopting the [LBP's] valuation in the amount of ₱6,112,598.86 for the 72.2268 [has] and the amount of ₱2,949,313.14 for the 36.3196 [ha] but these valuation was rejected by [the Mateos].

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[14] *Id*. at 127.

After due consideration of [Engr. Dino's] Report submitted to the Court[,] as well as the [Report of Empleo] and the Pass Book evidencing the Lease Rentals presented by the defendant DAR, as well as the testimon[ies] of [the Mateos] and their witnesses and also considering the applicable law, the Sanggunian Panlalawigan Resolution No. [0]3-99 providing for an updated schedule of fair market value of real properties in the Province of Sorsogon and the jurisprudence on the matter, the Court hereby adopts the commissioner's report submitted by Engr. [Dino] as part of this decision. The Court also took into consideration the evidence submitted on comparable sales transaction of the nearby landholdings executed by Jose Maria Simo, Jr. in favor of the National Housing Authority selling the property at Two Million[,] Three Hundred Thirty-three Thousand[,] One Hundred Seventy Pesos (₱2,335,170.00) Philippine currency, for the 159,968 square meters land x x x.[15] The report of [Engr. Dino] x x x represents only the fair market value of the land but does not include the value of the coconut trees and the actual production of the coconut trees. Although it valued the improvements in the property for acquisition, it did not include the value of the trees/hectare and the actual production of the coconut trees as well as the potentials of the land in term[s] of productivity and proximity to the center of commerce, the City of Sorsogon.

Commissioner's Report of [Engr.] Dino:

x x x x x x x x x

ACCESSIBILITY AND LOCATION

The subject property is located in Barangay San Isidro, Sorsogon. It is barely one kilometer away from the Bacon Airport and the Sorsogon-Bacon Highway. It could be reached through the San Vicente-Buhatan Road – a dormant overland artery linking the district of Bacon to the City of Sorsogon.

PROPERTY APPRAISAL

Provincial Ordinance No. 03-99, also known as "An Ordinance Providing for an Updated Schedule of Fair Market Values of Real Properties in the Province of Sorsogon" was used as the basis for determining the unit values of lands and other improvements found in the subject real property. However, with respect to the appraisal

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[15] The parcel of land was thus sold at ₱145,927.00 per ha.

of timber producing tree species, the approximate extractable lumber was multiplied by the prevailing market price per board foot.

[Engr. Dino made a detailed assessment computing the subject property's Fair Market Value to be ₱4,764,323.00, and the fruit-bearing and timber-producing trees found thereon amounting to ₱806,870.00 and ₱445,110.00, respectively. Engr. Dino, thus, concluded that just compensation for the subject property should amount to ₱6,016,303.00.]

On the matter of the land valuation submitted by [Engr. Dino] for the [Mateos], the Court considers said land valuation too low considering that the land subject for acquisition is within the city limit of the City of Sorsogon and as shown by the evidence of the [Mateos], the land was a subject of a housing subdivision and can command a price of not less than ₱350,000.00 per [ha]. The area for acquisition is ideal not only for housing subdivision but as expansion for commercial district of the City of Sorsogon. It has all the potentials of a city within the city. It has abundant water supply and accessible to the center of commerce. The [Mateos] also submitted evidence of comparable sales transactions of the nearby landholdings executed by Jose Maria Simo, Jr. in favor of the National Housing Authority selling the property with an area of 159,968 sq. m. for the amount of ₱2,335,170.00 x x x. As the property is within the city of Sorsogon, the selling price of land is ₱1,000.00 per square meter. The land subject of acquisition is an agricultural land but it cannot be denied that [in] the present time[,] the land commands [a] higher price especially that the exchange rate of peso to dollar is 1 dollar to 50 pesos. Evidence also show that the [parents of the Mateos] acquired the property for ₱1,000.00 per [ha] and it took them three (3) years to clear the property and after another three years, they planted coconuts which are now fruit bearing trees. x x x[.]

x x x x x x x x x

[The SAC then adopted Engr. Dino's valuation of the improvements found in the subject property and made estimates of the total amount the coconuts, copra and rice harvested therefrom could have fetched from 1994-2002. The SAC also assessed the price of the subject property to be ₱500,000.00 per ha.]

RECAPITULATION:

₱54,000,000.00	– Fair Market Value of 108 hectares coconut land at ₱500,000.00

13,057,397.00	– Net produce of copra from 1994 to 2002
806,820.00	– Value of the improvements inside the 108.0000 hectares
445,110.00	– Value of the coconut trunk[s]
₱68,309,327.00	– Total value of the 108 [has] coconut land
1,750,000.00	– Fair Market Value of 3.7649 [has] of Riceland at ₱500,000.00
1,686,085.00	– Net Produce of the Riceland from year 1994 to 2002
₱71,745,412.00	– Grand Total Value of the Coconut land and Riceland with an area of 112.3112 [has]
- 601,789.00	– less the amount previously received by [the Mateos] as lease rentals
₱71,143,623.00	– Total amount of Just Compensation[16]

Proceedings Before the CA

The LBP and the DAR both filed notices of appeal, but no brief was filed by the latter before the CA.[17]

On the LBP's part, it mainly argued that the complaint of the Mateos was premature as the DAR Adjudication Board (DARAB) had not yet made an administrative valuation of the subject property and that the SAC, in determining just compensation, failed to consider the guidelines provided for in Section 17[18] of R.A. No. 6657.[19]

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[16] *Rollo*, pp. 123-126.

[17] *Id.* at 55-56.

[18] **Section 17**. *Determination of Just Compensation*. – In determining just compensation, the cost of acquisition of the land, the current value of the like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, and the assessment made by government assessors shall be considered. The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property as well as the nonpayment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation.

[19] *Rollo,* pp. 56-57.

The Mateos sought the dismissal of the appeal. They claimed that had the DAR promptly sent them notices of acquisition and made preliminary valuation of the subject property, they would have complied with the administrative procedures and found no need to institute an action before the SAC. Further, while Section 50[20] of R.A. No. 6657 grants the DAR the primary jurisdiction to adjudicate agrarian reform matters, Section 57[21] of the same statute confers original and exclusive jurisdiction over the RTCs as SACs to take cognizance of petitions for determination of just compensation of landowners.[22]

On August 4, 2008, the CA rendered the herein assailed Decision[23] setting aside the SAC's judgment and dismissing without prejudice the complaint of the Mateos. The CA explained that:

> Since the DARAB is clothed with quasi-judicial authority to make a preliminary determination of just compensation of lands acquired under R.A. No. 6657, x x x and it appearing from the records and [the Mateos'] own admission that [the] said administrative agency had not yet taken cognizance of, and passed upon the issue of just compensation when [the Mateos] prematurely filed with the court *a quo* the complaint for determination of just compensation, thus failing

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[20] **Section 50.** *Quasi-Judicial Powers of the DAR.* – The DAR is hereby vested with the primary jurisdiction to determine and adjudicate agrarian reform matters and shall have exclusive original jurisdiction over all matters involving the implementation of agrarian reform, except those falling under the exclusive jurisdiction of the Department of Agriculture (DA) and the Department of Environment and Natural Resources (DENR).

x x x x x x x x x

[21] **Section 57.** *Special Jurisdiction.* – The Special Agrarian Courts shall have original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners, and the prosecution of all criminal offenses under this Act. The Rules of Court shall apply to all proceedings before the Special Agrarian Courts, unless modified by this Act.

The Special Agrarian Courts shall decide all appropriate cases under their special jurisdiction within thirty (30) days from submission of the case for decision.

[22] *Rollo*, p. 58.

[23] *Id.* at 51-63.

to exhaust the prescribed administrative remedy and, in the process, preventing the DARAB from complying with [the] said administrative process which is mandatory, We resolve to grant the appeal.

Jurisprudence teems with pronouncements that before a party is allowed to seek the intervention of the court, it is a pre-condition that he should have availed of all the means of administrative processes afforded him. x x x The premature invocation of [the] court's intervention is fatal to one's cause of action[.] x x x[.]

x x x x x x x x x

Anent the issue on just compensation, Section 17 of [R.A.] No. 6657 provides the guideposts for its determination[.] x x x[.]

x x x x x x x x x

As defined, just compensation is the full and fair equivalent of the property taken from its owner by the expropriator. While We agree with the trial court's submission that "the measure is not the taker's gain but the owner's loss", and that the word "just" is used to intensify the meaning of the word "compensation" to convey the idea that the equivalent to be rendered for the property to be taken shall be real, substantial, full and ample, We likewise subscribe to appellant LBP's contention that "just compensation", in contemplation of agrarian reform, is quite different from just compensation involving an ordinary exercise of the power of eminent domain. Thus, as correctly pointed out by LBP, just compensation must be viewed in the context of social justice enshrined in the fundamental law to make it easier for the disadvantaged to be able to obtain land.

Moreover, it is clear from the decision of the trial court that aside from the court *a quo*'s lack of jurisdiction to take cognizance of the present case, its computation totally disregarded Section 17 of R.A. No. 6657, which, as earlier reproduced, prescribes the factors for determining just compensation of lands acquired thereunder.[24] (Citations omitted)

In the Resolution[25] dated January 28, 2009, the CA denied the motion for reconsideration[26] filed by the Mateos.

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

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

[26] *Id*. at 66-87.

Issues

Aggrieved, the Mateos are before this Court essentially raising the following issues:[27]

1. Whether or not the CA erred in negating the jurisdiction of the RTC, as a SAC, to determine in the first instance and in the absence of the conduct of prior administrative proceedings, questions of just compensation to be paid to landowners.
2. Whether or not the CA erroneously held that the SAC disregarded the provisions of Section 17 of R.A. No. 6657 in determining the amount of just compensation to be paid for the subject property.

In support of the instant petition, the Mateos, citing *LBP v. Wycoco*,[28] reiterate that even without the DAR's final valuation of the agricultural land for expropriation, the RTC, as a SAC, can validly take cognizance of a case for determination of just compensation in accordance with Section 57 of R.A. No. 6657. Otherwise, if the DAR would vest in administrative officials' original jurisdiction in compensation cases, the jurisdiction conferred upon the RTC, as a SAC, by the said Section 57 is undermined.[29]

Additionally, the Mateos argue that the rule on exhaustion of administrative remedies admits of exceptions, one of which is when there are circumstances indicating the urgency of judicial intervention, like in the case at bar. The Mateos were prematurely deprived of the subject property in 1994, and as compensation therefor, a trust account was belatedly created for them in 1997 or three years after the illegal entry.[30]

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[27] *Id.* at 24.

[28] 464 Phil. 83 (2004).

[29] *Rollo*, pp. 26-29.

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

The Mateos likewise assert that the SAC had conscientiously made a fair determination of the subject property's value on the basis of the factors enumerated in Section 17 of R.A. No. 6657. The SAC considered the following: (a) nature and actual use of the subject property; (b) current value of similar property; (c) annual income derived from the subject property at the time of taking by the DAR; (d) cost of acquisition of the land and sworn valuation by the Mateos, both in relation to currency inflations; (e) Provincial Schedule of Fair Market Value (FMV) of Real Property in the Province of Sorsogon; and (f) just compensation for the damages incurred by the Mateos as a consequence of the DAR and the LBP's concerted acts of taking the subject property without compliance with due process. It was, thus, error for the CA to haphazardly conclude, without substantiation, that the SAC disregarded the legal requisites in determining just compensation.[31]

In their comments,[32] the DAR and the LBP seek the dismissal of the instant petition.

On its part, the DAR, citing *Republic of the Philippines v. Express Telecommunication Co., Inc.*,[33] emphasizes that the premature invocation of the court's intervention is fatal to a cause of action.[34] Further, the Market Data Approach used by the SAC in determining just compensation for the subject property is not in accord with Section 17 of R.A. No. 6657 and the formula fixed by law in arriving at such valuations.[35]

The LBP, on the other hand, quoting *Hongkong & Shanghai Banking Corporation, Ltd. v. G.G. Sportswear Manufacturing Corporation*,[36] stresses that the doctrine of

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[31] *Id.* at 38-43.

[32] DAR's Comment, *id.* at 145-151, and LBP's Comment, *id.* at 157-183.

[33] 424 Phil. 372 (2002).

[34] *Rollo*, p. 148.

[35] *Id.* at 149-150.

[36] 523 Phil. 245 (2006).

exhaustion of administrative remedies is a cornerstone of our judicial system; hence, it cannot be disregarded.[37] The LBP also assailed the valuation of just compensation made by the SAC, which erroneously considered factors not provided for in Section 17 of R.A. No. 6657, such as the subject property's potential use and comparative sales of adjacent non-agricultural lots.[38] The LBP adds that in determining just compensation, the SAC instead fatally overlooked the mandatory formula prescribed in DAR Administrative Order (AO) No. 6, series of 1992.[39]

Ruling of the Court

The instant petition is partially meritorious.

On jurisdiction and the doctrine of exhaustion of administrative remedies

Section 50 of R.A. No. 6657, in part, provides that the DAR is vested with "*primary jurisdiction to determine and adjudicate agrarian reform matters*" and "*exclusive original jurisdiction over all matters involving the implementation of agrarian reform*" except those falling under the jurisdiction of the Department of Agriculture (DA) and the Department of Environment and Natural Resources.

Section 57, on the other hand, confers "s*pecial*" and "*original and exclusive*" jurisdiction to the SAC over all petitions of landowners for the determination of just compensation.

In *Wycoco*,[40] the Court outlined the procedure involved in determining just compensation for agricultural landowners, *viz.*:

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[37] *Rollo*, pp. 171-173.

[38] *Id.* at 174-175.

[39] Rules and Regulations Amending the Valuation of Lands Voluntarily Offered and Compulsorily Acquired as provided for under Administrative Order No. 17, Series of 1989, as amended, issued Pursuant to Republic Act No. 6657. Adopted on October 30, 1992.

[40] *Supra* note 28.

Under Section 1 of Executive Order No. 405, Series of 1990, the [LBP] is charged with the initial responsibility of determining the value of lands placed under land reform and the just compensation to be paid for their taking. Through a notice of voluntary offer to sell (VOS) submitted by the landowner, accompanied by the required documents, the DAR evaluates the application and determines the land's suitability for agriculture. The LBP likewise reviews the application and the supporting documents and determines the valuation of the land. Thereafter, the DAR issues the Notice of Land Valuation to the landowner. In both voluntary and compulsory acquisition, where the landowner rejects the offer, the DAR opens an account in the name of the landowner and conducts a summary administrative proceeding. If the landowner disagrees with the valuation, the matter may be brought to the [RTC] acting as a [SAC]. This in essence is the procedure for the determination of just compensation.[41] (Citations omitted)

Anent the application of Sections 50 and 57 of R.A. No. 6657, in relation to the proper procedure which must be followed in cases involving determination of just compensation for landowners, *Ramon Alfonso v. LBP and DAR*[42] is emphatic that:

In *San Miguel Properties, Inc. v. Perez,* we explained the reasons why Congress, in its judgment, may choose to grant primary jurisdiction over matters within the erstwhile jurisdiction of the courts, to an agency:

> The doctrine of *primary jurisdiction* bas been increasingly called into play on matters demanding the special competence of administrative agencies even if such matters are at the same time within the jurisdiction of the courts. **A case that requires for its determination the expertise, specialized skills, and knowledge of some administrative board or commission because it involves technical matters or intricate questions of fact, relief must first be obtained in an appropriate administrative proceeding before a remedy will be supplied by the courts although the matter comes within the jurisdiction of the courts**. The application of the doctrine

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[41] *Id*. at 95.

[42] G.R. Nos. 181912 and 183347, November 29, 2016.

does not call for the dismissal of the case in the court but only for its **suspension until after the matters within the competence of the administrative body are threshed out and determined**.

x x x x x x x x x

Rule 43 of the Revised Rules of Court, which provides for a uniform procedure for appeals from a long list of quasi-judicial agencies to the [CA], is a **loud testament to the power of Congress to vest myriad agencies with the preliminary jurisdiction to resolve controversies within their particular areas of expertise and experience**.

In fact, **our landmark ruling in *Association* has already validated the grant by Congress to the DAR of the primary jurisdiction to determine just compensation**. There, it was held that RA 6657 does not suffer from the vice of the decree voided in *EPZA,* where the valuation scheme was voided by the Court for being an "impermissible encroachment on judicial prerogatives." x x x[.]

x x x x x x x x x

Unlike *EPZA,* and in answer to the question raised in one of the dissents, **the scheme provided by Congress under RA 6657 does not take discretion away from the courts in determining just compensation in agrarian cases**. Far from it. In fact, the DAR valuation formula is set up in such away that its application is dependent on the existence of a certain set of facts, the ascertainment of which falls within the discretion of the court.

x x x x x x x x x

x x x Congress thus clearly conceded that courts *have* the power to look into the "justness" of the use of a formula to determine just compensation, and the "justness" of the factors and their weights chosen to flow into it.

In fact, the regulatory scheme provided by Congress in fact sets the stage for a *heightened* judicial review of the DAR's preliminary determination of just compensation pursuant to Section 17 of RA 6657. In case of a proper challenge, SACs are actually empowered to conduct a *de novo* review of the DAR's decision. Under RA 6657, a full trial is held where SACs are authorized to (1) appoint one or more commissioners, (2) receive, hear, and retake the testimony and evidence of the parties, and (3) make findings of

fact anew. **In other words, in exercising its exclusive and original jurisdiction to determine just compensation under RA 6657, the SAC is possessed with exactly the same powers and prerogatives of [the RTC] under Rule 67 of the Revised Rules of Court**.

In such manner, the SAC thus conducts a more *exacting* type of review, compared to the procedure provided either under Rule 43 of the Revised Rules of Court, which governs appeals from decisions of administrative agencies to the [CA], or under Book VII, Chapter 4, Section 25 of the Administrative Code of 1987, which provides for a default administrative review process. In both cases, the reviewing court decides based on the record, and the agency's findings of fact are held to be binding when supported by substantial evidence. The SAC, in contrast, retries the whole case, receives new evidence, and holds a full evidentiary hearing.

x x x x x x x x x

Justice Velasco correctly pointed out this Court's statement in *Belista* excepting petitions for determination of just compensation from the list of cases falling within the DAR's original and exclusive jurisdiction. Justice Velasco is also correct when he stated that the Court, in *Heirs of Vidad,* summarized and affirmed rulings which "invariably upheld the [SAC's] original and exclusive jurisdiction x x x notwithstanding the seeming failure to exhaust administrative remedies before the DAR." Later on, he would point out, again correctly, the seemingly conflicting rulings issued by this Court regarding the imposition upon the courts of *a* formula to determine just compensation.

x x x x x x x x x

Justice Velasco reads both ***Belista*** **and** ***Heirs of Vidad*** **as bases to show that SACs possess original and exclusive jurisdiction to determine just compensation, regardless of prior exercise by the DAR of its primary jurisdiction**.

We do not disagree with the rulings in ***Belista*** **and** ***Heirs of Vidad,*** **both of which acknowledge the grant of primary jurisdiction to the DAR, subject to judicial review. We are, however, of the view that the better rule would be to read these seemingly conflicting cases without having to disturb established doctrine**.

Belista, **for example, should be read in conjunction with** ***Association,*** **the landmark case directly resolving the**

constitutionality of RA 6657. In *Association,* **this Court unanimously upheld the grant of jurisdiction accorded to the DAR under Section 16**[43] **to preliminarily determine just compensation**. **This grant of primary jurisdiction is specific, compared to the general grant of quasi-judicial power to the DAR under Section 50.** ***Belista,*** **which speaks of exceptions to the general grant of quasi-judicial power under Section 50, cannot be read to extend to the specific grant of primary jurisdiction under Section 16.**

x x x x x x x x x

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[43] **Section 16.** *Procedure for Acquisition of Private Lands*.– For purposes of acquisition of private lands, the following procedures shall be followed:

(a) After having identified the land, the landowners and the beneficiaries, the DAR shall send its notice to acquire the land to the owners thereof, by personal delivery or registered mail, and post the same in a conspicuous place in the municipal building and barangay hall of the place where the property is located. Said notice shall contain the offer of the DAR to pay a corresponding value in accordance with the valuation set forth in Sections 17, and 18, and other pertinent provisions hereof.

(b) Within thirty (30) days from the date of receipt of written notice by personal delivery or registered mail, the landowner, his administrator or representative shall inform the DAR of his acceptance or rejection of the offer.

(c) If the landowner accepts the offer of the DAR, the Land Bank of the Philippines (LBP) shall pay the landowner the purchase price of the land within thirty (30) days after he executes and delivers a deed of transfer in favor of the government and surrenders the Certificate of Title and other muniments of title.

(d) In case of rejection or failure to reply, the DAR shall conduct summary administrative proceedings to determine the compensation for the land requiring the landowner, the LBP and other interested parties to submit evidence as to the just compensation for the land, within fifteen (15) days from the receipt of the notice. After the expiration of the above period, the matter is deemed submitted for decision. The DAR shall decide the case within thirty (30) days after it is submitted for decision.

(e) Upon receipt by the landowner of the corresponding payment or, in case of rejection or no response from the landowner, upon the deposit with an accessible bank designated by the DAR of the compensation in cash or in LBP bonds in accordance with this Act, the DAR shall take immediate possession of the land and shall request the proper Register of Deeds to issue a Transfer Certificate of Title (TCT) in the name of the Republic of the Philippines. The DAR shall thereafter proceed with the redistribution of the land to the qualified beneficiaries.

Considering the validity of the grant of primary jurisdiction, our ruling in *Heirs of Vidad* should also be reconciled with the rationale behind the doctrine of primary jurisdiction. **In this sense, neither landowner nor agency can disregard the administrative process provided under the law without offending the already established doctrine of primary jurisdiction**:

x x x x x x x x x

Section 18, on the other hand, merely recognizes the possibility that the landowner will disagree with the DAR/LBP's offer. In such case, and where the landowner elevates the issue to the court, the court needs to rule on the offer of the DAR and the LBP. Since the government's offer is required by law to be founded on Section 17, the court, in exercising judicial review, will necessarily rule on the DAR determination based on the factors enumerated in Section 17.

Now, whether the court accepts the determination of the DAR will depend on its exercise of discretion. This is the essence of judicial review. That the court *can* reverse, affirm or modify the DAR/LBP's determination cannot, however, be used to argue that Section 18 excuses observance from Section 17 in cases of disagreement.[44] (Citations omitted, emphasis ours and italics in the original)

Alfonso[45] is unequivocal that *administrative remedies cannot be dispensed with and direct resort to the SAC is proscribed.* However, the foregoing rule cannot be applied in the case at bar for reasons discussed below.

While the Court recognizes the primacy of the doctrine of exhaustion of administrative remedies in our judicial system, it bears emphasizing that the principle admits of exceptions, among which is when there is unreasonable delay or official inaction that irretrievably prejudices a complainant.[46] This

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(f) Any party who disagrees with the decision may bring the matter to the court of proper jurisdiction for final determination of just compensation.

[44] *Ramon Alfonso v. LBP and DAR*, *supra* note 42.

[45] *Id*.

[46] Please *see Addition Hills Mandaluyong Civic & Social Organization, Inc. v. Megaworld Properties & Holdings, Inc., et al.,* 686 Phil. 76 (2012).

exception is attendant herein where the LBP and the DAR *entered* the property of the Mateos sometime in 1994,[47] but deposited cash and Agrarian Reform Bonds as payment therefor only on December 13, 1996 and February 11, 1997.[48] The LBP and the DAR were indisputably aware that the Mateos rejected the price offered as just compensation for the subject property. Still, at the time the Mateos filed their suit before the SAC, no summary administrative proceeding was yet initiated by the DAR to make further valuation. The SAC even had to issue no less than three *orders* dated November 12, 1997, January 7, 1998 and March 18, 1998 for the DAR to conduct the necessary proceedings.[49] DAR's delay and inaction had unjustly prejudiced the Mateos and precluding them from filing a complaint before the SAC shall result in an injustice, which the law never intends.

It bears stressing as well that on December 21, 2000 and March 22, 2001, while trial before the SAC was underway, the DARAB rendered decisions in the summary administrative proceedings upholding the valuations previously made by the LBP and rejected by the Mateos.[50] At that point, referring the case back to the DAR would have been completely moot as any challenge raised against the valuation shall be cognizable by the SAC. Clearly, there were no more administrative remedies to exhaust.

Prescinding from the above, the CA erred in ordering the dismissal of the Mateos' complaint before the SAC. The doctrine of exhaustion of administrative remedies finds no application in the instant case where the DAR took no initiative and inordinately delayed the conduct of summary administrative proceedings, and where during the pendency of the case before the SAC, the DARAB rendered decisions affirming the LBP's prior valuations of the subject property.

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[47] *See* Landowner's Reply to Notice of Land Valuation and Acquisition, *rollo*, pp. 105, 125.

[48] LBP Certifications of Deposit, *id*. at 106, 113.

[49] *Id*. at 19.

[50] *Id*. at 19-20.

On non-compliance with Section 17 of R.A. No. 6657 and DAR AOs, and the consequent remand of the case to the SAC

In *Alfonso*,[51] the Court summed up the guidelines in just compensation cases, *viz.*:

First, in determining just compensation, courts are obligated to apply both the compensation valuation factors enumerated by the Congress under Section 17 of RA 6657 and the basic formula laid down by the DAR. x x x[.]

x x x x x x x x x

Second, the formula, being an administrative regulation issued by the DAR pursuant to its rule-making and subordinate legislation power under RA 6657, has the force and effect of law. Unless declared invalid in a case where its validity is directly put in issue, courts must consider their use and application. x x x[.]

x x x x x x x x x

Third, courts, in the exercise of their judicial discretion, may relax the application of the formula to fit the peculiar circumstances of a case. They must, however, clearly explain the reason for any deviation; otherwise, they will be considered in grave abuse of discretion. x x x[.]

x x x x x x x x x

When acting within the parameters set by the law itself, the RTC-SACs, however, are not strictly bound to apply the DAR formula to its minute detail, particularly when faced with situations that do not warrant the formula's strict application; they may, in the exercise of their discretion, relax the formula's application to fit the factual situations before them. They must, however, clearly explain the reason for any deviation from the factors and formula that the law and the rules have provided.

The situation where a deviation is made in the exercise of judicial discretion should at all times be distinguished from a situation where there is utter and blatant disregard of the

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[51] *Supra* note 42.

> factors spelled out by law and by the implementing rules. For in [the latter case], the RTC-SAC's action already amounts to grave abuse of discretion for having been taken outside of the contemplation of the law.[52] (Citations and emphasis omitted)

In the case at bench, the SAC's deviation from the prescribed procedures in determining just compensation due to the Mateos is evident as discussed hereunder.

The SAC made no exact finding as to when the subject property was taken by the government. Without anything more, the SAC merely mentioned Vivencio's testimony that in the early part of June of 1994, the DAR entered the subject property.[53] However, the SAC did not discuss when the subject property was actually transferred through the issuance of emancipation patents, certificates of land ownership awards or any other titles to the farmer beneficiaries. The dates are significant as they are to be considered as the time of taking, and just compensation must be valued in relation thereto.[54]

Reference to any DAR AOs or formulas is conspicuously absent as well. Note that on October 30, 1992, the DAR issued AO No. 6, which was later amended by AO No. 11, series of 1994.[55] The applicability of AO No. 11 in the case at bar is, however, still uncertain pending the SAC's determination of when the subject property was actually transferred to the farmer beneficiaries. Further, prior to the conclusion of the Mateos' just compensation complaint before the SAC, the DAR issued AO No. 5, series of 1998 on April 15, 1998.[56] Item II(I) thereof,

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[52] *Id.*

[53] *Rollo*, p. 125.

[54] *LBP v. Lajom*, G.R. No. 184982, August 20, 2014, 733 SCRA 511, 521.

[55] Revising the Rules and Regulations Covering the Valuation of Lands Voluntarily Offered or Compulsorily Acquired as Embodied in Administrative Order No. 6, Series of 1992. Adopted on September 13, 1994.

[56] Revised Rules and Regulations Governing the Valuation of Lands Voluntarily Offered or Compulsorily Acquired Pursuant to Republic Act No. 6657. Adopted on April 15, 1998.

however, provides that "*all claims whose [MoV] have not yet been forwarded to DAR shall be valued in accordance with this [AO].*" Considering that in the case of the Mateos, the MoV was forwarded by the LBP to the DAR on September 30, 1996,[57] AO No. 6 and not AO No. 5, shall apply.

Item II(A) of AO No. 6 provides:

A. There shall be one basic formula for the valuation of lands covered by [Voluntary Offer to Sell] or [Compulsory Acquisition] regardless of the date of offer or coverage of the claim:

LV = (CNI x 0.6) + (CS x 0.3) + (MV x 0.1)

Where:	LV	=	Land Value
	CNI	=	Capitalized Net Income
	CS	=	Comparable Sales
	MV	=	Market Value per Tax Declaration

The above formula shall be used if all the three factors are present, relevant, and applicable.

A.1 When the CS factor is not present and CNI and MV are applicable, the formula shall be:

LV = (CNI x 0.9) + (MV x 0.1)

A.2 When the CNI factor is not present, and CS and MV are applicable, the formula shall be:

LV = (CS x 0.9) + (MV x 0.1)

A.3 When both the CS and CNI are not present and only MV is applicable, the formula shall be:

LV = MV x 2

A. 4 In all the above, the computed value using the applicable formula or the Declared Value by Landowner (DV), whichever is lower, shall be adopted as the Land Value.

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[57] *Rollo*, pp. 100-103.

> DV shall refer to the amount indicated in the Landowner's offer or the Listasaka declaration, whichever is lower, in case of VOS. In case of CA, this shall refer to the amount indicated in the Listasaka. Both LO's offer and Listasaka shall be grossed-up using the immediately preceding semestral Regional Consumer Price Index (RCPI), from the date of the offer or the date of Listasaka up to the date of receipt of claim folders by LBP from DAR for processing.

Items B, C and D of AO No. 6 also indicate very detailed guidelines on how Capitalized Net Income (CNI), Comparable Sales (CS) and Market Value per Tax Declaration (MV) shall be computed.

However, in the valuation of the subject property owned by the Mateos, the SAC did not even minutely refer to any *formula* mandated to be applied by pertinent DAR regulations. There was also *no explanation at all* as to why the case should be excepted from the application of AO No. 6.

Further, the SAC did not specifically lay down its basis in concluding that the FMV of the subject property is ₱500,000.00 per ha. The SAC referred to *Sanggunian Panlalawigan* Resolution No. 03-99, which provided for an updated schedule of FMVs of real properties in the Province of Sorsogon.[58] However, it is settled that the valuation of the property should be pegged at the *time of taking*, not of filing of the complaint, pendency of the proceedings or rendition of judgment.[59]

As to the CS transactions which were considered as evidence, the SAC did not elaborate if they had indeed satisfied the guidelines set forth by AO No. 6 as regards their sizes and locations.[60]

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[58] *Id*. at 124.

[59] *LBP v. Heirs of Spouses Encinas,* 686 Phil. 48, 55 (2012).

[60] *Rollo*, p. 125.

Anent the productivity of the subject property, the SAC made estimates, the bases of which are likewise unclear. The estimated earnings were also unwarrantedly cumulated covering the period of 1994 to 2002.[61] Note that in Item II(B) of AO No. 6, in computing CNI, only "*one year's average gross production immediately preceding the date of offer in case of Voluntary Offer to Sell or date of notice of coverage in case of CA*" is included as among the factors.

Inevitably then, the Court is constrained to remand the case to the SAC to determine the just compensation due to the Mateos. As bases therefor, Section 17 of R.A. No. 6657, AO No. 6 and pertinent DAR AOs explicitly providing for their application over pending cases involving just compensation for lands taken before the effectivity of the AOs, shall be applied.

It is significant to note that R.A. No. 6657 was first amended by R.A. No. 8532,[62] which augmented the funds in the implementation of the CARP. Thereafter, Section 7 of R.A. No. 9700[63] amended Section 17 of R.A. No. 6657, which now reads as follows:

Sec. 17. *Determination of Just Compensation.* – In determining just compensation, the cost of acquisition of the land, the value of the standing crop, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax

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[61] *Id.* at 125-126.

[62] AN ACT STRENGTHENING FURTHER THE COMPREHENSIVE AGRARIAN REFORM PROGRAM (CARP) BY PROVIDING AUGMENTATION FUND THEREFOR, AMENDING FOR THE PURPOSE SECTION 63 OF REPUBLIC ACT NO. 6657, OTHERWISE KNOWN AS THE CARP LAW OF 1988. Approved on February 23, 1998.

[63] AN ACT STRENGTHENING THE COMPREHENSIVE AGRARIAN REFORM PROGRAM (CARP), EXTENDING THE ACQUISITION AND DISTRIBUTION OF ALL AGRICULTURAL LANDS, INSTITUTING NECESSARY REFORMS, AMENDING FOR THE PURPOSE CERTAIN PROVISIONS OF REPUBLIC ACT NO. 6657, OTHERWISE KNOWN AS THE COMPREHENSIVE AGRARIAN REFORM LAW OF 1988, AS AMENDED, AND APPROPRIATING FUNDS THEREFOR. Approved on August 7, 2009.

declarations, the assessment made by government assessors, and seventy percent (70%) of the zonal valuation of the Bureau of Internal Revenue (BIR), translated into a basic formula by the DAR, shall be considered, subject to the final decision of the proper court. The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property as well as the non-payment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation. (Underscoring ours)

On the other hand, the transitory provision of DAR AO No. 2, series of 2009,[64] in part, provides that "*with respect to land valuation, all Claim Folders received by LBP prior to July 1, 2009 shall be valued in accordance with Section 17 of R.A. No. 6657 prior to its amendment by R.A. No. 9700*." Accordingly then, in *LBP v. Heirs of Jesus Alsua*,[65] the Court "*excepted from the application of the amended Section 17 all claim folders received by LBP prior to July 1, 2009, which shall be valued in accordance with Section 17 of [R.A. No.] 6657, as amended, prior to its further amendment by [R.A.] No. 9700*."[66]

In the case of the Mateos, the Claim Folder was received by LBP earlier than July 1, 2009; hence, the amendments in Section 17, as introduced by R.A. No. 9700, shall not be applicable. Just compensation shall be determined in accordance with Section 17 of R.A. No. 6657 prior to its amendment by R.A. No. 9700.

Note too that the LBP valued the subject property at more or less ₱52,000.00 per ha without considering factors relating to productivity and the prices of comparable parcels of land.[67] Engr. Dino, on his part, determined that the entire

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[64] Rules and Procedures Governing the Acquisition and Distribution of Agricultural Lands Under R.A. No. 6657, as amended by R.A. No. 9700. Issued on October 15, 2009.

[65] G.R. No. 211351, February 4, 2015, 750 SCRA 121.

[66] *Id*. at 139.

[67] *Rollo*, pp. 101-103; 107-110.

subject property is ₱6,016,303.00, *sans* ample substantiation of the amounts used.[68] The SAC valued the subject property at ₱71,143,623.00, without using any formulas mandated by any DAR AO or explaining why it dispensed with the application thereof.

Repetitive as it may be, the SAC is reminded that the valuation shall be based at the time of taking of the subject property, not the date of the filing of or period of pendency of the suit, or the rendition of judgment. While the valuation may prove outdated, it should be stressed that the purpose of payment is not to reward the owners for the property taken but to compensate them for the loss thereof.[69]

In applying the basic formula prescribed by the DAR in determining just compensation, it is important that the values to be used are documented, verified and accurate. In considering CNI as a factor, information obtained from government agencies such as the DA and the Philippine Coconut Authority, tasked to regulate or monitor agricultural production, shall be useful. Anent the determination of MV and CS, the parties' mere allegations, without substantiation, do not suffice.

Moreover, since the Mateos were deprived of the subject property without prompt payment of just compensation, if indeed as alleged the transfers to the farmer beneficiaries were made in 1994, the DAR, as the institution tasked to initiate the summary administrative valuation proceedings, violated proprietary rights. Hence, the Mateos should be entitled to actual or compensatory damages, which in this case should be the legal interest on the value of the subject property at the time of taking up to full payment.[70]

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[68] *Id*. at 124.

[69] Please *see Secretary of the Department of Public Works and Highways and District Engineer Celestino R. Contreras v. Spouses Heracleo and Ramona Tecson*, G.R. No. 179334, April 21, 2015.

[70] *Id*.

The following facts need to be emphasized: (a) the Mateos claimed that DAR's entry into the subject property occurred in June 1994; (b) the complaint for just compensation was filed before the SAC on April 30, 1997; and (c) deposits by LBP of cash and Agrarian Reform Bonds in favor of the Mateos were made on December 13, 1996 and February 11, 1997.

The Court has allowed the grant of legal interest in expropriation cases where there is delay in the payment since the just compensation due to the landowners was deemed to be an effective forbearance on the part of the State. Legal interest shall be pegged at the rate of 12% interest *per annum* from the time of taking until June 30, 2013 only. Thereafter, or beginning July 1, 2013, until fully paid, interest shall be at six percent (6%) *per annum* in line with the amendment introduced by Bangko Sentral ng Pilipinas-Monetary Board Circular No. 799,[71] series of 2013.[72]

IN VIEW OF THE FOREGOING, the petition is **PARTIALLY GRANTED**. The Decision and Resolution dated August 4, 2008 and January 28, 2009, respectively, of the Court of Appeals in CA-G.R. CV No. 79581 are hereby **REVERSED** only insofar as they dismissed the complaint for just compensation filed by Vivencio Mateo, Eugenio Mateo, Joji Mateo Morales and Myrna Mateo Santos. However, the petition is **DENIED** insofar as it seeks to sustain the valuation of the subject property in Civil Case No. 97-6331 made by the Regional Trial Court of Sorsogon City, Sorsogon, Branch 52, sitting as Special Agrarian Court.

The case is hereby **REMANDED** to the trial court to determine with utmost dispatch the just compensation due to Vivencio Mateo, Eugenio Mateo, Joji Mateo Morales and Myrna Mateo Santos strictly in accordance with Section 17 of Republic Act No. 6657 prior to its amendment by Republic Act No. 9700, pertinent Administrative Orders

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[71] Rate of Interest in the Absence of Stipulation, effective July 1, 2013.

[72] *LBP v. Heirs of Jesus Alsua*, *supra* note 65.

issued by the Department of Agrarian Reform, and the guidelines set forth in this Decision. To be deducted from the final valuation is the total amount withdrawn by Vivencio Mateo, Eugenio Mateo, Joji Mateo Morales and Myrna Mateo Santos from the cash and Agrarian Reform Bonds deposited in their names by the Land Bank of the Philippines. The remaining balance shall be subject to annual legal interest at the rate of twelve percent (12%) from the time of taking until June 30, 2013, and six percent (6%) from July 1, 2013 until full payment. The trial court is directed to **SUBMIT** a report on its findings and recommendations within **SIX (6) MONTHS** from notice hereof.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Bersamin, Jardeleza,* and *Caguioa,*[*] *JJ.,* concur.

SECOND DIVISION

[G.R. No. 187094. February 15, 2017]

LIZA L. MAZA, SATURNINO C. OCAMPO, TEODORO A. CASIÑO, AND RAFAEL V. MARIANO, *petitioners, vs.* **HON. EVELYN A. TURLA, in her capacity as Presiding Judge of Regional Trial Court of Palayan City, Branch 40, FLORO F. FLORENDO, in his capacity as Officer-in-Charge Provincial Prosecutor, ANTONIO LL. LAPUS, JR., EDISON V. RAFANAN, and EDDIE**

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[*] Designated Fifth Member of the Third Division per Special Order No. 2417 dated January 4, 2017.

C. GUTIERREZ, in their capacity as members of the panel of investigating prosecutors, and RAUL M. GONZALEZ, in his capacity as Secretary of Justice, *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; DOCTRINE OF HIERARCHY OF COURTS; THE SUPREME COURT HAS FULL DISCRETIONARY POWER TO TAKE COGNIZANCE AND ASSUME JURISDICTION OVER SPECIAL CIVIL ACTIONS FOR *CERTIORARI* FILED DIRECTLY WITH IT FOR EXCEPTIONALLY COMPELLING REASONS OR IF WARRANTED BY THE NATURE OF THE ISSUES CLEARLY AND SPECIFICALLY RAISED IN THE PETITION; CASE AT BAR.— This Court thoroughly explained the doctrine of hierarchy of courts in *The Diocese of Bacolod v. Commission on Elections*: The doctrine that requires respect for the hierarchy of courts was created by this court to ensure that every level of the judiciary performs its designated roles in an effective and efficient manner. x x x Thus, the doctrine of hierarchy of courts is not an iron-clad rule. This court has "full discretionary power to take cognizance and assume jurisdiction [over] special civil actions for *certiorari* ... filed directly with it for exceptionally compelling reasons or if warranted by the nature of the issues clearly and specifically raised in the petition." As correctly pointed out by petitioners, we have provided exceptions to this doctrine: *First*, a direct resort to this court is allowed when there are genuine issues of constitutionality that must be addressed at the most immediate time. x x x A *second* exception is when the issues involved are of transcendental importance. x x x *Third*, cases of first impression warrant a direct resort to this court. x x x *Fourth*, the constitutional issues raised are better decided by this court. x x x *Fifth*,... Exigency in certain situations would qualify as an exception for direct resort to this court. *Sixth*, the filed petition reviews the act of a constitutional organ... *Seventh*, [there is] no other plain, speedy, and adequate remedy in the ordinary course of law[.] x x x *Eighth*, the petition includes questions that are "dictated by public welfare and the advancement of public policy, or demanded by the broader interest of justice,

or the *orders complained of were found to be patent nullities*, or the appeal was considered as clearly an inappropriate remedy." x x x In this case, the presence of compelling circumstances warrants the exercise of this Court's jurisdiction. At the time the petition was filed, petitioners were incumbent party-list representatives. The possibility of their arrest and incarceration should the assailed Orders be affirmed, would affect their representation of their constituents in Congress. Although the circumstances mentioned are no longer present, the merits of this case necessitate this Court's exercise of jurisdiction.

2. ID.; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; UPON FILING OF THE INFORMATION, THE TRIAL JUDGE HAS THREE OPTIONS TO DO, WHICH DOES NOT INCLUDE A REMAND OF THE CASE BACK TO THE PANEL OF PROSECUTORS FOR ANOTHER PRELIMINARY INVESTIGATION; CASE AT BAR.— A plain reading of Rule 112, Section 5 (a) of the Revised Rules of Criminal Procedure shows that upon filing of the information, the trial court judge has the following options: (1) dismiss the case if the evidence on record clearly fails to establish probable cause; (2) issue a warrant of arrest or a commitment order if findings show probable cause; or (3) order the prosecutor to present additional evidence if there is doubt on the existence of probable cause. x x x Regardless of Judge Turla's assessment on the conduct of the preliminary investigation, it was incumbent upon her to determine the existence of probable cause against the accused after a personal evaluation of the prosecutors' report and the supporting documents. She could even disregard the report if she found it unsatisfactory, and/or require the prosecutors to submit additional evidence. There was no option for her to remand the case back to the panel of prosecutors for another preliminary investigation. In doing so, she acted without any legal basis.

3. ID.; ID.; ID.; DETERMINATION OF PROBABLE CAUSE; WHEN THE JUDGE HELD THAT THE PROSECUTORS' CONDUCT OF PRELIMINARY INVESTIGATION WAS "INCOMPLETE" AND THAT THEIR DETERMINATION OF PROBABLE CAUSE "HAS NOT MEASURED UP TO THE STANDARD," SHE ENCROACHED UPON THE EXCLUSIVE FUNCTION OF THE PROSECUTORS;

RATIONALE.— The trial court judge's determination of probable cause is based on her or his personal evaluation of the prosecutor's resolution and its supporting evidence. The determination of probable cause by the trial court judge is a judicial function, whereas the determination of probable cause by the prosecutors is an executive function. x x x Thus, when Judge Turla held that the prosecutors' conduct of preliminary investigation was "incomplete" and that their determination of probable cause "has not measured up to [the] standard," she encroached upon the exclusive function of the prosecutors. Instead of determining probable cause, she ruled on the propriety of the preliminary investigation.

4. ID.; ID.; ID.; THE ADMISSIBILITY OF EVIDENCE CANNOT BE RULED UPON IN A PRELIMINARY INVESTIGATION.— The admissibility of evidence cannot be ruled upon in a preliminary investigation. x x x To emphasize, "a preliminary investigation is merely preparatory to a trial[;] [i]t is not a trial on the merits." Since "it cannot be expected that upon the filing of the information in court the prosecutor would have already presented all the evidence necessary to secure a conviction of the accused," the admissibility or inadmissibility of evidence cannot be ruled upon in a preliminary investigation.

APPEARANCES OF COUNSEL

Public Interest Law Center for petitioners.
Office of the Solicitor General for public respondents.

D E C I S I O N

LEONEN, *J.*:

Upon filing of an information in court, trial court judges must determine the existence or non-existence of probable cause based on their personal evaluation of the prosecutor's report and its supporting documents. They may dismiss the case, issue an arrest warrant, or require the submission of additional evidence. However, they cannot remand the case for another conduct of preliminary investigation on the ground that the earlier preliminary investigation was improperly conducted.

This is a Petition for Certiorari and Prohibition[1] with a Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction. Petitioners seek to have the Orders[2] dated July 18, 2008[3] and December 2, 2008[4] of the Regional Trial Court, Palayan City, Branch 40 in Criminal Case Nos. 1879-P and 1880-P nullified and set aside and the criminal cases against them dismissed.

Petitioners Liza L. Maza, Saturnino C. Ocampo, Teodoro A. Casiño, and Rafael V. Mariano (petitioners) are former members of the House of Representatives. Liza represented Gabriela Women's Party (Gabriela), Saturnino and Teodoro represented Bayan Muna Party-List (Bayan Muna), while Rafael represented Anakpawis Party-List (Anakpawis).[5]

In three letters[6] all dated December 14, 2006, Police Senior Inspector Arnold M. Palomo (Inspector Palomo), Deputy Provincial Chief of the Nueva Ecija Criminal Investigation and Detection Team, referred to the Provincial Prosecutor of Cabanatuan City, Nueva Ecija, three (3) cases of murder against petitioners and 15 other persons.[7]

Inspector Palomo named 19 individuals, including Petitioners, who were allegedly responsible for the death of Carlito Bayudang, Jimmy Peralta, and Danilo Felipe.[8] His findings show that the named individuals conspired, planned, and implemented the killing of the supporters of AKBAYAN Party List (AKBAYAN),

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[1] *Rollo*, pp. 3-63. The Petition was filed under Rule 65 of the 1997 Rules of Court.

[2] The Orders were penned by Presiding Judge Evelyn A. Atienza-Turla of Branch 40, Regional Trial Court, Palayan City.

[3] *Rollo*, pp. 68-84.

[4] *Id*. at 85-87.

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

[6] *Id*. at 88-91, 131-134, and 166-170.

[7] *Id*. at 88-89, 131-132, and 166-167.

[8] *Id*. at 88, 132, and 167.

a rival of Bayan Muna and Gabriela.[9] Carlito Bayudang and Danilo Felipe were AKBAYAN community organizers,[10] whereas Jimmy Peralta was mistaken for a certain Ricardo Peralta, an AKBAYAN supporter.[11]

Inspector Palomo recommended that a preliminary investigation be conducted and that an Information for each count of murder be filed against the 19 individuals.[12]

On February 2, 2007, Investigating Prosecutor Antonio Ll. Lapus, Jr. issued a subpoena[13] requiring petitioners to testify at the hearings scheduled on February 16 and 23, 2007.

On March 9, 2007, petitioners filed a Special Appearance with Motion to Quash Complaint/Subpoena and to Expu[ng]e Supporting Affidavits.[14] They argue that the Provincial Prosecutor had no jurisdiction to conduct the preliminary investigation since no valid complaint was filed against them.[15] They also claimed that, "the preliminary investigation conducted was highly irregular, and that the subpoena issued against [them] was patently defective amounting to a denial of their rights to due process."[16]

On July 13, 2007, the panel of investigating prosecutors, composed of Antonio Ll. Lapus, Jr., Eddie C. Gutierrez, and Edison V. Rafanan, denied petitioners' motion and ordered the submission of their counter-affidavits.[17]

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[9] *Id*. at 91, 133-134, and 169.

[10] *Id*. at 90 and 168.

[11] *Id*. at 134.

[12] *Id*. at 91, 134, and 170.

[13] *Id*. at 206.

[14] *Id*. at 207-217.

[15] *Id*. at 9, Petition.

[16] *Id*.

[17] *Id*. at 218-219, panel of investigating prosecutor's Resolution.

Petitioners filed their respective counter-affidavits.[18] They also filed a (1) Motion to conduct Clarificatory Hearing and to Allow [them] to Submit Written Memorandum,[19] and a (2) Joint Supplemental Counter-Affidavit on Common Legal Grounds in Support of their Prayer to Dismiss the Case,[20] both dated August 21, 2007.

On October 23, 2007, the panel issued an Order[21] again denying the motion. Petitioners moved for reconsideration,[22] which was denied by the panel in the Resolution[23] dated November 14, 2007.

The panel of prosecutors issued on April 11, 2008 a Joint Resolution,[24] reviewed and approved by Officer-in-charge Provincial Prosecutor Floro F. Florendo (Prosecutor Florendo). The panel found probable cause for murder in the killing of Carlito Bayudang and Jimmy Peralta, and for kidnapping with murder in the killing of Danilo Felipe, against the nineteen 19 suspects. However, the panel considered one of the suspects, Julie Flores Sinohin, as a state witness. The panel recommended that the corresponding Informations be filed against the remaining suspects.[25] On the same day, two (2) Informations[26] for murder were filed before the Regional Trial Court of Palayan City, Branch 40 in Nueva Ecija, (Palayan cases) and an Information[27]

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[18] *Id*. at 220-289.

[19] *Id*. at 290-295.

[20] *Id*. at 297-303.

[21] *Id*. at 304.

[22] *Id*. at 305-313.

[23] *Id*. at 317.

[24] *Id*. at 328-338.

[25] *Id*. at 337.

[26] *Id*. at 339-344. The murder cases were docketed as Criminal Case No. 1879-P and Criminal Case No. 1880-P.

[27] *Id*. at 345-347. The kidnapping with murder case was docketed as Criminal Case No. 2613-G.

for kidnapping with murder was filed in Guimba, Nueva Ecija (Guimba case).

Petitioners filed a Motion for Judicial Determination of Probable Cause with Prayer to Dismiss the Case Outright on the Guimba case. This was opposed by the panel of investigating prosecutors and Prosecutor Florendo.[28] After the hearing on the motion and submission of the parties' memoranda, Judge Napoleon R. Sta. Romana issued an Order[29] dated August 5, 2008, dismissing the case for lack of probable cause.[30]

On April 21, 2008, petitioners also filed a Motion for Judicial Determination of Probable Cause with Prayer to Dismiss the Case Outright[31] on the Palayan cases. They requested the court to move forward with the presented evidence and decide if there were probable cause and, consequently, dismiss the case outright if there were none.[32]

The panel of investigating prosecutors and Prosecutor Florendo opposed the motion.[33] Petitioners filed their Reply[34] on May 12, 2008.

On April 25, 2008 and May 12, 2008, the motion was heard by the Regional Trial Court of Palayan City, Branch 40.[35] Thereafter, both parties submitted their respective memoranda.[36]

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[28] *Id*. at 485, Regional Trial Court Order dated August 5, 2008.

[29] *Id*. at 484-494.

[30] *Id*. at 486.

[31] *Id*. at 348-402.

[32] *Id*. at 69, Regional Trial Court Order dated July 18, 2008.

[33] *Id*. at 403-414.

[34] *Id*. at 415-427.

[35] *Id*. at 68, Regional Trial Court Order dated July 18, 2008.

[36] *Id*. at 428-471, Petitioners' Memorandum, 473-479, People's Memorandum, and 480-483, Petitioners' Supplemental Memorandum.

On July 18, 2008, Presiding Judge Evelyn A. Atienza-Turla (Judge Turla) issued an Order[37] on the Palayan cases. Judge Turla held that "the proper procedure in the conduct of the preliminary investigation was not followed in [the Palayan] cases"[38] due to the following:

First, the records show that the supposed principal witnesses for the prosecution were not presented before the panel of prosecutors, much less subscribed their supposed affidavits before them.

The marginal note of one of the panel member, Asst. Prov'l Pros. Eddie Gutierrez said it all, thus: **"I concur with the conclusion but I would have been more than satisfied if witnesses for the prosecution were presented."**

Second, the charge against [petitioners] is Murder (two counts), a non-bailable offense. The gravity of the offense alone, not to mention the fact that three of the movants are incumbent Party-List Representatives while the other one was a former Party-List Representative himself, whose imprisonment during the pendency of the case would deprive their constituents of their duly-elected representatives, should have merited a deeper and more thorough preliminary investigation.

The panel of prosecutors, however, did nothing of the sort and instead swallowed hook, line and sinker the allegations made by Isabelita Bayudang, Cleotilde Peralta[,] and Alvaro Juliano, and principally hinges on the affidavit of Julie Sinohin, a supposed "co-conspirator" of the movants, which were all not "subscribed or sworn" before the said panel.

Given the foregoing circumstances, this Court for all practical purposes will do an even worse job than what the panel of prosecutors did, by accepting in its entirety the findings of the said panel despite its obvious flaws. This practice should not be condoned.

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Third, [petitioners'] filing of a motion for reconsideration of the resolution of the preliminary investigation conducted by the panel of prosecutors is allowed by the rules. . .

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[37] *Id.* at 68-84.

[38] *Id.* at 80.

. . . . . .

Strictly speaking, the filing of a "Motion for Reconsideration" is an integral part of the preliminary investigation proper. There is no dispute that the two (2) Informations for murder were filed *without* first affording the movants their right to file a motion for reconsideration. The denial thereof is tantamount to a denial of the right itself to a preliminary investigation. This fact alone already renders preliminary investigation conducted in this case *incomplete*. The inevitable conclusion is that the movants were not only effectively denied the opportunity to file a "Motion for Reconsideration" of the "Joint Resolution" dated April 11, 2008 issued by the panel of prosecutors assigned in these cases, but were also **deprived of their right to a full preliminary investigation preparatory to the filing of the Information against them**. (Emphasis in the original, citation omitted).[39]

Judge Turla further held:

In this case, the undue haste in filing of the information against movants cannot be ignored. From the gathering of evidence until the termination of the preliminary investigation, it appears that the state prosecutors were overly-eager to file the case and to secure a warrant of arrest of [petitioners] without bail and their consequent detention. There can be no gainsaying the fact that the task of ridding society of criminals and misfits and sending them to jail in the hope that they will in the future reform and be productive members of the community rests both on the judiciousness of judges and the prudence of the prosecutors. There is however, a standard in the determination of the existence of probable cause. The determination has not measured up to that standard in this case.[40]

Judge Turla added that her order of remanding the Palayan cases back to the provincial prosecutors "for a complete preliminary investigation is not a manifestation of ignorance of law or a willful abdication of a duty imposed by law . . . but

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[39] *Id.* at 80-81.

[40] *Id.* at 82.

due to the peculiar circumstances obtaining in [the cases] and not just 'passing the buck' to the panel of prosecutors[.]"[41]

The dispositive portion reads:

WHEREFORE, PREMISES CONSIDERED, this Court hereby resolves to:

1.) **SET ASIDE** the "**Joint Resolution**" of the Nueva Ecija Provincial Prosecutor's Office dated **April 11, 2008** finding probable cause for two (2) counts of Murder against the herein movants; and,

2.) **ORDER** the Office of the Provincial Prosecutor of Nueva Ecija to conduct the preliminary investigation on the incidents subject matter hereof in accordance with the mandates of Rule 112 of the Rules of Court.

SO ORDERED.[42] (Emphasis in the original)

Petitioners moved for partial reconsideration[43] of the July 18, 2008 Order, praying for the outright dismissal of the Palayan cases against them for lack of probable cause.[44] The Motion was denied by Judge Turla in an Order dated December 2, 2008.[45]

Hence, on March 27, 2009, petitioners filed this Petition for Certiorari and Prohibition with Prayer for Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction against Judge Evelyn A. Turla, Prosecutors Floro F. Florendo, Antonio Ll. Lapus, Jr., Edison V. Rafanan, and Eddie C. Gutierrez, and Justice Secretary Raul M. Gonzalez (respondents).[46]

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[41] *Id*. at 83-84.

[42] *Id*. at 84.

[43] *Id*. at 495-511.

[44] *Id*. at 509.

[45] *Id*. at 87.

[46] *Id*. at 3.

Petitioners pray that the July 18, 2008 and December 2, 2008 Orders of Judge Turla be set aside and annulled and that the murder cases against them be dismissed for failure to show probable cause. They also ask for the issuance of a temporary restraining order and/or writ of preliminary injunction to enjoin Judge Turla from remanding the cases to the provincial prosecutors, and "the respondent prosecutors from conducting further preliminary investigation [on] these cases."[47]

Petitioners claim that they "have no plain, speedy[,] and adequate remedy in the ordinary course of law[.]"[48] They also contend that "[r]espondents' actions will certainly cause grave and irreparable damage to [their] constitutional rights unless injunctive relief is afforded them through the issuance of a writ of preliminary injunction and/or temporary restraining order[.]"[49]

They allege that Judge Turla acted with grave abuse of discretion amounting to lack or excess of jurisdiction,

[I] WHEN SHE SHIRKED FROM HER CONSTITUTIONAL DUTY TO DETERMINE PROBABLE CAUSE AGAINST PETITIONERS AND INSTEAD REMANDED THE CASES TO THE OFFICE OF THE PROVINCIAL PROSECUTOR DESPITE LACK OF EVIDENCE.

[II] WHEN SHE DID NOT DISMISS THE CASES DESPITE THE LACK OF EVIDENCE TO ESTABLISH PROBABLE CAUSE AGAINST PETITIONERS.

[III] WHEN SHE REFUSED TO RULE ON THE ISSUE OF FAILURE OF THE PROSECUTION EVIDENCE TO ESTABLISH THAT PETITIONERS ARE PRINCIPALS BY INDUCEMENT.

[IV] FOR IGNORING THE ISSUE OF INADMISSIBILITY OF PROSECUTION EVIDENCE ON THE GROUND OF VIOLATION OF THE *RES INTER ALIOS ACTA* RULE.[50]

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[47] *Id*. at 59.

[48] *Id*. at 5.

[49] *Id*.

[50] *Id*. at 14.

Petitioners claim that Judge Turla's order of remanding the case back to the prosecutors had no basis in law, jurisprudence, or the rules. Since she had already evaluated the evidence submitted by the prosecutors along with the Informations, she should have determined the existence of probable cause for the issuance of arrest warrants or the dismissal of the Palayan cases.[51]

Petitioners assert that under the Rules of Court, in case of doubt on the existence of probable cause, Judge Turla could "order the prosecutor to present additional evidence [or] set the case for hearing so she could make clarifications on the factual issues of the case."[52]

Moreover, petitioners argue that the setting aside of the Joint Resolution establishes the non-existence of probable cause against them. Thus, the cases against them should have been dismissed.[53]

Petitioners aver that the documents submitted by the prosecution are neither relevant nor admissible evidence.[54] The documents "do not establish the complicity of the petitioner party-list representatives to the death of the supposed victims."[55]

On May 29, 2009, respondents filed their Comment[56] through the Office of the Solicitor General, raising the following arguments:

I

THE PETITION SHOULD BE DISMISSED FOR VIOLATING THE HIERARCHY OF COURTS.

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[51] *Id*. at 18-19.

[52] *Id*. at 19.

[53] *Id*. at 19-20.

[54] *Id*. at 22-47.

[55] *Id*. at 47.

[56] *Id*. at 513-534.

II

RESPONDENT JUDGE'S ACTION IN REMANDING THE CASES FOR PRELIMINARY INVESTIGATION IS A RECOGNITION OF THE EXCLUSIVE AUTHORITY OF THE PUBLIC PROSECUTORS TO DETERMINE PROBABLE CAUSE FOR PURPOSES OF FILING APPROPRIATE CRIMINAL INFORMATION.

III.

THE PROSECUTION RIGHTLY FOUND PROBABLE CAUSE TO WARRANT THE FILING OF THE INDICTMENTS.

IV.

A FINDING OF PROBABLE CAUSE IS NOT A PRONOUNCEMENT OF GUILT BUT MERELY BINDS A SUSPECT TO STAND TRIAL.

V.

THE ISSUE OF ADMISSIBILITY OR INADMISSIBILITY OF EVIDENCE IS PROPERLY ADDRESSED DURING THE TRIAL ON THE MERITS OF THE CASE AND NOT DURING THE EARLY STAGE OF PRELIMINARY INVESTIGATION.[57]

Respondents claim that the petition before this Court violates the principle of hierarchy of courts. They contend that petitioners should have filed their petition before the Court of Appeals since it also exercises original jurisdiction over petitions for certiorari and prohibition. According to respondents, petitioners failed to justify a direct resort to this Court.[58]

Respondents also allege that respondent Secretary Gonzalez was wrongly impleaded. There was no showing that he exercised judicial or quasi-judicial functions, for which certiorari may be issued.[59]

On the allegation that Judge Turla reneged on her constitutional duty to determine probable cause, respondents counter that she

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[57] *Id*. at 518.

[58] *Id*. at 519.

[59] *Id*.

did not abandon her mandate.[60] Her act of remanding the cases to the public prosecutors "is a confirmation of her observance of the well-settled principle that such determination of probable cause is an exclusive executive function of the prosecutorial arm of our government."[61]

Furthermore, respondent prosecutors' finding of probable cause is correct since evidence against petitioners show that more likely than not, they participated in the murder of the alleged victims.[62] The prosecutors' finding is not a final declaration of their guilt. It merely engages them to trial.[63]

Finally, respondents argue that the "issue of admissibility or inadmissibility of evidence is properly addressed during the trial on the merits of the case and not during the early stage of preliminary investigation."[64]

Petitioners filed their Reply[65] on September 24, 2009. Aside from reiterating their allegations and arguments in the petition, they added that direct invocation of this Court's original jurisdiction was allowed as their petition involved legal questions.[66] Moreover, the inclusion of Secretary Gonzalez as nominal party-respondent was allowed under Rule 65, Section 5[67] of the Rules of Court.[68]

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[60] *Id*. at 520-523.

[61] *Id*. at 523.

[62] *Id*. at 523-527.

[63] *Id*. at 527.

[64] *Id*. at 527-530.

[65] *Id*. at 549-565.

[66] *Id*. at 549-553.

[67] RULE 65. *Certiorari*, Prohibition and *Mandamus*

. . . . . .

Section 5. Respondents and costs in certain cases. — When the petition filed relates to the acts or omissions of a judge, court, quasi-judicial agency, tribunal, corporation, board, officer or person, the petitioner shall join, as

We resolve the following issues:

First, whether petitioners violated the principle of hierarchy of courts in bringing their petition directly before this Court;

Second, whether respondent Judge Turla gravely abused her discretion when she remanded the Palayan cases to the Provincial Prosecutor for the conduct of preliminary investigation; and

Finally, whether admissibility of evidence can be ruled upon in preliminary investigation.

I

This petition is an exception to the principle of hierarchy of courts.

This Court thoroughly explained the doctrine of hierarchy of courts in *The Diocese of Bacolod v. Commission on Elections*:[69]

> The doctrine that requires respect for the hierarchy of courts was created by this court to ensure that every level of the judiciary performs its designated roles in an effective and efficient manner. Trial courts

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private respondent or respondents with such public respondent or respondents, the person or persons interested in sustaining the proceedings in the court; and it shall be the duty of such private respondents to appear and defend, both in his or their own behalf and in behalf of the public respondent or respondents affected by the proceedings, and the costs awarded in such proceedings in favor of the petitioner shall be against the private respondents only, and not against the judge, court, quasi-judicial agency, tribunal, corporation, board, officer or person impleaded as public respondent or respondents.

Unless otherwise specifically directed by the court where the petition is pending, the public respondents shall not appear in or file an answer or comment to the petition or any pleading therein. If the case is elevated to a higher court by either party, the public respondents shall be included therein as nominal parties. However, unless otherwise specifically directed by the court, they shall not appear or participate in the proceedings therein.

[68] *Rollo*, p. 553, Reply.

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

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

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

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

In other words, the Supreme Court's role to interpret the Constitution and act in order to protect constitutional rights when these become exigent should not be emasculated by the doctrine in respect of the hierarchy of courts. That has never been the purpose of such doctrine.

Thus, the doctrine of hierarchy of courts is not an iron-clad rule. This court has "full discretionary power to take cognizance and assume jurisdiction [over] special civil actions for *certiorari* . . . filed directly with it for exceptionally compelling reasons or if warranted by the nature of the issues clearly and specifically raised in the petition." As correctly pointed out by petitioners, we have provided exceptions to this doctrine:

First, a direct resort to this court is allowed when there are genuine issues of constitutionality that must be addressed at the most immediate time. A direct resort to this court includes availing of the remedies of *certiorari* and prohibition to assail the constitutionality of actions of both legislative and executive branches of the government.

. . . . . .

A *second* exception is when the issues involved are of transcendental importance. In these cases, the imminence and clarity of the threat to fundamental constitutional rights outweigh the necessity for prudence. The doctrine relating to constitutional issues of transcendental importance prevents courts from the paralysis of procedural niceties when clearly faced with the need for substantial protection.

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Third, cases of first impression warrant a direct resort to this court. In cases of first impression, no jurisprudence yet exists that will guide the lower courts on this matter. In *Government of the United States v. Purganan*, this court took cognizance of the case as a matter of first impression that may guide the lower courts:

> In the interest of justice and to settle once and for all the important issue of bail in extradition proceedings, we deem it best to take cognizance of the present case. Such proceedings constitute a matter of first impression over which there is, as yet, no local jurisprudence to guide lower courts.

. . . . . .

Fourth, the constitutional issues raised are better decided by this court. In *Drilon v. Lim*, this court held that:

> . . it will be prudent for such courts, if only out of a becoming modesty, to defer to the higher judgment of this Court in the consideration of its validity, which is better determined after a thorough deliberation by a collegiate body and with the concurrence of the majority of those who participated in its discussion.

. . . . . .

Fifth, . . . Exigency in certain situations would qualify as an exception for direct resort to this court.

Sixth, the filed petition reviews the act of a constitutional organ. . .

. . . . . .

Seventh, [there is] no other plain, speedy, and adequate remedy in the ordinary course of law[.]

. . . The lack of other sufficient remedies in the course of law alone is sufficient ground to allow direct resort to this court.

Eighth, the petition includes questions that are "dictated by public welfare and the advancement of public policy, or demanded by the broader interest of justice, or the *orders complained of were found to be patent nullities*, or the appeal was considered as clearly an inappropriate remedy." In the past, questions similar to these which this court ruled on immediately despite the doctrine of hierarchy of courts included citizens' right to bear arms, government contracts involving modernization of voters' registration lists, and the status and existence of a public office.

. . . . . .

It is not, however, necessary that all of these exceptions must occur at the same time to justify a direct resort to this court.[70] (Emphasis supplied, citations omitted)

In *First United Constructors Corp. v. Poro Point Management Corp. (PPMC), et al.*,[71] this Court reiterated that it "will not entertain a direct invocation of its jurisdiction unless the redress desired cannot be obtained in the appropriate lower courts, and exceptional and compelling circumstances justify the resort to the extraordinary remedy of a writ of certiorari."[72]

In this case, the presence of compelling circumstances warrants the exercise of this Court's jurisdiction. At the time the petition was filed, petitioners were incumbent party-list representatives. The possibility of their arrest and incarceration should the assailed

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[70] *Id*. at 43-50.

[71] 596 Phil. 334 (2009) [Per *J*. Nachura, Third Division].

[72] *Id*. at 342.

Orders be affirmed, would affect their representation of their constituents in Congress.

Although the circumstances mentioned are no longer present, the merits of this case necessitate this Court's exercise of jurisdiction.

II

The remand of the criminal cases to the Provincial Prosecutor for the conduct of another preliminary investigation is improper.

Petitioners assert that the documents submitted along with the Informations are sufficient for Judge Turla to rule on the existence of probable cause. If she finds the evidence inadequate, she may order the prosecutors to present additional evidence. Thus, according to petitioners, Judge Turla's action in remanding the case to the prosecutors for further preliminary investigation lacks legal basis.

Petitioners' contention has merit.

Rule 112, Section 5(a) of the Revised Rules of Criminal Procedure provides:

RULE 112

PRELIMINARY INVESTIGATION

. . . . . .

SEC. 5. 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 when the complaint or information was filed pursuant to Section 6 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 or information.

A plain reading of the provision shows that upon filing of the information, the trial court judge has the following options: (1) dismiss the case if the evidence on record clearly fails to establish probable cause; (2) issue a warrant of arrest or a commitment order if findings show probable cause; or (3) order the prosecutor to present additional evidence if there is doubt on the existence of probable cause.[73]

The trial court judge's determination of probable cause is based on her or his personal evaluation of the prosecutor's resolution and its supporting evidence. The determination of probable cause by the trial court judge is a judicial function, whereas the determination of probable cause by the prosecutors is an executive function.[74] This Court clarified this concept in *Napoles v. De Lima*:[75]

During preliminary investigation, the prosecutor determines the existence of probable cause for filing an information in court or dismissing the criminal complaint. As worded in the Rules of Court, the prosecutor determines during preliminary investigation whether "there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial." At this stage, the determination of probable cause is an executive function. Absent grave abuse of discretion, this determination cannot be interfered with by the courts. This is consistent with the doctrine of separation of powers.

On the other hand, if done to issue an arrest warrant, the determination of probable cause is a judicial function. No less than the Constitution commands that "no . . . 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

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[73] *See Ong v. Genio*, 623 Phil. 835, 843 (2009) [Per *J*. Nachura, Third Division].

[74] *Napoles v. De Lima*, G.R. No. 213529, July 13, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/july2016/213529.pdf> 9–10 [Per *J*. Leonen, Second Division].

[75] G.R. No. 213529, July 13, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/july2016/213529.pdf> [Per *J*. Leonen, Second Division].

the witnesses he may produce[.]" This requirement of personal evaluation by the judge is reaffirmed in Rule 112, Section 5 (a) of the Rules on Criminal Procedure[.]

. . . . . .

Therefore, the determination of probable cause for filing an information in court and that for issuance of an arrest warrant are different. Once the information is filed in court, the trial court acquires jurisdiction and "any disposition of the case as to its dismissal or the conviction or acquittal of the accused rests in the sound discretion of the Court."[76] (Citations omitted)

In *De Lima v. Reyes*,[77] this Court further held:

The courts do not interfere with the prosecutor's conduct of a preliminary investigation. The prosecutor's determination of probable cause is solely within his or her discretion. Prosecutors are given a wide latitude of discretion to determine whether an information should be filed in court or whether the complaint should be dismissed.[78] (Emphasis supplied, citation omitted)

Thus, when Judge Turla held that the prosecutors' conduct of preliminary investigation was "incomplete"[79] and that their determination of probable cause "has not measured up to [the] standard,"[80] she encroached upon the exclusive function of the prosecutors. Instead of determining probable cause, she ruled on the propriety of the preliminary investigation.

In *Leviste v. Hon. Alameda, et al.*:[81]

[T]he task of the presiding judge when the Information is filed with the court is first and foremost to determine the existence or non-existence of probable cause for the arrest of the accused.

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

[77] G.R. No. 209330, January 11, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/january2016/209330.pdf> [Per *J*. Leonen, Second Division].

[78] *Id*. at 16.

[79] *Rollo*, p. 81, Regional Trial Court Order dated July 18, 2008.

[80] *Id*. at 82.

[81] 640 Phil. 620 (2009) [Per *J*. Carpio Morales, Third Division].

What the Constitution underscores is the exclusive and personal responsibility of the issuing judge to satisfy himself of the existence of probable cause. But the judge is not required to personally examine the complainant and his witnesses. Following established doctrine and procedure, he shall (1) personally evaluate the report and the supporting documents submitted by the prosecutor regarding the existence of probable cause, and on the basis thereof, he may already make a personal determination of the existence of probable cause; and (2) if he is not satisfied that probable cause exists, he may disregard the prosecutor's report and require the submission of supporting affidavits of witnesses to aid him in arriving at a conclusion as to the existence of probable cause.[82] (Citations omitted)

Regardless of Judge Turla's assessment on the conduct of the preliminary investigation, it was incumbent upon her to determine the existence of probable cause against the accused after a personal evaluation of the prosecutors' report and the supporting documents. She could even disregard the report if she found it unsatisfactory, and/or require the prosecutors to submit additional evidence. There was no option for her to remand the case back to the panel of prosecutors for another preliminary investigation. In doing so, she acted without any legal basis.

III

The admissibility of evidence cannot be ruled upon in a preliminary investigation.

In a preliminary investigation,

…the public prosecutors do not decide whether there is evidence beyond reasonable doubt of the guilt of the person charged; they merely determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and that respondent is probably guilty thereof, and should be held for trial.[83]

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[82] *Id.* at 649.

[83] *People v. Castillo*, 607 Phil. 754, 767 (2009) [Per *J.* Quisumbing, Second Division].

To emphasize, "a preliminary investigation is merely preparatory to a trial[;] [i]t is not a trial on the merits."[84] Since "it cannot be expected that upon the filing of the information in court the prosecutor would have already presented all the evidence necessary to secure a conviction of the accused,"[85] the admissibility or inadmissibility of evidence cannot be ruled upon in a preliminary investigation.

WHEREFORE, the Petition is **PARTIALLY GRANTED**. The assailed Orders dated July 18, 2008 and December 2, 2008 of the Regional Trial Court, Palayan City, Branch 40 in Criminal Case Nos. 1879-P and 1880-P are **SET ASIDE**. The case is remanded to the Regional Trial Court, Palayan City, Branch 40 for further proceedings with due and deliberate dispatch in accordance with this Decision.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 187273. February 15, 2017]

ROMEO F. ARA AND WILLIAM A. GARCIA, *petitioners, vs.* **DRA. FELY S. PIZARRO AND HENRY ROSSI,** *respondents.*

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[84] *De Lima v. Reyes*, G.R. No. 209330, January 11, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/january2016/209330.pdf> 17 [Per *J.* Leonen, Second Division].

[85] *De Los Santos-Dio v. Court of Appeals*, 712 Phil. 288, 309 (2013) [Per *J.* Perlas-Bernabe, Second Division].

SYLLABUS

1. CIVIL LAW; FAMILY CODE; PROOF OF FILIATION; A PERSON WHO SEEKS TO ESTABLISH ILLEGITIMATE FILIATION AFTER THE DEATH OF A PUTATIVE PARENT MUST DO SO VIA A RECORD OF BIRTH APPEARING IN THE CIVIL REGISTER OR A FINAL JUDGMENT, OR AN ADMISSION OF LEGITIMATE FILIATION; CASE AT BAR.— On establishing the filiation of illegitimate children, the Family Code provides: Article 175. Illegitimate children may establish their illegitimate filiation in the same way and on the same evidence as legitimate children. x x x Thus, a person who seeks to establish illegitimate filiation after the death of a putative parent must do so via a record of birth appearing in the civil register or a final judgment, or an admission of legitimate filiation. x x x Even without a record of birth appearing in the civil register or a final judgment, filiation may still be established after the death of a putative parent through an admission of filiation in a public document or a private handwritten instrument, signed by the parent concerned. However, petitioners did not present in evidence any admissions of filiation. An admission is an act, declaration, or omission of a party on a relevant fact, which may be used in evidence against him. x x x An alleged parent is the best person to affirm or deny a putative descendant's filiation. Absent a record of birth appearing in a civil register or a final judgment, an express admission of filiation in a public document, or a handwritten instrument signed by the parent concerned, a deceased person will have no opportunity to contest a claim of filiation. In truth, it is the mother and in some cases, the father, who witnesses the actual birth of their children. Descendants normally only come to know of their parents through nurture and family lore. When they are born, they do not have the consciousness required to be able to claim personal knowledge of their parents. It thus makes sense for the parents to be present when evidence under the second paragraph of Article 172 is presented. The limitation that an action to prove filiation as an illegitimate child be brought within the lifetime of an alleged parent acknowledges that there may be other persons whose rights should be protected from spurious claims. This includes other children, legitimate and illegitimate, whose statuses are supported by strong evidence of a categorical nature.

2. ID.; ID.; ID.; BIRTH CERTIFICATES OFFER *PRIMA FACIE* EVIDENCE OF FILIATION, HOWEVER, THE CIRCUMSTANCES SURROUNDING THE DELAYED REGISTRATION MAY PREVENT THE COURT FROM ACCORDING IT THE SAME WEIGHT AS ANY OTHER BIRTH CERTIFICATE; CASE AT BAR.— True, birth certificates offer *prima facie* evidence of filiation. To overthrow the presumption of truth contained in a birth certificate, a high degree of proof is needed. However, the circumstances surrounding the delayed registration prevent us from according it the same weight as any other birth certificate. There is a reason why birth certificates are accorded such high evidentiary value. x x x Further, the birth must be registered within 30 days from the time of birth. Thus, generally, the rules require that facts of the report be certified by an attendant at birth, within 30 days from birth. The attendant is not only an eyewitness to the event, but also presumably would have no reason to lie on the matter. The immediacy of the reporting, combined with the participation of disinterested attendants at birth, or both parents, tend to ensure that the report is a factual reporting of birth. x x x National Statistics Office Administrative Order No. 1-93 also contemplates that reports of birth may be made beyond the 30-day period: x x x National Statistics Office Administrative Order No. 1-93 also contemplates that reports of birth may be made beyond the 30-day period: x x x A delayed registration of birth, made after the death of the putative parent, is tenuous proof of filiation. Thus, we are unable to accord petitioner Garcia's delayed registration of birth the same evidentiary weight as regular birth certificates.

APPEARANCES OF COUNSEL

Emelie P. Bangot, Jr. for petitioner.
Leovigildo D. Tandog, Jr. for respondent Rossi.
Vivencio P. Estrada for respondent Dra. Pizarro.

D E C I S I O N

LEONEN, *J.*:

For a claim of filiation to succeed, it must be made within the period allowed, and supported by the evidence required under the Family Code.

This is a Petition for Review on Certiorari under Rule 45 of the Rules of Court, asking that the Court of Appeals Decision[1] dated August 1, 2008 and Resolution[2] dated March 16, 2009, in CA-G.R. CV No. 00729 entitled "*Romeo F. Ara, Ramon A. Garcia, William A. Garcia, and Henry A. Rossi v. Dra. Fely S. Pizarro,*" which modified the Decision[3] of the Regional Trial Court in Special Civil Action No. 337-03 entitled "*Romeo F. Ara, Ramon A. Garcia, William A. Garcia and Henry A. Rossi vs. Dra. Fely S. Pizarro*" for Judicial Partition, be set aside.

Romeo F. Ara and William A. Garcia (petitioners), and Dra. Fely S. Pizarro and Henry A. Rossi (respondents) all claimed to be children of the late Josefa A. Ara (Josefa), who died on November 18, 2002.[4]

Petitioners assert that Fely S. Pizarro (Pizarro) was born to Josefa and her then husband, Vicente Salgado (Salgado), who died during World War II.[5] At some point toward the end of the war, Josefa met and lived with an American soldier by the name of Darwin Gray (Gray).[6] Romeo F. Ara (Ara) was born from this relationship. Josefa later met a certain Alfredo Garcia (Alfredo), and, from this relationship, gave birth to sons Ramon Garcia (Ramon) and William A. Garcia (Garcia).[7] Josefa and Alfredo married on January 24, 1952.[8] After Alfredo passed away, Josefa met an Italian missionary named Frank Rossi, who allegedly fathered Henry Rossi (Rossi).[9]

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[1] Penned by Associate Justice Jane Aurora C. Lantion. Associate Justices Edgardo A. Camello and Rodrigo F. Lim, Jr. concurred. *Rollo,* pp. 42-56.

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

[3] RTC Records, pp. 154-160.

[4] *Rollo*, pp. 42-43.

[5] *Id*. at 5.

[6] *Id*.

[7] *Id*.

[8] *Id*. at 6.

[9] *Id*. at 5.

Respondent Pizarro claims that, to her knowledge, she is the only child of Josefa.[10] Further, petitioner Garcia is recorded as a son of a certain Carmen Bucarin and Pedro Garcia, as evidenced by a Certificate of Live Birth dated July 19, 1950;[11] and petitioner Ara is recorded as a son of spouses Jose Ara and Maria Flores, evidenced by his Certificate of Live Birth.[12]

Petitioners, together with Ramon and herein respondent Rossi (collectively, plaintiffs *a quo*), verbally sought partition of the properties left by the deceased Josefa, which were in the possession of respondent Pizarro.[13] The properties are enumerated as follows:

1. Lot and other improvements located at Poblacion, Valencia City, Bukidnon with an area of One Thousand Two Hundred Sixty Eight (1,268) sq. m. in the name of Josefa Salgado covered by Katibayan ng Original na Titulo No. T-30333;
2. Tamaraw FX; and
3. RCBC Bank Passbook in the amount of One Hundred Eight Thousand Pesos (Php108,000.00) bank deposit.[14]

Respondent Pizarro refused to partition these properties. Thus, plaintiffs *a quo* referred the dispute to the Barangay Lupon for conciliation and amicable settlement.[15]

The parties were unable to reach an amicable settlement.[16] Thus, the Office of the Barangay Captain issued a Certification to File Action dated April 3, 2003.[17]

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[10] *Id*. at 154.

[11] *Id*. at 153-154.

[12] *Id*. at 154.

[13] *Id*. at 43.

[14] *Id*.

[15] *Id*.

[16] *Id*.

[17] *Id*.

Plaintiffs *a quo* filed a Complaint dated April 9, 2003[18] for judicial partition properties left by the deceased Josefa, before the Regional Trial Court of Malaybalay City, Branch 9 (Trial Court). In her Answer, respondent Pizarro averred that, to her knowledge, she was the only legitimate and only child of Josefa.[19] She denied that any of the plaintiffs *a quo* were her siblings, for lack of knowledge or information to form a belief on that matter.[20] Further, the late Josefa left other properties mostly in the possession of plaintiffs *a quo*, which were omitted in the properties to be partitioned by the trial court in Special Civil Action No. 337-03, enumerated in her counterclaim (Additional Properties).[21]

Respondent Pizarro filed her Pre-Trial Brief dated July 28, 2003, which contained a proposed stipulation that the Additional Properties also form part of the estate of Josefa.[22] Amenable to this proposal, plaintiffs *a quo* moved that the Additional Properties be included in the partition, in a Motion to Include in the Partition the Proposed Stipulation dated August 31, 2003.[23]

At the pre-trial, Ara, Garcia, and Ramon claimed a property of respondent Rossi as part of the estate of Josefa. This property was not alleged nor claimed in the original complaint. This compelled respondent Rossi to engage the services of separate counsel, as the claim of his property constituted a conflict of interest among the plaintiffs *a quo*.[24]

In a Pre-trial Order issued by the Trial Court on October 1, 2003, the following facts were admitted:

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[18] RTC Records, p. 1.

[19] RTC Records, p. 21.

[20] *Id*.

[21] *Id*. at 22.

[22] *Rollo*, p. 45.

[23] *Id*.

[24] *Id*. at 92.

4. All the above mentioned fathers of the children in this case, Mr. Vicente Salgado, Mr. Darwin Grey [sic] and Henry Rosi (sic), are all deceased. Josefa Ara Salgado is also deceased having died on November 18, 2002.

5. The properties mentioned in Paragraph 9 of the counter-claim mentioned in the Answer filed by the defendant thru counsel are also admitted by both counsels to be part of the properties subject of this partition case.

6. The Katibayan Ng Orihinal na Titulo attached thereto as ANNEXES "C"-"C-1", are all admitted as the subject properties.

7. Some properties involved maybe covered by the land reform program of the government and the parties have agreed that only the remainder thereof or the proceeds of compensation shall be partitioned among them. All these properties shall be properly determined during the inventory to be finally submitted to the Court for approval.

8. All the foregoing properties were acquired after the death of Vicente Salgado and presumably all the exclusive properties of Josefa Ara Salgado.[25]

After trial, on February 20, 2006, the Trial Court, issued a Decision. The decretal portion states:

WHEREFORE, the Court renders a DECISION as follows:

1. Awarding the Baguio property to Henry Rossi, to be deducted from his share;

2. Awarding the Valencia property covered by OCT No. T-30333; Tamaraw FX and the RCBC Bank Deposit Passbook to defendant Fely S. Pizarro, to be deducted from her share; and

3. With respect to the other properties that may not be covered by the foregoing, the same are declared under the co-ownership of all the plaintiffs and defendant and in equal shares.

SO ORDERED.[26]

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

[26] *Id*. at 46.

Respondent Pizarro appealed the Trial Court Decision, claiming it erred in finding petitioners Ara and Garcia to be children of Josefa, and including them in the partition of properties.[27]

Petitioners Ara and Garcia, as well as respondent Rossi, also filed their own respective appeals to the Trial Court Decision. Respondent Rossi questioned the inclusion of his property in the inventory of properties of the late Josefa.[28] Petitioners questioned the awarding of particular properties to, and deductions from the respective shares of, respondents Pizarro and Rossi.[29]

The Court of Appeals,[30] on August 1, 2008, promulgated its Decision[31] and held that only respondents Pizarro and Rossi, as well as plaintiff *a quo* Ramon, were the children of the late Josefa, entitled to shares in Josefa's estate:

> WHEREFORE, premises considered, the instant Appeals are PARTIALLY GRANTED. The assailed *Decision* dated 20 February 2006, of the court *a quo*, is hereby AFFIRMED with MODIFICATION. The legitimate children of Josefa Ara, namely, Fely Pizarro and Ramon A. Garcia, are each entitled to one (1) share, while Henry Rossi, the illegitimate child of Josefa Ara, is entitled to one-half (1/2) of the share of a legitimate child, of the total properties of the late Josefa Ara sought to be partitioned[.]
>
> . . . . . .
>
> SO ORDERED.[32]

In omitting petitioners from the enumeration of Josefa's descendants, the Court of Appeals reversed the finding of the

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[27] *Id*.

[28] *Id*. at 47.

[29] *Id*.

[30] *Id*. at 42-56.

[31] *Id*.

[32] *Id*. at 55-56.

Trial Court. The Court of Appeals found that the Trial Court erred in allowing petitioners to prove their status as illegitimate sons of Josefa after her death:

> In holding that appellants William A. Garcia and Romeo F. Ara are the illegitimate sons of Josefa Ara, the court *a quo* ratiocinated:
>
> > Without anymore discussing the validity of their respective birth and baptismal certificates, there is sufficient evidence to hold that all the plaintiffs are indeed the children of the said deceased Josefa Ara for having possessed and enjoyed the status of recognized illegitimate children pursuant to the first paragraph of Article 175 of the Family Code which provides:
> >
> > > "Illegitimate children may establish their filiation in the same way and on the same evidence as legitimate children"
> >
> > in relation to the second paragraph No. (1) of Article 172 of the same code (sic), which provides:
> >
> > > "In the absence of the foregoing evidence, legitimate filiation shall be proven by:
> > >
> > > (1) the open and continuous possession of the status of a legitimate child."
> >
> > All the plaintiffs and defendant were taken care of and supported by their mother Josefa Ara, including their education, since their respective birth and were all united and lived as one family even up to the death and burial of their said mother, Josefa Ara. Their mother had acknowledged all of them as her children throughout all her life directly, continuously, spontaneously and without concealment.[33] (Emphasis omitted.)

Petitioners, together with Garcia, and respondent Rossi filed separate Motions for Reconsideration, which were both denied by the Court of Appeals on March 16, 2009.[34]

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[33] *Id*. at 48.

[34] *Id*. at 59.

Petitioners bring this Petition for Review on Certiorari.[35]

Respondents Pizarro and Rossi filed their respective Comments on the Petition.[36] Petitioners filed a Reply to respondents' Comments, as well as a Motion to Submit Parties to DNA Testing,[37] which this Court denied. Memoranda were submitted by all the parties.

Petitioners argue that the Court of Appeals erroneously applied Article 285 of the Civil Code, which requires that an action for the recognition of natural children be brought during the lifetime of the presumed parents, subject to certain exceptions.[38] Petitioners assert that during Josefa's lifetime, Josefa acknowledged all of them as her children directly, continuously, spontaneously, and without concealment.[39]

Petitioners claim that the Court of Appeals did not apply the second paragraph of Article 172 of the Family Code, which states that filiation may be established even without the record of birth appearing in the civil register, or an admission of filiation in a public or handwritten document.[40]

Further, petitioners aver that the Court of Appeals erred in its asymmetric application of the rule on establishing filiation. Thus, the Court of Appeals erred in finding that respondent Pizarro was a daughter of Josefa Ara and Vicente Salgado, asserting there was no basis for the same. Petitioners claim that, in her Formal Offer of Exhibits dated May 26, 2005, respondent Pizarro offered as evidence only a Certificate of Marriage of Salgado and Josefa to support her filiation to Josefa.[41]

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[35] *Id.* at 3-40.

[36] *Id.* at 90-103 and 105-111.

[37] *Id.* at 114-116.

[38] *Id.* at 34.

[39] *Id.*

[40] *Id.*

[41] *Id.* at 34-35.

On respondent Rossi, petitioners claim that there is no direct evidence to prove his filiation to Josefa, except for his Baptismal Certificate, which was testified to only by respondent Rossi.[42]

The primordial issue for this Court to resolve is whether petitioners may prove their filiation to Josefa through their open and continuous possession of the status of illegitimate children, found in the second paragraph of Article 172 of the Family Code.

This Petition is denied.

I

On establishing the filiation of illegitimate children, the Family Code provides:

> Article 175. Illegitimate children may establish their illegitimate filiation in the same way and on the same evidence as legitimate children.
>
> The action must be brought within the same period specified in Article 173, except when the action is based on the second paragraph of Article 172, in which case the action may be brought during the lifetime of the alleged parent.

Articles 172 and 173 of the Family Code provide:

> Article 172. The filiation of legitimate children is established by any of the following:
>
> (1) The record of birth appearing in the civil register or a final judgment; or
>
> (2) An admission of legitimate filiation in a public document or a private handwritten instrument and signed by the parent concerned.
>
> In the absence of the foregoing evidence, the legitimate filiation shall be proved by:

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[42] *Id*. at 196.

(1) The open and continuous possession of the status of a legitimate child; or

(2) Any other means allowed by the Rules of Court and special laws. (265a, 266a, 267a)

Article 173. The action to claim legitimacy may be brought by the child during his or her lifetime and shall be transmitted to the heirs should the child die during minority or in a state of insanity. In these cases, the heirs shall have a period of five years within which to institute the action.

The action already commenced by the child shall survive notwithstanding the death of either or both of the parties. (268a)

Thus, a person who seeks to establish illegitimate filiation after the death of a putative parent must do so via a record of birth appearing in the civil register or a final judgment, or an admission of legitimate filiation. In *Uyguangco v. Court of Appeals:*[43]

The following provision is therefore also available to the private respondent in proving his illegitimate filiation:

Article. 172. The filiation of legitimate children is established by any of the following:

. . . .

In the absence of the foregoing evidence, the legitimate filiation shall be proved by:

(1) The open and continuous possession of the status of a legitimate child; or

(2) Any other means allowed by the Rules of Court and special laws.

While the private respondent has admitted that he has none of the documents mentioned in the first paragraph (which are practically the same documents mentioned in Article 278 of the Civil Code except for the "private handwritten instrument signed by the parent himself"), he insists that he has nevertheless been "in open and continuous

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[43] 258-A Phil. 467 (1989) [Per *J*. Cruz, First Division].

possession of the status of an illegitimate child," which is now also admissible as evidence of filiation.

Thus, he claims that he lived with his father from 1967 until 1973, receiving support from him during that time; that he has been using the surname Uyguangco without objection from his father and the petitioners as shown in his high school diploma, a special power of attorney executed in his favor by Dorotea Uyguangco, and another one by Sulpicio Uyguangco; that he has shared in the profits of the copra business of the Uyguangcos, which is a strictly family business; that he was a director, together with the petitioners, of the Alu and Sons Development Corporation, a family corporation; and that in the addendum to the original extrajudicial settlement concluded by the petitioners he was given a share in his deceased father's estate.

It must be added that the illegitimate child is now also allowed to establish his claimed filiation by "any other means allowed by the Rules of Court and special laws," like his baptismal certificate, a judicial admission, a family Bible in which his name has been entered, common reputation respecting his pedigree, admission by silence, the testimonies of witnesses, and other kinds of proof admissible under Rule 130 of the Rules of Court.

The problem of the private respondent, however, is that, since he seeks to prove his filiation under the second paragraph of Article 172 of the Family Code, his action is now barred because of his alleged father's death in 1975. The second paragraph of this Article 175 reads as follows:

> The action must be brought within the same period specified in Article 173, except when the action is based on the second paragraph of Article 172, in which case the action may be brought during the lifetime of the alleged parent.

It is clear that the private respondent can no longer be allowed at this time to introduce evidence of his open and continuous possession of the status of an illegitimate child or prove his alleged filiation through any of the means allowed by the Rules of Court or special laws. The simple reason is that Apolinario Uyguangco is already dead and can no longer be heard on the claim of his alleged son's illegitimate filiation.[44]

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[44] *Id.* at 471-473.

Petitioners did not present evidence that would prove their illegitimate filiation to their putative parent, Josefa, after her death as provided under Articles 172 and 175 of the Family Code.

To recall, petitioners submitted the following to establish their filiation:

(1) Garcia's Baptismal Certificate listing Josefa as his mother, showing that the baptism was conducted on June 1, 1958, and that Garcia was born on June 23, 1951;[45]

(2) Garcia's Certificate of Marriage, listing Josefa as his mother;[46]

(3) A picture of Garcia's wedding, with Josefa and other relatives;[47]

(4) Certificate of Marriage showing that Alfredo and Josefa were married on January 24, 1952;[48]

(5) Garcia's Certificate of Live Birth from Paniqui, Tarlac, issued on October 23, 2003,[49] under Registry No. 2003-1447, which is a late registration of his birth, showing he was born on June 23, 1951 to Alfredo and Josefa;[50]

(6) A group picture of all the parties in the instant case.[51]

(7) In the Comment of Rossi to the Formal Offer of Exhibits of Pizarro, Rossi stated:

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[45] *Rollo*, p. 188.

[46] *Id*.

[47] *Id*.

[48] *Id*.

[49] *Id*. at 154.

[50] *Id*. at 188-189.

[51] *Id*. at 190.

1. That William Garcia and Romeo Flores Ara are half brothers of Dr. Henry Rossi their mother being Josefa Ara, who did not register them as her children for fear of losing her pension from the U.S. Veterans Office;[52]

(8) Ara testified that he was a son of the late Josefa and Gray, and that his record of birth was registered at camp Murphy, Quezon City;[53]and

(9) Nelly Alipio, first degree cousin of Josefa, testified that Ara was a son of Josefa and Gray.[54]

None of the foregoing constitutes evidence under the first paragraph of Article 172 of the Family Code.

Although not raised by petitioners, it may be argued that petitioner Garcia's Certificate of Live Birth obtained in 2003 through a late registration of his birth is a record of birth appearing in the civil register under Article 172 of the Family Code.

True, birth certificates offer *prima facie* evidence of filiation. To overthrow the presumption of truth contained in a birth certificate, a high degree of proof is needed.[55] However, the circumstances surrounding the delayed registration prevent us from according it the same weight as any other birth certificate.

There is a reason why birth certificates are accorded such high evidentiary value. Act No. 3753, or An Act to Establish a Civil Register, provides:

Section 5. *Registration and Certification of Births*. — The declaration of the physician or midwife in attendance at the birth or, in default thereof, the declaration of either parent of the newborn child, shall be sufficient for the registration of a birth in the civil register. Such declaration shall be exempt from the documentary

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[52] *Id*. at 192.

[53] *Id*.

[54] *Id*.

[55] *Heirs of Cabais v. Court of Appeals*, 374 Phil. 681, 688 (1999) [Per J. Purisima, Third Division].

stamp tax and shall be sent to the local civil registrar not later than thirty days after the birth, by the physician, or midwife in attendance at the birth or by either parent of the newly born child.

In such declaration, the persons above mentioned shall certify to the following facts: (a) date and hour of birth; (b) sex and nationality of infant; (c) names, citizenship, and religion of parents or, in case the father is not known, of the mother alone; (d) civil status of parents; (e) place where the infant was born; (f) and such other data may be required in the regulation to be issued.

In the case of an exposed child, the person who found the same shall report to the local civil registrar the place, date and hour of finding and other attendant circumstances.

In case of an illegitimate child, the birth certificate shall be signed and sworn to jointly by the parents of the infant or only the mother if the father refuses. In the latter case, it shall not be permissible to state or reveal in the document the name of the father who refuses to acknowledge the child, or to give therein any information by which such father could be identified.

Any foetus having human features which dies after twenty four hours of existence completely disengaged from the maternal womb shall be entered in the proper registers as having been born and having died.

Further, Rule 21 of National Statistics Office Administrative Order No. 1-93, or the Implementing Rules and Regulations of Act No. 3753, provides that a person's birth be registered with the Office of the Civil Registrar-General by one of the following individuals:

Rule 21. *Persons Responsible to Report the Event*. — (1) When the birth occurred in a hospital or clinic or in a similar institution, the administrator thereof shall be responsible in causing the registration of such birth. However, it shall be the attendant at birth who shall certify the facts of birth.

(2) When the birth did not occur in a hospital or clinic or in a similar institution, the physician, nurse, midwife, "hilot," or anybody who attended to the delivery of the child shall be responsible both in certifying the facts of birth and causing the registration of such birth.

(3) In default of the hospital/clinic administrator or attendant at birth, either or both parents of the child shall cause the registration of the birth.

(4) When the birth occurs aboard a vehicle, vessel or airplane while in transit, registration of said birth shall be a joint responsibility of the driver, captain or pilot and the parents, as the case may be.

Further, the birth must be registered within 30 days from the time of birth.[56] Thus, generally, the rules require that facts of the report be certified by an attendant at birth, within 30 days from birth. The attendant is not only an eyewitness to the event, but also presumably would have no reason to lie on the matter. The immediacy of the reporting, combined with the participation of disinterested attendants at birth, or of both parents, tend to ensure that the report is a factual reporting of birth. In other words, the circumstances in which registration is made obviate the possibility that registration is caused by ulterior motives. The law provides in the case of illegitimate children that the birth certificate shall be signed and sworn to jointly by the parents of the infant or only by the mother if the father refuses. This ensures that individuals are not falsely named as parents.

National Statistics Office Administrative Order No. 1-93 also contemplates that reports of birth may be made beyond the 30-day period:

Rule 25.*Delayed Registration of Birth.* — (1) The requirements are:

a) if the person is less than eighteen (18) years old, the following shall be required:

   i) four (4) copies of the Certificate of Live Birth duly accomplished and signed by the proper parties;

   ii) accomplished Affidavit for Delayed Registration at the back of the Certificate of Live Birth by the father, mother or guardian, declaring therein, among other things, the following:

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[56] NSO Adm. O. No. 1-93 (1992), Rule 19.

> name of child;

> date and place of birth;

> name of the father if the child is illegitimate and has been acknowledged by him;

> if legitimate, the date and place of marriage of parents; and

> reason for not registering the birth within thirty (30) days after the date of birth.

In case the party seeking late registration of the birth of an illegitimate child is not the mother, the party shall, in addition to the foregoing facts, declare in a sworn statement the present whereabouts of the mother.

iii) any two of the following documentary evidences which may show the name of the child, date and place of birth, and name of mother (and name of father, if the child has been acknowledged);

> baptismal certificate;
> school records (nursery, kindergarten, or preparatory);
> income tax return of parent/s;
> insurance policy;
> medical records; and
> others, such as barangay captain's certification.

iv) affidavit of two disinterested persons who might have witnessed or known the birth of the child. (46:1aa)

b) If the person is eighteen (18) years old or above, he shall apply for late registration of his birth and the requirements shall be:

i) all the requirements for a child who is less than eighteen (18) years old; and

ii) Certificate of Marriage, if married. (46:1ba)

(2) Delayed registration of birth, like ordinary registration made at the time of birth, shall be filed at the Office of the Civil Registrar of the place where the birth occurred. (46:3)

(3) Upon receipt of the application for delayed registration of birth, the civil registrar shall examine the Certificate of Live

Birth presented whether it has been completely and correctly filled up and all requirements complied with. (47a)

(4) In the delayed registration of the birth of an alien, travel documents showing the origin and nationality of the parents shall be presented in addition to the requirements mentioned in Rule 25 (1). (49:2a)

Thus, petitioners submitted in evidence a delayed registration of birth of Garcia, pursuant to this rule. Petitioners point out that a hearing on the delayed registration was held at the Office of the Municipal Civil Registrar of Paniqui, Tarlac. No one appeared to oppose the delayed registration, despite a notice of hearing posted at the Office of the Civil Registrar.[57]

It is analogous to cases where a putative father's name is written on a certificate of live birth of an illegitimate child, without any showing that the putative father participated in preparing the certificate. In *Fernandez v. Court of Appeals*:[58]

Fourth, the certificates of live birth (Exh. "A"; Exh. "B") of the petitioners identifying private respondent as their father are not also competent evidence on the issue of their paternity. Again, the records do not show that private respondent had a hand in the preparation of said certificates. In rejecting these certificates, the ruling of the respondent court is in accord with our pronouncement in *Roces vs. Local Civil Registrar, 102 Phil. 1050 (1958)*,*viz*:

". . . Section 5 of Act No. 3793 and Article 280 of the Civil Code of the Philippines explicitly prohibited, not only the naming of the father or the child born outside wedlock, when the birth certificates, or the recognition, is not filed or made by him, but, *also, the statement of any information or circumstances by which he could be identified. Accordingly, the Local Civil Registrar had no authority to make or record the paternity of an illegitimate child upon the information of a third person and the certificate of birth of an illegitimate child, when signed only by the mother of the latter, is incompetent evidence of fathership of said child.*

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[57] *Rollo,* p. 178.

[58] 300 Phil. 131 (1994) [Per *J.* Puno, Second Division].

We reiterated this rule in *Berciles, op. cit.,* when we held that "a birth certificate not signed by the alleged father therein indicated is not competent evidence of paternity."[59] (Emphasis in the original).

In *Berciles v. Government Service Insurance System:*[60]

The evidence considered by the Committee on Claims Settlement as basis of its finding that Pascual Voltaire Berciles is an acknowledged natural child of the late Judge Pascual Berciles is the birth certificate of said Pascual Voltaire Berciles marked Exh. "6". We have examined carefully this birth certificate and We find that the same is not signed by either the father or the mother; We find no participation or intervention whatsoever therein by the alleged father, Judge Pascual Berciles. Under our jurisprudence, if the alleged father did not intervene in the birth certificate, the putting of his name by the mother or doctor or registrar is null and void. Such registration would not be evidence of paternity. (*Joaquin P. Roces et al. vs. Local Civil Registrar of Manila*, 102 Phil. 1050). The mere certificate by the registrar without the signature of the father is not proof of voluntary acknowledgment on his part (*Dayrit vs. Piccio*, 92 Phil. 729). A birth certificate does not constitute recognition in a public instrument. (*Pareja vs. Pareja, et al*., 95 Phil. 167). A birth certificate, to evidence acknowledgment, must, under Section 5 of Act 3753, bear the signature under oath of the acknowledging parent or parents. (*Vidaurrazaga vs. Court of Appeals and Francisco Ruiz*, 91 Phil. 492).

. . . . . .

In the case of Mendoza, et al. vs. Mella, 17 SCRA 788, the Supreme Court speaking through Justice Makalintal who later became chief Justice, said:

> It should be noted, however, that a Civil Registry Law was passed in 1930 (Act No. 3753) containing provisions for the registration of births, including those of illegitimate parentage; and the record of birth under such law, if sufficient in contents for the purpose, would meet the requisites for voluntary recognition even under Article 131. Since Rodolfo was born in 1935, after the registry law was enacted, the question here

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

[60] 213 Phil. 48 (1984) [Per *J.* Guerrero, *En Banc*].

> really is whether or not his birth certificate (Exhibit 1), which is merely a certified copy of the registry record, may be relied upon as sufficient proof of his having been voluntarily recognized. No such reliance, in our judgment, may be placed upon it. While it contains the names of both parents, there is no showing that they signed the original, let alone swore to its contents as required in Section 5 of Act No. 3753 (*Vidaurrazaga vs. Court of Appeals*, 91 Phil. 493; In re Adoption of Lydia Duran, 92 Phil. 729). For all that might have happened, it was not even they or either of them who furnished the data to be entered in the civil register. Petitioners say that in any event the birth certificate is in the nature of a public document wherein voluntary recognition of a natural child may also be made, according to the same Article 131. True enough, but in such a case there must be a clear statement in the document that the parent recognizes the child as his or her own (*Madridejo vs. De Leon*, 55 Phil. 1); and in Exhibit 1 no such statement appears. The claim of voluntary recognition is without basis."[61]

Further, in *People v. Villar,*[62] this Court sustained the Trial Court's rejection of a delayed registration of birth as conclusive evidence of the facts stated therein:

> In the resolution of the sole assignment of error we find as well-taken and accordingly adopt as our own the lower court's ratiocination, thus:
>
> > After going over the evidence in support of the alleged minority of the accused Francisco Villar when he committed the crime on or about August 24, 1977, the Court finds that Exhibit 1 and the testimonies of the defense witnesses can not have more probative value than the written statement of Francisco Villar, Exhibit E. It is to be noted that Exhibit 1 is a delayed registration of a supposed birth accomplished and submitted only on January 12, 1979 to the Local Civil Registrar of Caloocan City by the witness Leonor Villar, long after the offense was committed and after the prosecution finally rested its case on November 21, 1978, thus exposing the basis of Exhibit 1 to be

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[61] *Id.* at 49-72.

[62] 193 Phil. 203 (1981) [Per *J.* Abad Santos, Second Division].

> resting on a slender and shaky foundation, and more so, in the absence of explanation from the defense of the reason for said late registration. Hence, the Court rejects Exhibit 1....
>
> The appellant invokes Art. 410 of the Civil Code which reads:
>
> > Art. 410. The books making up the civil register and all documents relating thereto shall be considered public documents and shall be prima facie evidence of the facts herein contained.
>
> Suffice it to say that the above-quoted provision makes the information given in Exhibit 1 only *prima facie* but not conclusive evidence. This must be so because the Local Civil Registrar merely receives the information submitted to him; he does not inquire into its veracity. Moreover, to regard as conclusive the content of a certificate of live birth can lead to absurd results. Supposing that Leonor had given John F. Kennedy as the father of Francisco, are we to accept that as an incontestable fact? In the light of the circumstances already narrated concerning the preparation and submission of Exhibit 1, the lower court committed no error in disregarding it.[63]

A delayed registration of birth, made after the death of the putative parent, is tenuous proof of filiation.

Thus, we are unable to accord petitioner Garcia's delayed registration of birth the same evidentiary weight as regular birth certificates.

Even without a record of birth appearing in the civil register or a final judgment, filiation may still be established after the death of a putative parent through an admission of filiation in a public document or a private handwritten instrument, signed by the parent concerned.[64] However, petitioners did not present in evidence any admissions of filiation.

An admission is an act, declaration, or omission of a party on a relevant fact, which may be used in evidence against him.[65]

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[63] *Id.* at 207-208.

[64] FAMILY CODE, Art. 172.

[65] RULES OF COURT, Rule 130, Sec. 26.

The evidence presented by petitioners such as group pictures with Josefa and petitioners' relatives, and testimonies do not show that Josefa is their mother. They do not contain any acts, declarations, or omissions attributable directly to Josefa, much less ones pertaining to her filiation with petitioners. Although petitioner Garcia's Baptismal Certificate, Certificate of Marriage, and Certificate of Live Birth obtained via late registration all state that Josefa is his mother, they do not show any act, declaration, or omission on the part of Josefa. Josefa did not participate in making any of them. The same may be said of the testimonies presented. Although Josefa may have been in the photographs, the photographs do not show any filiation. By definition, none of the evidence presented constitutes an admission of filiation under Article 172 of the Family Code.

II

The Trial Court bypassed the issue of the birth certificates and did not consider the first paragraph of Article 172 of the Family Code. Instead, it ruled only on the open and continuous possession of status of filiation:

> Without anymore discussing the validity of their respective birth and baptismal certificates, there is sufficient evidence to hold that all the plaintiffs are indeed the children of the said deceased Josefa Ara for having possessed and enjoyed the status of recognized illegitimate children pursuant to the first paragraph of Article 175 of the Family Code[.]
>
> . . . . . .
>
> All the plaintiffs and defendant were taken care of and supported by their mother Josefa Ara, including their education, since their respective birth and were all united and lived as one family even up to the death and burial of their said mother, Josefa Ara. Their mother had acknowledged all of them as her children throughout all her life directly, continuously, spontaneously and without concealment.[66]

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[66] RTC Records, pp. 158-159.

Thus, the Court of Appeals found that the Trial Court had erred in allowing petitioners to prove their illegitimate filiation through the open and continuous possession of the status of illegitimate children *after* the death of the putative parent:

> However, the trial court's finding cannot be sustained. Even granting for the sake of argument that appellants Romeo F. Ara and William Garcia did enjoy open and continuous possession of the status of an illegitimate child, still, they should have proven this during the lifetime of the putative parent. *Article 285 of the Civil Code* provides the period for filing and (*sic*) action for recognition as follows:
>
> ART. 285. The action for the recognition of natural children may be brought only during the lifetime of the presumed parents, except in the following cases:
>
> (1) If the father or mother died during the minority of the child, in which case the latter may file the action before the expiration of four years from the attainment of his majority;
>
> (2) If after the death of the father or of the mother a document should appear of which nothing had been heard and in which either or both parents recognize the child.
>
> In this case, the action must be commenced within four years from the finding of the document.
>
> The two exceptions provided under the foregoing provision, have however been omitted by *Articles 172, 173* and *175 of the Family Code*, which We quote:
>
> . . . . . .
>
> The law is very clear. If filiation is sought to be proved under the *second paragraph of Article 172 of the Family Code*, the action must be brought during the lifetime of the alleged parent. It is evident that appellants Romeo F. Ara and William Garcia can no longer be allowed at this time to introduce evidence of their open and continuous possession of the status of an illegitimate child or prove their alleged filiation through any of the means allowed by the Rules of Court or special laws. The simple reason is that Josefa Ara is already dead

and can no longer be heard on the claim of her alleged sons' illegitimate filiation.[67]

The Court of Appeals did not adopt the Trial Court's appreciation of evidence. It ruled that, because petitioners' putative parent Josefa had already passed away, petitioners were proscribed from proving their filiation under the second paragraph of Article 172 of the Family Code.

The Court of Appeals properly did not give credence to the evidence submitted by petitioners regarding their status.

Josefa passed away in 2002.[68] After her death, petitioners could no longer be allowed to introduce evidence of open and continuous illegitimate filiation to Josefa. The only evidence allowed under the law would be a record of birth appearing in the civil register or a final judgment, or an admission of legitimate filiation in a public document or a private signed, handwritten instruction by Josefa.

An alleged parent is the best person to affirm or deny a putative descendant's filiation. Absent a record of birth appearing in a civil register or a final judgment, an express admission of filiation in a public document, or a handwritten instrument signed by the parent concerned, a deceased person will have no opportunity to contest a claim of filiation.

In truth, it is the mother and in some cases, the father, who witnesses the actual birth of their children. Descendants normally only come to know of their parents through nurture and family lore. When they are born, they do not have the consciousness required to be able to claim personal knowledge of their parents. It thus makes sense for the parents to be present when evidence under the second paragraph of Article 172 is presented.

The limitation that an action to prove filiation as an illegitimate child be brought within the lifetime of an alleged parent acknowledges that there may be other persons whose rights

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

[68] *Id.* at 43.

should be protected from spurious claims. This includes other children, legitimate and illegitimate, whose statuses are supported by strong evidence of a categorical nature.

Respondent Pizarro has submitted petitioners' certificates of live birth to further disprove petitioners' filiation with Josefa. A Certificate of Live Birth issued in Paniqui, Tarlac on July 19, 1950 shows that Garcia's parents are Pedro Garcia and Carmen Bugarin[69] while another Certificate of Live Birth issued in petitioner Ara's birthplace, Bauang, La Union, shows that he is the son of spouses Jose Ara and Maria Flores.[70]

The Court of Appeals gave credence to these birth certificates submitted by respondent Pizarro:

> The trustworthiness of public documents and the value given to the entries made therein could be grounded on 1) the sense of official duty in the preparation of the statement made, 2) the penalty which is usually affixed to a breach of that duty, 3) the routine and disinterested origin of most such statements, and 4) the publicity of record which makes more likely the prior exposure of such errors as might have occurred.
>
> Therefore, this Court upholds the birth certificates of William Garcia and Romeo F. Ara, as issued by the Civil Registry, in line with *Legaspi v. Court of Appeals*, where the High Court ruled that the evidentiary nature of public documents must be sustained in the absence of strong, complete and conclusive proof of its falsity or nullity. Consequently, appellants Romeo F. Ara and William Garcia are deemed not to be the illegitimate sons of the late Josefa Ara.[71]

Thus, the Court of Appeals made a determination on the evidence and found that the birth certificates submitted by respondent Pizarro belong to petitioners Garcia and Ara. These birth certificates name Carmen Bugarin[72] and Maria Flores,[73]

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[69] *Id*. at 190.

[70] *Id*. at 154.

[71] *Id*. at 51.

[72] *Id*. at 190.

[73] *Id*. at 154.

as the respective mothers of petitioners Garcia and Ara. Considering that these birth certificates do not name Josefa as a parent of either petitioner, petitioners are properly determined not to be Josefa's children.

Petitioners point out that the Certificate of Birth does not contain petitioner Garcia's correct birth date. They claim that the birth date of petitioner Garcia as recorded in his baptismal certificate is June 23, 1951. This birth date is also reflected on his Certificate of Live Birth issued by the Municipal Civil Registrar of Paniqui, Tarlac, as well as in the Notice of Hearing of the delayed registration of birth certificate of petitioner Garcia. Thus, petitioners speculate that the birth certificate submitted by respondent Pizarro is of a different "William Garcia":

> Perhaps, defendant-appellant Fely Pizarro obtained a Certificate of Live Birth and Cedula de Baotismo of a wrong person bearing the same name William Garcia which always happened (*sic*) in our country considering that the family name Garcia is very much common because in the said documents the birthdate of a certain William Garcia was June 23, 1950 not June 23, 1951, the actual birth of William Garcia.[74]

On this point, respondent Pizarro argues:

> It may be noted that William Garcia obtained said Certificate more than six (6) months after he, with his co-plaintiffs, had filed the case of judicial partition on 9 April 2003. Obviously, he found the need to apply for the late registration of his birth when he learned from respondent's Answer that from her knowledge she is the only child of Josefa Ara. Very likely, William Garcia already knew that he already has a record of birth in the municipality of Paniqui, Tarlac, showing that her mother was not Josefa Ara.[75]

These are matters of appreciation of evidence, however, which cannot be subject of inquiry in a petition for review under Rule 45. Nonetheless, considering that there were two reports of birth for William Garcia, and considering further that one

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[74] *Id*. at 181.

[75] *Id*. at 154.

of the reports was made only *after* initiating a case which would directly use said report, we cannot find error in the Court of Appeals' decision to disregard the delayed registration.

Finally, petitioners' claim that there was no basis for the Court of Appeals to find that respondents are the children of Josefa is untenable. Respondents' filiation with Josefa was not put in question before the Trial Court. Even petitioners admitted in their Complaint that respondents were Josefa's children.[76] Further, on appeal, no party questioned the Trial Court's determination that respondents Pizarro and Rossi were the children of Josefa. Consequently, the Court of Appeals did not err in sustaining these findings without requiring further proof.

WHEREFORE, the petition for review on certiorari is **DENIED**. The August 1, 2008 Decision and the March 16, 2009 Resolution of the Court of Appeals in CA-G.R. CV No. 00729 are **AFFIRMED**.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 194226. February 15, 2017]

POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT CORPORATION (PSALM), *petitioner, vs.* **COURT OF APPEALS (21st Division), and FRANCISCO LABAO, as General Manager of SAN MIGUEL PROTECTIVE SECURITY AGENCY (SMPSA),** *respondents.*

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[76] RTC Records, p. 1.

SYLLABUS

1. **REMEDIAL LAW; CIVIL ACTIONS; PARTIES IN INTEREST; AN INDISPENSABLE PARTY IS ONE WHO HAS SUCH AN INTEREST IN THE CONTROVERSY OR SUBJECT MATTER THAT A FINAL ADJUDICATION CANNOT BE MADE IN ITS ABSENCE WITHOUT INJURING OR AFFECTING THAT INTEREST; ESTABLISHED IN CASE AT BAR.—** Section 49 of Republic Act No. 9136, or EPIRA, *expressly created* PSALM as a corporate entity separate and distinct from NPC, x x x PSALM became the owner as early as in mid-2001 of *all* of NPC's existing generation assets, liabilities, IPP contracts, real estate and all other disposable assets, as well as all facilities of NPC. NPC-MinGen was among the assets or properties coming under the ownership of PSALM. As such owner, PSALM was an indispensable party without whom no final determination could be had if it was not joined. An indispensable party is one who has such an interest in the controversy or subject matter that a final adjudication cannot be made in its absence without injuring or affecting that interest. As such, Labao should have impleaded PSALM in the proceedings in the RTC, or the RTC should have itself seen to PSALM's inclusion as an indispensable party.

2. **CIVIL LAW; CONTRACTS; AGENCY; AN AGENT IS A PERSON WHO BINDS HIMSELF TO RENDER SOME SERVICES OR TO DO SOMETHING IN REPRESENTATION OR ON BEHALF OF ANOTHER, WITH CONSENT AND AUTHORITY OF THE LATTER; NOT APPLICABLE IN CASE AT BAR.—** NPC and PSALM had entered into the OMA on March 9, 2009, whereby the latter, as the owner of all the assets of NPC pursuant to EPIRA, assumed the obligation to provide for the security of all the plants, assets and other facilities. x x x It was PSALM's responsibility as the owner under Part VII of the OMA to provide for the security of all plants, other assets, and other facilities, including NPC's personnel working in the owner's premises. On March 29, 2009, therefore, PSALM conducted its own public bidding for the security package of various power plants and facilities in Mindanao, including those of NPC MinGen. In that public bidding, TISDA was the winning bidder for the package corresponding to NPC MinGen. In so conducting its own public

bidding, PSALM was not acting as the agent of NPC, but in its own interest as the owner. According to the *Civil Code,* indeed, an agent is a "person who binds himself to render some service or to do something in representation or on behalf on another, with the consent or authority of the latter."

3. ID.; ID.; PRINCIPLE OF RELATIVITY OF CONTRACTS; WHATEVER RIGHTS AND OBLIGATIONS ARISING FROM THE CONTRACT WILL TAKE EFFECT ONLY BETWEEN THE PARTIES; CASE AT BAR.— It is further worth pointing out that the security contract between NPC and SMPSA, which was entered into in 2004 for a duration from September 1, 2004 to September 1, 2006, did not relate to or include PSALM. Hence, whatever rights and obligations arising from said contract between NPC and SMPSA did not affect PSALM under the basic principle of relativity of contracts by which contracts take effect only between the parties, their assigns and heirs. Accordingly, in the absence of privity of contract between SMPSA and PSALM, the latter had no obligation towards or liability in favor of the former to speak about. Specifically, PSALM, for lack of privity, came under no legal obligation to continue the security contract entered into between NPC and SMPSA.

4. REMEDIAL LAW; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; NO PERSON WHO HAS NOT BEEN IMPLEADED AND DULY SERVED WITH SUMMONS MAY BE ADVERSELY AFFECTED BY THE OUTCOME OF THE ACTION; CASE AT BAR.— [T]he CA unquestionably exceeded its jurisdiction in including PSALM within the coverage of the TRO and the writ of injunction issued against NPC. There is no question that as a provisional remedy to prevent irreparable injury pending the final determination of the action, injunction can bind only the parties in the action, or their privies or successors-in-interest. No person who has not been impleaded and duly served with the summons should be adversely affected by the outcome of the action. The principle that a person cannot be prejudiced by a ruling rendered in an action or proceeding in which it has not been made a party conforms to the constitutional guarantee of due process of law. *Certiorari* lies.

APPEARANCES OF COUNSEL

Office of the Government Corporate Counsel for petitioner.
Office of the Solicitor General for public respondent.
Federico Maranda for respondent Labao.
Romero A. Boniel, collaborating counsel for respondent Labao.

D E C I S I O N

BERSAMIN, *J.*:

At issue is whether a non-party to a suit may be subjected to the injunctive writ issued against one of the parties.

The Case

By petition for *certiorari*, Power Sector Assets and Liabilities Management Corporation (PSALM) seeks that judgment be rendered: (a) issuing a writ of preliminary mandatory injunction to allow it to post security guards to secure the premises and property of the National Power Corporation Mindanao-Generation Headquarters (NPC MinGen); (b) annulling the resolutions promulgated by the Court of Appeals (CA) on June 9, 2010[1] and August 18, 2010[2] and in CA-G.R. SP No. 03219-MIN; (c) dissolving the writ of preliminary injunction issued by the CA insofar as the writ affected its (PSALM) rights and interest; and (d) issuing a permanent injunction to prevent respondent Francisco Labao (Labao) from proceeding against it (PSALM).[3]

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[1] *Rollo,* pp. 52-53; penned by Associate Justice Romulo V. Borja, with Associate Justice Edgardo T. Lloren and Associate Justice Ramon Paul L. Hernando concurring.

[2] *Id*. at 55-56; penned by Associate Justice Borja, with Associate Justice Lloren and Associate Justice Hernando concurring.

[3] *Id*. at 41.

Antecedents

National Power Corporation (NPC) set a public bidding for the security package in NPC MinGen. Among the participating bidders was San Miguel Protective Security Agency (SMPSA), represented by Labao. However, NPC's Bids and Awards Committee (BAC) disqualified SMPSA for its alleged failure to meet the equipage requirements. The disqualification prompted Labao, as the general manager of SMPSA, to bring a petition for *certiorari* against NPC and its officials in the Regional Trial Court (RTC) in Lanao del Norte.

On January 30, 2009, the RTC issued a temporary restraining order (TRO) directing NPC and its officials to desist from awarding the security package, as well as from declaring a failure of bidding. On February 17, 2009, the RTC issued the writ of preliminary injunction enjoining NPC and its officials from committing said acts.

On August 17, 2009, the RTC, ruling in favor of SMPSA, made the injunction permanent, and granted other reliefs to SMPSA, to wit:

WHEREFORE, in the light of the foregoing, judgment is hereby rendered in favor of the petitioner and against the respondent as follows:

1. Declaring the injunction permanent against the respondent by:

a) Setting aside the ruling disqualifying petitioner and to issue an amended ruling that petitioner had passed in the technical proposal;

b) Ordering the respondent to stop the direct payment scheme it imposed;

2. Ordering the BAC to open the BID of petitioner in order to determine the lowest bidder;

3. Ordering the member of the BAC to pay the petitioner;

a) the sum of ₱250,000.00 as moral damages;

b) the sum of ₱100,000.00 as attorney's fees and to pay the cost of suit.

SO ORDERED.[4]

In due course, NPC appealed to the CA.

In the meantime, on March 9, 2009, NPC and PSALM entered into an operation and maintenance agreement (OMA) whereby the latter, as the owner of all assets of NPC by virtue of Republic Act No. 9136, otherwise known as the *Electric Power Industry Reform Act of 2001* (EPIRA), had the obligation to provide for the security of all the plants, assets and other facilities. Accordingly, on March 29, 2009, PSALM conducted a public bidding of its own for the security package of various power plants and facilities in Mindanao, including those of NPC MinGen. During the public bidding, Tiger Investigation, Detective & Security Agency (TISDA) was declared the winning bidder for the package corresponding to NPC MinGen.

On April 7, 2010, PSALM received the TRO issued by the CA on April 5, 2010. It is noted, however, that Labao did not furnish PSALM a copy of SMPSA's *Urgent Motion for the Issuance of a TRO and/or Preliminary Prohibitory Injunction*.

Notwithstanding the fact that PSALM was not a party in the case brought by Labao against NPC, and the fact that PSALM was not furnished a copy of Labao's *Urgent Motion for the Issuance of a TRO and/or Preliminary Prohibitory Injunction*, the CA issued the assailed resolution granting the TRO in order to maintain the *status quo*, and expressly included PSALM as subject of the writ.

Hence, PSALM has come to the Court by petition for *certiorari*, insisting that the CA thereby acted without or in excess of jurisdiction, or gravely abused its discretion amounting to lack or excess of jurisdiction.

Issues

PSALM submits the following as issues, namely:

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[4] *Id*. at 630-A-631.

1.) Whether or not the CA acted without or in excess of jurisdiction or with grave abuse of discretion in issuing a writ of preliminary injunction enjoining the petitioner from offering or bidding out or accepting bid proposals for the procurement of security services for the MinGen Headquarters despite the fact that private respondent Labao is not entitled to the injunctive relief; and

2.) Whether or not the CA acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction in holding petitioner bound by the decision of the lower court although petitioner was not a party to the case between private respondents NPC and Labao.[5]

Ruling of the Court

The petition for *certiorari* is granted.

Considering that PSALM had not been impleaded as a party in the proceedings in the RTC, Labao tried to include PSALM by praying that "National Power Corporation, its agents, successors or assigns such as Power Sector Assets and Liabilities Management Corp. (PSALM)" be enjoined as well. In the assailed resolution promulgated on June 9, 2010 granting Labao's application for the writ of preliminary injunction, the CA, without elucidating how it found merit in the application of Labao,[6] tersely stated:

> After a judicious evaluation of their respective memoranda, this Court finds merit in the prayer for a Writ of Preliminary Injunction. In order to Maintain the *status quo*, the prayer for the issuance of a Writ of Preliminary Injunction is hereby GRANTED.[7]

The rationale of the ruling can be gleaned from the CA's resolution promulgated on April 5, 2010 granting the TRO,[8] as

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[5] *Id*. at 14.

[6] *Supra* note 1.

[7] *Rollo,* p. 53.

[8] *Id*. at 193-196.

well as the resolution promulgated on May 18, 2010 denying the motion for reconsideration filed by PSALM.[9] Therein, the CA observed that the judgment of the RTC granting the prayer for injunction was enforceable against NPC as well as against its agents, representatives and whoever acted in its behalf, including PSALM which had clearly acted on behalf of NPC;[10] that PSALM was not merely an agent but an assignee of the NPC;[11] that PSALM, in its capacity as owner, was already a real party in interest when the case was instituted in the RTC;[12] and that it was erroneous for PSALM to claim that it was not a party in the proceedings below because the continuance of the action against PSALM's predecessor-in-interest was sanctioned by the *Rules of Court*.[13]

In its resolution promulgated on May 18, 2010 denying PSALM's motion for reconsideration,[14] the CA opined that PSALM was a real party in interest as defined under Section 2, Rule 3 of *the Rules of Court* because PSALM stood to benefit from or be injured by the judgment in the case.[15]

We cannot uphold the resolutions of the CA.

First of all, Section 49 of Republic Act No. 9136,[16] or EPIRA, *expressly created* PSALM as a corporate entity separate and distinct from NPC, to wit:

Section 49. Creation of Power Sector Assets and Liabilities Management Corporation. – There is hereby created a government owned and controlled corporation to be known as the "Power Sector

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[9] *Id*. at 226-229.

[10] *Id*. at 195.

[11] *Id*. at 228.

[12] *Id*.

[13] *Id*.

[14] *Supra* note 9.

[15] *Rollo,* p. 38.

[16] Approved on June 8, 2001.

Assets and Liabilities Management Corporation", hereinafter referred to as the "PSALM Corp.", which shall take ownership of all existing NPC generation assets, liabilities, IPP contracts, real estate and all other disposable assets. All outstanding obligations of the National Power Corporation arising from loans, issuances of bonds, securities and other instruments of indebtedness shall be transferred to and assumed by the PSALM Corp. within ninety (90) days from the approval of this Act.

Accordingly, the CA blatantly erred in holding that PSALM, without being made a party itself, was subject of the writ of injunction issued against NPC. PSALM and NPC, despite being unquestionably invested by law with *distinct* and *separate* personalities, were intolerably confused with each other.

Secondly, Labao was quite aware that under EPIRA, PSALM became the owner as early as in mid-2001 of *all* of NPC's existing generation assets, liabilities, IPP contracts, real estate and all other disposable assets, as well as all facilities of NPC. NPC-MinGen was among the assets or properties coming under the ownership of PSALM. As such owner, PSALM was an indispensible party without whom no final determination could be had if it was not joined.[17] An indispensable party is one who has such an interest in the controversy or subject matter that a final adjudication cannot be made in its absence without injuring or affecting that interest.[18] As such, Labao should have impleaded PSALM in the proceedings in the RTC, or the RTC should have itself seen to PSALM's inclusion as an indispensable party.

Thirdly, the CA, in issuing the TRO, relevantly declared in the resolution promulgated on April 5, 2010,[19] *viz.*:

x x x x x x x x x

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[17] See Section 7, Rule 2 of the *Rules of Court*.

[18] *Regner v. Logarta,* G.R. No. 168747, October 19, 2007, 537 SCRA 277, 291, citing *Arcelona v. Court of Appeals*, G.R. No. 102900, October 2, 1997, 280 SCRA 20, 38.

[19] *Rollo*, pp. 193-196.

The injunction granted by the lower court in the above-quoted Decision is not stayed by appeal but is immediately executory. Upon its rendition, the judgment granting injunction is enforceable against appellants as well as their agents, representatives and whosoever acts in their behalf **including the Power Sector Assets and Liabilities Management Corporation (PSALM) which is clearly acting on behalf of appellants.** Thus, to reinforce and fortify the injunctive judgment of the lower court and to foreclose any attempt to circumvent the reach of the injunctive judgment, this Court resolves to grant the motion for a temporary restraining order.

WHEREFORE, let a Temporary Restraining Order (TRO) issue ordering appellants, their agents, representatives or other entities acting for them and in their behalf, **including the PSALM**, to cease and desist from offering or bidding out or accepting bid proposals for the procurement of security services for the MINGEN Head Quarters (NPC MRC Complex) from interested bidders.

In order to determine the necessity of issuing a Writ of Preliminary Injunction, let a hearing be called on May 5, 2010, at 10:00 o'clock in the morning, at the Hearing Room of the Court of Appeals – Mindanao Station, YMCA Building, Julio Pacana St., Cagayan de Oro City.

SO ORDERED.

The CA thereby committed a manifest error.

NPC and PSALM had entered into the OMA on March 9, 2009, whereby the latter, as the owner of all the assets of NPC pursuant to EPIRA, assumed the obligation to provide for the security of all the plants, assets and other facilities. By virtue of PSALM and NPC being separate and distinct entities operating the assets and facilities, the OMA was crafted to avoid confusion between them by delineating their respective functions in the making of management decisions. The OMA further ensured that PSALM and NPC co-existed in the management of the assets and facilities and were on the same page as to day-to-day operations. It was PSALM's responsibility as the owner under Part VII of the OMA to provide for the security of all plants, other assets, and other facilities, including NPC's

personnel working in the owner's premises.[20] On March 29, 2009, therefore, PSALM conducted its own public bidding for the security package of various power plants and facilities in Mindanao, including those of NPC MinGen. In that public bidding, TISDA was the winning bidder for the package corresponding to NPC MinGen. In so conducting its own public bidding, PSALM was not acting as the agent of NPC, but in its own interest as the owner. According to the *Civil Code*, indeed, an agent is a "person who binds himself to render some service or to do something in representation or on behalf on another, with the consent or authority of the latter."[21]

We also emphasize that the transfer of NPC's assets and liabilities pursuant to EPIRA had become effective as of June 26, 2001; and that the security contract between NPC and SMPSA had run from September 1, 2004 to September 1, 2006. Considering that SMPSA's action was commenced only on January 26, 2009, PSALM was not a transferee *pendente lite* or successor-in-interest of the parties by title *subsequent to* the commencement of the action within the context of Section 19,[22] Rule 3 of the *Rules of Court*. In other words, no order or judgment rendered in the action between SMPSA and NPC could bind PSALM.

It is further worth pointing out that the security contract between NPC and SMPSA, which was entered into in 2004 for a duration from September 1, 2004 to September 1, 2006, did not relate to or include PSALM. Hence, whatever rights and obligations arising from said contract between NPC and SMPSA did not affect PSALM under the basic principle of relativity of contracts by which contracts take effect only between the parties, their assigns and heirs.[23] Accordingly, in the absence of privity

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[20] *Id.* at 92.

[21] Article 1868, *Civil Code*.

[22] Section 19. Transfer of interest. — In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party.

[23] See Article 1311, *Civil Code*.

of contract between SMPSA and PSALM, the latter had no obligation towards or liability in favor of the former to speak about.[24] Specifically, PSALM, for lack of privity, came under no legal obligation to continue the security contract entered into between NPC and SMPSA.

Moreover, the security contract of SMPSA with NPC, having already expired, was being renewed on a monthly basis since its expiration. There was no longer any existing or current legal tie binding NPC and SMPSA together. Consequently, the theory of the CA that PSALM could be covered by the TRO and the writ of injunction as an agent of NPC had no factual and legal bases.

And, lastly, Labao's pleading in the RTC claimed that SMPSA was entitled to the issuance of a writ of preliminary injunction on the ground that depriving them of the opportunity to bid for the contract was prejudicial, and that SMPSA would lose legitimate income should the award of the contract and/or declaration of failure of bidding not be restrained.[25] But it was clear that even if SMPSA had not been disqualified by the BAC, there was no guarantee that it would emerge as the lowest bidder in the public bidding. This highlighted the reality that because the interest that SMPSA sought to protect by the suit for injunction hinged on the favorable result of the public bidding, the supposed income to be earned by SMPSA was but a mere expectancy premised on the remote possibility of the security contract being ultimately awarded to SMPSA. In other words, the suit was based on the assumption that SMPSA would win the bid if it would not be disqualified, which, at best, was highly speculative. Hence, the right of SMPSA to be protected by injunction, because it might not arise at all, was not *in esse*.[26]

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[24] *Borromeo v. Court of Appeals*, G.R. No. 169846, March 28, 2008, 550 SCRA 269, 282.

[25] *Rollo,* p. 111.

[26] *Osmeña III v. Abaya,* G.R. Nos. 211737 & 214756, January 13, 2016.

In fine, the CA unquestionably exceeded its jurisdiction in including PSALM within the coverage of the TRO and the writ of injunction issued against NPC. There is no question that as a provisional remedy to prevent irreparable injury pending the final determination of the action, injunction can bind only the parties in the action, or their privies or successors-in-interest. No person who has not been impleaded and duly served with the summons should be adversely affected by the outcome of the action.[27] The principle that a person cannot be prejudiced by a ruling rendered in an action or proceeding in which it has not been made a party conforms to the constitutional guarantee of due process of law.[28] *Certiorari* lies.

WHEREFORE, the Court **GRANTS** the petition for *certiorari*; **MODIFIES** the resolution promulgated on June 9, 2010 issued in CA-G.R. SP No. 03219-MIN by excluding petitioner Power Sector Assets and Liabilities Management Corporation from the coverage and legal effects of the Writ of Preliminary Injunction; **ANNULS** and **SETS ASIDE** the resolution promulgated on August 18, 2010 in CA-G.R. SP No. 03219-MIN denying Power Sector Assets and Liabilities Management Corporation's motion for reconsideration; and **EXCLUDES** Power Sector Assets and Liabilities Management Corporation from the scope of the Writ of Preliminary Injunction issued in CA-G.R. SP No. 03219-MIN.

Respondent Francisco Labao is **ORDERED** to pay the costs of suit.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Reyes, Jardeleza,* and *Caguioa,*[*] *JJ.,* concur.

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[27] *Dare Adventure Farm Corporation v. Court of Appeals*, G.R. No. 161122, September 24, 2012, 681 SCRA 580; citing *Filamer Christian Institute v. Court of Appeals*, G.R. No. 75112, October 16, 1990, 190 SCRA 485, 492.

[28] *Id*. at 588.

[*] Designated as additional Member of the Third Division per Special Order No. 2417 dated January 4, 2017.

THIRD DIVISION

[G.R. No. 194272. February 15, 2017]

SPOUSES AMADO O. IBAÑEZ and ESTHER R. IBAÑEZ, *petitioners, vs.* **JAMES HARPER as Representative of the Heirs of FRANCISCO MUÑOZ, SR., the REGISTER OF DEEDS OF MANILA and the SHERIFF OF MANILA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PARTIES TO CIVIL ACTIONS; PARTIES IN INTEREST; INTEREST WITHIN THE MEANING OF THE RULE MEANS MATERIAL INTEREST, AN INTEREST IN ISSUE AND TO BE AFFECTED BY THE DECREE; ESTABLISHED IN CASE AT BAR.— "Interest," within the meaning of the rule, means material interest, an interest in issue and to be affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest. In their Complaint and Amended Complaint, the spouses Ibañez impleaded Francisco as a defendant and described him as the capitalist. They also alleged that they took a loan from Francisco, Ma. Consuelo and Consuelo. They also narrated that a public auction over the mortgaged property was conducted where Francisco, Ma. Consuelo and Consuelo emerged as the highest bidders. Further, attachments to the Complaint and Amended Complaint show that Amado Ibañez and Francisco communicated with each other regarding the payment of the loan. The Amended Compromise Agreement, approved by the trial court and which served as the basis for the *Hatol,* referred to the spouses Ibañez as the plaintiffs while the defendants they covenanted to pay are Francisco, Consuelo and Ma. Consuelo. It was signed by the spouses Ibañez and Francisco, for himself and on behalf of Ma. Consuelo and Consuelo. These facts indicate that Francisco has a material interest in the case as it is in his interest to be paid the money he lent the spouses Ibañez. Any judgment which will be rendered will either benefit or injure Francisco; thus, he is a real party in interest.

2. ID.; ID.; ID.; SUBSTITUTION OF PARTY; THE RATIONALE BEHIND THE RULE ON SUBSTITUTION IS TO APPRISE THE HEIR OR THE SUBSTITUTE THAT HE IS BEING BROUGHT TO THE JURISIDICTION OF THE COURT IN LIEU OF THE DECEASED PARTY BY OPERATION OF LAW.— Section 16, Rule 3 of the Revised Rules of Court provides: x x x Whenever a party to a pending action dies, and the claim is not thereby extinguished, it shall be the duty of his counsel to inform the court within thirty (30) days after such death of the fact thereof, and to give the name and address of his legal representative or representatives. Failure of counsel to comply with this duty shall be a ground for disciplinary action. x x x The rationale behind the rule on substitution is to apprise the heir or the substitute that he is being brought to the jurisdiction of the court in lieu of the deceased party by operation of law. It serves to protect the right of every party to due process. It is to ensure that the deceased party would continue to be properly represented in the suit through the duly appointed legal representative of his estate. Non-compliance with the rule on substitution would render the proceedings and the judgment of the trial court infirm because the court acquires no jurisdiction over the persons of the legal representatives or of the heirs on whom the trial and the judgment would be binding.

3. ID.; ID.; ID.; FAILURE TO EFFECT A FORMAL SUBSTITUTION OF HEIRS BEFORE THE RENDITION OF JUDGMENT DOES NOT INVALIDATE THE COURT'S JUDGMENT WHERE THE HEIRS THEMSELVES APPEARED BEFORE THE TRIAL COURT AND ACTIVELY PARTICIPATED IN THE PROCEEDINGS; CASE AT BAR.— [T]here are instances when formal substitution may be dispensed with. In *Vda. de Salazar v. Court of Appeals,* we ruled that the defendant's failure to effect a formal substitution of heirs before the rendition of judgment does not invalidate the court's judgment where the heirs themselves appeared before the trial court, participated in the proceedings, and presented evidence in defense of the deceased defendant. The court there found it undeniably evident that the heirs themselves sought their day in court and exercised their right to due process. Similarly, in *Berot v. Siapno,* we ruled that the continued appearance and participation of Rodolfo, the estate's representative, in the proceedings of the case

dispensed with the formal substitution of the heirs in place of the deceased. Here, while there may have been a failure to strictly observe the provisions of the rules and there was no formal substitution of heirs, the heirs of Francisco, represented by James, voluntarily appeared and actively participated in the case, particularly in the enforcement of the *Hatol.* As the records show, they have filed multiple pleadings and moved several times to implement the *Hatol* to protect Francisco's interest. Following our rulings in *Vda. de Salazar* and *Berot,* a formal substitution of parties is no longer required under the circumstances.

4. ID.; ID.; COMPROMISE AGREEMENT; A COMPROMISE AGREEMENT IS A CONTRACT WHEREBY THE PARTIES, MAKE RECIPROCAL CONCESSIONS TO AVOID LITIGATION OR PUT AN END TO ONE ALREADY COMMENCED.— A compromise agreement is a contract whereby the parties, make reciprocal concessions to avoid a litigation or put an end to one already commenced. In a compromise, the parties adjust their difficulties in the manner they have agreed upon, disregarding the possible gain in litigation and keeping in mind that such gain is balanced by the danger of losing. It encompasses the objects stated, although it may include other objects by necessary implication. It is binding on the contractual parties, being expressly acknowledged as a juridical agreement between them, and has the effect and authority of *res judicata.*

5. CIVIL LAW; OBLIGATIONS; SOLIDARY OBLIGATIONS MUST BE POSITIVELY AND CLEARLY EXPRESSED IN THE AGREEMENT; NOT ESTABLISHED IN CASE AT BAR.— There is nothing in the *Hatol,* and the Amended Compromise Agreement it is based on, which shows a declaration that the obligation created was solidary. In any case, solidary obligations cannot be inferred lightly. They must be positively and clearly expressed. x x x In this case, given that solidarity could not be inferred from the agreement, the presumption under the law applies—the obligation is joint. As defined in Article 1208, a joint obligation is one where there is a concurrence of several creditors, or of several debtors, **or of several creditors and debtors,** by virtue of which **each of the creditors has a right to demand, and each of the debtors is bound to render compliance with his proportionate part of the prestation**

which constitutes the object of the obligation. Each debtor answers only for a part of the whole liability **and to each obligee belongs only a part of the correlative rights** as it is only in solidary obligations that payment made to any one of the solidary creditors extinguishes the entire obligation.

APPEARANCES OF COUNSEL

Zerrudo Law Office for petitioners.
Roberto Bermejo for respondents.

D E C I S I O N

JARDELEZA, *J.*:

This is an Amended Petition for Review on *Certiorari*[1] under Rule 45 of the Revised Rules of Court assailing the Decision[2] dated October 29, 2009 (assailed Decision) and Resolution[3] dated September 29, 2010 (assailed Resolution) of the Court of Appeals (CA) in CA-G.R. SP No. 98623. The CA set aside the Orders dated August 11, 2006[4] and February 20, 2007[5] and reinstated the Order dated March 24, 2006[6] of the Regional Trial Court (RTC) of Manila, Branch 40, in Civil Case No. 97-86454.

I

Sometime in October 1996, spouses Amado and Esther Ibañez (spouses Ibañez) borrowed from Francisco E. Muñoz, Sr.

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[1] *Rollo,* pp. 146-178.

[2] *Id.* at 10-24, penned by Associate Justice Vicente S.E. Veloso with Associate Justices Andres B. Reyes, Jr. and Marlene Gonzales-Sison, concurring.

[3] *Id.* at 37-39.

[4] *Id.* at 125-126.

[5] *Id.* at 127-128.

[6] *Id.* at 208-209.

(Francisco), Consuelo Estrada (Consuelo) and Ma. Consuelo E. Muñoz (Ma. Consuelo) the amount of ₱1,300,000, payable in three months, with interest at the rate of 3% a month.[7]

On October 14, 1996, the spouses Ibañez issued a Promissory Note[8] binding themselves jointly and severally to pay Ma. Consuelo and Consuelo the loan amount with interest, to wit:

> FOR VALUE RECEIVED, I jointly and severally, promise to pay to MA. CONSUELO E. MUÑOZ & CONSUELO C. ESTRADA, at their office at x x x, the principal sum of ONE MILLION THREE HUNDRED THOUSAND ONLY (₱1,300,000.00), Philippine Currency, with interest thereon at the rate of three percent (3%) per month, subject to one (1%) percent penalty if not paid on monthly due date. Interest not paid when due shall be added to and become part of the principal and shall likewise bear interest at the same rate compounded monthly. Payable within a period of three (3) months from the date hereof, beginning Nov. 14, 1996 and every month thereafter, until the whole sum of principal and interest shall have been fully paid.
>
> Upon default of three (3) monthly installments when due, all the other installments shall become due and payable. Interest not paid when due shall be added to, and become part of the principal and shall likewise bear interest at the same rate, compounded monthly.[9]

As security, on October 17, 1996, the spouses Ibañez executed a Deed of Real Estate Mortgage[10] in favor of Ma. Consuelo and Consuelo over a parcel of land and its improvements covered by Transfer of Certificate Title (TCT) No. 202978. The mortgage contained the same terms as the promissory note. It further stipulated that Ma. Consuelo and Consuelo shall have the right to immediately foreclose the mortgage upon the happening of the following events: (1) filing by the mortgagor of any petition for insolvency or suspension of payment; and/or (2) failure of

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[7] Records, Vol. I, p. 5.

[8] *Id.* at 18-19.

[9] *Id.* at 18.

[10] *Id.* at 20-23.

the mortgagor to perform or comply with any covenant, agreement, term or condition of the mortgage.[11]

On September 23, 1997, alleging that the conditions of the mortgage have been violated since November 17, 1996 and that all check payments were dishonored by the drawee, Ma. Consuelo and Consuelo applied for foreclosure of the real estate mortgage.[12]

On December 8, 1997, the spouses Ibañez filed in the RTC of Manila a Complaint[13] for injunction and damages with prayers for writ of preliminary injunction and temporary restraining order against Francisco, Ma. Consuelo, Consuelo, the Clerk of Court and *Ex-Officio* Sheriff, Sheriff-in-Charge and Register of Deeds of the City of Manila. Docketed as Civil Case No. 97-86454, the Complaint alleged that there is no reason to proceed with the foreclosure because the real estate mortgage was novated.[14] They prayed that the public auction of the property be enjoined and that Francisco, Ma. Consuelo and Consuelo be held liable for actual and compensatory, moral and exemplary damages, as well as attorney's fees and costs of suit.[15]

On December 12, 1997, the spouses Ibañez filed an Amended Complaint.[16] They alleged that the public auction was conducted, with Francisco, Ma. Consuelo and Consuelo as the highest bidders[17] and prayed that the *Ex-Officio* Sheriff and the Sheriff-in-Charge be enjoined from executing the certificate of sale in favor of Francisco, Ma. Consuelo and Consuelo. In the event the certificate of sale is already issued, they alternatively prayed

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[11] *Id.* at 21.

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

[13] *Id.* at 3-14.

[14] *Id.* at 7.

[15] *Id.* at 11-12.

[16] *Id.* at 31-43.

[17] *Id.* at 39.

for that the Register of Deeds of Manila be enjoined from registering the certificate of sale.[18]

On December 16, 1997, the RTC issued a *status quo* order.[19]

On June 11, 2002, the parties filed a Joint Motion for Approval of Amended Compromise Agreement.[20] The Amended Compromise Agreement,[21] signed by the spouses Ibañez and Francisco, for himself and on behalf of Ma. Consuelo and Consuelo, reads:

AMENDED COMPROMISE AGREEMENT

PARTIES PLAINTIFFS and DEFENDANTS, assisted by their respective counsels, unto this Honorable Court, most respectfully submit this **AMENDED COMPROMISE AGREEMENT,** to wit:

I- STIPULATIONS OF THE PARTIES:

1.1. On October 16, 1996, plaintiffs obtained a loan from the defendants, in the principal amount of **₱1,300,000.00,** with interest thereon, **payable within three (3) months therefrom;**

1.2. The loan has been secured by a Real Estate Mortgage, constituted on a parcel of land, situated in the District of Singalong, Malate, Manila, containing an area of **135.70 Square Meters,** registered in the name of **Amado O. Iba[ñ]ez, married to Esther R. Iba[ñ]ez,** embraced under Transfer **Certificate of Title No. [202978]**, of the Registry of Deeds for the City of Manila;

1.3. Thereafter, the mortgage was extra-judicially foreclosed by the defendants, for failure to pay the loan obligation, plus interests due thereon, within the agreed period;

1.4. The property in question was not redeemed within the period prescribed by law. Hence, on **December 10, 1997,** after **Notice,** the Office of the Clerk of Court and Ex-Officio Sheriff

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[18] *Id.* at 39-40.

[19] *Id*. at 60.

[20] *Id.* at 309-310.

[21] *Id.* at 311-314.

of Manila, **sold the same property at public auction** where defendant Francisco E. Munoz, Sr. was the highest bidder;

1.5. However, the **Certificate of Sale,** was not issued in view of the institution by plaintiffs of the present case.

II- TERMS AND CONDITIONS:

2.1. The plaintiffs shall pay unto the defendants, the total sum of **THREE MILLION PESOS (₱3,000,000.00),** Philippine Currency, portion of which shall be paid through the proceeds of a real estate loan, being secured from the Government Service[] Insurance System (GSIS), and the remaining balance, from such other sources determined by the plaintiffs, subject to the conformity of the defendants;

2.2. The defendants accept, as initial payment, the amount of **PESOS: TWO MILLION (₱2,000,000.00) Philippine Currency,** from the proceeds of the said real estate loan to be released by the **Government Service**[] **Insurance System (GSIS),** which amount is hereby unconditionally committed by the plaintiffs to be paid in full to the defendants, immediately upon release thereof, or within a period of three (3) months from date of this agreement;

2.3. The amount to be released by the **Government Service Insurance System (GSIS),** representing proceeds of the above-stated loan **shall be assigned by the plaintiffs, in favor of the defendants, upon execution of this agreement;**

2.4. The **remaining balance** of the total obligation stated in paragraph 2.1 above, amounting to **One Million (₱1,000,000.00),** shall be payable **within one (1) year from date hereof, with interest at the rate of two (2%) per month, and to be secured by a real estate mortgage**, to be constituted on a property registered in the names of the plaintiffs, situated at **Puerto Azul, Brgy. Zapang, Ternate, Cavite,** identified as **Lot 1-J of the subdivision plan Psd-04-133674, portion of Lot 1, (LRC) Psd-88692, L.R.C. Record No. N-33296, containing an area of Twenty (20) hectares,** more or less;

2.5. In the event, that the above-mentioned GSIS loan application will not materialize, parties hereby agree **to immediately cause the lifting or recall of the Status Quo Order issued by this Honorable Court, on December 16, 1997**. Thereafter, the defendants shall immediately cause the

issuance of the **Certificate of Sale** over the subject property in their favor, and the plaintiffs agree not to further delay the same, with any Court action or otherwise;

2.6. Parties hereby agree to **WAIVE** such other claims by one party against the other, relative to or connected with the instant case;

2.7. In the event of failure of the plaintiffs to comply with any of the terms and conditions of this agreement, the defendants shall be entitled to a **Writ of Execution,** to implement this agreement of the parties.

IN WITNESS WHEREOF, parties have hereunto signed this **Compromise Agreement,** this x x x, in the City of Manila.

(Signed)
AMADO O. IBANEZ
Plaintiff

(Signed)
FRANCISCO E. MUNOZ, SR.
Defendant
For himself and on behalf of his Co-defendants

(Signed)
ESTHER R. IBANEZ
Plaintiff

ASSISTED BY:

(Signed)
ATTY. CESAR G. VIOLA
Counsel for the Plaintiffs

(Signed)
ATTY. PROSPERO A. ANAVE
Counsel for the Defendants

x x x[22] (Emphasis and underscoring in the original.)

On June 17, 2002, the RTC approved the Amended Compromise Agreement and adopted it as its *Hatol*.[23]

On September 24, 2002, the spouses Ibañez manifested that: (1) there will be a slight delay in their compliance due to new

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[22] *Id.*

[23] Records, Vol. I. pp. 315-318.

loan requirements of the Government Service Insurance System (GSIS);[24] and (2) they have executed a Real Estate Mortgage[25] dated August 10, 2002 in favor of Ma. Consuelo and Consuelo over a property covered by TCT No. T-77676, as per the parties' Amended Compromise Agreement.

On February 28, 2006, Atty. Roberto C. Bermejo (Atty. Bermejo), representing himself as collaborating counsel for Francisco, Ma. Consuelo and Consuelo, filed an Omnibus Motion for Execution and Lifting of the *Status Quo* Order of December 16, 1997 and for the Issuance of Writ of Possession.[26] Atty. Bermejo alleged that the spouses Ibañez failed to comply with their obligation under the Amended Compromise Agreement. Consequently, and following the terms of the Amended Compromise Agreement, the RTC's *status quo* order must be lifted and a certificate of sale over the subject property be immediately issued.[27]

On March 24, 2006, the RTC granted Atty. Bermejo's motion. It found that the spouses Ibañez have yet to pay the amount due, in violation of the terms of the Amended Compromise Agreement.[28] The Order dated March 24, 2006 reads:

> WHEREFORE, in view of the foregoing, Order is issued: (1) lifting the status quo order of December 16, 1997; (2) directing the issuance of a writ of possession directing the private defendant[s] be placed in possession of the subject property; and (3) directing the Office of the Sheriff of Manila to issue a certificate of sale in favor of the private defendant[s].[29] (Emphasis omitted.)

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

[25] *Id.* at 321-322.

[26] Records, Vol. II, pp. 1-3.

[27] *Id.* at 1-2.

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

[29] *Id.* at 7.

The spouses Ibañez moved to reconsider[30] this order on the following grounds: (1) Francisco died in June 2004; (2) Atty. Prospero A. Anave (Atty. Anave), counsel on record of Francisco, Ma. Consuelo and Consuelo, failed to inform the court of such fact; thus, there was no valid substitution of parties; and (3) Atty. Bermejo had no authority to file the omnibus motion as it is without knowledge, approval and consent of Atty. Anave.[31]

On June 15, 2006, the RTC granted the spouses Ibañez' Motion for Reconsideration.[32] It held that: (1) Atty. Anave's failure to report Francisco's death to the court for purposes of substitution rendered the proceedings thereat null and void; (2) Atty. Anave's subsequent conformity to Atty. Bermejo's actions did not cure the initial defect in the filing of the Omnibus Motion; neither did it mean the withdrawal, dismissal or substitution of Atty. Anave by Atty. Bermejo; and (3) a formal entry of appearance with Atty. Anave's conformity is necessary before Atty. Bermejo can legally act as collaborating counsel.

On June 29, 2006, the spouses Ibañez filed a Motion for the Implementation of the Amended Compromise Agreement.[33] They argued that since there was no proper substitution of the heirs of Francisco, the proper parties to substitute him are Ma. Consuelo and Consuelo. They also argued that the Amended Compromise Agreement had already been partially complied with: (1) they have already executed a Deed of Assignment assigning to Ma. Consuelo and Consuelo the proceeds of the GSIS loan pursuant to paragraph 2.3; and (2) on May 19, 2006, they have already executed the Real Estate Mortgage provided under paragraph 2.4.[34] They further allege that the delay in the implementation of the assignment was due to the assignees' failure to deliver to the GSIS the owner's copy of TCT No.

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[30] *Id.* at 10-18.

[31] *Id.* at 10.

[32] *Id.* at 104-105.

[33] *Id.* at 108-111.

[34] *Id.* at 110-111.

202978 (the same lot which served as security for the Promissory Note executed by the spouses Ibañez on October 14, 1996) and the discharge of the corresponding Real Estate Mortgage executed by the spouses Ibañez on October 17, 1996.

The spouses Ibañez thus prayed that the Amended Compromise Agreement be considered initially implemented and that Ma. Consuelo and Consuelo be ordered to surrender the owner's copy of TCT No. 202978 or to consider the title lost should the same not be surrendered.[35]

On July 5, 2006, citing irreconcilable differences, Atty. Anave filed his Notice of Withdrawal of Appearance[36] as counsel for Francisco, Ma. Consuelo and Consuelo.

On even date, Atty. Bermejo filed a Notice of Death[37] of Francisco and named James Harper (James) as Francisco's legal representative. Atty. Bermejo also filed his Entry of Appearance[38] as counsel for James, Ma. Consuelo and Consuelo.

On July 31, 2006, the spouses Ibañez filed a Motion to Adopt/ Consider the Judicial Compromise Agreement dated June 17, 2002 Designated as "*Hatol*" as the Final and Executory Decision.[39] The motion prayed that since all the stipulations in the Amended Compromise Agreement have been complied with to the entire satisfaction of all the contending parties, the Compromise Agreement should be considered and adopted as the trial court's decision on the merits.[40] The motion was signed by Amado Ibañez with the conformity of Consuelo, signing for herself and Ma. Consuelo.[41] Atty. Anave and the Branch

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[35] *Id.* at 111.

[36] *Id.* at 121.

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

[38] *Id.* at 122.

[39] *Id.* at 125-130.

[40] *Id.* at 129.

[41] *Id.*

Clerk of Court were notified of the hearing. Only Atty. Anave, Ma. Consuelo and Consuelo were, however, furnished copies of the motion.[42]

In an Order dated August 11, 2006,[43] the RTC granted the spouses Ibañez' motion, thus:

> x x x It appearing that all the stipulations in the *"Hatol*", dated June 10, 2002, have been complied with accordingly to the entire satisfaction of each one of the contending parties and the terms and conditions set forth therein were duly performed and satisfied. As prayed for, the said *"Hatol,"* dated June 10, 2002, is considered, regarded and adopted as this Court's decision on the merits with finality which was approved by this Court on June 17, 2002.
>
> SO ORDERED.[44]

On same date, the RTC issued an Order[45] noting Atty. Anave's withdrawal as counsel and Atty. Bermejo's entry of appearance.

On August 18, 2006, Ma. Consuelo and Consuelo filed a Manifestation[46] disclaiming Atty. Bermejo as their counsel and naming Atty. Marigold Ana C. Barcelona (Atty. Barcelona) as their counsel. Attached to the Manifestation is Atty. Barcelona's Entry of Appearance.[47]

On August 24, 2006, James, as Francisco's legal representative, and through Atty. Bermejo, sought reconsideration[48] of the RTC's August 11, 2006 Order. He argued that the trial court erred in holding that all the stipulations in the *Hatol* have been complied with to the satisfaction of all the parties. According to James, the spouses Ibañez made it appear

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[42] Records, Vol. II, p. 130.

[43] *Id.* at 134-135.

[44] *Id.*

[45] Records, Vol. II, p. 132.

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

[47] *Id.* at 140.

[48] *Id.* at 143-146.

that only Ma. Consuelo and Consuelo remained as parties after Francisco's death. Since James, as Francisco's representative, was excluded from the Deed of Assignment, the Amended Compromise Agreement could not have been completely complied with.

On February 20, 2007, the RTC denied[49] James' motion for reconsideration of the trial court's August 11, 2006 Order, to wit:

> A judicial compromise, once stamped with judicial approval becomes more than a contract binding upon the parties and having the sanction of the Court and entered as its determination of the controversy, it has the force and effect and (*sic*) any other judgment. It has also the effect of res judicata and it is immediately executory and not appeallable (*sic*).
>
> In this case, the judicial compromise agreement entered into by the parties was already approved by this Court in its HATOL, dated June 17, 2002 and considered it as its decision on the merits with finality. Therefore, the same has become immediately final and executory and could no longer be reconsidered and set aside.
>
> Moreover, there is no reason to disturb this Court's finding that all the stipulations in the HATOL have already been complied with according to the entire satisfaction of each one of the contending parties. James Harper cannot be made a party thereto, there being no valid substitution of parties made.
>
> **WHEREFORE**, James Harper, through counsel's motion for reconsideration is **DENIED** for lack of merit.[50] (Emphasis in the original, citations omitted.)

Aggrieved, the heirs of Francisco, identified as Maria C. Muñoz, Angelina M. Crocker and Maria Elena M. Webster and represented by James Harper, filed before the CA a Petition for *Certiorari*[51] under Rule 65 of the Revised Rules of Court.

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[49] *Id.* at 177-178.

[50] *Id.* at 178.

[51] *Id.* at 193-203.

They assailed the Orders dated August 11, 2006 and February 20, 2007 of the trial court and clarified that contrary to the findings of the trial court, they are pushing for the execution of the Amended Compromise Agreement. The heirs emphasized that under the terms of the Compromise Agreement, the obligations of the spouses Ibañez are as follows: (1) To pay ₱2,000,000 to be sourced from the proceeds of a GSIS loan and released three months from the date of the agreement; and (2) to pay ₱1,000,000 within one year from the date of the agreement and secured by a real estate mortgage on the spouses Ibañez' property in Puerto Azul. The heirs are of the view that since the spouses Ibañez have not complied with any of the foregoing stipulations, the December 16, 1997 *status quo* order of the trial court should already be lifted. They likewise argue that the trial court gravely and seriously erred when it disregarded Francisco and his heirs by holding that there was no proper substitution of parties.[52]

Meanwhile, on April 17, 2007, the spouses Ibañez filed a Motion for Execution[53] and prayed that Ma. Consuelo and Consuelo be ordered to surrender to them the owner's copy of TCT No. 202978. In case of failure to surrender, they alternately prayed that the Register of Deeds of Manila be ordered to declare the owner's copy lost for purposes of subsequent reconstitution.[54]

On May 18, 2007, James filed his Opposition[55] to the Motion for Execution and moved to suspend further proceedings in the trial court due to the pendency of his petition for *certiorari* in the CA.

On May 31, 2007, the trial court issued its Order[56] granting the Motion for Execution and denying James' motion to suspend. According to the trial court, there was no valid substitution;

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[52] *Id.* at 197-202.

[53] *Id.* at 183-186.

[54] *Id.* at 184-185.

[55] *Id.* at 205-207.

[56] *Id.* at 234-235.

thus, it did not acquire jurisdiction over James. On June 26, 2007, the trial court issued a Writ of Execution.[57]

On September 20, 2007, Sheriff Gavin P. Reyala (Sheriff Reyala) filed his Return[58] indicating that Consuelo failed to surrender the owner's copy of TCT No. 202978 as it was allegedly in James' possession. Thus, the Registry of Deeds of Manila, in compliance with the Writ of Execution, issued a new owner's copy of TCT No. 202978 which Sheriff Reyala delivered to the spouses Ibañez.

On October 29, 2009, the CA resolved James' petition for *certiorari*, the dispositive portion of which states:

> **WHEREFORE**, the instant petition is **GRANTED**. **Setting aside** the assailed Orders dated August 11, 2006 and February 20, 2007, the RTC's March 24, 2006 Order granting the February 28, 2006 Omnibus Motion for Execution and the Lifting of the RTC's December 16, 1997 Status Quo Order is hereby Reinstated.
>
> **SO ORDERED**.[59] (Emphasis in the original.)

The CA ruled that the Amended Complaint and the *Hatol* identified Francisco, Ma. Consuelo and Consuelo as the creditors and the parties who were supposed to receive the proceeds of the Amended Compromise Agreement. Since the Deed of Assignment was executed only in favor of Ma. Consuelo and Consuelo, the loan obligation of the spouses Ibañez *to Francisco* remained unsettled. The heirs of Francisco thus retain the right to invoke paragraph 2.5 of the Compromise Agreement which provides for the lifting of the trial court's *status quo* order.[60] The CA disagreed that there was no valid substitution of parties and noted from the records that the RTC was notified of Francisco's death on June 29, 2006. The late filing of the notice of death did not divest the RTC of jurisdiction to favorably act

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[57] *Id.* at 241-242.

[58] *Id.* at 275.

[59] *Rollo,* p. 23.

[60] *Id.* at 21-22.

on the heirs' motion to lift the *status quo* order and issue the writ of execution. Based on Section 16, Rule 3 of the Revised Rules of Court, it is the counsel, not the heirs of the deceased, who will be penalized for the failure to comply with the duty to notify the court of the client's death.[61]

The CA denied the spouses Ibañez' Urgent Motion for Reconsideration[62] via its assailed Resolution.

Hence, this petition.The issues presented are:

1. Whether Francisco was a real party in interest;
2. Whether there was valid substitution of parties; and
3. Whether all the provisions of the Amended Compromise Agreement have been complied with.

II

In their Amended Petition for Review on *Certiorari*,[63] the spouses Ibañez claim that neither James nor Francisco, the person he seeks to substitute, are parties in interest in Civil Case No. 97-86454. As such, James has no personality to file the petition for *certiorari* in the CA and the issue of whether Francisco was validly substituted is moot and academic.[64] Alternatively, the spouses Ibañez argue that the CA erred in ruling that James has validly substituted Francisco as the notice of death and substitution was made beyond the mandatory 30-day period.[65]

Section 2, Rule 3 of the Revised Rules of Court provides:

> 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.

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[61] *Id.* at 22-23.

[62] *Id.* at 25-30.

[63] *Supra* note 1.

[64] *Rollo,* pp. 170, 172-173.

[65] *Id.* at 170-172.

"Interest," within the meaning of the rule, means material interest, an interest in issue and to be affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest.[66]

In their Complaint and Amended Complaint, the spouses Ibañez impleaded Francisco as a defendant and described him as the capitalist. They also alleged that they took a loan from Francisco, Ma. Consuelo and Consuelo.[67] They also narrated that a public auction over the mortgaged property was conducted where Francisco, Ma. Consuelo and Consuelo emerged as the highest bidders.[68]

Further, attachments to the Complaint and Amended Complaint show that Amado Ibañez and Francisco communicated with each other regarding the payment of the loan.[69] The Amended Compromise Agreement, approved by the trial court and which served as the basis for the *Hatol,* referred to the spouses Ibañez as the plaintiffs while the defendants they covenanted to pay are Francisco, Consuelo and Ma. Consuelo. It was signed by the spouses Ibañez and Francisco, for himself and on behalf of Ma. Consuelo and Consuelo.[70] These facts indicate that Francisco has a material interest in the case as it is in his interest to be paid the money he lent the spouses Ibañez. Any judgment which will be rendered will either benefit or injure Francisco; thus, he is a real party in interest.

We now resolve whether Francisco's heirs have validly substituted him as parties in the case.

Section 16, Rule 3 of the Revised Rules of Court provides:

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[66] *Republic v. Coalbrine International Philippines, Inc.,* G.R. No. 161838, April 7, 2010, 617 SCRA 491, 497.

[67] Records, Vol. I, pp. 3-5, 31-33.

[68] *Id.* at 38.

[69] *Id.* at 27-28, 57-58.

[70] *Supra* note 21.

Sec. 16. *Death of party; duty of counsel*. – Whenever a party to a pending action dies, and the claim is not thereby extinguished, it shall be the duty of his counsel to inform the court within thirty (30) days after such death of the fact thereof, and to give the name and address of his legal representative or representatives. Failure of counsel to comply with this duty shall be a ground for disciplinary action.

The heirs of the deceased may be allowed to be substituted for the deceased, without requiring the appointment of an executor or administrator and the court may appoint a guardian *ad litem* for the minor heirs.

The court shall forthwith order said legal representative or representatives to appear and be substituted within a period of thirty (30) days from notice.

If no legal representative is named by the counsel for the deceased party, or if the one so named shall fail to appear within the specified period, the court may order the opposing party, within a specified time, to procure the appointment of an executor or administrator for the estate of the deceased and the latter shall immediately appear for and on behalf of the deceased. The court charges in procuring such appointment, if defrayed by the opposing party, may be recovered as costs.

The rationale behind the rule on substitution is to apprise the heir or the substitute that he is being brought to the jurisdiction of the court in lieu of the deceased party by operation of law.[71] It serves to protect the right of every party to due process. It is to ensure that the deceased party would continue to be properly represented in the suit through the duly appointed legal representative of his estate. Non-compliance with the rule on substitution would render the proceedings and the judgment of the trial court infirm because the court acquires no jurisdiction over the persons of the legal representatives or of the heirs on whom the trial and the judgment would be binding.[72]

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[71] *Cardenas v. Heirs of the Late Spouses Aguilar*, G.R. No. 191079, March 2, 2016, 782 SCRA 405, 411.

[72] *Heirs of Bertuldo Hinog v. Melicor*, G.R. No. 140954, April 12, 2005, 455 SCRA 460, 477-478, as cited in *Cardenas v. Heirs of the Late Spouses Aguilar*, *supra.*

Nevertheless, there are instances when formal substitution may be dispensed with. In *Vda. de Salazar v. Court of Appeals,*[73] we ruled that the defendant's failure to effect a formal substitution of heirs before the rendition of judgment does not invalidate the court's judgment where the heirs themselves appeared before the trial court, participated in the proceedings, and presented evidence in defense of the deceased defendant. The court there found it undeniably evident that the heirs themselves sought their day in court and exercised their right to due process.[74]

Similarly, in *Berot v. Siapno,*[75] we ruled that the continued appearance and participation of Rodolfo, the estate's representative, in the proceedings of the case dispensed with the formal substitution of the heirs in place of the deceased.[76]

Here, while there may have been a failure to strictly observe the provisions of the rules and there was no formal substitution of heirs, the heirs of Francisco, represented by James, voluntarily appeared and actively participated in the case, particularly in the enforcement of the *Hatol.* As the records show, they have filed multiple pleadings and moved several times to implement the *Hatol* to protect Francisco's interest. Following our rulings in *Vda. de Salazar* and *Berot*, a formal substitution of parties is no longer required under the circumstances.

The trial court therefore committed grave abuse of discretion when it declared that Harper cannot be made a party in the case because of the lack of a valid substitution.[77] Its refusal to recognize Francisco's heirs deprived them of the opportunity to exact compliance with whatever rights they may have under the terms of the Amended Compromise Agreement.

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[73] G.R. No. 121510, November 23, 1995, 250 SCRA 305.

[74] *Id.* at 311.

[75] G.R. No. 188944, July 9, 2014, 729 SCRA 475.

[76] *Id.* at 488-491.

[77] *Rollo,* p. 128.

Anent the third issue, the spouses Ibañez argued that the CA erred in reversing the August 11, 2006 and February 20, 2007 Orders of the trial court. They claim that since the *Hatol,* rendered by the RTC based on the Amended Compromise Agreement, is already final, executory and, in fact, partially executed,[78] Harper cannot anymore file a petition for *certiorari* to assail them.[79]

A compromise agreement is a contract whereby the parties, make reciprocal concessions to avoid a litigation or put an end to one already commenced. In a compromise, the parties adjust their difficulties in the manner they have agreed upon, disregarding the possible gain in litigation and keeping in mind that such gain is balanced by the danger of losing.[80] It encompasses the objects stated, although it may include other objects by necessary implication. It is binding on the contractual parties, being expressly acknowledged as a juridical agreement between them, and has the effect and authority of *res judicata.*[81]

Here, the spouses Ibañez agreed to pay Francisco, Ma. Consuelo and Consuelo the total amount of ₱3,000,000, with the initial payment of ₱2,000,000 to be sourced from the proceeds of a GSIS loan and secured by the spouses Ibañez while the remaining balance of ₱1,000,000 to be paid one year from the date of the Amended Compromise Agreement.

As correctly identified by the CA, the Amended Compromise Agreement clearly refers to the spouses Ibañez as plaintiffs and Francisco, Consuelo and Ma. Consuelo as the defendants they covenanted to pay. There is nothing in the *Hatol*, and the Amended Compromise Agreement it is based on, which shows a declaration that the obligation created was solidary.

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[78] *Id.* at 173.

[79] *Id.*

[80] *Magbanua v. Uy,* G.R. No. 161003, May 6, 2005, 458 SCRA 184, 190.

[81] *Chu v. Cunanan,* G.R. No. 156185, September 12, 2011, 657 SCRA 379, 387.

In any case, solidary obligations cannot be inferred lightly. They must be positively and clearly expressed.[82] Articles 1207 and 1208 of the Civil Code provide:

Art. 1207. **The concurrence of two or more creditors or of two or more debtors in one and the same obligation does not imply that each one of the former has a right to demand, or that each one of the latter is bound to render, entire compliance with the prestations.** There is a solidary liability only when the obligation expressly so states, or when the law or the nature of the obligation requires solidarity.

Art. 1208. If from the law, or the nature or the wording of the obligations to which the preceding article refers the contrary does not appear, **the credit or debt shall be presumed to be divided into as many equal shares as there are creditors or debtors, the credits or debts being considered distinct from one another, subject to the Rules of Court governing the multiplicity of suits.** (Emphasis supplied.)

In this case, given that solidarity could not be inferred from the agreement, the presumption under the law applies — the obligation is joint.

As defined in Article 1208, a joint obligation is one where there is a concurrence of several creditors, or of several debtors, **or of several creditors and debtors**, by virtue of which **each of the creditors has a right to demand, and each of the debtors is bound to render compliance with his proportionate part of the prestation** which constitutes the object of the obligation.[83] Each debtor answers only for a part of the whole liability **and to each obligee belongs only a part of the correlative rights**[84] as it is only in solidary obligations that payment made to any

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[82] *PH Credit Corporation v. Court of Appeals,* G.R. No. 109648, November 22, 2001, 370 SCRA 155, 165.

[83] *Philippine Commercial International Bank v. Court of Appeals,* G.R. No. 121989, January 31, 2006, 481 SCRA 127, 135. Emphasis supplied.

[84] *Industrial Management International Development Corp. v. National Labor Relations Commission,* G.R. No. 101723, May 11, 2000, 331 SCRA 640, 646. Emphasis supplied.

one of the solidary creditors extinguishes the entire obligation.[85] This means that Francisco, Ma. Consuelo and Consuelo are each entitled to equal shares in the ₱3,000,000 agreed upon in the Amended Compromise Agreement and that payment to Consuelo and Ma. Consuelo will not have the effect of discharging the obligation with respect to Francisco.

The spouses Ibañez assigned the proceeds of the GSIS loan and executed a real estate mortgage over the Puerto Azul property only in Ma. Consuelo and Consuelo's favour. By doing so, they did not discharge their obligation in accordance with the terms of the Amended Compromise Agreement and left their loan obligation to Francisco unsettled. Thus, and as correctly held by the CA, it was gravely erroneous for the trial court to rule that all the stipulations in the *Hatol* have been complied with. Under the circumstances, the obligations to Francisco, and consequently, his heirs, have clearly not been complied with.

The trial court deprived the heirs of Francisco of the opportunity to assert their rights under the Amended Compromise Agreement not only in its August 11, 2006 and February 20, 2007 Orders finding that the stipulations in the Amended Compromise Agreement have been complied with to the

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[85] Art. 1216. The creditor may proceed against any one of the solidary debtors or some or all of them simultaneously. The demand made against one of them shall not be an obstacle to those which may subsequently be directed against the others, so long as the debt has not been fully collected.

Art. 1217. Payment made by one of the solidary debtors extinguishes the obligation. If two or more solidary debtors offer to pay, the creditor may choose which offer to accept.

He who made the payment may claim from his co-debtors only the share which corresponds to each, with the interest for the payment already made. If the payment is made before the debt is due, no interest for the intervening period may be demanded.

When one of the solidary debtors cannot, because of his insolvency, reimburse his share to the debtor paying the obligation, such share shall be borne by all his co-debtors, in proportion to the debt of each.

satisfaction of all parties, but also in its June 15, 2006 Order which set aside the March 24, 2006 Order granting the motion filed by the counsel for Francisco's heirs.

As earlier discussed, while there might have been a failure to strictly observe the rule on formal substitution of heirs, the trial court's refusal to recognize the heirs of Francisco even after their voluntary appearance and active participation in the case constitutes grave abuse of discretion. Thus, in addition to the August 11, 2006 and February 20, 2007 Orders of the RTC, its June 15, 2006 Order must also be set aside.

WHEREFORE, the petition is **DENIED**. The Decision dated October 29, 2009 and Resolution dated September 29, 2010 of the CA in CA-G.R. SP No. 98623 which **REINSTATED** the RTC's March 24, 2006 Order and **SET ASIDE** the August 11, 2006 and February 20, 2007 Orders of the RTC, Manila, Branch 40, in Civil Case No. 97-86454 are hereby **AFFIRMED with the MODIFICATION** that the June 15, 2006 Order of the RTC is likewise **ANNULLED** and **SET ASIDE**.

SO ORDERED.

Bersamin[*] (*Acting Chairperson*), *Reyes, Perlas-Bernabe,*[**] and *Caguioa,*[***] *JJ.,* concur.

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[*] Associate Justice Presbiterio J. Velasco, Jr. inhibited himself due to close association to one of the parties.

[**] Designated as Additional Member per Raffle dated February 13, 2017.

[***] Designated as Fifth Member of the Third Division per Special Order No. 2417 dated January 4, 2017.

THIRD DIVISION

[G.R. No. 196084. February 15, 2017]

NUEVA ECIJA II ELECTRIC COOPERATIVE, INC., AREA I, Mr. REYNALDO VILLANUEVA, President, Board of Directors, and Mrs. EULALIA CASTRO, General Manager, *petitioners, vs.* **ELMER B. MAPAGU,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; THE RIGHT TO APPEAL IS A MERE STATUTORY PRIVILEGE AND MUST BE EXERCISED IN THE MANNER AND IN ACCORDANCE WITH THE PROVISIONS OF LAW; NOT ESTABLISHED IN CASE AT BAR.— The right to appeal is a mere statutory privilege and must be exercised only in the manner and in accordance with the provisions of the law. One who seeks to avail of the right to appeal must strictly comply with the requirement of the rules. Failure to do so leads to the loss of the right to appeal. The case before us calls for the application of the requirements of appeal under Rule 45, x x x Petitioners failed to comply with the foregoing provisions. They confuse petitions for review on *certiorari* under Rule 45 with petitions for *certiorari* under Rule 65. It is the latter which is required to be filed within a period of not later than 60 days from notice of the judgment, order or resolution. If a motion for new trial or reconsideration is filed, the 60-day period shall be counted from notice of the denial of the motion. x x x A party litigant wishing to file a petition for review on *certiorari* must do so within 15 days from notice of the judgment, final order or resolution sought to be appealed. x x x Even if petitioners were given the maximum period of extension of 30 days, their petition before us still cannot stand. The Rules allow only for a maximum period of 45 days within which an aggrieved party may file a petition for review on *certiorari*. By belatedly filing their petition with us, petitioners have clearly lost their right to appeal.

2. ID.; ID.; ID.; FAILURE TO FILE AN APPEAL BY *CERTIORARI* WITHIN THE REGLEMENTARY PERIOD

RENDERED THE DECISION TO BE FINAL AND EXECUTORY; CASE AT BAR.— There are instances when we have relaxed the rules governing the periods of appeal to serve substantial justice. x x x Petitioners remain adamant that they properly observed the Rules when clearly they failed to do so. They did not even attempt to allude to any exceptional circumstance that would move us to use our equity jurisdiction to allow a liberal application of the Rules. Hence, we are constrained to declare that for petitioners' failure to file an appeal by *certiorari* within the reglementary period, the assailed Resolutions of the CA had already become final and executory. x x x All told, considering that we have lost jurisdiction to review the case in view of the finality of the CA Decision, we see no further reason to delve into the other issues raised by petitioners.

APPEARANCES OF COUNSEL

Rosita L. Dela Fuente-Torres for petitioners.
Joselito A. Oliveros for respondent.

D E C I S I O N

JARDELEZA, *J.*:

This is a Petition for Review on *Certiorari*[1] assailing the September 2, 2010[2] and March 3, 2011[3] Resolutions of the Court of Appeals (CA) in CA-G.R. SP No. 114690. The CA dismissed outright the petition for *certiorari* filed by Nueva Ecija II Electric Cooperative, Inc., Area I (NEEC), Reynaldo Villanueva (Villanueva) and Eulalia Castro (Castro) (collectively, petitioners) on the ground that their Verification and Certification against Forum Shopping was unsigned.

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[1] Under Rule 45 of the Rules of Court. *Rollo*, pp. 7-22.

[2] *Id.* at 210-211. Penned by Associate Justice Hakim S. Abdulwahid with Associate Justices Ricardo R. Rosario and Samuel H. Gaerlan, concurring.

[3] *Id.* at 219-220.

I

Respondent Elmer B. Mapagu (Mapagu) was employed with NEEC as a data processor since May 1983.[4] NEEC is an electric cooperative which supplies electricity to households in Nueva Ecija, including Aliaga, where Mapagu resides.[5] Upon the request of the NEEC Board of Directors, the National Electrification Administration (NEA) conducted a special audit on the power bills and accounts receivables of the consumers, as well as related internal control and procedure, of NEEC.[6] The audit revealed unaccounted consumption or readings which have accumulated due to under-reading and under-billing in prior years or months. Mapagu's electric consumption was found to be under-read and under-billed by 12,845 kilowatt hours (kWhrs) and 1,918 kWhrs for the months of April 2004 and March to May 2005, respectively. This under-reading/under-billing amounted to a total of ₱87,666.17.[7] As a result, petitioners sent a Notice of Charges dated June 13, 2006 against Mapagu, charging him with grave violations of Sections 7.2.18 & 7.2.19 of the NEEC Code of Ethics and Discipline (NEEC Code),[8] to wit:

"Section 7.2.18 – Fraud or willful breach by the employee of the trust reposed in him/her by his/her supervisor or by the management."

"Section 7.2.19 – All other acts of dishonesty which cause or tend to cause prejudice to the REC."[9]

Mapagu was informed that the penalty for the charges is dismissal for the first offense and was directed to submit an answer within 72 hours from receipt of the Notice of Charges.[10]

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[4] *Id.* at 134.

[5] *Id.* at 97.

[6] *Id.* at 154.

[7] *Id.* at 188, 191-192.

[8] *Id.* at 97-98.

[9] *Id.* at 98.

[10] *Id.*

In his answer, Mapagu denied under oath that his electric meter was under-read and under-billed by 1,918 kWhrs. He asserted that he has no meter reading from November 2002 to April 2005. He also argued that he availed of the amnesty offered and given by the NEEC Officer in Charge General Manager Jun Capulong in connection with employees' meter problems. Since the charges have been condoned, pardoned and disregarded, Mapagu maintains that he cannot be charged with unaccounted consumption.[11]

NEEC created an Investigation and Appeals Committee (IAC) to investigate Mapagu and the other workers implicated in the special audit. The IAC scheduled four conferences where data encoders and meter readers were invited as resource persons.[12]

On September 5, 2006, the IAC issued its findings and recommendations. It held that while the charges of under-reading and under-billing were not established, Mapagu failed to observe the highest degree of honesty as an employee. He did not take action to correct his kWhr consumption despite knowledge that he has no reading from 2002 to 2005. To the IAC, this was proof that Mapagu consented to the anomaly for his own benefit.[13] On account of his failure to protect the interest of NEEC, the IAC found him guilty of the charges against him, with the additional finding that he also violated Section 7.2.3 of the NEEC Code for concealing defective work resulting in the prejudice or loss of NEEC.

Nevertheless, and for humanitarian reasons, the IAC recommended that Mapagu only be suspended for two years, on the condition that he execute a waiver in favor of NEEC management against the filing of any legal action regarding his suspension. He was also ordered to pay his unbilled consumption worth ₱87,666.17.[14]

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[11] *Rollo,* pp. 99-100.

[12] *Id.* at 137.

[13] *Id.* at 182.

[14] *Id.* at 183.

On January 2, 2007, however, Mapagu received a Notice of Dismissal from service. Hence, he filed a Complaint for illegal dismissal and non-payment of allowances against petitioners. He later amended the Complaint to include a prayer for moral, exemplary and actual damages and attorney's fees, dropping his claim for allowances.[15] NEEC countered that Mapagu was dismissed due to valid and legal causes. His gross dishonesty, fraud and willful misconduct were unveiled by the special audit conducted by the NEA.[16] NEEC contended that the amnesty claimed by Mapagu cannot work in his favor because it only provided for a special payment arrangement, where he was allowed to pay his under-billed obligation on installment for two years.[17]

In his November 30, 2007 Decision,[18] Labor Arbiter (LA) Leandro M. Jose ruled in favor of petitioners. Stating that NEEC discharged its burden of proving that Mapagu was lawfully dismissed, LA Jose dismissed Mapagu's Complaint for lack of merit.[19]

Mapagu appealed to the National Labor Relations Commission (NLRC), which reversed and set aside[20] the ruling of the LA. The NLRC held that under the circumstances and facts of the case, the penalty of dismissal is unwarranted. According to the NLRC, while the law does not condone wrongdoing by an employee, it urges a moderation of the sanction that may be applied to him where a penalty less punitive would suffice.[21] The NLRC compared the penalty imposed upon Mapagu with the sanctions received by his co-employees who admitted that

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[15] *Id.* at 23-25, 137.

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

[17] *Id.* at 109.

[18] *Id.* at 96-115.

[19] *Id.* at 114.

[20] *Id*. at 134-144.

[21] *Id.* at 140.

they altered or tampered their meter reading slips. It found that despite the IAC recommendation of dismissal from the service, the other employees were merely suspended and even given separation pay by the petitioners.[22] The NLRC observed:

> Further, if respondents-appellees [herein petitioners] were able to condone, through Board Resolution No. 09-11-05, those with tampered meters, under read meters, stop/slow meters and illegal connection through payment of the unaccounted consumption, the dismissal of the complain[ant]–appellant all the more is shown to be tainted with bad faith. The condonation of some employees who have committed acts punishable with the (*sic*) dismissal and the dismissal of employees who have committed acts punishable with dismissal shows the bias of appellees.[23]

The NLRC concluded that Mapagu is entitled to the twin relief of reinstatement and backwages. Considering, however, that the trust reposed on Mapagu can no longer be restored, and reinstatement is no longer feasible, the NLRC ordered the payment of separation pay reckoned from the time of Mapagu's employment up to the finality of the Decision. The dispositive portion of the NLRC Decision reads:

> **WHEREFORE**, premises considered, the appeal is hereby **granted**. The 30 November 2007 Decision of the Labor Arbiter is **reversed and set aside** and a new one entered directing Nueva Ecija Electric Cooperative II to pay Elmer Mapagu separation pay in an amount equivalent to one (1) month pay reckoned from his employment up to the finality of this Decision and backwages reckoned from the time he was dismissed up to the finality of this Decision. However, from his backwages, the amount pertaining to his two years suspension must be deducted.
>
> The claims for moral and exemplary damages are dismissed for want of merit.
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> **SO ORDERED**.[24] (Emphasis in the original.)

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[22] *Id.* at 141-142.

[23] *Id.* at 142.

[24] *Id.* at 143-144.

Petitioners sought reconsideration but this was denied by the NLRC. Mapagu, meanwhile, filed a Motion for Clarification and Motion for Partial Reconsideration. The NLRC denied the latter motion but clarified that the separation pay referred to in the decretal portion of its Decision refers to one (1) month pay for every year of service reckoned from the time of Mapagu's employment up to the finality of its Decision.[25] Petitioners elevated the case to the CA via a petition for *certiorari* under Rule 65 of the Rules of Court (Rules).

In its September 2, 2010 Resolution, the CA dismissed the petition outright. It found that petitioners failed to sign the attached Verification and Certification against Forum Shopping and held that a defective verification and certification is equivalent to non-compliance with the Rules. It also constitutes valid cause for dismissal of the petition under the last paragraph of Section 3, Rule 46. Further, Section 5, Rule 7 of the Rules which requires the pleader to submit a certification of non-forum shopping executed by the plaintiff or principal party, is mandatory. Subsequent compliance cannot excuse a party from failing to comply in the first place.[26]

Petitioners filed a Motion for Reconsideration which the CA denied. The CA noted that petitioners still failed to attach a signed verification and certification of non-forum shopping.[27] Petitioners seek recourse with us via a petition for review under Rule 45.

Petitioners fault the CA for dismissing the case on the ground that not all of the petitioners signed the Verification and Certification against Forum Shopping. They explained that only Castro, the General Manager of NEEC, signed the verification and certification because she was authorized and empowered by the NEEC Board of Directors through Resolution No. 02-

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[25] *Id.* at 208.

[26] *Id.* at 211.

[27] *Id.* at 219-220.

18-07[28] dated February 22, 2007, to sign on behalf of NEEC. Likewise, Villanueva, the President of NEEC, executed a Special Power of Attorney[29] (SPA) dated February 20, 2007, giving Castro the power to represent him in this case and to sign all the documents for and on his behalf.[30] More importantly, petitioners contend that Villanueva and Castro have only one defense—that they were both sued as officers of NEEC. Thus, sharing a common interest, the execution by one of them of the certificate of non-forum shopping constitutes substantial compliance with the Rules.[31]

Mapagu filed his Comment,[32] claiming that the petition is filed out of time. He asserts that petitioners themselves disclosed that they received the Resolution of the CA denying their Motion for Reconsideration on March 17, 2011; hence, they only had until April 2, 2011 to file a petition for review on *certiorari*. The petition was filed on May 5, 2011, well beyond the reglementary period. Thus, the questioned Resolutions of the CA have become final and executory.[33] With respect to the alleged SPA in favor of Castro, Mapagu allege that NEEC only authorized Castro to represent Villanueva in the case before the NLRC and not before the CA. Also, the Board Resolution of the NEEC refers only to pending cases as of February 22, 2007. Since the original action for *certiorari* before the CA was filed only on July 23, 2010, Castro could not have validly signed the verification and certification on behalf of NEEC on the basis of the February 22, 2007 SPA.[34]

On the merits of the case, Mapagu attacks the LA's Decision for being rendered with grave abuse of discretion because the

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[28] *Id.* at 216-217.

[29] *Id.* at 218.

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

[31] *Id.* at 17-18.

[32] *Id.* at 223-244.

[33] *Id.* at 223-224.

[34] *Id.* at 224-225.

latter did not explain how petitioners were able to prove the validity of his dismissal from the service. He alleges that the LA merely declared petitioners as "victors without explanation."[35] He explains that petitioners' charges against him relate to his status as a customer and not as an employee of NEEC.[36] He maintains that as a computer operator or data processor, he merely encoded the bills of industrial consumers. This did not include residential consumers or those of NEEC employees.[37] Mapagu attributes bias against petitioners who he claimed treated him harshly compared to his co-employees who admitted their wrongdoings and committed far worse offenses.[38]

On April 4, 2012, petitioners filed their Reply[39] and insist that they have 60 days from March 17, 2011 (or until May 17, 2011) to file the petition for review on *certiorari*. Since the petition was filed on May 6, 2011, they maintain that the same was in fact, filed 11 days ahead of the deadline for submission.[40]

On December 13, 2011, Mapagu filed an Urgent Manifestation[41] disclosing that since he had already been paid the full monetary award granted him by the NLRC, petitioners are now released from any and all obligations to him arising from the NLRC's judgment.

The issues raised are:

1. Whether the petition for review on *certiorari* was, filed before the CA within the reglementary period; and

2. Whether the CA erred in dismissing the petition for *certiorari* for non-compliance with the Rules.

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[35] *Id.* at 226.

[36] *Id.* at 234.

[37] *Id.* at 229-231.

[38] *Id.* at 243-244.

[39] *Id.* at 253-261.

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

[41] *Id.* at 246.

II

We deny the petition.

The facts and material dates are undisputed. Petitioners received the September 2, 2010 Resolution of the CA on September 14, 2010. They filed a Motion for Reconsideration and received the Resolution denying the same on **March 17, 2011.** Thereafter, they filed a Motion for Extension of Time to File Petition for Review on *Certiorari* with Payment of Docket Fees.[42] They sought an extension of 20 days from April 1, 2011 or until April 21, 2011 within which to file the appeal.

On May 6, 2011, they filed this petition. They allege that they have 60 days to file the appeal and in fact, they claim that they are filing it 11 days ahead of the reglementary deadline. Petitioners insist that following *Republic v. Court of Appeals*[43] and *Bello v. National Labor Relations Commission*,[44] petitions for review on *certiorari* can be filed within 60 days from receipt of the order denying the motion for reconsideration.

Petitioners are gravely mistaken. The right to appeal is a mere statutory privilege and must be exercised only in the manner and in accordance with the provisions of the law. One who seeks to avail of the right to appeal must strictly comply with the requirement of the rules. Failure to do so leads to the loss of the right to appeal.[45] The case before us calls for the application of the requirements of appeal under Rule 45, to wit:

Sec. 1. *Filing of petition with Supreme Court*. –A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court

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[42] *Id.* at 3-4.

[43] G.R. No. 141530, March 18, 2003, 399 SCRA 277.

[44] G.R. No. 146212, September 5, 2007, 532 SCRA 234.

[45] *National Transmission Corporation v. Heirs of Teodulo Ebesa*, G.R. No. 186102, February 24, 2016, 785 SCRA 1, 10, citing *Julian v. Development Bank of the Philippines*, G.R. No. 174193, December 7, 2011, 661 SCRA 745, 753.

or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition shall raise only questions of law which must be distinctly set forth.

Sec. 2. *Time for filing*; *extension*. – **The petition shall be filed within fifteen (15) days from notice of the judgment or final order or resolution appealed from, or of the denial of the petitioner's motion for new trial or reconsideration filed in due time after notice of the judgment. On motion duly filed and served, with full payment of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the Supreme Court may for justifiable reasons grant an extension of thirty (30) days only within which to file the petition.** (Emphasis supplied.)

Petitioners failed to comply with the foregoing provisions. They confuse petitions for review on *certiorari* under Rule 45 with petitions for *certiorari* under Rule 65. It is the latter which is required to be filed within a period of not later than 60 days from notice of the judgment, order or resolution. If a motion for new trial or reconsideration is filed, the 60-day period shall be counted from notice of the denial of the motion. Sections 1 and 4 of Rule 65 read:

Sec. 1. *Petition for certiorari*. – When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46.

x x x x x x x x x

Sec. 4. *When and where petition filed.* – **The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of said motion.** x x x (Emphasis supplied.)

Petitioners' reliance on *Republic* and *Bello* are misplaced. In both cases, we are confronted with the issue of whether the petitions for *certiorari* before the CA were filed out of time. No other issue was raised in *Republic* and *Bello*. Further, it does not escape our attention that petitioners initially filed a motion for extension of time to file a petition for review where they recognized that they only have until April 1, 2011 (or 15 days from receipt of the denial of their Motion for Reconsideration) to file the petition. Clearly, petitioners were fully aware of the correct period for filing an appeal under Rule 45. Yet, in their actual petition, they maintain that they have 60 days to file the appeal. We cannot countenance petitioners' obvious legal maneuvering.

A party litigant wishing to file a petition for review on *certiorari* must do so within 15 days from notice of the judgment, final order or resolution sought to be appealed. Here, petitioners received the Resolution of the CA denying their Motion for Reconsideration on March 17, 2011. Under the Rules, they have until April 1, 2011 to file the petition. However, they filed the same only on May 6, 2011. This was **50 days** beyond the 15-day period provided under Section 2, Rule 45 and 30 days beyond the extension asked for. Even if petitioners were given the maximum period of extension of 30 days, their petition before us still cannot stand. The Rules allow only for a maximum period of 45 days within which an aggrieved party may file a petition for review on *certiorari*. By belatedly filing their petition with petitioners have clearly lost their right to appeal.[46]

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[46] See *Salvacion v. Sandiganbayan (Fifth Division)*, G.R. No. 175006, November 27, 2008, 572 SCRA 163, 183.

There are instances when we have relaxed the rules governing the periods of appeal to serve substantial justice.[47] In *Azores v. Securities and Exchange Commission*,[48] we held:

> The failure of a party to perfect his appeal in the manner and within the period fixed by law renders the decision sought to be appealed final, with the result that no court can exercise appellate jurisdiction to review the decision. For it is more important that a case be settled than that it be settled right. **It is only in exceptional cases when we have allowed a relaxation of the rules governing the periods of appeals**. As stated in *Bank of America, NT & SA v. Gerochi, Jr.,* typical of these cases are the following:
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> > In Ramos vs. Bagasao, 96 SCRA 395, we excused the delay of four days in the filing of a notice of appeal because the questioned decision of the trial court was served upon appellant Ramos at a time when *her counsel of record was already dead.* Her new counsel could only file the appeal four days after the prescribed reglementary period was over. In Republic vs. Court of Appeals, 83 SCRA 453, we allowed the perfection of an appeal by the Republic despite the delay of six days *to prevent a gross miscarriage of justice* since the Republic stood to lose hundreds of hectares of land *already titled in its name* and had since then been devoted for educational purposes. In Olacao vs. National Labor Relations Commission, 177 SCRA 38, 41, we accepted a tardy appeal considering that the subject matter in issue had theretofore been *judicially settled, with finality, in another case.* The dismissal of the appeal would have had the effect of the appellant being ordered twice to make the same reparation to the appellee.[49] (Emphasis supplied, citation omitted. Italics in the original.)

None of the foregoing justifications are, however, present here. Petitioners remain adamant that they properly observed

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[47] *Boardwalk Business Ventures, Inc. v. Villareal, Jr.*, G.R. No. 181182, April 10, 2013, 695 SCRA 468, 481, citing *Apex Mining Co., Inc. v. Commissioner of Internal Revenue*, G.R. No. 122472, October 20, 2005, 473 SCRA 490, 497-498.

[48] G.R. No. 112337, January 25, 1996, 252 SCRA 387.

[49] *Id.* at 392-393.

the Rules when clearly they failed to do so. They did not even attempt to allude to any exceptional circumstance that would move us to use our equity jurisdiction to allow a liberal application of the Rules. Hence, we are constrained to declare that for petitioners' failure to file an appeal by *certiorari* within the reglementary period, the assailed Resolutions of the CA had already become final and executory.

In the case of *Gonzales v. Pe*,[50] we held that:

> While every litigant must be given the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities, the failure to perfect an appeal within the reglementary period is not a mere technicality. It raises a jurisdictional problem, as it deprives the appellate court of its jurisdiction over the appeal. After a decision is declared final and executory, vested rights are acquired by the winning party. Just as a losing party has the right to appeal within the prescribed period, the winning party has the correlative right to enjoy the finality of the decision on the case.[51]

All told, considering that we have lost jurisdiction to review the case in view of the finality of the CA Decision, we see no further reason to delve into the other issues raised by petitioners.

WHEREFORE, the petition is **DENIED**. The September 2, 2010 and March 3, 2011 Resolutions of the Court of Appeals in CA-G.R. SP No. 114690 are hereby **AFFIRMED**.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Bersamin, Reyes,* and *Caguioa,*[*] *JJ.,* concur.

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[50] G.R. No. 167398, August 8, 2011, 655 SCRA 176.

[51] *Id.* at 191-192, citing *National Power Corporation v. Laohoo,* G.R. No. 151973, July 23, 2009, 593 SCRA 564, 591.

[*] Designated as Fifth Member of the Third Division per Special Order No. 2417 dated January 4, 2017.

THIRD DIVISION

[G.R. No. 196444. February 15, 2017]

DASMARIÑAS T. ARCAINA and MAGNANI T. BANTA, *petitioners, vs.* **NOEMI L. INGRAM, represented by MA. NENETTE L. ARCHINUE,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; JUDICIAL ADMISSIONS; JUDICIAL ADMISSIONS MADE BY THE PARTIES IN THE PLEADINGS, OR IN THE COURSE OF THE TRIAL OR OTHER PROCEEDINGS IN THE SAME CASE, ARE CONCLUSIVE AND DO NOT REQUIRE FURTHER EVIDENCE TO PROVE THEM.—** Judicial admissions made by the parties in the pleadings, or in the course of the trial or other proceedings in the same case, are conclusive and do not require further evidence to prove them. These admissions cannot be contradicted unless previously shown to have been made through palpable mistake or that no such admission was made. Petitioners do not deny their previous admission, much less allege that they had made a palpable mistake. Thus, they are bound by it.

2. **CIVIL LAW; CONTRACTS; SALE; IN LUMP SUM CONTRACT, A VENDOR IS GENERALLY OBLIGATED TO DELIVER ALL THE LAND COVERED WITHIN THE BOUNDARIES, REGARDLESS OF WHETHER THE REAL AREA SHOULD BE GREATER OR SMALLER THAN THAT RECITED IN THE DEED; EXCEPTION IN CASE AT BAR.—** In a lump sum contract, a vendor is generally obligated to deliver all the land covered within the boundaries, regardless of whether the real area should be greater or smaller than that recited in the deed. However, in case there is conflict between the area actually covered by the boundaries and the estimated area stated in the contract of sale, he/she shall do so only when the excess or deficiency between the former and

the latter is **reasonable**. Applying *Del Prado* to the case before us, we find that the difference of 5,800 sq. m. is too substantial to be considered reasonable. We note that only 6,200 sq. m. was agreed upon between petitioners and Ingram. Declaring Ingram as the owner of the whole 12,000 sq. m. on the premise that this is the actual area included in the boundaries would be ordering the delivery of almost twice the area stated in the deeds of sale. Surely, Article 1542 does not contemplate such an unfair situation to befall a vendor—that he/she would be compelled to deliver double the amount that he/she originally sold without a corresponding increase in price. In *Asiain v. Jalandoni*, we explained that "[a] vendee of a land when it is sold in gross or with the description 'more or less' does not thereby *ipso facto* take all risk of quantity in the land. The use of 'more or less' or similar words in designating quantity covers only a reasonable excess or deficiency." Therefore, we rule that Ingram is entitled only to 6,200 sq. m. of the property. An *area* of 5,800 sq. m. more than the area intended to be sold is not a reasonable excess that can be deemed included in the sale. Further, at the time of the sale, Ingram and petitioners did not have knowledge of the actual area of the land within the boundaries of the property. It is undisputed that before the survey, the parties relied on the tax declaration covering the lot, which merely stated that it measures more or less 6,200 sq. m. Thus, when petitioners offered the property for sale and when Ingram accepted the offer, the object of their consent or meeting of the minds is only a 6,200 sq. m. property. The deeds of sale merely put into writing what was agreed upon by the parties. x x x The contract of sale is the law between Ingram and petitioners; it must be complied with in good faith. Petitioners have already performed their obligation by delivering the 6,200 sq. m. property. Since Ingram has yet to fulfill her end of the bargain, she must pay petitioners the remaining balance of the contract price amounting to ₱145,000.00.

APPEARANCES OF COUNSEL

Madrilejos Law Office for petitioners.
Nereo Anri O. Cuebillas for respondent.

D E C I S I O N

JARDELEZA, *J.*:

This is a Petition for Review on *Certiorari*[1] assailing the October 26, 2010 Decision[2] and March 17, 2011 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 107997, which affirmed with modification the March 11, 2009 Decision[4] of the Regional Trial Court–Branch 7 of Legazpi City (RTC). The RTC reversed the July 31, 2008 Order[5] of the 3rd Municipal Circuit Trial Court of Sto. Domingo-Manito in Albay (MCTC). The MCTC dismissed for insufficiency of evidence Civil Case No. S-241—a case for recovery of ownership and title to real property, possession and damages with preliminary injunction (recovery case)—filed by respondent Noemi L. Ingram (Ingram) against petitioners Dasmarinas T. Arcaina (Arcaina) and Magnani T. Banta (Banta) [collectively, petitioners].

I

Arcaina is the owner of Lot No. 3230 (property) located at Salvacion, Sto. Domingo, Albay. Sometime in 2004, her attorney-in-fact, Banta, entered into a contract with Ingram for the sale of the property. Banta showed Ingram and the latter's attorney-in-fact, respondent Ma. Nenette L. Archinue (Archinue), the metes and bounds of the property and represented that Lot No. 3230 has an area of more or less 6,200 square meters (sq. m.) per the tax declaration covering it. The contract price was ₱1,860,000.00, with Ingram making installment payments for the property from May 5, 2004 to February 10, 2005 totaling

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[1] *Rollo*, pp. 8-20.

[2] *Id.* at 32-44. Penned by Associate Justice Franchito N. Diamante with Associate Justices Josefina Guevarra-Salonga and Mariflor P. Punzalan Castillo, concurring.

[3] *Id.* at 52-54.

[4] *Id.* at 28-31.

[5] *Id.* at 21-27.

₱1,715,000.00.[6] Banta and Ingram thereafter executed a Memorandum of Agreement acknowledging the previous payments and that Ingram still had an obligation to pay the remaining balance in the amount of ₱145,000.00.[7] They also separately executed deeds of absolute sale over the property in Ingram's favor. Both deeds described the property to wit:

DESCRIPTION

A parcel of land Lot No. 3230, situated at Salvacion, Sto. Domingo, Albay, Bounded on the NE-by Lot 3184 on the SE-by Seashore on the SW-Lot No. 3914 and on the NW-by Road with an area of **SIX THOUSAND TWO HUNDRED** (6,200) sq. meters more or less.[8]

Subsequently, Ingram caused the property to be surveyed and discovered that Lot No. 3230 has an area of 12,000 sq. m. Upon learning of the actual area of the property, Banta allegedly insisted that the difference of 5,800 sq. m. remains unsold. This was opposed by Ingram who claims that she owns the whole lot by virtue of the sale.[9] Thus, Archinue, on behalf of Ingram, instituted the recovery case, docketed as Civil Case No. S-241, against petitioners before the MCTC.

In her Complaint, Ingram alleged that upon discovery of the actual area of the property, Banta insisted on fencing the portion which she claimed to be unsold. Ingram further maintained that she is ready to pay the balance of ₱145,000.00 as soon as petitioners recognize her ownership of the whole property. After all, the sale contemplated the entire property as in fact the boundaries of the lot were clearly stated in the deeds of sale.[10] Accordingly, Ingram prayed that the MCTC declare her owner of the whole property and order petitioners to pay moral damages, attorney's fees and litigation expenses. She also asked the court to issue a writ of preliminary injunction to enjoin the petitioners

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[6] *Id.* at 33.

[7] *Id.* at 69.

[8] *Id.* at 68.

[9] *Id.* at 34.

[10] *Id.* at 57.

from undertaking acts of ownership over the alleged unsold portion.[11]

In their Answer with Counterclaim, petitioners denied that the sale contemplates the entire property and contended that the parties agreed that only 6,200 sq. m. shall be sold at the rate of ₱300.00 per sq. m.[12] This, according to petitioners, is consistent with the contemporaneous acts of the parties: Ingram declared only 6,200 sq. m. of the property for tax purposes, while Arcaina declared the remaining portion under her name with no objection from Ingram. Petitioners averred that since Ingram failed to show that that she has a right over the unsold portion of the property, the complaint for recovery of possession should be dismissed.[13] By way of counterclaim, petitioners asked for the payment of the balance of 145,000.00, as well as attorney's fees, litigation expenses, and costs of suit.[14]

Trial ensued. After Ingram presented her evidence, petitioners filed a demurrer on the grounds that (1) Ingram failed to sufficiently establish her claim and (2) her claim lacks basis in fact and in law.[15]

In its Order dated July 31, 2008, the MCTC granted petitioners' demurrer and counterclaim against Ingram, thus:

> **WHEREFORE**, in view of the foregoing this instant case is hereby ordered **DISMISSED** for insufficiency of evidence.
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> Plaintiffs are further ordered to pay to the Defendants the remaining amount of **ONE HUNDRED FORTY FIVE THOUSAND (PhP 145,000.00) PESOS** as *counterclaim* for the remaining balance of the contract as admitted by the Plaintiffs during the Pre-Trial.
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> **SO ORDERED**.[16]

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

[12] *Id.* at 70.

[13] *Id.* at 72.

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

[15] *Id.* at 21.

[16] *Id.* at 27. Penned by Judge Carlos L. Bona.

The MCTC held that the testimonies of Ingram and her witnesses suffer from several inconsistencies and improbabilities. For instance, while Archinue claimed that what was sold was the entire property, she also admitted in her cross-examination that she was not present when the sale was consummated between Banta, Ingram and Ingram's husband Jeffrey. Further, Archinue stated that she was made aware before their ocular visit to the property that the lot being sold is only 6,200 sq. m. based on the tax declaration covering it.[17] Ingram also had knowledge of the area of the property as confirmed by her husband Jeffrey's testimony. Jeffrey also testified that Banta gave them a copy of the tax declaration of the property.[18]

The MCTC declared that the survey showed that the property was 12,000 sq. m. or more than what was stated in the deeds of sale.[19] For Ingram to be awarded the excess 5,800 sq. m. portion of the property, she should have presented evidence that she paid for the surplus area consistent with Article 1540 of the Civil Code which reads:

> Art. 1540. If, in the case of the preceding article, there is a greater area or number in the immovable than that stated in the contract, the vendee may accept the area included in the contract and reject the rest. If he accepts the whole area, he must pay for the same at the contract rate.

Accordingly, since Ingram failed to show that she paid for the value of the excess land area, the MCTC held that she cannot claim ownership and possession of the whole property.

On appeal, the RTC reversed and set aside the Order of the MCTC, to wit:

> WHEREFORE, premises considered, the assailed Decision dated July 31, 2008 by the Municipal [Circuit] Trial Court of Sto. Domingo,

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

[18] *Id.* at 26.

[19] *Id.* at 27.

Albay is hereby REVERSED and SET ASIDE and a new judgment is hereby rendered as follows:

1. Ordering plaintiff-appellant [referring to Ingram] to pay the defendant-appellee [referring to Arcaina] the amount of ₱145,000.00 representing the remaining balance of the purchase price of Lot 3230;
2. Declaring Noemi L. Ingram the owner of the whole Lot 3230;
3. Ordering defendants-appellees Dasmariñas T. Arcaina and Magnani Banta or their agents to remove the fence constructed by them on the said lot and to respect the peaceful possession of Noemi Ingram over the same;
4. Ordering defendants-appellees Dasmariñas Arcaina and Magnani Banta to pay jointly and severally the plaintiff-appellent Noemi Ingram the amount of ₱5,000.00 as reasonable attorney's fees; and
5. To pay the cost of suit.

SO ORDERED.[20]

The RTC found that neither of the parties presented competent evidence to prove the property's actual area. Except for a photocopy of the cadastral map purportedly showing the graphical presentation of the property, no plan duly prepared and approved by the proper government agency showing the area of the lot was presented. Hence, the RTC concluded that the area of Lot No. 3230 as shown by the boundaries indicated in the deeds of sale is only 6,200 sq. m. more or less. Having sold Lot No. 3230 to Ingram, Arcaina must vacate it.[21]

In addition, the RTC held that Article 1542, which covers sale of real estate in lump sum, applies in this case.

Having apparently sold the entire Lot No. 3230 for a lump sum, Arcaina, as the vendor, is obligated to deliver all the land included in the boundaries of the property, regardless of whether

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[20] *Id.* at 31. Penned by Judge Jose G. Dy.

[21] *Id.* at 30.

the real area should be greater or smaller than what is recited in the deeds of sale.[22]

In its Decision dated October 26, 2010, the CA affirmed the RTC's ruling with modification. It deleted paragraphs 4 and 5 of the dispositive portion of the RTC's Decision, which ordered petitioners to pay ₱5,000.00 as attorney's fees and costs of suit, respectively.[23]

The CA agreed with the RTC that other than the uniform statements of the parties, no evidence was presented to show that the property was found to have an actual area of more or less 12,000 sq. m. It held that the parties' statements cannot be simply admitted as true and correct because the area of the land is a matter of public record and presumed to have been recorded in the Registry of Deeds. The CA noted that the best evidence should have been a certified true copy of the survey plan duly approved by the proper government agency.[24]

The CA also agreed with the RTC that the sale was made for a **lump sum** and not on a per-square-meter basis. The parties merely agreed on the purchase price of ₱1,860,000.00 for the 6,200 sq. m. lot, with the deed of sale providing for the specific boundaries of the property.[25] Citing *Rudolf Lietz, Inc. v. Court of Appeals*,[26] the CA explained that in case of conflict between the area and the boundaries of a land subject of the sale, the vendor is obliged to deliver to the vendee everything within the boundaries. This is in consonance with Article 1542 of the Civil Code. Further, the CA found the area in excess "substantial" which, to its mind, "should have not escaped the discerning eye of an ordinary vendor of a piece of land."[27] Thus, it held

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[22] *Id.*

[23] *Id.* at 43.

[24] *Id.* at 40-41.

[25] *Id.* at 41.

[26] G.R. No. 122463, December 19, 2005, 478 SCRA 451.

[27] *Rollo*, pp. 41-42.

that the RTC correctly ordered petitioners to deliver the entire property to Ingram.

The CA, however, deleted the award of attorney's fees and the costs of suit, stating that there was no basis in awarding them. First, the RTC did not discuss the grounds for granting attorney's fees in the body of its decision. Second, Arcaina cannot be faulted for claiming and then fencing the excess area of the land after the survey on her honest belief that the ownership remained with her.[28]

Petitioners moved for reconsideration, raising for the first time the issue of prescription. They pleaded that under Article 1543[29] of the Civil Code, Ingram should have filed the action within six months from the delivery of the property. Counting from Arcaina's execution of the notarized deed of absolute sale on April 13, 2005, petitioners concluded that the filing of the case only on January 25, 2006 is already time-barred.[30] The CA denied petitioners' motion for reconsideration and ruled that Article 1543 does not apply because Ingram had no intention of rescinding the sale. In fact, she instituted the action to recover the excess portion of the land that petitioners claimed to be unsold. Thus, insofar as Ingram is concerned, that portion remained undelivered.[31]

Petitioners now assail the CA's declaration that the sale of the property was made for a lump sum. They insist that they sold the property on a per-square-meter basis, at the rate of ₱300.00 per sq. m. They further claim that they were aware that the property contains more than 6,200 sq. m. According to petitioners, this is the reason why the area sold is specifically stated in the deeds of sale. Unfortunately, in the drafting of the deeds, the word "portion" was omitted. They allege that

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[28] *Id.* at 42-43.

[29] Art.1543. The actions arising from Articles 1539 and 1542 shall prescribe in six months, counted from the day of delivery.

[30] *Rollo*, p. 47.

[31] *Id.* at 53.

contemporaneously with the execution of the formal contract of sale, they delivered the area sold and constructed a fence delineating the unsold portion of the property.[32] Ingram allegedly recognized the demarcation because she introduced improvements confined to the area delivered.[33] Since the sale was on a per-square-meter basis, petitioners argue that it is Article 1539,[34] and not Article 1542 of the Civil Code, which governs.[35]

In her Comment, Ingram accuses petitioners of raising new and irrelevant issues based on factual allegations which they cannot in any case prove, as a consequence of their filing a demurrer to evidence.[36] She maintains that the only issue for resolution is whether the sale was made on a lump sum or per-square-meter basis. On this score, Ingram asserts that the parties intended the sale of the entire lot, the boundaries of which were

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[32] *Id.* at 15.

[33] *Id.* at 16.

[34] Art. 1539**.** The obligation to deliver the thing sold includes that of placing in the control of the vendee all that is mentioned in the contract, in conformity with the following rules:

If the sale of real estate should be made with a statement of its area, at the rate of a certain price for a unit of measure or number, the vendor shall be obliged to deliver to the vendee, if the latter should demand it, all that may have been stated in the contract; but, should this be not possible, the vendee may choose between a proportional reduction of the price and the rescission of the contract, provided that, in the latter case, the lack in the area be not less than one-tenth of that stated.

The same shall be done, even when the area is the same, if any part of the immovable is not of the quality specified in the contract.

The rescission, in this case, shall only take place at the will of the vendee, when the inferior value of the thing sold exceeds one-tenth of the price agreed upon.

Nevertheless, if the vendee would not have bought the immovable had he known of its smaller area or inferior quality, he may rescind the sale. (Emphasis supplied.)

[35] *Rollo*, p. 16.

[36] *Id.* at 85-87.

stated in the deeds of sale. These deeds of sale, as observed by the CA, did not contain any qualification.[37]

II

At the outset, we find that contrary to the findings of the RTC and the CA, the result of the survey conducted on the property is **not** a disputed fact. In their Answer to the Complaint, petitioners admitted that when the property was surveyed, it yielded an area of more or less 12,000 sq. m.[38] Nevertheless, petitioners now proffer that they agree with the CA that the final survey of the property is not yet approved; hence, there can be no valid verdict for the final adjudication of the parties' rights under the contract of sale.[39]

We reject petitioners' contention on this point.

Judicial admissions made by the parties in the pleadings, or in the course of the trial or other proceedings in the same case, are conclusive and do not require further evidence to prove them. These admissions cannot be contradicted unless previously shown to have been made through palpable mistake or that no such admission was made.[40] Petitioners do not deny their previous admission, much less allege that they had made a palpable mistake. Thus, they are bound by it.

We now resolve the main issue in this case and hold that Lot No. 3230 was sold for a **lump sum**. In sales involving real estate, the parties may choose between two types of pricing agreement: a **unit price contract** wherein the purchase price

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[37] *Id.* at 86.

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

[39] *Id.* at 14.

[40] *Philippine Long Distance Telephone Company (PLDT) v. Pingol*, G.R. No. 182622, September 8, 2010, 630 SCRA 413, 421; citing *Damasco v. National Labor Relations Commission*, G.R. No. 115755, December 4, 2000, 346 SCRA 714, 725, also citing *Philippine American General Insurance Co., Inc. v. Sweet Lines, Inc.,* G.R. No. 87434, August 5, 1992, 212 SCRA 194, 204.

is determined by way of reference to a stated rate per unit area (*e.g.*, ₱1,000.00 per sq. m.) or a **lump sum contract** which states a full purchase price for an immovable the area of which may be declared based on an estimate or where both the area and boundaries are stated (*e.g.*, 1 million for 1,000 sq. m., *etc.*).[41] Here, the Deed of Sale executed by Banta on March 21, 2005[42] and the Deed of Sale executed by Arcaina on April 13, 2005[43] both show that the property was conveyed to Ingram at the predetermined price of ₱1,860,000.00. There was no indication that it was bought on a per-square-meter basis. Thus, Article 1542 of the Civil Code governs the sale, *viz.*:

> Art. 1542. In the sale of real estate, made for a lump sum and not at the rate of a certain sum for a unit of measure or number, there shall be no increase or decrease of the price, although there be a greater or less area or number than that stated in the contract.
>
> The same rule shall be applied when two or more immovables are sold for a single price; but if, besides mentioning the boundaries, which is indispensable in every conveyance of real estate, its area or number should be designated in the contract, the vendor shall be bound to deliver all that is included within said boundaries, even when it exceeds the area or number specified in the contract; and, should he not be able to do so, he shall suffer a reduction in the price, in proportion to what is lacking in the area or number, unless the contract is rescinded because the vendee does not accede to the failure to deliver what has been stipulated.

The provision teaches that where both the area and the boundaries of the immovable are declared in a sale of real estate for a lump sum, the area covered within the boundaries of the immovable prevails over the stated area.[44] The vendor is obliged to deliver all that is included within the boundaries regardless of whether the actual area is more than what was specified in

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[41] *Esguerra v. Trinidad,* G.R. No. 169890, March 12, 2007, 518 SCRA 186, 196-197.

[42] *Rollo*, p. 67.

[43] *Id.* at 68.

[44] See *Rudolf Lietz, Inc. v. Court of Appeals*, *supra* note 26 at 459.

the contract of sale; and he/she shall do so without a corresponding increase in the contract price. This is particularly true when the stated area is qualified to be approximate only, such as when the words "more or less" were used.[45]

The deeds of sale in this case provide both the boundaries and the estimated area of the property. The land is bounded on the North East by Lot No. 3184, on the South East by seashore, on the South West by Lot No. 3914 and on the North West by a road.[46] It has an area of *more or less* 6,200 sq. m. The uniform allegations of petitioners and Ingram, however, reveal that the actual area within the boundaries of the property amounts to more or less 12,000 sq. m., with a difference of 5,800 sq. m. from what was stated in the deeds of sale. With Article 1542 in mind, the RTC and the CA ordered petitioners to deliver the excess area to Ingram.

They are mistaken.

In *Del Prado v. Spouses Caballero*,[47] we were confronted with facts analogous to the present petition. Pending the issuance of the Original Certificate of Title (OCT) in their name, Spouses Caballero sold a parcel of land to Del Prado. The contract of sale stated both the property's boundaries and estimated area of more or less 4,000 sq. m. Later, when the OCT was issued, the technical description of the property appeared to be 14,457 sq. m., more or less. Del Prado alleged that Spouses Caballero were bound to deliver all that was included in the boundaries of the land since the sale was made for a lump sum. Although, we agreed with Del Prado that the sale partakes of the nature of a lump sum contract, we did **not** apply Article 1542. In holding that Del Prado is entitled only to the area stated in the contract of sale, we explained:

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[45] *Santa Ana, Jr. v. Hernandez*, G.R. No. L-16394, December 17, 1966, 18 SCRA 973, 979.

[46] *Rollo*, pp. 67-68.

[47] G.R. No. 148225, March 3, 2010, 614 SCRA 102.

The Court, however, clarified that the rule laid down in Article 1542 is not hard and fast and admits of an exception. It held:

> "A caveat is in order, however. **The use of "more or less" or similar words in designating quantity covers only a reasonable excess or deficiency**. A vendee of land sold in gross or with the description "more or less" with reference to its area does not thereby *ipso facto* take all risk of quantity in the land.
>
> x x x x x x x x x

In the instant case, the deed of sale is not one of a unit price contract. The parties agreed on the purchase price of ₱40,000.00 for a predetermined area of 4,000 sq m, *more or less*, bounded on the North by Lot No. 11903, on the East by Lot No. 11908, on the South by Lot Nos. 11858 & 11912, and on the West by Lot No. 11910. In a contract of sale of land in a mass, the specific boundaries stated in the contract must control over any other statement, with respect to the area contained within its boundaries.

Black's Law Dictionary defines the phrase "more or less" to mean:

> "About; substantially; or approximately; implying that both parties assume the risk of any ordinary discrepancy. **The words are intended *to cover slight or unimportant inaccuracies* in quantity, *Carter v. Finch*, 186 Ark. 954, 57 S.W.2d 408; and are ordinarily to be interpreted as taking care of unsubstantial differences or differences of small importance compared to the whole number of items transferred.**"

Clearly, the discrepancy of 10,475 sq m cannot be considered a slight difference in quantity. The difference in the area is obviously sizeable and too substantial to be overlooked. It is not a reasonable excess or deficiency that should be deemed included in the deed of sale.[48] (Emphasis supplied; citations omitted.)

In a lump sum contract, a vendor is generally obligated to deliver all the land covered within the boundaries, regardless of whether the real area should be greater or smaller than that

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[48] *Id.* at 110-111.

recited in the deed.[49] However, in case there is conflict between the area actually covered by the boundaries and the estimated area stated in the contract of sale, he/she shall do so only when the excess or deficiency between the former and the latter is **reasonable**.[50]

Applying *Del Prado* to the case before us, we find that the difference of 5,800 sq. m. is too substantial to be considered reasonable. We note that only 6,200 sq. m. was agreed upon between petitioners and Ingram. Declaring Ingram as the owner of the whole 12,000 sq. m. on the premise that this is the actual area included in the boundaries would be ordering the delivery of almost twice the area stated in the deeds of sale. Surely, Article 1542 does not contemplate such an unfair situation to befall a vendor—that he/she would be compelled to deliver double the amount that he/she originally sold without a corresponding increase in price. In *Asiain v. Jalandoni*,[51] we explained that "[a] vendee of a land when it is sold in gross or with the description 'more or less' does not thereby *ipso facto* take all risk of quantity in the land. The use of 'more or less' or similar words in designating quantity covers only a reasonable excess or deficiency."[52] Therefore, we rule that Ingram is entitled only to 6,200 sq. m. of the property. An *area* of 5,800 sq. m. more than the area intended to be sold is not a reasonable excess that can be deemed included in the sale.[53]

Further, at the time of the sale, Ingram and petitioners did not have knowledge of the actual area of the land within the boundaries of the property. It is undisputed that before the survey, the parties relied on the tax declaration covering the lot, which

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[49] *Balantakbo v. Court of Appeals*, G.R. No. 108515, October 16, 1995, 249 SCRA 323, 327 citing *Pacia v. Lagman*, 63 Phil. 361 (1936).

[50] *Del Prado v. Spouses Caballero, supra* note 47.

[51] 45 Phil. 296 (1923).

[52] *Id.* at 309-310.

[53] See *Roble v. Arbasa*, G.R. No. 130707, July 31, 2001, 362 SCRA 69, 81.

merely stated that it measures more or less 6,200 sq. m. Thus, when petitioners offered the property for sale and when Ingram accepted the offer, the object of their consent or meeting of the minds is only a 6,200 sq. m. property. The deeds of sale merely put into writing what was agreed upon by the parties. In this regard, we quote with approval the ruling of the MCTC:

> In this case, the Deed of Absolute Sale (Exhibit "M") dated April 13, 2005 is clear and unequivocal as to the area sold being up to only 6,200 square meters. The agreement of the parties were clear and unambiguous, hence, the inconsistent and impossible testimonies of N[e]nette [Archinue] and the Spouses Ingram. No amount of extrinsic aids are required and no further extraneous sources are necessary in order to ascertain the parties' intent, determinable as it is, from the document itself. The court is thus convinced that the deed expresses truly the parties' intent as against the oral testimonies of Nenette, and the Spouses Ingram.[54]

The contract of sale is the law between Ingram and petitioners; it must be complied with in good faith. Petitioners have already performed their obligation by delivering the 6,200 sq. m. property. Since Ingram has yet to fulfill her end of the bargain,[55] she must pay petitioners the remaining balance of the contract price amounting to ₱145,000.00.

WHEREFORE, premises considered, the petition is **GRANTED**. The October 26, 2010 Decision and March 17, 2011 Resolution of the Court of Appeals in CA-G.R. SP No. 107997 are hereby **REVERSED** and **SET ASIDE.** The July 31, 2008 Order of the 3rd Municipal Circuit Trial Court of Sto. Domingo-Manito, dismissing Civil Case No. S-241 for insufficiency of evidence, and ordering Ingram to pay ₱145,000.00 to petitioners, is hereby **REINSTATED** with **MODIFICATION.**

Ingram is ordered to pay petitioners the amount of ₱145,000.00 to earn interest at the rate of six percent (6%) *per annum* from

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[54] *Rollo*, p. 27.

[55] *Id.* at 57.

July 31, 2008[56] until the finality of this Decision. Thereafter, the total amount due shall earn legal interest at the rate of 6% *per annum*[57] until fully paid.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Bersamin, Reyes,* and *Caguioa,*[*] *JJ.,* concur.

THIRD DIVISION

[G.R. No. 201607. February 15, 2017]

HON. CESAR D. BUENAFLOR, *petitioner, vs.* **JOSE R. RAMIREZ, JR.,** *respondent.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL COMMISSIONS; THE CIVIL SERVICE COMMISSION; POWERS AND FUNCTIONS; DISCIPLINARY CASES AND CASES INVOLVING PERSONNEL ACTIONS AFFECTING EMPLOYEES IN THE CIVIL SERVICE, LIKE APPOINTMENT OR SEPARATION FROM SERVICE, ARE WITHIN THE EXCLUSIVE JURISDICTION OF THE CIVIL SERVICE COMMISSION.— Disciplinary cases and

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[56] The date of the MCTC's Order.

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

[*] Designated as Fifth Member of the Third Division per Special Order No. 2417 dated January 4, 2017.

cases involving personnel actions affecting employees in the Civil Service, like appointment or separation from the service, are within the *exclusive jurisdiction* of the CSC. Indeed, the Constitution vests in the CSC the jurisdiction over all employees of the Government, including all its branches, subdivisions, instrumentalities, and agencies, as well as government-owned or controlled corporations with original charters. x x x We reiterate that any question regarding the appointment or separation from the service of a civil servant was lodged in the CSC as the sole arbiter of controversies relating to the Civil Service. In that regard, Section 12 of Chapter 1 *(General Provisions),* Subtitle A *(Civil Service Commission),* Title I *(Constitutional Commissions)* of the *Administrative Code of 1987* (Executive Order No. 292) relevantly provides: x x x It is clarified that the CSC has jurisdiction over a case involving a civil servant if it can be regarded as equivalent to a labor dispute resoluble under the *Labor Code;* conversely, the regular court has jurisdiction if the case can be decided under the general laws, such as when the case is for the recovery of private debts, or for the recovery of damages due to slanderous remarks of the employer, or for malicious prosecution of the employees. The mere fact that the parties are members of the Civil Service should not remove the controversy from the general jurisdiction of the courts of justice and place them under the special jurisdiction of the CSC.

2. REMEDIAL LAW; BATAS PAMBANSA BLG. 129, AS AMENDED; JURISIDICTION; WHEN A COURT HAS NO JURISDICTION OVER THE SUBJECT MATTER, THE ONLY POWER IT HAS IS TO DISMISS THE ACTION; CASE AT BAR.— The jurisdiction of a court over the subject matter of a particular action is determined by the plaintiff's allegations in the complaint and the principal relief he seeks in the light of the law that apportions the jurisdiction of courts. x x x Jurisdiction over the subject matter is conferred only by the Constitution or the law; it cannot be acquired through a waiver; it cannot be enlarged by the omission of the parties; it cannot be conferred by the acquiescence of the court. Specifically, Batas Pambansa Blg. 129, as amended, did not vest jurisdiction in the RTC over matters relating to the Civil Service. Consequently, the RTC could not arrogate unto itself the hearing and decision of a subject matter outside of its jurisdiction.

x x x When a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action. Upon the filing of the complaint, the RTC could only have dismissed it for lack of jurisdiction. Any further actions the RTC took, including rendering the decision on December 28, 2007, were void and ineffectual. Verily, the decisions or orders rendered by courts without or in excess of their jurisdiction are void, and cannot be the source of any right, or the creator of any obligation.

3. **ID.; ACTIONS; JUDGMENT; A VOID JUDGMENT, BEING NON-EXISTENT IN LEGAL CONTEMPLATION, DOES NOT BECOME FINAL AND EXECUTORY EVEN WITH THE BELATED FILING OF AN APPEAL; CASE AT BAR.—** The void and ineffectual decision of the RTC did not attain finality despite the supposedly belated appeal by Buenaflor. As emphasized in *Nazareno v. Court of Appeals,* a void judgment – being non-existent in legal contemplation – does not become final and executory even with the belated filing of an appeal. Moreover, the Court has pronounced in *National Housing Authority v. Commission on Settlement of Land Problems,* that because a void judgment does not attain finality, a petition for *certiorari* to declare its nullity should not be dismissed for untimeliness. Under the circumstances, the CA should have heard and granted the petition for *certiorari* of Buenaflor instead of dismissing it for the reasons advanced in the assailed resolutions.

APPEARANCES OF COUNSEL

FFW Legal Center for petitioner.

The Law Firm of Habitan Ferrer Chan Tagapan Habitan & Associates for respondent.

D E C I S I O N

BERSAMIN, *J.*:

The Regional Trial Court (RTC) has no jurisdiction over a case involving the validity of the termination of employment of an officer or employee of the Civil Service.

The Case

The petitioner appeals the resolutions promulgated on January 31, 2012[1] and April 24, 2012,[2] whereby the Court of Appeals (CA) respectively affirmed the dismissal by the RTC, Branch 96, in Quezon City of the petitioner's appeal for having been filed out of time and denied his motion for reconsideration.

Antecedents

On August 27, 2001, Chairman Eufemio Domingo of the Presidential Anti-Graft Commission (PAGC) appointed respondent Jose R. Ramirez, Jr. as Executive Assistant III[3] and concurrently designated him as Assistant Accountant.[4] On September 28, 2001, Chairman Domingo resigned,[5] and petitioner Cesar D. Buenaflor succeeded him. The petitioner terminated Ramirez as of the same date as Chairman Eugenio's resignation on the ground that his tenure had expired[6] by virtue of the position of Executive Assistant being personal and confidential, and, hence, co-terminous with that of the appointing authority.[7]

Believing that his appointment had been contractual in nature, Ramirez sued in the RTC to declare his dismissal null and void.[8] The case, docketed as Civil Case No. 01-4577-8, was raffled to Branch 96.

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[1] *Rollo*, pp. 57-58; penned by Associate Justice Rebecca De Guia-Salvador, with Associate Justice Normandie B. Pizarro and Associate Justice Rodil V. Zalameda concurring.

[2] *Id*. at 53-55.

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

[4] *Id*. at 100.

[5] *Id*. at 61.

[6] *Id*.

[7] *Id*. at 83.

[8] *Id*. at 107-113.

Buenaflor, represented by the Office of the Solicitor General (OSG), filed his answer,[9] wherein he contended, among others, that Ramirez had failed to exhaust administrative remedies and should have instead filed an administrative complaint in the Civil Service Commission (CSC).[10]

Ruling of the RTC

On December 28, 2007, after trial, the RTC rendered judgment declaring Buenaflor guilty of unlawful termination because he had not discharged his burden of proving that Ramirez's employment was co-terminous with that of Chairman Domingo, and ruling in favor of Ramirez, as follows :[11]

WHEREFORE, judgment is hereby rendered in favor of the plaintiff and hereby orders the defendant as his personal liability, to pay plaintiff the following sums, to wit:

1. Php 260,000.00 representing the lost income which he could have earned if he was to finish his contractual employment as actual damages;
2. Php 500,000.00 as moral damages;
3. Php 300,000.00 as exemplary damages;
4. Php 100,000.00 for and as attorney's fees; and,
5. Costs of suit.

SO ORDERED.[12]

Buenaflor seasonably filed his motion for reconsideration,[13] which the RTC denied on September 30, 2008.[14]

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[9] *Id*. at 114-126.

[10] *Id*. at 119.

[11] *Id*. at 169-178.

[12] *Id*. at 177.

[13] *Id*. at 179-194.

[14] *Id*. at 317.

On September 22, 2011, the OSG filed a notice of appeal,[15] explaining therein the apparently belated filing, thus:

x x x x x x x x x

The defendant timely filed a Motion for Reconsideration of this Honorable Court's Decision dated December 28, 2001. On September 30, 2008, this Honorable Court issued an Order denying defendant's Motion for Reconsideration. The OSG, however, was able to get a copy of said Order only on September 15, 2011 when it procured a copy of the Order at the Regional Trial Court of Quezon City, Branch 96. Attached herewith as Annex "A" is the Affidavit of Nilo Odilon L. Palestroque, Chief Administrative Officer of the Civil Cases Division, OSG Docket Management Service attesting to the fact that the OSG got hold of the trial court's Order only on September 15, 2011.

x x x x x x x x x.

The RTC, finding that the registry return card indicated that the OSG had received a copy of the decision on October 16, 2006, denied due course to the notice of appeal of Buenaflor, and altogether dismissed the appeal for having been filed out of time.[16]

Decision of the CA

Buenaflor assailed the order of the RTC by petition for *certiorari* in the CA, alleging that the RTC thereby gravely abused its discretion amounting to lack or excess of jurisdiction.[17]

On January 31, 2012, however, the CA promulgated the first assailed resolution dismissing the petition for *certiorari* on technical grounds,[18] *viz.*:

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[15] *Id.* at 318-319.

[16] *Id.* at 78.

[17] *Id.* at 59-77.

[18] *Id.* at 56-68. The grounds were, namely: (i) failure to state the Mandatory Continuing Legal Education (MCLE) Certificate of Compliance, per Bar Matter No. 1992; (ii) the counsel's Professional Tax Certificate (PTC) was not current; and (iii) the actual addresses of the parties are not stated in the petition pursuant to Section 3, Rule 46 of the *Rules of Court*.

Filed pursuant to Rule 65 of the 1977 Revised Rules of Civil Procedure, the instant petition for certiorari seeks the nullification and setting aside of the October 11, 2011 Order issued by public respondent, the Hon. Afable E. Cajigal in his capacity as Presiding Judge of the Regional Trial Court of Quezon City, Branch 96, in Civil Case No. Q-01-45778, which denied petitioner's September 30, 2011 *Notice of Appeal*.

A perusal of the petition shows the following infirmities which warrant its outright dismissal.

First, the petition does not state the date of issue of petitioner's counsel's Mandatory Continuing Legal Education (MCLE) Certificate of Compliance, as required under Bar Matter No. 1922, dated June 3, 2008.

Second, petitioner's counsel's PTR number is not current.

Third, the actual addresses of the parties are not stated in the petition, in violation of Section 3, Rule 46 of the Rules.

WHEREFORE, the petition is **DENIED DUE COURSE** and accordingly **DISMISSED.**

SO ORDERED.

Buenaflor moved for reconsideration, but the CA denied his motion for reconsideration through the second assailed resolution promulgated on April 24, 2012,[19] stating:

This treats of petitioner's motion for reconsideration of the Court's January 31, 2012 Resolution which dismissed the instant petition for certiorari due to a number of procedural infirmities. Contending that the procedural defects have been rectified, petitioner now seeks an opportunity to have the case resolved on its worth.

We deny the motion.

Despite the rectification of its procedural defects, a perusal of the petition shows that it must fail just the same for lack of *prima facie* merit. In certiorari proceedings under Rule 65, the inquiry is essentially confined to issues of want or excess of jurisdiction and grave abuse

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[19] *Id*. at 54.

of discretion on the part of public respondent. A circumspect perusal of this petition yielded no showing of any grave abuse of discretion on the part of public respondent judge in issuing the assailed October 11, 2011 Order which dismissed petitioner's September 30, 2011 *Notice of Appeal* for having been filed way out of time. Petitioner failed to disprove the records of the RTC which show that his counsel, the Office of the Solicitor General (OSG), received the September 30, 2008 Order denying petitioner's motion for reconsideration on **October 16, 2008**. Thus petitioner's *Notice of Appeal* filed 1,125 days thereafter is clearly out of time. In the absence of clear and convincing proof to the contrary, greater credence should be accorded the RTC as it enjoys the presumption of regularity in the performance of its official duties.

As to the September 22, 2011 *Affidavit* of the Chief, Civil Cases Division, Docket Management Service (DMS) of the OSG, the same will not save the day for petitioner. In justifying that copy of the September 30, 2008 Order was "officially" received only on September 15, 2011, the OSG essentially relied on the entries in its Docket and document tracking system without supplementing the same with *periodic* inquiries before the RTC. It is the duty of the party and his counsel to device a system for the receipt of mail intended for them, and matters internal to the clients and their counsels, like those narrated in the affidavit, are not the concern of this Court.

Finally, even conceding that a counsel has the obligation to inform his client of the material developments in the case, this obligation is balanced by a complementary duty on the part of a party-litigant to remain in contact with his lawyer in order to be informed of the progress of the case, more so that courts are not duty-bound to warn him against any possible procedural blunder. Litigants, represented by counsel should not expect that all they need to do is sit back, relax and await the outcome of their case. As what is at stake is his interest in the case, it is the responsibility of petitioner to check its status from time to time from his counsel or from the court.

WHEREFORE, premises considered, petitioner's motion for reconsideration is **DENIED** for lack of merit.

SO ORDERED.

Hence, this appeal by petition for review on *certiorari*.

Issue

Buenaflor submits the following as the issues for our consideration, namely:

1. Whether or not the Honorable Court of Appeals, in arriving [at] its decision and resolution, decided the case in accordance with law and existing jurisprudence:

   a. considering that findings and admonitions of the Honorable Court [of Appeals] are at war with the facts and the law obtaining in this case, thus legally reversible;

   - Considering likewise that the September 30, 2011 Notice of Appeal was timely filed; and
   - private respondent Jose Ramirez as Executive Assistant, a confidential and conterminous [sic] employees [sic] ended his term as co-term employee with the resigned Chairman and was not illegally terminated;

2. Whether or not the Court of Appeals committed grave abused [sic] of discretion in not declaring that the RTC has no jurisdiction to hear and decide the instant civil service related case, which is under the sole jurisdiction of the CSC.[20]

On his part, Ramirez sustains the dismissal of the appeal upon the grounds made extant in the assailed resolutions.

Ruling of the Court

Buenaflor submits that it was the CSC, not the RTC, that had jurisdiction over Ramirez's complaint that involved matters relative to the Civil Service.

The submission of Buenaflor is upheld.

The jurisdiction of a court over the subject matter of a particular action is determined by the plaintiff's allegations in the complaint and the principal relief he seeks in the light of the law that

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[20] *Rollo*, pp. 29-30.

apportions the jurisdiction of courts.[21] Accordingly, we need to peruse the complaint of Ramirez to determine the issue presented here. The complaint relevantly stated, *viz.*:

COMPLAINT
(With Provisional Remedy)

Plaintiff, by and through the undersigned counsel, to this Honorable Court, respectfully alleges that:

x x x x x x x x x

III

Plaintiff was appointed as Executive Assistant III, on contractual basis by then Chairman Eufemio Domingo of the Presidential Commission Against Graft and Corruption, effective September 3, 2001, x x x

IV

On September 17, 2001, plaintiff was designated as Assistant Accountant, x x x

V

Since the appointment is contractual and no period was stated, it is clearly understood that the term is for a period of one (1) year from September 3, 2001 and subject to renewal, pursuant to Memorandum Circular No. 38 issued by the Civil Service Commission.

VI

On or about September 20, 2001, Chairman Eufemio Domingo resigned as Chairman and the defendant was appointed as the new Chairman of the Presidential Commission Against Graft and Corruption

VII

On September 28, 2001, **without due process and notice, the defendant, without cause and with grave abuse of discretion,**

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[21] *Philippine Woman's Christian Temperance Union, Inc. v. Teodoro R. Yangco 2nd and 3rd Generation Heirs Foundation, Inc.,* G.R. No. 199595, April 2, 2014, 720 SCRA 522, 543-544: *Heirs of Generoso Sebe v. Heirs of Veronico Sevilla,* G.R. No. 174497, October 12, 2009, 603 SCRA 395, 400.

capriciously, whimsically and illegally terminated the services of the plaintiff, in violation of the Civil Service Commission Memorandum Circular No. 38.

VIII

Plaintiff is a Certified Public Accountant and a First Grade Civil Service eligible, hence very much qualified for the job. His appointment is not co-terminus with the term of Chairman Domingo as can be gleaned from his job description, x x x

IX

The termination of plaintiff's services is not even supported by any written notice to the herein plaintiff, stating therein the reasons for his termination, but was done in an orthodox manner, by merely preventing the plaintiff to report for work

x x x x x x x x x

XI

Finally, on November 23, 2001, copy of a service record signed by Jose Sonny G. Matala, Executive Director dated November 20, 2001, was given to the plaintiff embodying the cause of separation which states"

"Co-terminus with Chairman Domingo being personal and confidential staff xx xx xx."

x x x x x x x x x

XII

The termination of plaintiff by the defendant is illegal and violative of due process as plaintiff's appointment as contractual employee will expire or September 3, 2002 only.

XIII

Defendant, being a lawyer and formerly connected with the Civil Service Commission, is aware of the law that contractual employment without a definite period is presumed to be for one (1) year pursuant to Civil Service Commission Memorandum Circular No. 38.

x x x x x x x x x

XVI

The filing of this case in court is not violative of the Rule on Exhaustion of Administrative Remedies, as there are several exceptions in the exhaustion of administrative remedies enunciated by the Supreme Court in the case of Paat vs. Court of Appeals, 266 SCRA 167, such as:

(1) when there is a violation of due process;
(2) when the issue involved is purely a legal question;
(3) when the administrative action is patently illegal amounting to lack of excess of jurisdiction;
(4) x x x x x x x x x;
(5) when there is irreparable injury;
(6) x x x x x x x x x;
(7) when to require exhaustion of remedies would be unreasonable;
(8) x x x x x x x x x;
(9) x x x x x x x x x;
(10) when the rule does not provide a plain, speedy and adequate remedy; and
(11) when there are circumstances indicating the urgency of judicial intervention

XVII

The illegal act of the defendant of terminating plaintiff's services in violation of the latter's right to security of tenure and due process has caused plaintiff to suffer moral shock, anxiety, besmirched reputation, sleepless nights, social humiliation, embarrassment and similar injuries, thereby entitling him to recover damages from the defendant in the amount of no less than ₱500,000.00

x x x x x x x x x

ALLEGATION IN SUPPORT OF THE PRAYER FOR THE IMMEDIATE ISSUANCE OF A WRIT OF PRELIMINARY MANDATORY INJUNCTION

x x x x x x x x x

XXII

Irreparable injury has been caused and continue to cause plaintiff, hence, the necessity of a Writ of Preliminary Mandatory Injunction, ordering the defendant to reinstate the plaintiff, while this case is being heard

x x x x x x x x x

PREMISES CONSIDERED, it is respectfully prayed of this Honorable Court to render judgment in favor of the plaintiff and against the defendant by:

BEFORE HEARING ON THE MERITS

ORDERING the immediate issuance of a Writ of Preliminary Mandatory Injunction, COMMANDING the defendant to reinstate immediately the plaintiff to his previous position

AFTER HEARING ON THE MERITS

1. DECLARING the Preliminary Mandatory Injunction as PERMANENT;

2. DECLARING the DISMISSAL of the plaintiff as illegal and violative of plaintiff's right to due process and security of tenure;

3. x x x x x x x x x[22]

It cannot be disputed that Ramirez's complaint was thereby challenging the validity of his termination from the service, and that he thereby wanted the RTC to pry into the circumstances of the termination. Such challenge was outside of the RTC's sphere of authority. Instead, it was the CSC that was vested by law with jurisdiction to do so. Disciplinary cases and cases involving personnel actions affecting employees in the Civil Service, like appointment or separation from the service, are within the *exclusive jurisdiction* of the CSC.[23] Indeed, the Constitution vests in the CSC the jurisdiction over all employees of the Government, including all its branches, subdivisions, instrumentalities, and agencies, as well as government-owned or controlled corporations with original charters.[24]

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[22] *Rollo*, 107-113.

[23] *Olanda v. Bugayong,* G.R. No. 140917, October 10, 2003, 413 SCRA 255, 259.

[24] Section 2, Article IX, B (Civil Service Commission), 1987 Constitution.

Ramirez was one such employee. The agency in which he had been appointed by Chairman Domingo was the PAGC, an office established by President Macapagal-Arroyo through Executive Order No. 12[25] as an agency under the Office of the President. His complaint thus came under the jurisdiction of the CSC. We reiterate that any question regarding the appointment or separation from the service of a civil servant was lodged in the CSC as the sole arbiter of controversies relating to the Civil Service.[26] In that regard, Section 12 of Chapter 1 (*General Provisions*), Subtitle A (*Civil Service Commission*), Title I (*Constitutional Commissions*) of the *Administrative Code of 1987* (Executive Order No. 292) relevantly provides:

> Section 12. *Powers and Functions.* – The Commission shall have the following powers and functions:
>
> x x x x x x x x x
>
> (5) **Render opinion and rulings on all personnel and other Civil Service matters which shall be binding on all heads of departments, offices and agencies and which may be brought to the Supreme Court on *certiorari*;**
>
> x x x x x x x x x
>
> (11) **Hear and decide administrative cases instituted by or brought before it directly or on appeal, including contested appointments, and review decisions and actions of its offices and of the agencies attached to it. Officials and employees who fail to comply with such decisions, orders, or rulings shall be liable for contempt of the Commission. Its decisions, orders, or rulings shall be final and executory.** Such decisions, orders, or rulings may be brought to the Supreme Court on *certiorari* by the aggrieved party within thirty (30) days from receipt of a copy thereof;
>
> x x x x x x x x x

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[25] Dated April 16, 2001.

[26] *Catipon, Jr. v. Japson*, G.R. No. 191787, June 22, 2015, 759 SCRA 557, 57; *Corsiga v. Defensor*, G.R. No. 139302, October 28, 2002, 391 SCRA 267, 272-273.

It is clarified that the CSC has jurisdiction over a case involving a civil servant if it can be regarded as equivalent to a labor dispute resoluble under the *Labor Code*; conversely, the regular court has jurisdiction if the case can be decided under the general laws, such as when the case is for the recovery of private debts, or for the recovery of damages due to slanderous remarks of the employer, or for malicious prosecution of the employees.[27] The mere fact that the parties are members of the Civil Service should not remove the controversy from the general jurisdiction of the courts of justice and place them under the special jurisdiction of the CSC.[28]

Jurisdiction over the subject matter is conferred only by the Constitution or the law; it cannot be acquired through a waiver; it cannot be enlarged by the omission of the parties; it cannot be conferred by the acquiescence of the court.[29] Specifically, Batas Pambansa Blg. 129, as amended, did not vest jurisdiction in the RTC over matters relating to the Civil Service. Consequently, the RTC could not arrogate unto itself the hearing and decision of a subject matter outside of its jurisdiction.

Buenaflor was entirely justified in raising in his answer the special and affirmative defense that the RTC was bereft of jurisdiction to hear and resolve Ramirez's complaint. When a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action.[30] Upon the filing of the complaint, the RTC could only have dismissed it for lack of jurisdiction. Any further actions the RTC took, including rendering the decision on December 28, 2007, were void and ineffectual. Verily, the decisions or orders rendered by courts without or

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[27] *Phil. Amusement and Gaming Corp. v. Court of Appeals,* G.R. No. 93396, September 30, 1991, 202 SCRA 191, 195-196.

[28] *Id*. at 196.

[29] *Tumpag v. Tumpag,* G.R. No. 199133, September 29, 2014, 737 SCRA 62, 72; *Republic v. Bantigue Paint Development Corporation,* G.R. No. 162322, March 14, 2012, 668 SCRA 158, 164.

[30] *Katon v. Palanca,* G.R. No. 151149, September 7, 2004, 437 SCRA 565, 575.

in excess of their jurisdiction are void,[31] and cannot be the source of any right, or the creator of any obligation.[32]

The void and ineffectual decision of the RTC did not attain finality despite the supposedly belated appeal by Buenaflor. As emphasized in *Nazareno v. Court of Appeals*,[33] a void judgment – being non-existent in legal contemplation – does not become final and executory even with the belated filing of an appeal. Moreover, the Court has pronounced in *National Housing Authority v. Commission on Settlement of Land Problems*[34] that because a void judgment does not attain finality, a petition for *certiorari* to declare its nullity should not be dismissed for untimeliness.[35] Under the circumstances, the CA should have heard and granted the petition for *certiorari* of Buenaflor instead of dismissing it for the reasons advanced in the assailed resolutions.

WHEREFORE, the Court **GRANTS** the petition for *certiorari*; **ANNULS** and **SETS ASIDE** the resolutions promulgated by the Court of Appeals on January 31, 2012 and April 24, 2012; **DISMISSES** Civil Case No. 01-4577-8 entitled *Jose R. Ramirez v. Hon. Cesar D. Buenaflor*; and **ORDERS** the respondent to pay the costs of suit.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Reyes, Jardeleza,* and *Caguioa,*[*] *JJ.,* concur.

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[31] *De Pedro v. Romasan Development Corporation*, G.R. No. 194751, November 26, 2014, 743 SCRA 52, 79.

[32] *Zacarias v. Acanay,* G.R. No. 202354, September 24, 2014, 736 SCRA 508, 522.

[33] G.R. No. 111610, February 27, 2002, 378 SCRA 28, 35.

[34] G.R. No. 142601, October 23, 2006, 505 SCRA 38.

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

[*] Designated as additional Member of the Third Division per Special Order No. 2417 dated January 4, 2017.

FIRST DIVISION

[G.R. No. 204639. February 15, 2017]

SAN FRANCISCO INN, hereto represented by its authorized representative, LEODINO M. CARANDANG, *petitioner, vs.* **SAN PABLO CITY WATER DISTRICT, represented by its General Manager ROGER F. BORJA and the SPCWD INVESTIGATING BOARD,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; PRESIDENTIAL DECREE NO. 198 (PROVINCIAL WATER UTILITIES ACT OF 1973), AS AMENDED; THE COURTS HAVE JURISDICTION OVER A DISPUTE INVOLVING THE RIGHT OR AUTHORITY OF A LOCAL WATER UTILITY OR WATER DISTRICT ENTITY TO IMPOSE PRODUCTION ASSESSMENT AGAINST COMMERCIAL OR INDUSTRIAL DEEP WELL USERS, PURSUANT TO SECTION 39 OF PD 198.— The jurisdiction of the courts over a dispute involving the right or authority of a local water utility or water district entity, like SPCWD, to impose production assessment against commercial or industrial deep well users, like SFI, pursuant to Section 39 of PD 198 is settled. The issue in such a dispute is a judicial question properly addressed to the courts. Thus, the RTC correctly exercised its jurisdiction over the dispute between SFI and SPCWD. x x x There being no ambiguity, the plain meaning of Section 39, PD 189 and Section 11 of the Rules is to be applied. A cardinal rule in statutory construction is that when the law is clear and free from any doubt or ambiguity, there is no room for interpretation. There is only room for application.

2. ID.; ID.; REQUIREMENT WHICH MUST BE COMPLIED WITH BEFORE A WATER DISTRICT ENTITY MAY IMPOSE PRODUCTION ASSESSMENT ON THE PRODUCTION OF GROUND WATER BY COMMERCIAL OR INDUSTRIAL OPERATORS/USERS, CITED; NOT ESTABLISHED IN CASE AT BAR.— Under the law and

the Rules, the requirements that must be complied with before a water district entity may impose production assessment on the production of ground water by commercial or industrial operators/users are: 1. A prior notice and hearing; and 2. A resolution by the Board of Directors of the water district entity: (i) finding that the production of ground water by such operators/users within the district is injuring or reducing the water district entity's financial condition and is impairing its ground water source; and (ii) adopting and levying a ground water production assessment at fixed rates to compensate for such loss. x x x A MOA or contract between the water district entity and the deep well operator/user is not required under the law and the Rules. However, when a MOA is voluntarily agreed upon and executed, the obligation to pay production assessment fees on the part of the deep well operator/user and the right of the water district entity to collect the fees arise from contract. The parties are, therefore, legally bound to comply with their respective prestations. Unlike a MOA, which creates contractual obligations, faithful compliance with the requirements of Section 39 of PD 198 and Section 11 of the Rules creates binding obligations arising from law. Thus, in the absence of the requisite board resolution, SPCWD cannot legally impose any production assessment fees upon SFI.

APPEARANCES OF COUNSEL

Malveda Cachero And Balocating Law Offices for petitioner.
Antonio A. Lat for respondents.

D E C I S I O N

CAGUIOA, *J.:*

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the Decision dated September 14, 2011[1] of the Court of Appeals[2] (CA) in CA-

[1] *Rollo*, pp. 31-61. Penned by Associate Justice Magdangal M. De Leon, with Associate Justices Mario V. Lopez and Socorro B. Inting concurring.

[2] Fourteenth Division.

G.R. CV No. 95617, modifying the Decision dated May 25, 2010[3] of the Regional Trial Court of San Pablo City, Branch 32 (RTC), declaring valid the imposition of production charges/fees by respondent San Pablo City Water District (SPCWD) on commercial and industrial users/operators of deep wells in San Pablo City and upholding the right of SPCWD to demand payment of production charges/fees in accordance with existing rates from petitioner San Francisco Inn (SFI) and for the latter to pay interest thereon from their imposition starting in 1998. The review of the Resolution dated November 13, 2012[4] of the CA, denying SFI's motion for reconsideration of the CA Decision, is also sought in the petition.

While there were several issues raised by SFI before the RTC and the CA, the singular issue it raised in the petition is whether the CA erred in upholding SPCWD's right to impose production assessment in the absence of any findings or proof that SFI's use of ground water was injuring or reducing SPCWD's financial condition and impairing its ground water source, pursuant to Section 39 of Presidential Decree No. 198 (PD 198) and Section 11 of the "Rules Governing Ground Water Pumping and Spring Development Within the Territorial Jurisdiction of San Pablo City Water District" (the Rules).[5]

SFI argues that both the law and the Rules provide the following specific conditions before any water district may adopt and levy ground water production assessment:

(1) Prior due notice to entities within the district extracting ground water for commercial and industrial uses, and hearing on the water district's plan to adopt and levy a ground water production assessment or impose special charges at fixed rate; and

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[3] *Rollo*, pp. 80-96. Penned by Presiding Judge Agripino G. Morga.

[4] *Id*. at 63-65. Rendered by the Former Fourteenth Division.

[5] *Id*. at 15-16.

(2) A finding by the Board of Directors of the water district that production of ground water by such entities is: (i) adversely affecting the water district's financial condition **and** (ii) impairing its ground water sources.[6]

The Facts and Antecedent Proceedings

The RTC, in its Decision dated May 25, 2010, made the following findings which are relevant to the issue posed above:

The facts are not in dispute while the proceedings are of record.

The petitioner [SFI] is a hotel business establishment situated at Brgy. San Francisco Calihan, San Pablo City. In 1996, petitioner caused the construction of two (2) deep-well pumps for the use of its business. The pumps, which have a production capacity of four (4) liters per second each, bear the following specification[s]: size of casing [–] 2.0"; size of column pipe – 1.5"; pump setting – 60 feet; and motor HP rating – 1.5 HP.

The respondent [SPCWD] is a local water utility organized under Resolution No. 309, approved by the Municipal Board of the City of San Pablo, on December 17, 1973, absorbing the former San Pablo Waterworks System and its facilities. Its operation is under the National Water Resources Board, formerly Council (NWRB), which is the national agency vested with authority to control and regulate the utilization, exploitation, development, conservation and operation of water resources pursuant to Presidential Decree No. 1067, otherwise known as the "Water Code of the Philippines" (Water Code) and Presidential Decree No. 198, the "Local Water Utilities Administration Law." The respondent [SPCWD] is managed by a Board of Directors.

In 1977, the respondent [SPCWD] promulgated the Rules Governing Groundwater Pumping and Spring Development Within the Territorial Jurisdiction of the San Pablo City Water District. These rules were approved by the NWRB in its 88th meeting held on January 23, 1978. The provisions of the Rules relevant to this case are [Sections 10[7],

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

[7] Section 10 – Existing Appropriators or Users of Domestic, Commercial – Industrial Wells – Appropriators or users of domestic, commercial or industrial wells already drilled and in operation at the time of the effectivity

11[8] and 12[9]].

x x x x x x x x x

Pursuant to Section 80 of PD 1067, the NWRB in its Memorandum dated February 4, 1997, deputized the respondent to perform the following functions:

"x x x x x x x x x

"1. To accept, process, investigate and make recommendation on water permit applications on sources located within the territorial jurisdiction of the Water District.

2. To monitor drilling wells and other water resources development activities in your area for conformance with the provision of the Water Code and the rules and regulations of the Water District as approved by the Board.

3. To coordinate with the Offices of the DPWH-DE and NIA-PIO and other concerned agencies for the orderly and timely completion of necessary field activities related.

"x x x x x x x x x."

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of these rules shall be required to fill up NWRC Form Nos. 2902 and 2903, which forms shall be made available upon demand, and to comply with the provision of Section 6(g), for the evaluation of the Water District and levy of production assessment or special charges. RTC Decision, *rollo*, pp. 81-82; underscoring supplied.

[8] Section 11 – Production Assessment – In the event the Board of Directors of the District, finds, after notice and hearing, that production of ground water by other entities within the District for commercial or industrial uses is adversely affecting the District['s] financial condition and is impairing its ground water source, the Board may adopt and levy a ground water production assessment or impose special charges at fixed rates to compensate for such loss. In connection therewith the District may require commercial or industrial appropriators to install metering devices acceptable to the District to measure the actual abstraction or appropriation of water and which devices shall be regularly inspected by the District. *Id.* at 82.

[9] Section 12 – Rate Assessment – The assessment of special charges to be imposed by the District shall be computed on royalty basis at a rate to be fixed by the Board subject to the review and approval of the Local Water Utilities Administration. *Id*.

x x x In a letter dated 26 January 1998, the respondent's General Manager Roger F. Borja, invited petitioner and other deep-well users in San Pablo City, to a meeting to discuss the imposition of production assessment fees. The meeting proceeded as scheduled on February 19, 1998, with several deep-well owners present, among which is the petitioner. The topic discussed during the meeting involved the legality of the imposition of production fees and the rate of production fees to be imposed. No concrete agreement was reached except that the deep-well users just agreed to submit within fifteen (15) days a position paper either individually or collectively. x x x On March 26, 1998, deep-well users, including petitioner submitted their position paper opposing the imposition of the production assessment fee on the ground that the same "is inequitable and constitutes an unjust discrimination against such users."

On September 11, 1998, petitioner [SFI] filed an application for water permit with the NWRB. In a letter dated November 14, 1998, the DPWH District Engineer requested petitioner to submit clearances from the barangay chairman, the city mayor and the respondent water district. It appears that petitioner failed to comply except the submission of a barangay clearance certificate, and a certification dated 17 November 1998, issued by the respondent's Engr. Virgilio L. Amante, respondent's Engineering and Production Division Manager, stating among others that "the extraction of water has no adverse effect on the existing water supply and system of the San Pablo City Water District," but "without prejudice to the water district implementation of production assessment charges in the future."

On June 1, 1999, the respondent sent the petitioner a copy of a draft Memorandum of Agreement, regarding the proposed imposition of production assessment fee at ₱0.50 per cubic meter of water drawn from the well. The petitioner [SFI], however, did not sign the MOA. The respondent [SPCWD] in a letter dated November 9, 1999, again wrote the petitioner asking the latter to approve and/or sign the MOA.

On 30 July 2001, the Board of Directors of the respondent's (sic) passed a Board Resolution No. 050, Series of 2001, creating an investigating panel to investigate, hear and decide violations of the Water Code. The panel was composed of the Legal Counsel as Chairman, and then Senior Industrial Relations Management Officer and the Commercial Division Manager, as members, of the respondent. In an Order dated August 30, 2001, the Investigating Board directed the petitioner to appear and submit evidence "WHY NO CEASE AND DESIST ORDER AND CLOSURE OF OPERATION of the

water well" should be issued against the petitioner. Petitioner through counsel submitted a Manifestation and Motion on September 12, 2001, asking that the Order of August 30, 2001, be set aside and that it be furnished copy of the specific complaint against it. In an Order dated September 25, 2001, the Investigating Board resolved x x x:

"x x x x x x x x x

> In the interest of justice and for the reasons advanced in his motion, [petitioner SFI] is hereby ordered to appear before the Investigating Board on Tuesday, October 2, 2001 at 9:30 a.m. for continuation of the investigation and to submit [its] evidence why NO CEASE AND DESIST ORDER AND CLOSURE OF OPERATION of the water well against you and your corporation shall be issued pursuant to Board Resolution No. 045, Series of 1995 and Section 15 of the approved San Pablo City Water District Rules in Resolution No. 883, dated January 23, 1978 by the NWRB."

x x x x x x x x x

On November 19, 2001, prior to the issuance of the [Order dated November 20, 2001, submitting the matter for resolution due to the failure of petitioner [SFI] or counsel to appear on October 2, 2001, despite receipt of notice], the [p]etitioner instituted the instant petition seeking to enjoin the respondent water district and its General Manager, from further investigating and hearing IB No. 006, entitled "San Pablo City Water District vs. San Francisco Inn," as its continuance will work injustice and/or irreparable damage or injury to the petitioner and will mean closure of its hotel business operation. On November 28, 2001, the respondents through counsel filed a Motion to Dismiss anchored on the arguments that the Court has no jurisdiction over the subject matter, and for lack of cause of action against the respondents. The petitioner filed its opposition to the motion to dismiss, contending that the Court has jurisdiction over the subject matter of the case and that it has a valid cause of action against the petitioner (sic). The Court, in an Order dated February 1, 2002, denied the motion to dismiss, directing the respondents to file their answer x x x. On February 27, 2002, the respondents submitted their answer, maintaining its (sic) position that the NWRB, not the Court[,] has jurisdiction to hear the subject matter of the case, and that injunction is not the proper remedy there being an administrative remedy available to the petitioner.

x x x x x x x x x

In the interim, the Investigating Board came out with its Report and Resolution in IB-Case No. 006, dated April 9, 2002, recommending to the respondent's Board of Directors, the following:

> "1. To issue a CEASE AND DESIST ORDER AND CLOSURE OF OPERATION of their deepwell (sic) constructed by the [petitioner] without the required water permit;
>
> "2. To demand the required payment of the appropriations of water without permit from October 1999 up to the present, the equivalent value of the consumption to be paid to the district;
>
> "3. That a CEASE AND DESIST ORDER AND CLOSURE OF OPERATION of the water supply be issued by the Board of Directors of the appropriate agency after the lapse of 15 days from the issuance of approval order by the Board. The order that may be issued by the Board based on the recommendation be enforced by the designated enforcing officer with the assistance of the Philippine National Police as provided in PD 1067.
>
> "x x x x x x x x x."

From the above Report and Resolution, the petitioner filed a Motion for Reconsideration on May 14, 2002, on the following grounds: a) the authority of the respondent has already been questioned in the action for injunction; b) that the respondent has not shown proof that the extraction/drawing of water by the petitioner had caused injury upon the respondent's financial condition; and c) the petitioner had already filed a water permit application which is pending before the NWRB. In a 1st Indorsement dated May 15, 2002, the Investigating Board referred the above-mentioned Motion for Reconsideration to the respondent's Board of Directors for appropriate action. At this juncture, it may well be pointed out that the Board of Directors of the respondent has not yet taken action on the above Report and Resolution of the Investigating Board.

In addition to the above action taken by the petitioner, it also filed before this Court a Motion for Issuance of a Writ of Preliminary Mandatory Injunction, to enjoin the respondent and its Board of Directors "not to proceed in IB case No. 006 and/or from doing any further acts that could possibly disturb the status quo and will render the instant case moot and academic pending the final adjudication of the instant case in the higher interest of equity, fair play and substantial justice." The respondents through counsel filed an

Opposition to the motion on May 18, 2002, contending that the matters discussed in the subject motion, "are questions to be determined on the merits of the case," such that to rule on it "would be to rule on the main case of the petition which is injunction xxx." In a Supplemental Manifestation filed on May 28, 2002, the petitioner argued that it had already filed a water permit application which remained unacted upon and that the operation of a deep-well did not affect the water supply system of the respondent.

At the hearing on June 28, 2002, petitioner and counsel appeared but respondents and counsel did not. On motion by the petitioner, the Court gave it a period of ten (10) days to file its formal offer of exhibits, and for respondents to file their comment therein. On July 17, 2002, the petitioner formally offered Exhibits "A" to "I". On July 19, 2002, the respondents opposed the admission of the petitioner's exhibits on the ground that no formal hearing was conducted as to warrant the offer of the said exhibits. In an Order dated November 19, 2002, the Court admitted Exhibits "A" to "I" of the petitioner, in support of its prayer for the issuance of prohibitory mandatory injunction.

After a series of [O]rders setting the case for pre-trial, the initial pre-trial was held on November 13, 2002. The case was transferred from one Presiding Judge to another through various reasons such as inhibition, transfer to another station and illness of one. Eventually, full-blown pre-trial was held on February 4, 2008.

At the trial, the following testified for the petitioner: Leodino M. Carandang (on May 12, 2008); Virgilio Amante, whose testimony did not proceed in view of his unfortunate death (on June 23, 2008) but that the respondents admitted the due execution and existing (sic) of a Certification dated November 19, 1998, issued by Engr. Virgilio Amante, which was marked Exhibit "G"; Josefina Agoncillo (on July 28, 2008); and Renato Amurao as an adverse witness (on August 4, 2008)[.] On October 3, 2008, the petitioner formally offered its evidence consisting of Exhibits "A" to "N". On October 15, 2008, the respondents submitted their comment on the petitioner's exhibits, objecting primarily to the purpose[s] for which they are being offered. In an Order dated October 27, 2008, this Court admitted petitioner's Exhibits "A" to "N".

For the respondents, the following testified: Engr. Roger F. Borja (on November 17, 2008, and January 26, 2009); Florante Alvero (on March 2, 2009); Renato Amurao (on July 27, 2009); Antonio

Estemadura, one of the deep-well owners who is paying the production assessment fees (on November 9, 2009); and Teresita B. Rivera (on January 11, 2010). On January 28, 2010, the respondent[s] formally offered their exhibits consisting of Exhibits "1" to "34", with their respective sub-markings. On February 11, 2010, the petitioner through counsel filed its comments on the respondents' offer of evidence. In an Order dated February 15, 2010, this Court admitted all the respondents' Exhibits "1" to "34"; and directed the parties to submit their respective memoranda. Both the respondents and petitioner submitted their respective memoranda on March 29, 2010.[10]

On the power of the respondent local water utility [SPCWD] to impose production assessment fees on deep well owners, the RTC, citing Section 39 of PD 198 and Section 11 of the Rules, ruled that:

Clearly, then, there can be no dispute that the respondent water utility has the power to impose production assessment fees. The authority, however, shall be subject to notice and hearing, and conditioned upon a finding that the appropriation of underground water by a person or utility, as in the case of the petitioner "is injuring or reducing the district's financial condition."

This Court painstakingly reviewed the records of this case and the proceedings before the Investigating Board created by the respondent water utility. Nothing in the records will show that the respondent [SPCWD] has come up with a written finding that petitioner [SFI]'s appropriation of underground water is injuring or reducing the respondent's financial condition. What is extant from the records are the following:

a. that there was an invitation to all deep-well users in San Pablo City to a meeting regarding the legality of the imposition of production assessment fees;

b. the meeting was held on February 19, 1998, where deep-well users attended, including the petitioners (sic);

c. no concrete agreement was reached during the meeting except for the deep-well users to submit their position paper;

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[10] RTC Decision dated May 25, 2010, *rollo*, pp. 81-89.

d. that on March 26, 1998, the deep-well users submitted their position paper opposing the imposition of the production assessment fees;

e. that while other deep-well users eventually paid production assessment fees and signed the MOA on the same, petitioner did not agree and refused to sign the MOA;

f. that the respondent created an Investigating Board to investigate petitioner for failure to secure water permit;

g. that the Investigating Board directed petitioner to show cause why no cease and desist order be issued for operating a deep well without a permit;

h. that petitioner submitted a Manifestation and Motion asking for any specific complaint against it in regard of its operation;

i. that the Investigating [Board] set the incident for hearing on October 2, 2001, but the petitioner did not appear, prompting the Investigating Board to consider the matter submitted for resolution;

j. that on April 9, 2002, the Investigating Board came out with its Report and Resolution recommending to the respondent[‘s] Board of Directors to issue a cease and desist order against the petitioner for operating a deep well without a permit, and to demand payment of the equivalent value of the consumption or underground water "from October 1999 up to the present"; and

k. that the above Report and Resolution has not yet been acted upon by the respondent's Board of Directors up to this time.

In fine, the respondent [SPCWD]'s Board of Director[s] has no final resolution or decision yet on the matter of the recommendation of the Investigating Board. The obvious reason for this, as borne by the records is the fact that petitioner [SFI] sought intervention of this Court through the instant proceedings.

In short, the respondent [SPCWD]'s Board of Directors has no official action yet in the form of a board resolution fixing the rate of production assessment fees, neither does it have any conclusive finding that the appropriation by the petitioner [SFI] of their (sic) two (2) deep-well pumps is "injuring or reducing the district's financial condition." Even the Report and Resolution of the Investigating Board

made no mention about the injurious effect of the petitioner [SFI]'s operation upon the financial condition of the respondent [SPCWD]. There is also no showing that the respondent [SPCWD] had required the petitioner [SFI] to conduct reports on its operation of the two (2) deep-well pumps as so provided in Section 39 of PD 198 and Section 11 of the Rules Governing Groundwater Pumping and Spring Development quoted earlier. While the respondent [SPCWD] has drafted a MOA on the imposition of production assessment fees upon deep well owners/users and provided copies thereof to the latter including the petitioner [SFI], the same is not supported by any resolution promulgated and approved by the respondent [SPCWD]'s Board of Directors. In the absence of such board resolution, the respondent [SPCWD] cannot as yet legally impose any production assessment fees upon deep-well owners/users. Let it be clarified, however, that deep-well owners/users who have signed the MOA are presumed to have voluntarily acceded to the payment of production assessment fees, and must continue to pay the same.[11]

The RTC dismissed the petition of petitioner SFI in its Decision dated May 25, 2010, the dispositive portion of which reads as follows:

WHEREFORE, the instant petition is DISMISSED. Without pronouncement as to damages.

SO ORDERED.[12]

Respondent SPWCD appealed the RTC Decision before the CA. The CA, in its Decision dated September 14, 2011,[13] declared "valid the imposition of production charges/fees by respondent x x x SPCWD on commercial and industrial users/operators of deep wells in San Pablo City, and upholds the right of [respondent] SPCWD to demand payment of production charges/ fees in accordance with existing rates from [SFI] and for the latter to pay interest thereon from its imposition starting in 1998."[14]

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

[12] *Id*. at 96.

[13] *Supra* note 1.

[14] *Id*. at 60-61.

The CA made the following findings:

> At the outset, this Court finds that [respondent] SPCWD complied with the due process requirement for the effectivity and enforcement of the law and the rules sought to be implemented. It called a meeting for that purpose where even [SFI] itself stated that officials of SPCWD explained the concept and the legal basis of the production assessment fee and the purpose for which the district is imposing the said charges. [SFI] also narrated in its Appellee's Brief that the attendees at the public hearing expressed their concern with respect to the charges that will be imposed. It has been held that the importance of the first notice, that is, the notice of coverage and the letter of invitation to a conference, and its actual conduct cannot be understated. They are steps designed to comply with the requirements of administrative due process preliminary to the imposition of the production assessment rate which is an exercise of police power for the regulation of private property in accordance with the Constitution.
>
> With respect to the rate of the assessment, the trial court was of the firm view that without the express board resolution from the Board of Directors, the SPCWD is precluded from imposing and collecting the same. The trial court undermined SPCWD's compliance with the due process of prior consultation with the deep well users who were required to submit their position paper. Accordingly, from the intended production assessment fee of ₱6.50 was reduced to ₱0.80 per cubic meter for commercial users and ₱1.60 per cubic meters (sic) for industrial users. But upon further consultation, the Board of Directors of the SPCWD finally pegged the production assessment rate from ₱0.80 to ₱0.50 per cubic meter for commercial operator/ users, and from ₱1.60 to ₱1.00 per cubic meters (sic) for industrial users.[15]

From these findings, the CA ruled that there was no need to await the Board Resolution expressly fixing the rate since the assessment as well as the agreed reduced rate to be imposed was based on a prior consultation on the rates with deep well users, which is a "form of contemporaneous or practical construction by the administrative officers charged with the implementation of the Water Code" and the signing of the MOA

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

where the parties agreed to pay the reduced rate is a "form of implied administrative interpretation of the law or the so called interpretation by usage or practice."[16] The CA further ruled that SFI, by seeking the injunction on the assessment to be charged by SPCWD, questioned the exercise of police power by the State; and in this case, it was exercised by an administrative board by virtue of a valid delegation.[17]

On the matter of SFI's argument that for SPCWD to be able to charge production fee it should prove the impairment of ground water supply, the CA ruled that:

> To Our mind, it is not necessary to prove the impairment of ground water supply because the Water Code on which the rules is (sic) premised simply states that there may be assessment charges if the financial condition of the district is affected. It does not require establishment of the impairment of ground water supply. Thus, the imposition of an additional requirement exceeded the requirement in the main law. However, even assuming that proof must be made that there is injury to the ground water supply, this Court takes judicial notice that in 1997-1998 the entire world was affected by the El Niño Phenomenon. Its effect on the Philippines was explained by the Department of Science and Technology x x x.[18]

SFI filed a motion for reconsideration, which the CA denied in its Resolution dated November 13, 2012.[19] Hence, this petition for review filed by SFI.

SPCWD filed its Comment dated May 31, 2013.[20] SFI filed its Reply on March 10, 2014.[21]

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[16] *Id*. at 47-48.

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

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

[19] *Supra* note 4.

[20] *Id*. at 168-248 (with Annexes).

[21] *Id*. at 258-270.

The Issue Before the Court

As formulated by SFI, the sole issue to be resolved in the petition is:

> Whether the CA erred in upholding the right of SPCWD to impose production assessment in the clear absence of any findings/proof to support compliance that SFI's use of ground water is injuring or reducing SPCWD's financial condition and impairing its ground water source, pursuant to Section 39 of PD 198 and Section 11 of the Rules.[22]

The Court's Ruling

The petition has merit.

The jurisdiction of the courts over a dispute involving the right or authority of a local water utility or water district entity, like SPCWD, to impose production assessment against commercial or industrial deep well users, like SFI, pursuant to Section 39 of PD 198 is settled. The issue in such a dispute is a judicial question properly addressed to the courts.[23] Thus, the RTC correctly exercised its jurisdiction over the dispute between SFI and SPCWD.

Section 39 of PD 198, except for a minor typographical error, is unambiguous, *viz*:

> Section 39. *Production Assessment.* – In the event the board of a district finds, after notice and hearing, that production of ground water by other entities within the district for commercial or industrial uses in (sic) injuring or reducing the district's financial condition, the board may adopt and levy a ground water production assessment to compensate for such loss. In connection therewith, the district may require necessary reports by the operator of any commercial or industrial well. Failure to pay said assessment shall constitute an invasion of the waters of the district and shall entitle this district to an injunction and damages pursuant to Section 32 of this Title.

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[22] *Id.* at 15-16.

[23] See *Dasmariñas Water District v. Monterey Foods Corp.*, 587 Phil. 403, 414 (2008).

Section 11 of the Rules is likewise without ambiguity, *viz*:

> Section 11 – Production Assessment – In the event the Board of Directors of the District, finds, after notice and hearing, that production of ground water by other entities within the District for commercial or industrial uses is adversely affecting the District['s] financial condition and is impairing its ground water source, the Board may adopt and levy a ground water production assessment or impose special charges at fixed rates to compensate for such loss. In connection therewith the District may require commercial or industrial appropriators to install metering devices acceptable to the District to measure the actual abstraction or appropriation of water and which devices shall be regularly inspected by the District.[24]

There being no ambiguity, the plain meaning of Section 39, PD 189 and Section 11 of the Rules is to be applied. A cardinal rule in statutory construction is that when the law is clear and free from any doubt or ambiguity, there is no room for interpretation. There is only room for application.[25]

Under the law and the Rules, the requirements that must be complied with before a water district entity may impose production assessment on the production of ground water by commercial or industrial operators/users are:

1. A prior notice and hearing; and
2. A resolution by the Board of Directors of the water district entity: (i) finding that the production of ground water by such operators/users within the district is injuring or reducing the water district entity's financial condition and is impairing its ground water source; and (ii) adopting and levying a ground water production assessment at fixed rates to compensate for such loss.

The Court, not being a trier of facts, must rely on the findings of the RTC set forth above.

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[24] *Rollo*, p. 82.

[25] *Amores v. House of Representatives Electoral Tribunal*, 636 Phil. 600, 608 (2010), citing *Twin Ace Holdings Corp. v. Rufina and Company*, 523 Phil. 766, 777 (2006).

The RTC correctly applied the clear text of the law and the Rules. The RTC also correctly ruled that the preconditions for the levying of production assessment by SPCWD on SFI had not been complied with. While there had been prior notice and hearing, SPCWD's Board of Directors had not adopted the required resolution with a definitive finding that the appropriation by SFI of its two deep well pumps was injuring or reducing the SPCWD's financial condition and fixing the rate of production assessment fees to be levied against SFI that would be adequate to compensate the financial loss it stood to suffer.

It is well to note that, as astutely observed by the RTC, even the Report and Resolution of the Investigating Board created by SPCWD made no mention about the injurious effects, if any, of SFI's deep well operation upon the financial condition of SPCWD. While SPCWD had drafted a MOA on the imposition of production assessment fees upon deep well owners/users and provided copies thereof to them, including SFI, the MOA was not supported by any resolution duly promulgated and approved by SPCWD's Board of Directors or by any finding that there were injurious effects of SFI's deep well operation upon the financial condition of SPCWD. For its part, SFI did not execute the MOA.

A MOA or contract between the water district entity and the deep well operator/user is not required under the law and the Rules. However, when a MOA is voluntarily agreed upon and executed, the obligation to pay production assessment fees on the part of the deep well operator/user and the right of the water district entity to collect the fees arise from contract.[26] The parties are, therefore, legally bound to comply with their respective prestations.

Unlike a MOA, which creates contractual obligations, faithful compliance with the requirements of Section 39 of PD 198 and Section 11 of the Rules creates binding obligations arising from law.[27] Thus, in the absence of the requisite board resolution,

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[26] See CIVIL CODE, Art. 1157(2).

[27] *Id.* at Art. 1157(1).

SPCWD cannot legally impose any production assessment fees upon SFI.

The CA erred when it ruled that "there is no need to await the Board Resolution expressly fixing the rate"[28] because a board resolution, as described above, is a mandatory prerequisite under the law and the Rules. The CA's invocation of "contemporaneous or practical construction"[29] and "interpretation by usage or practice"[30] is unwarranted, Section 39 of PD 198 and Section 11 of the Rules being crystal clear and wholly unambiguous.

Furthermore, the CA's reliance on the *El Niño* phenomenon in 1997-1998, which it took judicial notice of, to justify the imposition of production assessment fees by SPCWD on SFI does not meet the clear parameters stated in the law and the Rules. What is sought to be compensated by the production assessment fees is the financial loss that the water district entity stands to suffer due to the production of the ground water by the deep well operator/user. The law requires proof of a direct correlation between the financial loss of the water district entity and the ground water production of the deep well operator/user. In this case, with or without the *El Niño* phenomenon, such direct correlation has not been preponderantly established as found by the RTC.

WHEREFORE, the Decision dated September 14, 2011 and the Resolution dated November 13, 2012 of the Court of Appeals in CA-G.R. CV No. 95617 are **REVERSED** and **SET ASIDE**. The Decision dated May 25, 2010 of the Regional Trial Court of San Pablo City, Branch 32 in Civil Case No. SP-5869, dismissing the petition, is **AFFIRMED**.

SO ORDERED.

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

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[28] CA Decision dated September 14, 2011, *rollo*, p. 47.

[29] *Id*.

[30] *Id*. at 48.

FIRST DIVISION

[G.R. No. 208459. February 15, 2017]

JULIETA B. STA. ANA, *petitioner, vs.* **MANILA JOCKEY CLUB, INC.,** *respondent.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT BY EMPLOYER; LOSS OF TRUST AND CONFIDENCE, AS A VALID GROUND; REQUIREMENTS, CITED.—** It is settled that the employer has the right to dismiss an employee for just causes, which include willful breach of trust and confidence. Complementary to such right is the burden of the employer to prove that the employee's dismissal is for a just cause, and the employer afforded the latter due process before termination. In this regard, to legally dismiss an employee on the ground of loss of trust, the employer must establish that a) the employee occupied a position of trust and confidence, or has been routinely charged with the care and custody of the employer's money or property; b) the employee committed a willful breach of trust based on clearly established facts; and, c) such loss of trust relates to the employee's performance of duties. In fine, there must be actual breach of duty on the part of the employee to justify his or her dismissal on the ground of loss of trust and confidence.

2. **ID.; ID.; ID.; LOSS OF TRUST AND CONFIDENCE MUST ARISE FROM DISHONEST OR DECEITFUL CONDUCT AND MUST NOT BE ARBITRARILY ASSERTED IN THE FACE OF OVERWHELMING CONTRARY EVIDENCE.—** It is a cardinal rule that loss of trust and confidence should be genuine, and not simulated; it must arise from dishonest or deceitful conduct, and must not be arbitrarily asserted in the face of overwhelming contrary evidence. While proof beyond reasonable doubt is not required; loss of trust must have some basis or such reasonable ground for one to believe that the employee committed the infraction, and the latter's participation makes him or her totally unworthy of the trust demanded by the position.

3. ID.; ID.; ID.; ILLEGAL DISMISSAL; AN ILLEGALLY DISMISSED EMPLOYEE IS ENTITLED TO TWO SEPARATE RELIEFS OF FULL BACKWAGES AND REINSTATEMENT, HOWEVER, WHEN REINSTATEMENT IS NO LONGER AN OPTION, PAYMENT OF SEPARATION PAY IS JUSTIFIED.— An illegally dismissed employee is entitled to two separate reliefs: full backwages and reinstatement. In such case where reinstatement is no longer an option, payment of separation pay is justified. The Court considers "considerable time," which includes the lapse of eight years or more (from the filing of the complaint up to the resolution of the case) to support the grant of separation pay in lieu of reinstatement. Considering that about eight years had passed from the time that Sta. Ana filed her complaint on February 25, 2009 then, her reinstatement is an impractical option. Thus, instead of reinstatement, the Court grants her separation pay of one month for every year of service. As regards backwages, she is entitled to receive full backwages, which include allowances and other benefits due her or their monetary equivalent, computed from the time her compensation was withheld up to the finality of this Decision.

4. ID.; ID.; ID.; ID.; THE GRANT OF MORAL DAMAGES IS ALLOWED WHERE THE EMPLOYER ACTED IN BAD FAITH OR IN SUCH A MANNER OPPRESSIVE TO LABOR; ESTABLISHED IN CASE AT BAR.— The grant of moral damages is allowed where the employer acted in bad faith or in such a manner oppressive to labor. During the administrative hearing, MJCI received in evidence relevant documents establishing her capacity to engage in a lending business, and proving that she did not engage in any activity to defraud MJCI. Also a plain reading of the statements of Santos and Pimentel would show that they did not explicitly declare that Sta. Ana used another employee during office hours as conduit in her business. However, despite all these clear pieces of evidence, and only on mere allegation of loss of trust, MJCI still dismissed her. Therefore, for acting in "bad faith or such conscious design to do a wrongful act for a dishonest purpose," MJCI is liable to pay Sta. Ana ₱50,000.00 as moral damages.

APPEARANCES OF COUNSEL

Pro-labor Legal Assistance Center for petitioner.
Reyno Tiu Domingo & Santos Law Offices for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

Before the Court is a Petition for Review on *Certiorari* assailing the July 11, 2012 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 114861. The CA affirmed the February 26, 2010[2] and April 30, 2010[3] Resolutions of the National Labor Relations Commission (NLRC), which in turn affirmed the September 28, 2009 Decision[4] of the Labor Arbiter (LA) dismissing the illegal dismissal case against Manila Jockey Club, Inc. (MJCI)/Atty. Alfonso Reyno (Atty. Reyno). Also challenged is the July 31, 2013 CA Resolution[5] denying the Motion for Reconsideration on the assailed Decision.

Factual Antecedents

In May 1977, MJCI, a domestic corporation with legislative franchise to operate horse race betting,[6] hired Julieta B. Sta. Ana (Sta. Ana) as outlet teller of its off-track betting (OTB) station in Tayuman, Manila (OTB Tayuman). Because horse racing was not on a daily basis, Sta. Ana's work schedule was

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[1] CA *rollo*, pp. 485-498; penned by Associate Justice Edwin D. Sorongon and concurred in by Associate Justices Hakim S. Abdulwahid and Marlene Gonzales-Sison.

[2] NLRC records, pp. 388-396; penned by Commissioner Pablo C. Espiritu, Jr. and concurred in by Presiding Commissioner Alex A. Lopez and Commissioner Gregorio O. Bilog III.

[3] *Id*. at 407-408.

[4] *Id*. at 265-278; penned by Labor Arbiter Melquiades Sol D. del Rosario.

[5] CA *rollo*, pp. 545-547.

[6] NLRC records, p. 43.

only for 12 days per month with shifts from 5 p.m. to 10:30 p.m. on weekdays, and 1 p.m. to 7 p.m. on weekends.[7]

As teller, Sta. Ana performed the following duties and functions:

1. Waits on [OTB] tellers' booth for customers/clients; sells betting tickets.
2. Answers bettor's inquiries, provides information on racing events, assists patrons with information, and takes bet orders.
3. Processes cash payments through terminal registers; balances registers and makes daily ticket sales reports after the races.
4. Handles cash and transactions with due diligence and honesty to the bettors and to the company as well.
5. Coordinates with the Betting Operations Department (BOD) on matters beyond the standard operating procedure of the BOD.
6. Strictly observes and implements company policies and procedures to protect the interests of the company against unscrupulous bettors and operators.
7. Reports incidents to the company on matters pertaining to the operations.
8. Submits or remits the cash sales for the day to the official collection team and/or to the assigned banks with night depository box.
9. May be assigned to different OTBs as necessary to the company's operations.
10. Performs miscellaneous job-related duties as assigned.[8]

On November 13, 2008, however, MJCI issued a Memorandum[9] stating that its Treasury Department was discovered to have been illegally appropriating funds and lending it out to the employees of MJCI. As a result, MJCI required its officers and employees to report any loan obtained from said department or any of its personnel.

On December 21, 2008, MJCI's Internal Auditing Department (IAD) submitted its Preliminary Report[10] indicating that its Agudo

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[7] *Id.* at 14.

[8] *Id.* at 44.

[9] *Id.* at 69.

[10] *Id.* at 70-73.

OTB Branch (OTB Agudo) had unaccounted check remittances amounting to ₱44,377,455.00 for the period January 10, 2008 to November 30, 2008.

On January 8, 2009, MJCI, through its Special Disciplinary Committee (SDC), formally charged[11] Sta. Ana with the following infractions:

x x x Julieta Sta. Ana – OTB Teller

DISHONESTY AND OTHER FRAUDULENT ACTS

[A.] Stealing or attempting to steal corporate property or money/ corporate assets – 1st offense: dismissal

[B.] Malversation – 1st offense; dismissal

[C.] Engaging/conniving in anomalous transactions – 1st offense: dismissal[12]

In her Explanation,[13] Sta. Ana denied committing any offense. She contended that even prior to the takeover of the new management of MJCI, she had been engaged in the lending business to augment her income.

Later, MJCI served upon Sta. Ana a Notice of Investigation[14] reiterating the accusations against her, and narrating the circumstances surrounding her case, *viz.*:

Initial investigation revealed that there were unaccounted shortages incurred by the Cashier Department. The Balance Sheet as of November 2008 indicated that the Cash on Hand amounted to around ₱198 million; actual counting of the cash in vault revealed, however, that the actual amount is only around ₱3.1 million. At the center of this irregularity and/or fraud is Josephine Tejada.

It has been reported that Josephine Tejada, without authority, has been lending large amount [sic] of money to some MJCI personnel

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[11] *Id.* at 82-88.

[12] *Id.* at 86.

[13] *Id.* at 26.

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

using corporate funds. It has likewise been reported that you [*Sta. Ana*] were abetting Josephine Tejada in the said unauthorized lending or that you yourself has also been lending to some MJCI personnel using corporate funds and without any authority from management.[15]

The Notice further informed Sta. Ana of her 30-day suspension without pay effective January 16, 2009.

In her Answer,[16] Sta. Ana averred that she did not know anything regarding MJCI's unaccounted money and that her suspension was unjust. She maintained that she did not violate any company rule by engaging in the lending business.

On January 30, 2009, Sta. Ana attended the hearing conducted by MJCI.[17]

Sta. Ana and Josephine Tejada (Tejada), also submitted a Joint Affidavit[18] dated January 20, 2009. Therein, Tejada, MJCI's Assistant Head/Cashier, Treasury Department, denied doing business with Sta. Ana while Sta. Ana asserted that she had been in the money lending business for 15 years, or even prior to the takeover by the new management of MJCI, and that her capital was sourced from the sale of her fishing boats.

Sta. Ana likewise submitted a Supplement Affidavit[19] dated February 2, 2009 alleging that in August 2008, Benjie Sunga (Sunga) proposed to borrow money from her but since she could not personally attend to him, she requested Tejada to give Sunga the money he needed. The following day, she paid Tejada the amount the latter lent to Sunga. According to Sta. Ana, that was her only transaction with Tejada.

In its February 13, 2009 Report,[20] the SDC found that Sta. Ana extended loans to the employees of MJCI during office

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[15] *Id*. at 91.

[16] *Id*. at 93.

[17] *Id*. at 104.

[18] *Id*. at 95-96.

[19] *Id*. at 28.

[20] *Id*. at 98-126.

hours using its personnel as messenger. It further stated that on one occasion, Sta. Ana used corporate funds without MJCI's authority, and with the assistance of Tejada.[21]

Consequently, the SDC found Sta. Ana guilty of conspiring to defraud, illegally take funds, and cause irreparable damage to MJCI; as such, MJCI lost its trust on her. It also declared that even granting that there was no conspiracy, Sta. Ana, nonetheless, committed gross inexcusable negligence for failure to perform her duties and protect the interest of MJCI. SDC recommended the dismissal of Sta. Ana and the filing of criminal cases for qualified theft and other appropriate charges.

On February 16, 2009, MJCI issued a Notice of Termination[22] to Sta. Ana.

On February 25, 2009, Sta. Ana filed a Complaint[23] for illegal dismissal and payment of actual, moral and exemplary damages, and attorney's fees against MJCI/Atty. Reyno, its President.

In her Position Paper,[24] Sta. Ana averred that she had been in the service for 31 years prior to her dismissal. She stressed that she had bank deposits, real properties and fishing business to fund her lending business; and, the fact that she lent money to her co-employees is not proof that she used MJCI's funds for her business. She further insisted that there was no company rule prohibiting employees from engaging in their own businesses. In addition, Sta. Ana contended that she had no direct access to her employer's money; thus, she could not have stolen it. She pointed out that she never incurred a shortage in remitting the income of her OTB Branch or the OTB Tayuman Branch. Lastly, Sta. Ana stated that her one-time request for Tejada to accommodate Sunga is not evidence of any complicity with Tejada. Similarly, she should not be dragged into the

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[21] *Id*. at 123.

[22] *Id*. at 148.

[23] *Id*. at 1-3.

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

controversy in the Cashier/Treasury Department of MJCI just because she was a "*kumare*" of Tejada.

On the other hand, MJCI/Atty. Reyno countered in their Position Paper[25] that it was incredible that the money that Tejada advanced to Sunga came from Tejada's own fund. They insisted that the salary of Sta. Ana (of ₱6,700.00 per month), even including that of Tejada, was insufficient to fund a money lending business; hence, the only logical conclusion was that the amount lent to Sunga came from MJCI's funds.

MJCI/Atty. Reyno remained firm that Sta. Ana committed dishonesty and connived with Tejada in an anomalous transaction. They further declared that in its Report[26] dated April 22, 2009, the SDC reiterated the charge against Sta. Ana of operating a lending business and using a personnel of MJCI as conduit even during office hours. That Sta. Ana supposedly used MJCI personnel in her business was derived from the statements of two employees of MJCI, namely, Ramon Santos (Santos) and Ramon Pimentel (Pimentel).

Later, Sta. Ana argued in her Reply[27] that MJCI/Atty. Reyno maliciously and hastily concluded that she was in cahoots with Tejada based only on the single transaction relating to Sunga. She also denied using MJCI's personnel as conduit during office hours; she pointed out that considering her office schedule, she had enough free time to engage in a lending business.

For their part, MJCI/Atty. Reyno attached in their Reply[28] the Affidavit[29] of Sunga alleging that Sta. Ana advised him to get money from Tejada. Thus, MJCI/Atty. Reyno maintained that Sta. Ana and Tejada were business partners, and they

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[25] *Id*. at 42-68.

[26] *Id*. at 149-162.

[27] *Id*. at 170-176.

[28] *Id*. at 177-180.

[29] *Id*. at 181.

committed dishonesty and connived in perpetrating an anomalous transaction against MJCI.

The parties filed their respective Rejoinders[30] reiterating the contentions in their Position Papers and Replies.

Ruling of the Labor Arbiter

On September 28, 2009, the LA dismissed the Complaint for lack of merit. He declared that Sta. Ana conspired with the other tellers against MJCI by issuing reports intended to conceal discrepancies in the remittance which resulted in the unlawful taking of MJCI's funds, and that the money obtained by Sta. Ana was used in her lending business.

The LA noted that Sta. Ana claimed that her capital was sourced from the proceeds of the sale of her fishing vessels two years ago; yet, she also alleged that she started her lending business 15 years prior to the takeover of the new management. The LA also concluded, based on the declarations of two employees, that the amounts they borrowed from Sta. Ana were delivered by an employee of MJCI, that Sta. Ana had used an MJCI's employee and company time in her business.

Lastly, the LA held that Sta. Ana's salary alone could not support her lending business. He also decreed that the filing by MJCI of criminal cases against Sta. Ana proved its loss of trust and confidence in her, a valid ground for dismissal from work.

Ruling of the National Labor Relations Commission

The NLRC affirmed the LA Decision. It ruled that MJCI validly dismissed Sta. Ana for loss of trust and confidence; that although Sta. Ana might not have been directly involved in the discrepancies of the remittances and in the preparation of reports to cover up such discrepancies, she was nonetheless a recipient of the stolen money which she used in her lending business; that Sta. Ana's claim that her lending business was

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[30] *Id*. at 183-201.

funded by the sale of her fishing vessels two years ago contradicted her declaration that she commenced her business 15 years earlier; and that Sta. Ana's statement, anent her co-employees who had loans from her, did not indicate the dates when the borrowers obtained their loans from Sta. Ana.

Furthermore, the NLRC decreed that conspiracy between Sta. Ana and Tejada was established by Sunga's admission that the money he borrowed from Sta. Ana came from Tejada; that Sta. Ana deliberately engaged in a lending business and used corporate funds without MJCI's authority; and that the filing of a criminal case against Sta. Ana proved the employer's loss of trust and confidence in her.

Lastly, the NLRC held that Atty. Reyno must be dropped as party-respondent because there was no showing that he acted maliciously in furtherance of any illegal act of MJCI. It also affirmed the finding of the LA that MJCI complied with the procedural requirements in dismissing Sta. Ana.

On April 30, 2010, the NLRC denied the Motion for Reconsideration filed by Sta. Ana.

Ruling of the Court of Appeals

Sta. Ana filed with the CA a Petition for *Certiorari* contending that the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction when it ruled that she was validly dismissed from work.

On July 11, 2012, the CA affirmed the NLRC Resolutions.

The CA held that Sta. Ana regularly handled a large amount of money belonging to MJCI; thus, she occupied a position of trust. The CA gave credence to Sunga's Affidavit where he declared that Sta. Ana told him that Tejada was her (Sta. Ana) business partner. The CA further ruled that it could not see how Sta. Ana, with her meager salary, could finance her lending business. It likewise sustained the view that Sta. Ana's statement that she funded her business from the sale of her fishing boats two years ago contradicted her assertion that her lending business commenced 15 years earlier.

In sum, the CA held that Sta. Ana connived with Tejada in stealing MJCI's funds and using it to finance her lending business.

On July 31, 2013, the CA denied Sta. Ana's Motion for Reconsideration.

Undeterred, Sta. Ana filed this Petition for Review on *Certiorari* raising the following grounds:

THE RESPONDENT COURT OF APPEALS – 6TH DIVISION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN AFFIRMING THE DECISION AND THE RESOLUTION OF THE NATIONAL LABOR RELATIONS COMMISSION[;]

THE RESPONDENT COURT OF APPEALS – 6TH DIVISION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN FINDING THAT PETITIONER WAS LEGALLY DISMISSED ON THE BASIS OF THE LONE TESTIMONY OF MR. BENJIE SUNGA AND ON THE SPECIAL DISCIPLINARY COMMITTEE REPORT DATED FEBRUARY 13, 2009[; AND,]

THE RESPONDENT COURT OF APPEALS – 6TH DIVISION COMMITTED GRAVE ABUSE OF DISCRETION [AMOUNTING TO LACK] OR EXCESS OF JURISDICTION IN THEORIZING THAT PETITIONER AND THE OTHER EMPLOYEES CONSPIRED [TO COMMIT] AN OFFENSE PUNISHABLE BY DISMISSAL.[31]

Sta. Ana maintains that MJCI failed to substantiate its allegation of conspiracy between her and Tejada. She argues that the SDC found shortages in remittances in the OTB Agudo only, and not OTB Tayuman where she was assigned. She also stresses that she was never assigned to the Agudo Branch and that she had no transactions or dealings with said branch.

In addition, Sta. Ana avers that she never incurred any shortage in her remittances of the income of OTB Tayuman. She likewise claims that her relationship with Tejada as "*magkumare*" should not be used as basis to conclude that she was involved in the infraction committed by Tejada.

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[31] *Rollo*, p. 17.

Sta. Ana insists that she has the financial capacity to engage in the lending business and MJCI did not conduct any investigation on her financial background. She adds that she sold her fishing boats to infuse additional capital into her business.

Furthermore, Sta. Ana asserts that she had no direct access to the vaults and bank accounts of MJCI; thus, it is impossible that she could have used its funds.

Finally, Sta. Ana contends that she did not conduct her lending business during office hours or use an MJCI's employee as conduit thereto. She reiterates that her work schedule permitted her to conduct her lending business outside office hours, and there was no prohibition in the Employee's Handbook regarding extending of loans to her co-employees.

On the other hand, MJCI counters that the instant Petition for Review on *Certiorari* ascribing grave abuse of discretion against the CA must be dismissed because only questions of law may be raised in a petition under Rule 45 of the Rules of Court.

In any event, MJCI argues that the Petition lacks merit because the CA did not commit any reversible error as MJCI had sufficient basis for dismissing Sta. Ana on the ground of loss of trust and confidence. It reiterates that Sta. Ana stole money from MJCI, and she abetted the commission of defalcation by Tejada in furtherance of their illegal lending business.

In a Resolution[32] dated October 13, 2014, the Court gave due course to the Petition and required the parties to submit their respective memoranda.

Issue

Whether Sta. Ana was validly dismissed on the ground of loss of trust and confidence.

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[32] *Id.* at 632-633.

Our Ruling

The Petition is with merit.

As a rule, a petition under Rule 45 covers only questions of law as the factual findings of the CA are final and binding upon the Court. However, this rule allows certain exceptions including a situation where the CA manifestly overlooked undisputed relevant facts, which if properly considered would support a different conclusion,[33] as in this case. In particular, the uniform finding of the LA, NLRC, and CA that Sta. Ana was validly dismissed is unjustified because salient facts were overlooked, which, if properly considered, will prove the absence of just cause in dismissing her from work.

It is settled that the employer has the right to dismiss an employee for just causes, which include willful breach of trust and confidence. Complementary to such right is the burden of the employer to prove that the employee's dismissal is for a just cause, and the employer afforded the latter due process before termination.[34]

In this regard, to legally dismiss an employee on the ground of loss of trust, the employer must establish that a) the employee occupied a position of trust and confidence, or has been routinely charged with the care and custody of the employer's money or property; b) the employee committed a willful breach of trust based on clearly established facts; and, c) such loss of trust relates to the employee's performance of duties.[35] In fine, there must be actual breach of duty on the part of the employee to justify his or her dismissal on the ground of loss of trust and confidence.[36]

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[33] *Pasos v. Philippine National Construction Corporation*, 713 Phil. 416, 434 (2013).

[34] *Lagahit v. Pacific Concord Container Lines*, G.R. No. 177680, January 13, 2016.

[35] *Manila Jockey Club, Inc. v. Trajano*, 712 Phil. 254, 267(2013).

[36] *Cocoplans, Inc. v. Villapando,* G.R. No. 183129, May 30, 2016.

In *Manila Jockey Club, Inc. v. Trajano,*[37] where therein respondent was also a teller working for MJCI, like Sta. Ana, the Court determined that the position of a selling teller is a position of trust and confidence since it requires the handling and custody of tickets issued and bets made in the teller's station. Thus, Sta. Ana undoubtedly occupied a position of trust and confidence.

However, while Sta. Ana occupied such position of trust and MJCI afforded her procedural due process, her dismissal is still unwarranted because MJCI failed to discharge its burden of proving that she willfully breached its trust, and such loss of trust relates to Sta. Ana's performance of duties.

To recall, MJCI issued a formal charge against Sta. Ana for dishonesty and other fraudulent acts for stealing or attempting to steal corporate assets; malversation; and engaging in anomalous transactions. In its Report dated February 13, 2009, the SDC specifically accused her of having used a co-employee in her personal business during office hours; and, having lent money to another using MJCI's fund without authority, to wit:

> x x x The SDC found other irregularities prejudicial to MJCI. [T]ejada and Purificacion were extending unauthorized loans to MJCI personnel using corporate funds. This was confirmed by Atty. Juan S. Baun and Mr. Noli Valencia. Ms. Purificacion also admitted overpaying late dividends and not reporting the same. **Another teller, x x x Julieta Sta. Ana has a personal lending operation within MJCI using MJCI personnel as conduit and messenger apparently during office hours. [In] one instance, she also used corporate funds without authority and with the assistance of x x x Tejada to lend to Benjamin Sunga**.[38] (Emphasis supplied)

These allegations, however, are not supported by clear and convincing evidence.

One, MJCI argued that Sta. Ana used its personnel in her lending business during office hours. It will be recalled that

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[37] *Supra* note 35 at 268.

[38] NLRC records, p. 123.

Sta. Ana was dismissed on February 16, 2009 pursuant to the SDC Report dated February 13, 2009. Notably, however, the specific statements as regards the accusation that Sta. Ana used in her lending business an MJCI employee were mentioned for the first time only in the SDC Report dated April 22, 2009, as follows:

> x x x RAMON SANTOS
>
> Mr. Santos is a Racetrack and Starting Gate Supervisor of MJCI. In his testimony, he admitted obtaining [a] loan in the amount of ₱20,000.00, not from Tejada but from Sta. Ana. The loan was received [in] October 2008, in time for the enrolment of his children. The loan [was] delivered by an MJCI employee, driver Lito Maingat.
>
> x x x RAMON PIMENTEL
>
> Mr. Pimentel is the Head of the Food and Beverages at SLLBP, Carmona, Cavite. When asked if he obtained any loan from any personnel of MJCI, he replied that while in Carmona, Cavite, he asked for [a] loan in the amount of ₱4,000.00 from Sta. Ana through Atty. Juan Baun. The money was handed [to him] by Lito Maingat, less 5% for the interest. He paid the loan with two post-dated checks.[39]

The statements of Santos and Pimentel only proved that they borrowed money from Sta. Ana, and the same was delivered by Maingat. Significantly, there was no narration as to when the money was delivered. Otherwise stated, there is no evidence that Sta. Ana engaged the services of an MJCI personnel during office hours. Clearly, to accuse Sta. Ana of having used MJCI's personnel in her business during office hours remains a bare allegation without corresponding proof.

Also worth stressing is the fact that MJCI did not refute Sta. Ana's assertion that the company rules do not prohibit its employees from engaging in their own personal businesses. Likewise, the investigation conducted by MJCI pertained only to OTB Agudo, which was not the branch where Sta. Ana was assigned. Moreover, there was no showing that Sta. Ana's branch

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[39] *Id.* at 151.

(OTB Tayuman) had incurred any shortage in its remittance to MJCI.

Two, MJCI alleged that in one occasion and with Tejada's assistance, Sta. Ana used its money to lend to Sunga. This accusation is pursuant to the Affidavit of Sunga, the pertinent portions of which read:

1. I am the Fleet Head of the Manila Jockey Club, Inc. ('MJCI') and I have been serving MJCI as such since May 2003.
2. Sometime June 2008, I approached Ms. Julieta Sta. Ana to x x x borrow some money from her x x x
3. When I talked to Ms. Sta. Ana on the phone regarding my need to borrow the amount of ₱10,000.00, she said that she did not have that amount at that time. She advised me that I can get the money from her business partner, Ms. Josephine Tejada at the Cashier Department of MJCI in Strata 100, as they have an arrangement for such loan requests.
4. Ms. Sta. Ana said I can pay her and she will settle with Ms. Tejada.
5. A few days after I talked to Ms. Sta. Ana, I went to see Ms. Tejada and she gave me personally the ₱10,000.00 I needed. She said that she has already talked to Ms. Sta. Ana regarding the loan.
6. I have already paid in full the amount I borrowed from Ms. Tejada and Ms. Sta. Ana which I paid on installments.[40]

According to Sunga, he borrowed money from Sta. Ana but it was Tejada who gave it to him; and Sta. Ana told him that Tejada was her business partner. However, there was neither allegation nor proof that the amount involved was derived from the funds of MJCI.

The mere allegation that Tejada is the business partner of Sta. Ana does not by itself establish that Tejada is involved in the business of Sta. Ana. Even granting for argument's sake

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[40] *Id*. at 181.

that Tejada is involved in said business, no evidence worthy of credence was adduced showing that this business derived capital from the funds of MJCI.

The LA, NLRC, and the CA concluded that Sta. Ana was in conspiracy with Tejada because a) she made an inconsistent declaration that she funded her business from the sale of her fishing vessels two years ago (from the time she executed her Affidavit dated February 2, 2009) yet she also stated that she started her business 15 years prior to the takeover of MJCI's new management; and b) Sta. Ana's salary was insufficient to support her business.

Such conclusion, however, is untenable.

From the narration of the SDC, during the hearing, Sta. Ana admitted owning fishing vessels as evidenced by a permit to operate them; also, the SDC stated that Sta. Ana confirmed that these vessels were eventually sold and their proceeds were used in her business. This only means that MJCI, through the SDC, was fully aware that the sale of Sta. Ana's fishing vessels was for the purpose of infusing additional capital into her lending business.

In addition, from the time Sta. Ana was under investigation, she made readily available documents to justify the amount of her capital for her lending business. As noted by the SDC in its February 13, 2009 Report:

> During the formal hearing, [Sta. Ana] submitted additional documents to show her capability to engage in loan operations: These are: (1) Certification from PS Bank that x x x Sta. Ana. has existing housing loan with outstanding balance of ₱439,421.65, (2) Permit to Operate fishing vessels issued by [the] Maritime Industry Authority, (3) various statement of accounts from BPI, HSBC, Citibank, BDO, Standard Chartered, Metrobank credit cards. The three fishing vessels were already sold, according to her, and she used the proceeds in her lending business.[41]

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[41] *Id*. at 115.

In her Position Paper, Sta. Ana attached the Certification[42] from Philippine Savings Bank (PSBank) indicating that she already paid interest and the principal amount of ₱80,984.15 and ₱560,578.35 respectively, and her outstanding balance to PSBank was ₱439,421.65. Likewise, the annotations[43] in Transfer Certificate of Title No. T-389599 under the name of Sta. Ana and her spouse proved that they had been mortgaging their real property since 2003. The latest of such mortgage was on August 23, 2007 to secure the loan of One Million Pesos from PSBank.

Based on the foregoing, Sta. Ana derived capital from the bank loans she obtained secured by real estate mortgage on her property; and from the income of her fishing business; later, her fishing vessels were sold and the proceeds thereof were infused as additional capital in her lending business. Simply put, she had funds derived from sources other than her monthly salary; and, there was no direct linkage shown between Sta. Ana's business and the alleged stolen funds of MJCI.

It is a cardinal rule that loss of trust and confidence should be genuine, and not simulated; it must arise from dishonest or deceitful conduct, and must not be arbitrarily asserted in the face of overwhelming contrary evidence.[44] While proof beyond reasonable doubt is not required, loss of trust must have some basis or such reasonable ground for one to believe that the employee committed the infraction, and the latter's participation makes him or her totally unworthy of the trust demanded by the position.[45]

Here, MJCI failed to prove that Sta. Ana committed willful breach of its trust. Particularly, it failed to establish that Sta. Ana used its employee for her personal business during office

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[42] *Id.* at 31.

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

[44] *Capili v. Philippine National Bank,* G.R. No. 204750, July 11, 2016.

[45] *Jerusalem v. Keppel Monte Bank*, 662 Phil. 676, 685-686 (2011).

hours, and used its money, without authority, to lend money to another. Hence, to dismiss her on the ground of loss of trust and confidence is unwarranted.[46]

Under these circumstances, Sta. Ana is entitled to receive backwages and separation pay.

An illegally dismissed employee is entitled to two separate reliefs: full backwages and reinstatement. In such case where reinstatement is no longer an option, payment of separation pay is justified. The Court considers "considerable time," which includes the lapse of eight years or more (from the filing of the complaint up to the resolution of the case) to support the grant of separation pay in lieu of reinstatement. Considering that about eight years had passed from the time that Sta. Ana filed her complaint on February 25, 2009 then, her reinstatement is an impractical option. Thus, instead of reinstatement, the Court grants her separation pay of one month for every year of service. As regards backwages, she is entitled to receive full backwages, which include allowances and other benefits due her or their monetary equivalent, computed from the time her compensation was withheld up to the finality of this Decision.[47]

Finally, the Court finds that Sta. Ana is entitled to moral and exemplary damages as well as attorney's fees as she prayed for in her Complaint.

The grant of moral damages is allowed where the employer acted in bad faith or in such a manner oppressive to labor.[48]

During the administrative hearing, MJCI received in evidence relevant documents establishing her capacity to engage in a lending business, and proving that she did not engage in any activity to defraud MJCI. Also a plain reading of the statements of Santos and Pimentel would show that they did not explicitly declare that Sta. Ana used another employee during office hours

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[46] *Leo's Restaurant and Bar Café v. Densing,* G.R. No. 208535, October 19, 2016.

[47] *Manila Jockey Club, Inc. v. Trajano*, *supra* note 35 at 273-274.

[48] *Leo's Restaurant and Bar Café v. Densing, supra* note 46.

as conduit in her business. However, despite all these clear pieces of evidence, and only on mere allegation of loss of trust, MJCI still dismissed her.

Therefore, for acting in "bad faith or such conscious design to do a wrongful act for a dishonest purpose,"[49] MJCI is liable to pay Sta. Ana ₱50,000.00 as moral damages. It is also liable to pay her ₱50,000.00 as exemplary damages to deter other employers from committing the same or similar act. At the same time,the Court awards in her favor attorney's fees equivalent to 10% of the total monetary award as she was compelled to litigate in order to protect her rights.[50] The legal interest of 6% *per annum* shall be imposed on the total monetary awards from the finality of this Decision until its full satisfaction.[51]

WHEREFORE, the Petition is **GRANTED**. The Decision dated July 11, 2012 and Resolution dated July 31, 2013 of the Court of Appeals in CA-G.R. SP No. 114861 are **REVERSED and SET ASIDE**. Petitioner Julieta B. Sta. Ana is declared to have been illegally dismissed from service. Accordingly, Manila Jockey Club, Inc. is ordered to pay Julieta B. Sta. Ana the following: 1) full backwages inclusive of allowances and other benefits or their monetary equivalent, computed from February 16, 2009, the date of her dismissal, until the finality of this Decision; 2) separation pay equivalent to one month pay per year of service in lieu of reinstatement; 3) ₱50,000.00 as moral damages; 4) ₱50,000.00 as exemplary damages; and, 5) attorney's fees equivalent to 10% of the total monetary awards. These awards shall also earn legal interest at the rate of 6% *per annum* from the finality of this Decision until its full satisfaction.

SO ORDERED.

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

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[49] *Id.*

[50] *Id.*

[51] *Nacar v. Gallery Frames*, 716 Phil. 267, 283 (2013).

FIRST DIVISION

[G.R. No. 212193. February 15, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JUAN RICHARD TIONLOC *y* MARQUEZ,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; RAPE; ELEMENTS; FORCE AND INTIMIDATION, EXPLAINED.— [T]he prosecution had to overcome the presumption of innocence of appellant by presenting evidence that would establish the elements of rape by sexual intercourse under paragraph 1, Article 266-A of the RPC, to wit: (1) the offender is a man; (2) the offender had carnal knowledge of a woman; (3) such act was accomplished by using force, threat or intimidation. "In rape cases alleged to have been committed by force, threat or intimidation, it is imperative for the prosecution to establish that the element of voluntariness on the part of the victim be absolutely lacking. The prosecution must prove that force or intimidation was actually employed by accused upon his victim to achieve his end. Failure to do so is fatal to its cause." Force, as an element of rape, must be sufficient to consummate the purposes which the accused had in mind. On the other hand, intimidation must produce fear that if the victim does not yield to the bestial demands of the accused, something would happen to her at that moment or even thereafter as when she is threatened with death if she reports the incident. "Intimidation includes the moral kind as the fear caused by threatening the girl with a knife or pistol."

2. ID.; ID.; ID.; USE OF FORCE OR INTIMIDATION, NOT ESTABLISHED; VICTIM'S RESISTANCE SHOULD BE MADE RIGHT FROM THE START; FAILURE TO PUT UP RESISTANCE OR ANY SIGN OF REJECTION OF APPELLANT'S SEXUAL ADVANCES IS FATAL TO THE PROSECUTION.— It this case, the prosecution established that appellant was an 18-year old man who had sexual intercourse with "AAA," a woman who was 24 years old during the incident.

However, there was no evidence to prove that appellant used force, threat or intimidation during his sexual congress with "AAA." x x x Even assuming in the nil possibility that Meneses was able to force or instill fear in "AAA's" mind, it should be noted that he was already gone when appellant asked "AAA" for a sexual favor. In other words, the source of the feigned force, threat or intimidation was no longer present when appellant casually asked his friend, "AAA," if she "can do it" one more time. "AAA" did not respond either in the affirmative or **in the negative**. x x x Later on, appellant went on top of "AAA" without saying anything or uttering threatening words. For her part, "AAA" neither intimated any form of resistance nor expressed any word of rejection to appellant's advances. It was only when she felt something painful **minutes during their sexual intercourse** that "AAA" tried to move. x x x Three things are thus clear from the testimony of "AAA": *first*, appellant never employed the slightest force, threat or intimidation against her; *second*, "AAA" never gave the slightest hint of rejection when appellant asked her to have sex with him; and, *third*, appellant did not act with force since he readily desisted when "AAA" felt the slightest pain and tried to move during their sexual congress. "AAA" could have resisted ***right from the start***. But she did not, and chose not to utter a word or make any sign of rejection of appellant's sexual advances. It was only in the middle of their sexual congress when "AAA" tried to move which can hardly be considered as an unequivocal manifestation of her refusal or rejection of appellant's sexual advances.

3. **ID.; ID.; ID.; THE AGE GAP BETWEEN THE VICTIM AND APPELLANT NEGATES FORCE, THREAT OR INTIMIDATION.—** "AAA's" state of "shivering" could not have been produced by force, threat or intimidation. She insinuates that she fell into that condition after Meneses had sexual intercourse with her. However, their age gap negates force, threat or intimidation; he was only 14 while "AAA" was already 24, not to mention that they were friends.

4. **ID.; ID.; ID.; THE PROSECUTION FAILED TO SHOW THAT VICTIM'S DRUNKENESS COMPLETELY DEPRIVED HER OF WILL POWER TO GIVE HER CONSENT.—** The fact that "AAA" was tipsy or drunk at that time cannot be held

against the appellant. There is authority to the effect that "where consent is induced by the administration of drugs or liquor, which incites her passion but does not deprive her of her will power, the accused is not guilty of rape." Here, and as narrated by "AAA" on the witness stand, appellant and Meneses were her friends. Thus, as usual, she voluntarily went with them to the house of appellant and chatted with them while drinking liquor for about four hours. And while "AAA" got dizzy and was "shivering," the prosecution failed to show that she was completely deprived of her will power. "AAA's" degree of dizziness or "shivering" was not that grave as she portrays it to be. "AAA" is used to consuming liquor. And if it is true that the gravity of her "shivering" at that time rendered her immobile such that she could not move her head to signal her rejection of appellant's indecent proposal or to whisper to him her refusal, then she would have been likewise unable to stand up and walk home immediately after the alleged rape.

5. REMEDIAL LAW; EVIDENCE; BURDEN OF EVIDENCE; WHERE THE PROSECUTION FAILED TO DISCHARGE ITS BURDEN OF EVIDENCE, ACCUSED DESERVES AN ACQUITTAL.— It has been ruled repeatedly that in criminal litigation, the evidence of the prosecution must stand or fall on its own merits and cannot draw strength from the weakness of the defense. The burden of proof rests on the State. Thus, the failure of the prosecution to discharge its burden of evidence in this case entitles appellant to an acquittal.

APPEARANCES OF COUNSEL

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

D E C I S I O N

DEL CASTILLO, *J.*:

When the evidence fails to establish all the elements of the crime, the verdict must be one of acquittal of the accused. This basic legal precept applies in this criminal litigation for rape.

Factual Antecedents

Juan Richard Tionloc *y* Marquez (appellant) appeals the September 26, 2013 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR.-H.C. No. 05452 which affirmed with modification the February 15, 2012 Decision[2] of the Regional Trial Court (RTC) of Manila, Branch 37, in Criminal Case No. 08-264453. The RTC found appellant guilty beyond reasonable doubt of the crime of rape committed against "AAA"[3] under paragraph 1 of Article 266-A of the Revised Penal Code (RPC). The designation of the crime in the Information against appellant is rape by sexual assault under paragraph 2, Article 266-A of the RPC. However, the accusatory portion of the Information charges appellant with rape through sexual intercourse under paragraph 1(b), Article 266-A, to wit:

> That on or about September 29, 2008 in the City of Manila, Philippines, the said accused, conspiring and confederating with one whose true name, real identity and present whereabouts are still unknown and mutually helping each other, did then and there wilfully, unlawfully and feloniously, with lewd design and by means of force and intimidation, commit sexual abuse upon the person of "AAA" by then and there making her drink liquor which made her dizzy and drunk, depriving her of reason or otherwise unconsciousness, bringing her to a room and succeeded in having carnal knowledge of her, against her will.

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[1] CA *rollo*, pp. 113-127; penned by Associate Justice Celia C. Librea-Leagogo and concurred in by Associate Justices Franchito N. Diamante and Melchor Q.C. Sadang.

[2] Records, pp. 123-140; penned by Presiding Judge Virgilio V. Macaraig.

[3] The identity of the victim or any information which could establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. 7610, An Act Providing for Stronger Deterrence And Special Protection Against Child Abuse, Exploitation And Discrimination, And for Other Purposes; Republic Act No. 9262, An Act Defining Violence Against Women And Their Children, Providing For Protective Measures For Victims, Prescribing Penalties Therefor, and for Other Purposes; and Section 40 of A.M. No. 04-10-11-SC, known as the Rule on Violence against Women and Their Children, effective November 15, 2004. *People v. Dumadag*, 667 Phil. 664, 669 (2011).

Contrary to law.[4]

When arraigned, appellant pleaded "not guilty." Elvis James Meneses (Meneses) was involved in the commission of the crime but could not be prosecuted due to his minority. He was only 14 years old at the time of the incident.

Version of the Prosecution

"AAA" testified that at around 9:30 p.m. of September 29, 2008, she was having a drinking session with appellant and Meneses in the house of appellant. After some time, she felt dizzy so she took a nap. At around 11:00 p.m., she was roused from her sleep by Meneses who was mounting her and inserting his penis into her vagina. She felt pain but could only cry in silence for fear that the knife which they used to cut hotdog and now lying on top of a table nearby would be used to kill her if she resisted. Meneses left after raping her. While still feeling dizzy, afraid and shivering, appellant approached her and asked if he could also have sex with her. When she did not reply appellant mounted and raped her. Appellant stopped only when she tried to reposition her body. "AAA" then left appellant's house and immediately returned to the house she shared with her live-in partner.

The following day, "AAA" reported the incident to the police. She also underwent a medical examination and the results revealed two lacerations in her hymen.

Version of the Defense

Appellant denied raping "AAA". He claimed that on that fateful night, he was having a drinking session with his cousin, Gerry Tionloc. After a while, Meneses and "AAA" arrived and joined in their drinking session. Meneses and "AAA" then went inside his bedroom and continued drinking while he went out of the house to buy food. When he returned and entered his bedroom, he saw Meneses and "AAA" having sex. They

[4] Records, p. 1.

asked him to leave, so he went to the kitchen. Meneses then came out of the bedroom followed by "AAA" who was holding a bottle of "rugby," which she brought home with her. Appellant contended that nothing more happened that night. Meneses corroborated his version of the incident.

Ruling of the Regional Trial Court

In its Decision[5] dated February 15, 2012, the RTC clarified that appellant is charged with rape through sexual intercourse under paragraph 1, Article 266-A of the RPC based on the allegations in the Information and not with rape by sexual assault under paragraph 2 of the same provision of law, as the designation in the Information suggests. The RTC stressed that this is consistent with the legal precept that it is the allegations or recital in the Information that determine the nature of the crime committed. Thus, the RTC ruled that appellant was guilty beyond reasonable doubt of rape through sexual intercourse against "AAA". It held that the prosecution successfully established the crime through the testimony of "AAA", which was credible, natural, convincing and consistent with human nature and the normal course of things. The dispositive portion of the Decision reads as follows:

> WHEREFORE, the Court finds the accused Juan Richard Tionloc y Marquez GUILTY beyond reasonable doubt of the crime of rape punishable under paragraph 1 of Article 266-A of the Revised Penal Code and hereby sentences him to suffer the penalty of reclusion perpetua. He is ordered to pay the private complainant Php50,000.00 as civil indemnity and Php50,000.00 as moral damages.
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> SO ORDERED.[6]

Appellant appealed the RTC's Decision arguing that discrepancies in the sworn statement of "AAA" and her testimony diminished her credibility. Appellant contended that "AAA" alleged in her sworn statement that: (1) appellant held her hands

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[5] *Id*. at 123-140.

[6] *Id*. at 140.

while Meneses was on top of her; and (2) she slept after Meneses raped her and awakened only when he was on top of her. However, "AAA" did not mention these allegations during her direct examination. Appellant maintained that "AAA" failed to refute his assertions that her aunt and uncle fabricated the charges against him for having previous affairs with two of her cousins.

Ruling of the Court of Appeals

In its Decision[7] dated September 26, 2013, the CA ruled that discrepancies between the affidavit and testimony of "AAA" did not impair her credibility since the former is taken *ex parte* and is often incomplete or inaccurate for lack or absence of searching inquiries by the investigating officer. The inconsistencies even preclude the possibility that the testimony given was rehearsed. Moreover, the CA held that a rape victim like "AAA" is not expected to make an errorless recollection of the incident, so humiliating and painful that she might even try to obliterate it from her memory. The CA gave scant consideration to the appellant's claim of ill motive of the aunt and uncle of "AAA", as well as his denial of raping her which cannot overcome her positive, candid and categorical testimony that he was the rapist. The CA therefore affirmed the Decision of the RTC with modification that interest at the rate of 6% *per annum* is imposed on all damages awarded from the date of finality of the CA's Decision until fully paid. The dispositive portion of the CA's Decision reads as follows:

> WHEREFORE, premises considered, the appeal is DENIED. The Decision dated 15 February 2012 of the Regional Trial Court, National Capital Judicial Region, Manila, Branch 37, in Crim. Case No. 08-264453 finding accused-appellant Juan Richard Tionloc *y* Marquez guilty beyond reasonable doubt for the crime of rape under paragraph 1 of Article 266-A of the Revised Penal Code, as amended, and sentencing him to suffer the penalty of *reclusion perpetua* and

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[7] CA *rollo*, pp. 113-127.

to pay Php50,000.00 as civil indemnity and another Php50,000.00 as moral damages in favor of private complainant AAA is AFFIRMED with MODIFICATION in that interest at the rate of 6% *per annum* is imposed on all damages awarded from the date of finality of this judgment until fully paid.

SO ORDERED.[8]

Still insisting on his innocence, appellant comes to this Court through this appeal.

Assignment of Error

Appellant adopts the same assignment of error he raised before the CA, *viz.*:

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED.[9]

Appellant asserts that he should be acquitted of rape since the prosecution was not able to establish the required quantum of evidence in order to overcome the presumption of innocence.

Our Ruling

The appeal is meritorious.

The Facts Recited In The Information Determine the Crime Charged.

It is apparent that there is a discrepancy in the designation of the crime in the Information (rape by sexual assault under paragraph 2 of Article 266-A of the RPC) and the recital in the Information (rape through sexual intercourse under paragraph 1 of the same provision of law). However, this discrepancy does not violate appellant's right to be informed of the nature

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[8] *Id*. at 124.

[9] *Id*. at 28.

and cause of the accusation against him. As ruled correctly by the RTC, the allegations in the Information charged appellant with rape through sexual intercourse under paragraph 1 of Article 266-A of the RPC and said allegations or recital in the Information determine the nature of the crime committed. "[T]he character of the crime is not determined by the caption or preamble of the Information nor from the specification of the provision of law alleged to have been violated, but by the recital of the ultimate facts and circumstances in the complaint or information."[10]

The Use Of Force, Threat or Intimidation Causes Fear on the Part of the Rape Victim.

Be that as it may, the prosecution had to overcome the presumption of innocence of appellant by presenting evidence that would establish the elements of rape by sexual intercourse under paragraph 1, Article 266-A of the RPC, to wit: (1) the offender is a man; (2) the offender had carnal knowledge of a woman; (3) such act was accomplished by using force, threat or intimidation. "In rape cases alleged to have been committed by force, threat or intimidation, it is imperative for the prosecution to establish that the element of voluntariness on the part of the victim be absolutely lacking. The prosecution must prove that force or intimidation was actually employed by accused upon his victim to achieve his end. Failure to do so is fatal to its cause."[11]

Force, as an element of rape, must be sufficient to consummate the purposes which the accused had in mind. On the other hand, intimidation must produce fear that if the victim does not yield to the bestial demands of the accused, something would happen to her at that moment or even thereafter as when she is

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[10] *Pielago v. People*, 706 Phil. 460, 470 (2013), citing *People v. Rayon, Sr.*, 702 Phil. 672, 684 (2013).

[11] *People v. Amogis*, 420 Phil. 278, 292 (2001).

threatened with death if she reports the incident.[12] "Intimidation includes the moral kind as the fear caused by threatening the girl with a knife or pistol."[13]

It this case, the prosecution established that appellant was an 18-year old man who had sexual intercourse with "AAA", a woman who was 24 years old during the incident. However, there was no evidence to prove that appellant used force, threat or intimidation during his sexual congress with "AAA". She testified that appellant and Meneses are her good friends. Thus, she frequented the house of appellant. At around 7:00 p.m. of September 29, 2008, she again went to the house of appellant and chatted with him and Meneses while drinking liquor. From that time up to about 11 p.m. when she took a nap, there is no showing that appellant or Meneses forced, threatened or intimidated her.

As to how appellant and Meneses had sexual intercourse with her, "AAA" merely testified as follows:

Q - Madam Witness, you said that it was Elvis James who raped you first. And then after he left this Juan Richard Tionloc [accused] approached you and asked if you can do it?
A - Yes, Ma'am; he asked me but I did not answer because I was still shivering.

Q - And then what else happened after that?
A - That is it; he was the one who did it.[14]

No allegation whatsoever was made by "AAA" that Meneses or appellant employed force, threat or intimidation against her. No claim was ever made that appellant physically overpowered, or used or threatened to use a weapon against, or uttered threatening words to "AAA". While "AAA" feared for her

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[12] See *People v. Frias*, 718 Phil. 173, 183 (2013), citing *People v. Sgt. Bayani*, 331 Phil. 169, 193 (1996).

[13] *Id*.

[14] TSN, May 7, 2009, pp. 6-7.

life since a knife lying on the table nearby could be utilized to kill her if she resisted, her fear was a mere product of her own imagination. There was no evidence that the knife was placed nearby precisely to threaten or intimidate her. We cannot even ascertain whether said knife can be used as a weapon or an effective tool to intimidate a person because it was neither presented nor described in court. These findings are clear from the following testimony of "AAA":

Q - While Elvis James was inserting his penis to [sic] your vagina, what are [sic] you doing?
A - I was crying, Ma'am.

Q - You did not shout for help?
A - I did not because I was afraid, Ma'am.

Q - Why were you afraid, madam witness?
A - Because there was a knife inside the room which we used in cutting the hotdog and then [I] did not shout anymore because I was afraid that they might stab me, Ma'am.[15]

Even assuming in the nil possibility that Meneses was able to force or instill fear in "AAA's" mind, it should be noted that he was already gone when appellant asked "AAA" for a sexual favor. In other words, the source of the feigned force, threat or intimidation was no longer present when appellant casually asked his friend, "AAA", if she "can do it" one more time. "AAA" did not respond either in the affirmative or **in the negative**.

Resistance Should be Made Before the Rape is Consummated.

Later on, appellant went on top of "AAA" without saying anything or uttering threatening words. For her part, "AAA" neither intimated any form of resistance nor expressed any word of rejection to appellant's advances. It was only when she felt

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[15] TSN, February 3, 2009, pp. 14-15.

something painful **minutes during their sexual intercourse** that "AAA" tried to move. Thus:

A - During the intercourse that was about few minutes and when I felt the pain that was the time when I tried to move.

Q - When you tried to move, what else happened?
A - When I tried to move he released himself.

Q - And then what happened?
A - He went out of the room.[16]

Three things are thus clear from the testimony of "AAA": *first*, appellant never employed the slightest force, threat or intimidation against her; *second*, "AAA" never gave the slightest hint of rejection when appellant asked her to have sex with him; and, *third*, appellant did not act with force since he readily desisted when "AAA" felt the slightest pain and tried to move during their sexual congress.

"AAA" could have resisted ***right from the start***. But she did not, and chose not to utter a word or make any sign of rejection of appellant's sexual advances. It was only in the middle of their sexual congress when "AAA" tried to move which can hardly be considered as an unequivocal manifestation of her refusal or rejection of appellant's sexual advances.

In *People v. Amogis,*[17] this Court held that resistance must be manifested and tenacious. A mere attempt to resist is not the resistance required and expected of a woman defending her virtue, honor and chastity. And granting that it was sufficient, "AAA" should have done it earlier or the moment appellant's evil design became manifest. In other words, it would be unfair to convict a man of rape committed against a woman who, after giving him the impression **thru her unexplainable silence** of her tacit consent and allowing him to have sexual contact with her, changed her mind in the middle and charged him with rape.

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[16] TSN, May 7, 2009, pp. 9-10.

[17] *Supra* note 11.

The Age Gap Between the Victim and Appellant Negates Force, Threat or Intimidation.

"AAA's" state of "shivering" could not have been produced by force, threat or intimidation. She insinuates that she fell into that condition after Meneses had sexual intercourse with her. However, their age gap negates force, threat or intimidation; he was only 14 while "AAA" was already 24, not to mention that they were friends. In addition, per "AAA's" own declaration, Meneses and appellant did not also utter threatening words or perform any act of intimidation against her.

Drunkeness Should Have Deprived the Victim of Her Will Power to Give her Consent.

The fact that "AAA" was tipsy or drunk at that time cannot be held against the appellant. There is authority to the effect that "where consent is induced by the administration of drugs or liquor, which incites her passion but does not deprive her of her will power, the accused is not guilty of rape."[18]

Here, and as narrated by "AAA" on the witness stand, appellant and Meneses were her friends. Thus, as usual, she voluntarily went with them to the house of appellant and chatted with them while drinking liquor for about four hours. And while "AAA" got dizzy and was "shivering," the prosecution failed to show that she was completely deprived of her will power.

"AAA's" degree of dizziness or "shivering" was not that grave as she portrays it to be. "AAA" is used to consuming liquor.[19] And if it is true that the gravity of her "shivering" at that time rendered her immobile such that she could not move her head to signal her rejection of appellant's indecent proposal

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[18] See *State v. Lung*, 21 Nev. 209 (1891), cited in Reyes, L., *The Revised Penal Code*, Book II, 2001 Edition, p. 523.

[19] See TSN, February 3, 2009, p. 17.

or to whisper to him her refusal, then she would have been likewise unable to stand up and walk home immediately after the alleged rape.

It has been ruled repeatedly that in criminal litigation, the evidence of the prosecution must stand or fall on its own merits and cannot draw strength from the weakness of the defense. The burden of proof rests on the State. Thus, the failure of the prosecution to discharge its burden of evidence in this case entitles appellant to an acquittal.

WHEREFORE, the appeal is **GRANTED**. The September 26, 2013 Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 05452 affirming with modification the Decision of the Regional Trial Court of Manila, Branch 37, in Criminal Case No. 08-264453 is **REVERSED and SET ASIDE**. Accused-appellant Juan Richard Tionloc *y* Marquez is **ACQUITTED** due to insufficiency of evidence. His immediate **RELEASE** from detention is hereby **ORDERED**, unless he is being held for another lawful cause. Let a copy of this Decision be furnished to the Director of the Bureau of Corrections, Muntinlupa City for immediate implementation, who is then directed to report to this Court the action he has taken within five days from receipt hereof.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 214986. February 15, 2017]

ATTY. HERMINIO HARRY L. ROQUE, JR., *petitioner, vs.* **ARMED FORCES OF THE PHILIPPINES (AFP) CHIEF OF STAFF, GEN. GREGORIO PIO CATAPANG, BRIG. GEN. ARTHUR ANG, CAMP AGUINALDO CAMP COMMANDER, and LT. COL. HAROLD CABUNOC, AFP PUBLIC AFFAIRS OFFICE CHIEF,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; DISBARMENT OF ATTORNEYS; DISBARMENT PROCEEDINGS AGAINST LAWYERS ARE COVERED BY CONFIDENTIALITY RULE; AS A GENERAL RULE, PUBLICLY DISCLOSING DISBARMENT PROCEEDINGS MAY BE PUNISHED WITH CONTEMPT.— Disbarment proceedings are covered by what is known as the confidentiality rule. This is laid down by Section 18, Rule 139-B of the Rules of Court, which provides: Section 18. *Confidentiality.* — Proceedings against attorneys shall be private and confidential. However, the final order of the Supreme Court shall be published like its decisions in other cases. Law is a profession and not a trade. Lawyers are held to high standards as officers of the court, and subject to heightened regulation to ensure that the legal profession maintains its integrity and esteem. As part of the legal profession, lawyers are generally prohibited from advertising their talents, and are expected to rely on their good reputation to maintain their practice. x x x The confidentiality rule is intended, in part, to prevent the use of disbarment proceedings as a tool to damage a lawyer's reputation in the public sphere. Thus, the general rule is that publicly disclosing disbarment proceedings may be punished with contempt.

2. ID.; ID.; ID.; CONFIDENTIALITY IN DISCIPLINARY ACTIONS AGAINST LAWYERS IS NOT ABSOLUTE; IT DOES NOT EXTEND SO FAR THAT IT COVERS THE MERE EXISTENCE OR PENDENCY OF DISCIPLINARY ACTIONS.— The confidentiality in disciplinary actions for lawyers is not absolute. It is not to be applied under any

circumstance, to all disclosures of any nature. As a general principle, speech on matters of public interest should not be restricted. This Court recognizes the fundamental right to information, which is essential to allow the citizenry to form intelligent opinions and hold people accountable for their actions. Accordingly, matters of public interest should not be censured for the sake of an unreasonably strict application of the confidentiality rule. x x x Indeed, to keep controversial proceedings shrouded in secrecy would present its own dangers. In disbarment proceedings, a balance must be struck, due to the demands of the legal profession. x x x The confidentiality rule requires only that "proceedings against attorneys" be kept private and confidential. It is the proceedings against attorneys that must be kept private and confidential. This would necessarily prohibit the distribution of actual disbarment complaints to the press. However, the rule does not extend so far that it covers the mere existence or pendency of disciplinary actions.

3. ID.; SPECIAL CIVIL ACTIONS; CONTEMPT; WHERE THE PRESS STATEMENT WAS BRIEF AND UNEMBELLISHED REPORT THAT A DISBARMENT COMPLAINT HAD BEEN FILED, IT DOES NOT VIOLATE THE CONFIDENTIALITY RULE; RESPONDENTS SHOULD NOT BE FAULTED FOR RELEASING SUCH STATEMENT AND SHOULD NOT BE PUNISHED FOR CONTEMPT FOR RESPONDING PUBLICLY IN THE EXERCISE OF THEIR PUBLIC FUNCTION.— The Press Statement declared only three (3) things: *first*, respondent AFP filed a disbarment complaint against petitioner; *second*, petitioner is a lawyer, and thus, must conduct himself according to the standards of the legal profession; and *third*, petitioner's "unlawful conduct" is prohibited by the Code of Professional Responsibility. x x x The Press Statement's coverage of the disbarment complaint was a brief, unembellished report that a complaint had been filed. Such an announcement does not, in and of itself, violate the confidentiality rule, particularly considering that it did not discuss the disbarment complaint itself. In any case, the Press Statement does not divulge any acts or character traits on the part of petitioner that would damage his personal and professional reputation. Although the Press Statement mentioned that a disbarment complaint had been filed against petitioner, no particulars were given about the content of the complaint or the actual charges filed. x x x Thus, this Court agrees with

respondents, that they should not be faulted for releasing a subsequent press statement regarding the disbarment complaint they filed against petitioner. The statements were official statements made in the performance of respondents' official functions to address a matter of public concern. It was the publication of an institutional action in response to a serious breach of security. Respondents, in the exercise of their public functions, should not be punished for responding publicly to such public actions.

4. ID.; ID.; ID.; THE POWER OF CONTEMPT SHOULD BE BALANCED WITH THE RIGHT TO FREEDOM OF EXPRESSION; WHEN A LAWYER USES PUBLIC FORA AS HIS BATTLEGROUND, HE CANNOT EXPECT TO BE PROTECTED FROM PUBLIC SCRUTINY AND IT WOULD BE AN ABUSE OF THE COURT'S CONTEMPT POWER TO STIFLE THE SUBJECT OF HIS ATTENTION.— This Court will not freely infringe on the constitutional right to freedom of expression. It may interfere, on occasion, for the proper administration of justice. However, the power of contempt should be balanced with the right to freedom of expression, especially when it may have the effect of stifling comment on public matters. Freedom of expression must always be protected to the fullest extent possible. x x x The power to punish for contempt is not exercised without careful consideration of the circumstances of the allegedly contumacious act, and the purpose of punishing the act. Especially where freedom of speech and press is involved, this Court has given a restrictive interpretation as to what constitutes contempt. x x x Given [the] circumstances, citing respondents in contempt would be an unreasonable exercise of this Court's contempt power. x x x When a lawyer chooses to conduct his cases in as public a manner as in this case, it would be an abuse of our contempt power to stifle the subject of his attention. A lawyer who uses the public fora as his battleground cannot expect to be protected from public scrutiny. Controversial cases of public interest cases can be challenging for lawyers. This Court is cognizant of the hardships lawyers must face as they may continually be pressed by media for details of their cases. Nonetheless, it must strike a balance between protecting officers of the court from harassment on one hand, and the interests of freedom of speech on the other. Given this case's factual milieu, the balance is served by denying the petition.

APPEARANCES OF COUNSEL

Office of the Solicitor General for public respondents.
Roque & Butuyan Law Offices for petitioner.

D E C I S I O N

LEONEN, *J.*:

We resolve a Petition to Cite for Indirect Contempt[1] filed by petitioner Atty. Herminio Harry L. Roque, Jr. against respondents Gen. Gregorio Pio Catapang, Brig. Gen. Arthur Ang, and Lt. Col. Harold Cabunoc, for violating Rule 139-B, Section18 of the Rules of Court.

On October 11, 2014, Jeffrey "Jennifer" Laude, 26-year old Filipino, was allegedly killed at a motel in Olongapo City by 19-year old US Marine Private Joseph Scott Pemberton.[2] After nearly a month since the killing, police had not been able to obtain Pemberton's latent fingerprints and oral swabs, because he was confined by his superiors on a ship and placed under their custody.[3] Thus, the question of custody over Pemberton was subject of public discussions.[4] Pemberton was eventually transferred from his ship to a facility in the headquarters of the Armed Forces of the Philippines.[5] However, Philippine authorities maintained that until a case was filed against Pemberton, custody over him remained with the United States of America.[6]

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

[2] *Id*. at 4.

[3] *Id*.

[4] *Id*.

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

[6] *Id*. at 5.

On October 22, 2014, news broke out that Pemberton had been flown into Camp Aguinaldo, where a detention facility had been constructed for him, in the premises of the Mutual Defense Board-Security Engagement Board.[7]

Thus, petitioner, together with his clients, the family of the slain Jeffrey "Jennifer" Laude, and German national Marc Sueselbeck, went to Camp General Emilio Aguinaldo, Quezon City, to demand to see Pemberton.[8]

Respondents state that petitioner, with his clients, forced their way inside the premises of the Mutual Defense Board-Security Engagement Board and gained entry despite having been instructed by Military Police personnel not to enter the compound, and even though the gates were closed.[9]

SSg Norly R. Osio PA ("Osio"), a guard who was detailed at Gate 6 Bravo of Camp Aguinaldo, attested that he flagged down a BMW vehicle with Regulation Plate Number UDR-628 sometime between 3:00 and 4:00 p.m. for inspection, and for the issuance of an appropriate Vehicle Pass, but the vehicle did not stop, and sped directly into the Camp.[10] Immediately following the BMW vehicle was a silver Toyota Innova with Regulation Plate Number AHJ-129, with the word "MEDIA" displayed on the windshield.[11] Upon inquiry, the driver of the Innova informed Osio that they were heading to the Public Affairs Office.[12]

Cpl Walter Francisco 796690 (INF) PA attested that he had been posted at the perimeter fence of the MDB-SEB, and was instructed that no media be allowed inside.[13] He narrated

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[7] *Id*.

[8] *Id*.

[9] *Id*.

[10] *Id*. at 136, Affidavit of SSg Norly R. Osio PA.

[11] *Id*.

[12] *Id*.

[13] *Id*. at 138, Affidavit of Cpl. Walter Francisco 796690 (INF) PA.

encountering petitioner at the MDB-SEB, in front of members of the media:

. . . . . .

3. Pagdating namin sa lugar ay pumuwesto ako sa perimeter fence ng MDB-SEB compound. Naabutan naming maraming media na nakapwesto malapit sa Golf Driving Range na humigit-kumulang 15 metro lamang sa tapat ng perimeter fence na kinaroroonan ko. Binantayan na namin ang mga media na baka sila ay makapasok sa loob ng MDB-SEB compound.

4. Mga bandang alas tres ng hapon ay dumating si Atty. Harry Roque. Sinalubong sya ng media at sya ay ininterview sa may parking area ng Golf Driving Range at dumating na rin ang nanay ni Jennifer Laude.

5. Pagkatapos ay bigla silang tumawid, kasama ang media at galit na galit na sumugod sa aking kinatatayuan malapit sa perimeter fence ng binabantayan kong compound.

6. Noong sandaling iyon ay pinagsabihan ko sila na "Hanggang dyan lang po muna kayo at wala pang advice ang taga PAO (Public Affairs Office, Armed Forces of the Philippines)."

7. Nung makalapit na sila ay minura ako ni Atty. Roque ng "Putang ina, bakit hindi taga PAO ang pumunta dito! [A]t hindi kami ang pupunta sa kanila"!

8. Pagkatapos ay napilitan akong umalis sa pwesto ko sa dami nila na sumugod sa akin. Sa pagkakataong iyon ay sinabihan ko ang tropa sa pamamamagitan ng handheld radio na isara at ilock ang gate ng AFRESCOM dahil papunta sila Atty. Roque at pamilya Laude dyan kasama mga media sa loob ng compound.

9. Habang sila ay papunta sa gate ng AFRESCOM ay sinundan ko sila para awatin ngunit sadya silang marami kaya nakaya nilang maitulak ang gate ng AFRESCOM na sya naming pilit na pinigilan nina Cpl Abdulla at SSg Arica na nasa likod ng gate ng AFRESCOM. Sa pagkakataong iyon, ay tuluyan nakapasok ang grupo nila Mr. Sueselbeck at Atty. Roque kasama na rin ang media. [14]

. . . . . .

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

As narrated by respondents, petitioner fomented disorder by inciting his clients to scale the perimeter fence, to see Pemberton. TSG Mariano C. Pamittan 787924 PA and SGT Alfonso A. Bungag 810943 PA attested:

> Nakita ko na pinangunahan nina ATTY. ROQUE at nung German ang pwersahang pagpasok sa Main Gate ng AFPRESCOM at MDB-SEB, at pagkatapos tumapat sila sa Gate ng MDB-SEB na kung saan kami ay nakaduty ng oras na iyon, at doon nagsisigaw si Marilou Laude, kapatid ni Jeffrey Laude, na "ilabas nyo si PEMBERTON at gusto namin makita kung nandyan ba talaga!"
>
> Pagkatapos magsisigaw ay biglang umakyat na si Marilou Laude sa bakod ng MDB-SEB, at inawat namin itong dalawa. Pagkatapos makaakyat ni Marilou Laude ay nakita namin yung German na umakyat na rin ng bakod, at pagbaba nilang pareho ay sinabihan namin na bawal ang ginagawa nila.
>
> Napansin din namin na habang umaakyat yung dalawa ay imbes na pigilin ni ATTY. ROQUE ay ginagatongan pa niya sila at pinagsasalitahan din kami ng masama.
>
> Samantala ay dumating na si Camp Commander sa lugar. Pag dating niya ay agad niyang pinakiusapan ang dalawang umakyat ng bakod na lumabas na.
>
> Habang pinapakiusapan niya sila ay kung ano anong mga masasakit na salita ang sinasabi ni ATTY. ROQUE kay Camp Commander at sa amin. Bagaman siya ay sinasabihan ng masama patuloy parin na nakikiusap si Camp Commander.
>
> Natigil lamang sa pagsasalita niya ng masama si ATTY. ROQUE ng napagsabihan ni Camp Commander na umalis muna ang media sa lugar.[15]

Respondents allege that the foregoing events are of public knowledge, having been subject of various national television, radio, internet, and print media publications.[16]

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[15] *Id*. at 140-141, Joint Affidavit of TSG Mariano C. Pamittan 787924 PA and SGT Alfonso A. Bungag 810943 PA.

[16] *Id*. at 125, Comment.

In response to the events of October 22, 2014, respondents released a press statement that they were considering filing disbarment proceedings against petitioner.[17] Thus, on October 30, 2014, respondent Cabunoc, the AFP Public Affairs Office Chief, was quoted by the Philippine Daily Inquirer:

"The [AFP Chief of Staff] is strongly considering the filing of a formal complaint against him before the Integrated Bar of the Philippines, if warranted. The bases for this complaint are his inappropriate actions inside camp premises during the intrusion incident on October 22," AFP Public Affairs Office Chief Lieutenant Colonel Harold Cabunoc said on Wednesday night.[18]

The Inquirer also quoted petitioner's Twitter account:

Roque, in his Twitter account, said he was looking forward to responding to the AFP's complaint.

"I look forward to answering the complaint of AFP before the IBP. They will hopefully stop their tirades which I consider as a threat to my security," he said.[19]

Similarly, on November 4, 2014, the Philippine Star reported:

AFP to proceed with disbarment case vs Laude lawyer

MANILA, Philippines – The military leadership will push through with its plan to file a disbarment case against lawyer Harry Roque, counsel of the family of Filipino transgender Jeffrey "Jennifer" Laude . . .

Lt. Col. Harold Cabunoc, Armed Forces of the Philippines-Public Affairs Office (AFP-PAO) chief, said military lawyers will file legal action against Roque at the Integrated Bar of the Philippines (IBP) for his conduct when he and members of the Laude family gate-

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[17] *Id*.

[18] *Id*. at 21. Francis Mangosing, *AFP mulls filing disbarment case vs Laude family lawyer Harry Roque,* INQUIRER.NET, October 30, 2014, available at <http://newsinfo.inquirer.net/647743/afp-mulls-filing-disbarment-case-vs-laude-family-lawyer-harry-roque>.

[19] *Id*.

crashed at Camp Aguinaldo in their bid to confront US Marine Private First Class Joseph Scott Pemberton.

. . . . . .

Roque, for his part, said that he is not at all threatened by the AFP move to have him disbarred, saying that the military move will clarify a lawyer's role in pushing the victims' rights and national sovereignty.

In return, Roque said he would also be filing graft charges against the AFP for allowing the US to have custody over Pemberton at Camp Aguinaldo.

"It's graft when they allow the US to have custody over Pemberton. If they win, I will be disbarred. If I win, they end up in jail," Roque said.

He added that his filing of charges against the AFP is without prejudice to the filing of contempt charges against those who have repeatedly and publicly threatened him with disbarment.[20]

On November 3, 2014, the Sun Star reported:

MANILA – The Armed Forces of the Philippines (AFP) formally filed Monday a disbarment case against Harry Roque, the lawyer of the slain transgender Filipino Jeffrey "Jennifer" Laude before the Integrated Bar of the Philippines (IBP), a military official said Monday.

AFP Public Affairs chief Lieutenant Colonel Harold Cabunoc said AFP chief of staff Gregorio Catapang ordered the military's legal office to file the case against Roque in relation to the inappropriate actions he displayed during the intrusion of Laude's family in restricted areas at the AFP headquarters in Camp Aguinaldo in Quezon City.

On October 22, United States authorities turned over alleged suspect, US Marine Private First Class Joseph Scott Pemberton to Camp Aguinaldo, where he will be detained temporarily while facing murder charges related to Laude's death last October 11.

After attending the hearing of the Senate committee on foreign relations… Laude's family together with Roque went to Camp Aguinaldo to personally see Pemberton and confront him.

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[20] *Id*. at 22. Jaime Laude, *AFP to proceed with disbarment case vs Laude lawyer*, THE PHILIPPINE STAR, November 4, 2014, available at <http://www.philstar.com/headlines/2014/11/04/1387860/afp-proceed-disbarment-case-vs-laude-lawyer>.

The family were able to pass through the first gate of the facility where Pemberton is being held. Marilou, sister of Laude, and German national Marc Sueselbeck climbed over the fence of the second gate as they tried to move closely to where the alleged suspect is detained.

The said facility was considered a restricted area, Cabunoc said.

He said Roque was apparently the one who pushed Laude's family to violate the camp rules and regulations.

"Ang isang abogado supposedly ay dapat sa aming paningin ay siyang dapat ang mag-uphold sa law dahil sila ang nakakaalam kung ano ang batas," Cabunoc said adding that Roque deceived the military police by dropping his name as the person they will visit upon entering the camp.

In a text message, Roque said the case is a chance for him to "clarify a lawyer's role in pushing victims' rights and sovereignty."

"On my part, I will file graft charges vs. AFP. Its (sic) graft when they allow the US to have custody over Pemberton in Aguinaldo. If they win, I will be disbarred. If I win, they end up in jail. This is without prejudice to filing contempt charges vs those who have repeatedly and publicly threatened me with disbarment. AFP should be taught what a civilian officer of the court stands for," he said.[21]

On November 4, respondents filed a disbarment complaint against petitioner, before the Integrated Bar of the Philippines.[22] On the same day, respondent Cabunoc called a conference at Camp Aguinaldo, and publicly announced that a disbarment complaint had been filed against petitioner.[23] Respondent Cabunoc also distributed a press statement, which reads:

Press Statement: AFP files disbarment complaint against Atty. Harry Roque

CAMP AGUINALDO, Quezon City – At about 2 p.m. today, the AFP has filed a verified disbarment complaint before the Integrated

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[21] *Id*. at 23. Third Anne Peralta, *AFP files disbarment case vs Laude's lawyer,* SUN STAR, November 3, 2014.

[22] *Id*. at 125, Comment.

[23] *Id*. at 10.

Bar of the Philippines (IBP) against Atty. Harry Roque for violation of the Code of Professional Responsibility.

As a lawyer, Atty. Roque is, at all times, subject to the watchful public eye and community approbation.

He is bound to maintain and live up to the standards of the legal profession not only in keeping a high regard of legal proficiency which he undoubtedly possesses but also of distinct high regard for morality, honesty, integrity and fair dealing.

As a lawyer, he must bring honor to the legal profession by faithfully performing his duties to society and he must refrain from doing any act that might lessen the confidence and trust reposed by the public in the fidelity, honesty and integrity of the legal profession.

His unlawful conduct is clearly prohibited under the rules of the Code of Professional Responsibility.[24]

Petitioner alleges that this press statement was reported on, and generously quoted from, by media.[25]

Petitioner asserts that respondents' acts are contumacious violations of Section 18, Rule 139-B of the Rules of Court.[26] Further, petitioner claims that respondents' acts put to question his professional and personal reputation.[27]

Respondents argue that the press statements are not among the contumacious acts prescribed under Section 3, Rule 71 of the Rules of Court.[28] The subject of the disbarment case pertains

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[24] *Id*. at 24. Available at <http://www.afp.mil.ph/index.php/8-afp-news/202-press-statement-afp-files-disbarment-complaint-against-atty-harry-roque> (last visited on February 14, 2017).

[25] *Id*. at 11.

[26] *Id*. at 15-18. RULES OF COURT, Rule 139-B, Sec. 18 provides:

Section 18. Confidentiality. — Proceedings against attorneys shall be private and confidential. However, the final order of the Supreme Court shall be published like its decisions in other cases.

[27] *Id*. at 15.

[28] *Id*. at 126-127, Comment. Rules of Court, Rule 71, Sec. 3 provides:

Section 3. Indirect Contempt to be Punished After Charge and Hearing.— After charge in writing has been filed, and an opportunity given to the

to a serious breach of security of a military zone.[29] The statements were official statements made in the performance of a public function to address a public concern.[30] The circumstances, which led to the filing of the disbarment complaint and the acts alleged therein were witnessed by the public and duly reported by the media.[31] The filing of the disbarment case was not meant to malign petitioner as a lawyer but rather was a response to the events that transpired at Camp Aguinaldo.[32] Respondents also claim the issue is a matter of public interest, which is a defense in contempt proceedings such as this.[33] With the Laude Murder

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respondent to comment thereon within such period as may be fixed by the court and to be heard by himself or counsel, a person guilty of any of the following acts may be punished for indirect contempt:
(a) Misbehavior of an officer of a court in the performance of his official duties or in his official transactions;
(b) Disobedience of or resistance to a lawful writ, process, order, or judgment of a court, including the act of a person who, after being dispossessed or ejected from any real property by the judgment or process of any court of competent jurisdiction, enters or attempts or induces another to enter into or upon such real property, for the purpose of executing acts of ownership or possession, or in any manner disturbs the possession given to the person adjudged to be entitled thereto;
(c) Any abuse of or any unlawful interference with the processes or proceedings of a court not constituting direct contempt under Section 1 of this Rule;
(d) Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice;
(e) Assuming to be an attorney or an officer of a court, and acting as such without authority;
(f) Failure to obey a subpoena duly served;
(g) The rescue, or attempted rescue, of a person or property in the custody of an officer by virtue of an order or process of a court held by him.
But nothing in this section shall be so construed as to prevent the court from issuing process to bring the respondent into court, or from holding him in custody pending such proceedings.

[29] *Id*. at 128, Comment.

[30] *Id*.

[31] *Id*. at 131, Comment.

[32] *Id*. at 127, Comment.

[33] *Id*. at 129-130, Comment.

case being of public concern, petitioner has attained the status of a public figure, susceptible of public comment in connection with his actions on the case.[34] In any case, respondents instituted the disbarment complaint against petitioner in good faith.[35] They are laymen, and are not familiar with the confidentiality rule.[36]

The issues for this Court to resolve are:

1. Whether a violation of the confidentiality rule constitutes contempt of court;

2. Whether respondents' public pronouncements violate Section 18, Rule 139-B of the Rules of Court;

3. Whether respondents may raise public interest as a defense; and

4. Whether non-lawyers may be punished for contempt.

We find for the respondents.

I

Generally, court proceedings are often matters of public discussion, and the mere fact of publicity does not, in and of itself, influence or interfere with them. In *Webb v. De Leon*:[37]

> Finally, we come to the argument of petitioner that the DOJ Panel lost its impartiality due to the prejudicial publicity waged in the press and broadcast media by the NBI.
>
> Again, petitioners raise the effect of prejudicial publicity on their right to due process while undergoing preliminary investigation. We find no procedural impediment to its early invocation considering the substantial risk to their liberty while undergoing a preliminary investigation.

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[34] *Id*. at 131, Comment.

[35] *Id*. at 128.

[36] *Id*. at 130.

[37] 317 Phil. 758 (1995) [Per *J*. Puno, Second Division].

In floating this issue, petitioners touch on some of the most problematic areas in constitutional law where the conflicting demands of freedom of speech and of the press, the public's right to information, and an accused's right to a fair and impartial trial collide and compete for prioritization. The process of pinpointing where the balance should be struck has divided men of learning as the balance keeps moving either on the side of liberty or on the side of order as the tumult of the time and the welfare of the people dictate. The dance of the balance is a difficult act to follow.

In democratic settings, media coverage of trials of sensational cases cannot be avoided and oftentimes, its excessiveness has been aggravated by kinetic developments in the telecommunications industry. For sure, few cases can match the high volume and high velocity of publicity that attended the preliminary investigation of the case at bar. Our daily diet of facts and fiction about the case continues unabated even today. Commentators still bombard the public with views not too many of which are sober and sublime. Indeed, even the principal actors in the case — the NBI, the respondents, their lawyers and their sympathizers — have participated in this media blitz. The possibility of media abuses and their threat to a fair trial notwithstanding, criminal trials cannot be completely closed to the press and the public. In the seminal case of *Richmond Newspapers, Inc. v. Virginia*, it was wisely held:

. . . . . .

> (a) The historical evidence of the evolution of the criminal trial in Anglo-American justice demonstrates conclusively that at the time this Nation's organic laws were adopted, criminal trials both here and in England had long been presumptively open, thus giving assurance that the proceedings were conducted fairly to all concerned and discouraging perjury, the misconduct of participants, or decisions based on secret bias or partiality. In addition, the significant community therapeutic value of public trials was recognized: when a shocking crime occurs, a community reaction of outrage and public protest often follows, and thereafter the open processes of justice serve an important prophylactic purpose, providing an outlet for community concern, hostility, and emotion. To work effectively, it is important that society's criminal process 'satisfy the appearance of justice,' *Offutt v. United States*, 348 US 11, 14, 99 L Ed 11, 75 S Ct 11, which can best be provided by allowing people to observe such process. From this unbroken, uncontradicted history, supported

by reasons as valid today as in centuries past, it must be concluded that a presumption of openness inheres in the very nature of a criminal trial under this Nation's system of justice, Cf., *e.g., Levine v. United States*, 362 US 610, 4 L Ed 2d 989, 80 S Ct 1038.

(b) The freedoms of speech, press, and assembly, expressly guaranteed by the First Amendment, share a common core purpose of assuring freedom of communication on matters relating to the functioning of government. In guaranteeing freedoms such as those of speech and press, the First Amendment can be read as protecting the right of everyone to attend trials so as to give meaning to those explicit guarantees; the First Amendment right to receive information and ideas means, in the context of trials, that the guarantees of speech and press, standing alone, prohibit government from summarily closing courtroom doors which had long been open to the public at the time the First Amendment was adopted. Moreover, the right of assembly is also relevant, having been regarded not only as an independent right but also as a catalyst to augment the free exercise of the other First Amendment rights with which it was deliberately linked by the draftsmen. A trial courtroom is a public place where the people generally — and representatives of the media — have a right to be present, and where their presence historically has been thought to enhance the integrity and quality of what takes place.

(c) Even though the Constitution contains no provision which by its terms guarantees to the public the right to attend criminal trials, various fundamental rights, not expressly guaranteed, have been recognized as indispensable to the enjoyment of enumerated rights. The right to attend criminal trials is implicit in the guarantees of the First Amendment, without the freedom to attend such trials, which people have exercised for centuries, important aspects of freedom of speech and of the press could be eviscerated.

Be that as it may, we recognize that pervasive and prejudicial publicity under certain circumstances can deprive an accused of his due process right to fair trial. Thus, in *Martelino, et al. vs. Alejandro, et al.*, we held that to warrant a finding of prejudicial publicity there must be *allegation and proof* that the judges have been unduly influenced, not simply that they might be, by the barrage of publicity. In the case at bar, we find nothing in the records that will prove that

the tone and content of the publicity that attended the investigation of petitioners fatally infected the fairness and impartiality of the DOJ Panel. Petitioners cannot just rely on the subliminal effects of publicity on the sense of fairness of the DOJ Panel, for these are basically unbeknown and beyond knowing. To be sure, the DOJ Panel is composed of an Assistant Chief State Prosecutor and Senior State Prosecutors. Their long experience in criminal investigation is a factor to consider in determining whether they can easily be blinded by the klieg lights of publicity. Indeed, their 26-page Resolution carries no indubitable indicia of bias for it does not appear that they considered any extra-record evidence except evidence properly adduced by the parties. The length of time the investigation was conducted despite its summary nature and the generosity with which they accommodated the discovery motions of petitioners speak well of their fairness. At no instance, we note, did petitioners seek the disqualification of any member of the DOJ Panel on the ground of bias resulting from their bombardment of prejudicial publicity.

It all remains to state that the Vizconde case will move to a more critical stage as petitioners will now have to undergo trial on the merits. We stress that probable cause is not synonymous with guilt and while the light of publicity may be a good disinfectant of unfairness, too much of its heat can bring to flame an accused's right to fair trial. Without imposing on the trial judge the difficult task of supervising every specie of speech relating to the case at bar, it behooves her to be reminded of the duty of a trial judge in high profile criminal cases to control publicity prejudicial to the fair administration of justice. The Court reminds judges that our ability to dispense impartial justice is an issue in every trial and in every criminal prosecution, the judiciary always stands as a silent accused. More than convicting the guilty and acquitting the innocent, the business of the judiciary is to assure fulfillment of the promise that justice shall be done and is done — and that is the only way for the judiciary to get an acquittal from the bar of public opinion.[38]

Publicity does not, in and of itself, impair court proceedings. Even in the highly publicized case of *Webb*, where the parties, their sympathizers, and lawyers all participated in a media blitz, this Court required proof that the fairness and impartiality of the investigation was actually affected by the publicity.

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[38] *Id.* at 899-900.

II

Proceedings against lawyers, however, are treated differently, for several reasons.

Disbarment proceedings are covered by what is known as the confidentiality rule. This is laid down by Section 18, Rule 139-B of the Rules of Court, which provides:

> Section 18. *Confidentiality*. — Proceedings against attorneys shall be private and confidential. However, the final order of the Supreme Court shall be published like its decisions in other cases.

Law is a profession and not a trade. Lawyers are held to high standards as officers of the court, and subject to heightened regulation to ensure that the legal profession maintains its integrity and esteem. As part of the legal profession, lawyers are generally prohibited from advertising their talents, and are expected to rely on their good reputation to maintain their practice. In *Ulep v. Legal Clinic, Inc.*:[39]

> The standards of the legal profession condemn the lawyer's advertisement of his talents. A lawyer cannot, without violating the ethics of his profession, advertise his talents or skills as in a manner similar to a merchant advertising his goods. The proscription against advertising of legal services or solicitation of legal business rests on the fundamental postulate that the practice of law is a profession. Thus, in the case of *The Director of Religious Affairs vs. Estanislao R. Bavot* an advertisement, similar to those of respondent which are involved in the present proceeding, was held to constitute improper advertising or solicitation.
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> The pertinent part of the decision therein reads:
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> > It is undeniable that the advertisement in question was a flagrant violation by the respondent of the ethics of his profession, it being a brazen solicitation of business from the public. Section 25 of Rule 127 expressly provides among other things that "the practice of soliciting cases at law for the purpose of

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[39] B.M. No. 553, June 17, 1993, 223 SCRA 378 [Per *J*. Regalado, *En Banc*].

> gain, either personally or thru paid agents or brokers, constitutes malpractice." It is highly unethical for an attorney to advertise his talents or skill as a merchant advertises his wares. Law is a profession and not a trade. The lawyer degrades himself and his profession who stoops to and adopts the practices of mercantilism by advertising his services or offering them to the public. As a member of the bar, he defiles the temple of justice with mercenary activities as the money-changers of old defiled the temple of Jehovah. The most worthy and effective advertisement possible, even for a young lawyer, . . . is the establishment of a well-merited reputation for professional capacity and fidelity to trust. This cannot be forced but must be the outcome of character and conduct." (Canon 27, Code of Ethics.)

We repeat, the canons of the profession tell us that the best advertising possible for a lawyer is a well-merited reputation for professional capacity and fidelity to trust, which must be earned as the outcome of character and conduct. Good and efficient service to a client as well as to the community has a way of publicizing itself and catching public attention. That publicity is a normal by-product of effective service which is right and proper. A good and reputable lawyer needs no artificial stimulus to generate it and to magnify his success. He easily sees the difference between a normal by-product of able service and the unwholesome result of propaganda.[40]

Thus, a good reputation is among a lawyer's most valuable assets. In *Santiago v. Calvo*:[41]

> The success of a lawyer in his profession depends almost entirely on his reputation. Anything which will harm his good name is to be deplored.[42]

The confidentiality rule is intended, in part, to prevent the use of disbarment proceedings as a tool to damage a lawyer's reputation in the public sphere.

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[40] *Id*. at 406-407.

[41] 48 Phil. 919 (1926) [Per *J*. Malcolm, *En Banc*].

[42] *Id*. at 923.

Thus, the general rule is that publicly disclosing disbarment proceedings may be punished with contempt.[43]

III

The confidentiality in disciplinary actions for lawyers is not absolute. It is not to be applied under any circumstance, to all disclosures of any nature.

As a general principle, speech on matters of public interest should not be restricted. This Court recognizes the fundamental right to information, which is essential to allow the citizenry to form intelligent opinions and hold people accountable for their actions. Accordingly, matters of public interest should not be censured for the sake of an unreasonably strict application of the confidentiality rule. Thus, in *Palad v. Solis*,[44] this Court dismissed claims that the confidentiality rule had been violated, considering that the lawyer therein represented a matter of public interest:

> A person, even if he was not a public official or at least a public figure, could validly be the subject of a public comment as long as he was involved in a public issue. Petitioner has become a public figure because he is representing a public concern. We explained it, thus:
>
> > But even assuming . . . that [the person] would not qualify as a public figure, it does not necessarily follow that he could not validly be the subject of a public comment even if he was not a public official or at least a public figure, for he could be, as long as he was involved in a public issue. **If a matter is a subject of public or general interest, it cannot suddenly become less so merely because a private individual is involved**

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[43] *See Relativo v. De Leon*, 128 Phil. 104 (1967) [Per *J*. Bengzon, J.P., *En Banc*]; *Fortun v. Quinsayas*, 703 Phil. 578 (2013) [Per *J*. Carpio, Second Division]; *Murillo v. Superable, Jr.*, 107 Phil. 322 (1960) [Per *J*. Montemayor, *En Banc*].

[44] *Palad v. Solis*, G.R. No. 206691, October 3, 2016, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/october2016/206691.pdf> [Per *J*. Peralta, Third Division].

or because in some sense the individual did not voluntarily choose to become involved. The public's primary interest is in the event; the public focus is on the conduct of the participant and the content, effect and significance of the conduct, not the participant's prior anonymity or notoriety.

As a general rule, disciplinary proceedings are confidential in nature until their final resolution and the final decision of this Court. However, in this case, the disciplinary proceeding against petitioner became a matter of public concern considering that it arose from his representation of his client on the issue of video voyeurism on the internet. The interest of the public is not in himself but primarily in his involvement and participation as counsel of Halili in the scandal. Indeed, the disciplinary proceeding against petitioner related to his supposed conduct and statements made before the media in violation of the Code of Professional Responsibility involving the controversy.[45]

Indeed, to keep controversial proceedings shrouded in secrecy would present its own dangers. In disbarment proceedings, a balance must be struck, due to the demands of the legal profession.

In *Fortun v. Quinsayas*,[46] despite recognizing that the disbarment complaint was a matter of public interest, it still declared the complainant therein in contempt for violating the confidentiality rule:

Atty. Quinsayas is bound by Section 18, Rule 139-B of the Rules of Court both as a complainant in the disbarment case against petitioner and as a lawyer. As a lawyer and an officer of the Court, Atty. Quinsayas is familiar with the confidential nature of disbarment proceedings. However, instead of preserving its confidentiality, Atty. Quinsayas disseminated copies of the disbarment complaint against petitioner to members of the media which act constitutes contempt of court. In *Relativo v. De Leon*, the Court ruled that the premature disclosure by publication of the filing and pendency of disbarment proceedings is a violation of the confidentiality rule. In that case, Atty. Relativo, the complainant in a disbarment case, caused the publication in newspapers of statements regarding the filing and

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[45] *Id*. at 8.

[46] 703 Phil. 578 (2013) [Per *J*. Carpio, Second Division].

pendency of the disbarment proceedings. The Court found him guilty of contempt.[47]

The complainant in *Fortun* bears the distinction of having distributed the actual disbarment complaint to the press. This case is different.

The confidentiality rule requires only that "proceedings against attorneys" be kept private and confidential. It is the proceedings against attorneys that must be kept private and confidential. This would necessarily prohibit the distribution of actual disbarment complaints to the press. However, the rule does not extend so far that it covers the mere existence or pendency of disciplinary actions.

Some cases are more public than others, because of the subject matter, or the personalities involved. Some are deliberately conducted in the public as a matter of strategy. A lawyer who regularly seeks attention and readily welcomes, if not invites, media coverage, cannot expect to be totally sheltered from public interest, himself.

IV

Contempt power is not designed to insulate a lawyer from any publicity he may deem undesirable.

On indirect contempt, Rule 71 of the Rules of Court provides:

> SECTION 3. *Indirect Contempt to be Punished After Charge and Hearing*. — After charge in writing has been filed, and an opportunity given to the respondent to comment thereon within such period as may be fixed by the court and to be heard by himself or counsel, a person guilty of any of the following acts may be punished for indirect contempt:
>
> (a) Misbehavior of an officer of a court in the performance of his official duties or in his official transactions;
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> (b) Disobedience of or resistance to a lawful writ, process, order, or judgment of a court, including the act of a person

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[47] *Id.* at 599-600.

who, after being dispossessed or ejected from any real property by the judgment or process of any court of competent jurisdiction, enters or attempts or induces another to enter into or upon such real property, for the purpose of executing acts of ownership or possession, or in any manner disturbs the possession given to the person adjudged to be entitled thereto;

(c) Any abuse of or any unlawful interference with the processes or proceedings of a court not constituting direct contempt under Section 1 of this Rule;

(d) Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice;

(e) Assuming to be an attorney or an officer of a court, and acting as such without authority;

(f) Failure to obey a subpoena duly served;

(g) The rescue, or attempted rescue, of a person or property in the custody of an officer by virtue of an order or process of a court held by him.

But nothing in this section shall be so construed as to prevent the court from issuing process to bring the respondent into court, or from holding him in custody pending such proceedings.

The power of contempt is exercised to ensure the proper administration of justice and maintain order in court processes. *In Re: Kelly* provides:[48]

The summary power to commit and punish for contempt, tending to obstruct or degrade the administration of justice, as inherent in courts as essential to the execution of their powers and to the maintenance of their authority, is a part of the law of the land. (*Ex parte* Terry, *supra*.)

Courts of justice are universally acknowledged to be vested, by their very creation, with power to impose silence, respect, and decorum in their presence and submission to their lawful mandates, and as a corollary to this provision, to preserve themselves and their officers from the approach of insults and pollution. (Anderson *vs*. Dunn, 6 Wheaton [U. S.], 204, 226; *Ex parte* Terry, *supra*.)

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[48] 35 Phil. 944 (1916) [Per *J*. Johnson, Second Division].

The existence of the inherent power of courts to punish for contempt is essential to the observance of order in judicial proceedings and to the enforcement of judgments, orders, and writs of the courts, and consequently to the due administration of justice. (*Ex parte* Robinson *supra*; *Ex parte* Terry *supra*; In re Durant, 80 Conn., 140; In re Davies, 93 Pa. St., 116; The People *vs*. Goodrich, 79 Ill., 148; Bradley *vs*. Fisher, 13 Wallace [U. S.], 335; *Ex parte* Wall, 107 U. S., 265; *In re Duncan, 64 S. C., 461; Fields vs*. State, 18 Tenn., 168; Brooks *vs*. Fleming, 66 Tenn., 331, 337.)[49]

Similarly, in *Villavicencio v. Lukban*: [50]

The power to punish for contempt of court should be exercised on the preservative and not on the vindictive principle. Only occasionally should the court invoke its inherent power in order to retain that respect without which the administration of justice must falter or fail.[51]

The power to punish for contempt should be invoked only to ensure or promote the proper administration of justice. Accordingly, when determining whether to declare as contumacious alleged violations of the confidentiality rule, we apply a restrictive interpretation.

We decline to exercise our contempt power under the conditions of this case.

Petitioner assails two acts as violating the confidentiality rule: *first*, respondents' supposed public threats of filing a disbarment case against him, and *second*, respondents' public statement that they had filed a disbarment complaint.

Where there are yet no proceedings against a lawyer, there is nothing to keep private and confidential. Respondents' threats were made before November 4, 2014, and there was no proceeding to keep private.

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[49] *Id*. at 950.

[50] 39 Phil. 777 (1919) [Per *J*. Malcolm, *En Banc*].

[51] *Id*. at 798.

As for the Press Statement made on November 4, 2014, a close examination reveals that it does not divulge anything that merits punishment for contempt.

The Press Statement declared only three (3) things: *first*, respondent AFP filed a disbarment complaint against petitioner; *second*, petitioner is a lawyer, and thus, must conduct himself according to the standards of the legal profession; and *third*, petitioner's "unlawful conduct" is prohibited by the Code of Professional Responsibility.[52] As regards the disbarment, the Press Statement only said:

> At about 2 p.m. today, the AFP has filed a verified disbarment complaint before the Integrated Bar of the Philippines (IBP) against Atty. Harry Roque for violation of the Code of Professional Responsibility. [53]

The Press Statement's[54] coverage of the disbarment complaint was a brief, unembellished report that a complaint had been filed. Such an announcement does not, in and of itself, violate the confidentiality rule, particularly considering that it did not discuss the disbarment complaint itself.

In any case, the Press Statement does not divulge any acts or character traits on the part of petitioner that would damage his personal and professional reputation. Although the Press Statement mentioned that a disbarment complaint had been filed against petitioner, no particulars were given about the content of the complaint or the actual charges filed.

Furthermore, prior to the filing of the complaint, petitioner even made his own public statement regarding respondents' possible filing of a disbarment complaint. Even before any case against him had been filed, media reported that petitioner tweeted publicly that he looked forward to answering the

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[52] *Rollo*, p. 24.

[53] *Id*.

[54] *Id*.

complaint before the AFP.[55] In the articles cited by petitioner as evidence of respondents' violation of the confidentiality rule, he, too, is quoted, saying "the case is a chance for him to 'clarify a lawyer's role in pushing victims' rights and sovereignty.'"[56] It is unlikely that petitioner's reputation could be further damaged by a factual report that a complaint had actually been filed. Petitioner has made it even more public by filing the instant case against the entire Armed Forces of the Philippines, instead of targeting only the individuals who participated in the disclosure.

Even the events that led to the filing of the disbarment case transpired in front of media. As alleged by petitioner, the question of custody over Pemberton was the subject of public discussion.[57] In relation to that issue, petitioner accompanied his clients when they demanded to see Pemberton, when they were refused, and when they forced themselves into Pemberton's detention facility, in a serious breach of security of a military zone.

Thus, this Court agrees with respondents, that they should not be faulted for releasing a subsequent press statement regarding the disbarment complaint they filed against petitioner. The statements were official statements made in the performance of respondents' official functions to address a matter of public concern. It was the publication of an institutional action in response to a serious breach of security.[58] Respondents, in the exercise of their public functions, should not be punished for responding publicly to such public actions.

V

This Court will not freely infringe on the constitutional right to freedom of expression. It may interfere, on occasion, for the proper administration of justice. However, the power of

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[55] *Id.* at 21.

[56] *Id.* at 22.

[57] *Id.* at 4.

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

contempt should be balanced with the right to freedom of expression, especially when it may have the effect of stifling comment on public matters. Freedom of expression must always be protected to the fullest extent possible. In *In re: Lozano*:[59]

> The rule is well established that newspaper publications tending to impede, obstruct, embarrass, or influence the courts in administering justice in a pending suit or proceeding constitute criminal contempt which is summarily punishable by the courts. The rule is otherwise after the cause is ended. It is also regarded as an interference with the work of the courts to publish any matters which their policy requires should be kept private, as for example the secrets of the jury room, or proceedings in camera (6 R. C. L., pp. 508-515).
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> An examination of the authorities discloses that little attention has been directed to facts like those before us, and that in the few cases which have given consideration to the question there exist divergence of opinions. The English courts are more stringent in prohibiting the publication of their proceedings than are the American courts. Thus where the petitioner and her solicitor published a copy of the transcript of the official shorthand notes in a case of a very delicate and private character in contravention of an order directing that the cause be heard in camera, the presiding judge in England found the petitioner and her solicitor in contempt of court but accepted their excuses and apologies (Scott vs. Scott [1912], Am. Ann. Cas., 1912-B, 540). A decision of the Supreme Court of Iowa inclines to the same view, for in this case it was said that if by general or special rule the publication of testimony pending general or special rule the publication of testimony pending an investigation has been prohibited, a willful violation of such rule might amount to a contempt (State of Iowa vs. Dunham [1858], 6 Iowa, 245). But in a California divorce case, although the trial court ordered that no public report of the testimony should be made, and thereafter punished the editor of a newspaper for publishing a report of the trial, on certiorari the Supreme Court of California annulled the proceedings of the court under review. As explanatory of this judgment, it should be said that a fair and true report of the testimony was published and that the result was influenced by the phraseology of the California Law (Re Shortridge [1893], 99 Cal., 526; 21 L. R. A., 755). Along similar lines is the case of Ex parte Foster ([1903], 60 L. R. A., 631), coming from the

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[59] 54 Phil. 801 (1930) [Per *J.* Malcolm, *En Banc*].

Texas Court of Criminal Appeals, and holding that merely publishing a true statement of the testimony adducted from the witnesses in the course of a public trial in the courts of justice does not authorize a finding of contempt. To conclude our review of the pertinent decisions, we desire to quote from the decision of the Supreme Court of Wisconsin in Burns vs. State ([1911], 145 Wis., 373; 140 Am. St. Rep., 1081), where, in referring to the commendation meted out to the courts of England, it was said: "Judicial proceedings, in a case which the law requires to be conducted in secret for the proper administration of justice, should never be, while the case i son trial, given publicity by the press."

With reference to the applicability of the above authorities, it should be remarked first of all that this court is not bound to accept any of them absolutely and unqualifiedly. What is best for the maintenance of the Judiciary in the Philippines should be the criterion. Here, in contrast to other jurisdictions, we need not be overly sensitive because of the sting of newspaper articles, for there are no juries to be kept free from outside influence. Here also we are not restrained by regulatory law. The only law, and that judge made, which is at all applicable to the situation, is the resolution adopted by this court. That the respondents were ignorant of this resolution is no excuse, for the very article published by them indicates that the hearing was held behind closes doors and that the information of the reporter was obtained from outside the screen and from comments in social circles. Then in writing up the investigation, it came about that the testimony was mutilated and that the report reflected upon the action of the complainant to his possible disadvantage.

The Organic Act wisely guarantees freedom of speech and press. This constitutional right must be protected in its fullest extent. The court has heretofore given evidence of its tolerant regard for charges under given evidence of its tolerant regard for charges under the Liberal Law which come dangerously close to its violation. We shall continue in this chosen path. The liberty of the citizen must be preserved in all of its completeness. But license or abuse of liberty of the press and of the citizen should not be confused with liberty in its true sense. As important as the maintenance of an unmuzzled press and the free exercise of the rights of the citizen is the maintenance of the independence of the Judiciary. Respect for the Judiciary cannot be had if persons are privileged to scorn a resolution of the court adopted for good purposes, and if such persons are to be permitted by subterranean means to diffuse inaccurate accounts of confidential proceedings to the embarrassment of the parties and the courts.

In a recent Federal case (U. S. vs. Sullens [1929], 36 Fed. [2d], 230, 238, 239), Judge Holmes very appropriately said:

> The administration of justice and the freedom of the press, though separate and distinct, are equally sacred, and neither should be violated by the other. The press and the courts have correlative rights and duties and should cooperate to uphold the principles of the Constitution and laws, from which the former receives its prerogative and the latter its jurisdiction. The right of legitimate publicity must be scrupulously recognized and care taken at all times to avoid impinging upon it. In a clear case where it is necessary, in order to dispose of judicial business unhampered by publications which reasonably tend to impair the impartiality of verdicts, or otherwise obstruct the administration of justice, this court will not hesitate to exercise its undoubted power to punish for contempt. . .
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> . . . . . .
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> This court must be permitted to proceed with the disposition of its business in an orderly manner free from outside interference obstructive of its constitutional functions. This right will be insisted upon as vital to an impartial court, and, as a last resort, as an individual exercises the right of self-defense, it will act to preserve its existence as an unprejudiced tribunal. . . .[60]

The power to punish for contempt is not exercised without careful consideration of the circumstances of the allegedly contumacious act, and the purpose of punishing the act. Especially where freedom of speech and press is involved, this Court has given a restrictive interpretation as to what constitutes contempt.

In *Cabansag v. Fernandez*,[61] this Court was asked to review a charge of contempt, which was based on a remark in a letter to the Presidential Complaints and Action Commission. This Court emphasized the importance of freedom of speech and press:

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[60] *Id.* at 805-808.

[61] 102 Phil. 152 (1957) [Per *J.* Bautista, First Division].

No less important is the ruling on the power of the court to punish for contempt in relation to the freedom of speech and press. We quote; "Freedom of speech and press should not be impaired through the exercise of the power to punish for contempt of court unless there is no doubt that the utterances in question are a serious and imminent threat to the administration of justice. . . . A judge may not hold in contempt one who ventures to publish anything that tends to make him unpopular or to belittle him. . . . The vehemence of the language used in newspaper publications concerning a judge's decision is not alone the measure of the power to punish for contempt. The fires which it kindles must constitute an imminent, not merely a likely, threat to the administration of justice." (Craig *vs.* Harney, 331 U. S. 367, syllabi.)

And in weighing the danger of possible interference with the courts by newspaper criticism against the right of free speech to determine whether such criticism may constitutionally be punished as contempt, it was ruled that "freedom of public comment should in borderline instances weigh heavily against a possible tendency to influence pending cases." (Pennekamp *vs.* Florida, 328 U. S. 331)

The question in every case, according to Justice Holmes, is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that congress has a right to prevent. It is a question of proximity and degree (Schenck *vs.* U. S., *supra*).

The "dangerous tendency" rule, on the other hand, has been adopted in cases where extreme difficulty is confronted in determining where the freedom of expression ends and the right of courts to protect their independence begins. There must be a remedy to borderline cases and the basic principle of this rule lies in that the freedom of speech and of the press, as well as the right to petition for redress of grievance, while guaranteed by the constitution, are not absolute. They are subject to restrictions and limitations, one of them being the protection of the courts against contempt (Gilbert *vs.* Minnesota, 254 U. S. 325.)

This rule may be epitomized as follows: If the words uttered create a dangerous tendency which the state has a right to prevent, then such words are punishable. It is not necessary that some definite or immediate acts of force, violence, or unlawfulness be advocated. It is sufficient that such acts be advocated in general terms. Nor is it necessary that the language used be reasonably calculated to incite

persons to acts of force, violence, or unlawfulness. It is sufficient if the natural tendency and probable effect of the utterance be to bring about the substantive evil which the legislative body seeks to prevent. (Gitlow *vs.* New York, 268 U.S. 652.)

> It is a fundamental principle, long established, that the freedom of speech and of the press which is secured by the Constitution does not confer an absolute right to speak or publish, without responsibility, whatever one may choose, or an unrestricted and unbridled license that gives immunity for every possible use of language, and prevents the punishment of those who abuse this freedom. . . . Reasonably limited, it was said by story in the passage cited this freedom is an inestimable privilege in a free government; without such limitation, it might become the scourge of the Republic.
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> . . . . . .
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> And, for yet more imperative reasons, a state may punish utterances endangering the foundations of organized government and threatening its overthrow by unlawful means. These imperil its own existence as a constitutional state. . . .
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> . . . . . .

. . . And the immediate danger is none the less real and substantial because the effect of a given utterance cannot be accurately foreseen. The state cannot reasonably be required to measure the danger from every such utterance in the nice balance of a jeweler's scale. A single revolutionary spark may kindle a fire that, smoldering for a time, may burst into a sweeping and destructive conflagration. It cannot be said that the state is acting arbitrarily or unreasonably when, in the exercise of its judgment as to the measures necessary to protect the public peace and safety, it seeks to extinguish the spark without waiting until it has enkindled the flame or blazed into the conflagration. It cannot reasonably be required to defer the adoption of measures for its own peace and safety until the revolutionary utterances lead to actual disturbances of the public peace or imminent and immediate danger of its own destruction; but it may, in the exercise of its judgment suppress the threatened danger in its incipiency. In People *vs.* Lloyd, *supra* p. 35 (136 N. E. 605), it was aptly said: 'Manifestly the legislature has authority to forbid the advocacy of a doctrine until there is a present and imminent danger of the success of the plan advocated. If the state were compelled to wait until the apprehended danger became certain, than its right to protect itself

would come into being simultaneously with the overthrow of the government, when there would be neither prosecuting officers nor courts for the enforcement of the law.' [(]Gitlow *vs.* New York, *supra.*)[62]

In *Cabansag*, this Court reversed the contempt charges, considering that the allegedly contumacious letter did not undermine or cause any serious imminent threat to the fair administration of justice. This Court also noted that the intent behind sending the letter was not to degrade the courts.

This was echoed in *People v. Castelo*,[63] where this Court found that a news story, which was a factual account of an investigation, and did not contain any words tending to affect the administration of justice, was not contumacious. Although this case involved the freedom of the press, it may be instructive in that, in determining whether the subject publication was contumacious, this Court scrutinized its content, apparent purpose, and effect:

> It should however be noted that there is nothing in the story which may even in a slight degree indicate that the ultimate purpose of appellant in publishing it was to impede, obstruct or degrade the administration of justice in connection with the Castelo case. The publication can be searched in vain for any word that would in any way degrade it. The alleged extortion try merely concerns a news story which is entirely different, distinct and separate from the Monroy murder case. Though mention was made indirectly of the decision then pending in that case, the same was made in connection with the extortion try as a mere attempt to secure the acquittal of Castelo. But the narration was merely a factual appraisal of the negotiation and no comment whatsoever was made thereon one way or the other coming from the appellant. Indeed, according to the trial judge himself, as he repeatedly announced openly, said publication did not in any way impede or obstruct his decision promulgated on March 31, 1955. As this Court has aptly said, for a publication to be considered as contempt of court there must be a showing not only that the article was written while a case is pending but *that it must really appear*

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[62] *Id.* at 162-164.

[63] 114 Phil. 892 (1962) [Per *J.* Bautista Angelo, *En Banc*].

that such publication does impede, interfere with and embarrass the administration of justice (People vs. Alarcon, 69 Phil., 265). Here, there is no such clear showing. The very decision of the court shows the contrary.[64]

In deciding *Danguilan-Vitug v. Court of Appeals*,[65] this Court discussed various publications that it deemed contumacious. This Court reiterated that an article which does not impede, obstruct, or degrade the administration of justice is not contumacious:

> With respect to the motion for contempt filed by Margarita Cojuangco against Rina Jimenez-David, we believe that the article written by the latter is not such as to impede, obstruct, or degrade the administration of justice. The allegedly contemptuous article merely restates the history of the case and reiterates the arguments which Rina Jimenez-David, together with some other journalists have raised before this Court in their Brief for Petitioner Vitug. We do not find in this case the contemptuous conduct exhibited by the respondent in *In re Torres* where the respondent, being a newspaper editor, published an article which anticipated the outcome of a case in the Supreme Court, named the author of the decision, and pointed out the probable vote of the members of the Court although in fact, no such action had been taken by the court; and in *In re Kelly* where respondent, having been convicted of contempt of court, published a letter during the pendency of his motion for a re-hearing of the contempt charge. In said letter, he severely criticized the court and its action in the proceeding for contempt against him. In contrast to the aforementioned publications, Rina Jimenez-David's article cannot be said to have cast doubt on the integrity of the court or of the administration of justice. If at all, it was a mere criticism of the existing libel law in the country. In view of the above considerations, we are constrained to deny the motion for contempt.[66]

Given these circumstances, citing respondents in contempt would be an unreasonable exercise of this Court's contempt power.

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[64] *Id*. at 899-900.

[65] 302 Phil. 484 (1994) [Per *J*. Romero, Third Division].

[66] *Id*. at 496.

On a final note, this Court is more resilient than as projected by the petitioner. We are aware of the attempts of some parties — perhaps upon advice of their lawyers – to employ the media to gain public sympathies for their case. Ultimately, this strategy is based on the hope that the members of this Court will be swayed by the fear of vociferous criticism by columnists or popular protagonists in social media. Unfortunately, such strategy is misguided.

Every resort to the media by one party invites the same effort from the opposing party. Litigating cases in public may cause misunderstanding of the issues by the public, especially since many opinion writers will usually infer motives and standpoints closer to fiction than reality. Furthermore, there exists the real danger of slanting the focus of the public. Instead of the important question as to whether our treaties allow custody of foreign military personnel in transit through our territory, it has now become a battle of wits between counsel and the spokesperson for the military. The public becomes invested in that issue, which, while important for counsels, may be tangential to the more important public concerns.

Seasoned practitioners tend to approach their cases with more sobriety, dignity, and professionalism. After all, after their years of practice, they discover that this Court is aware of machinations using public opinion.

When a lawyer chooses to conduct his cases in as public a manner as in this case, it would be an abuse of our contempt power to stifle the subject of his attention. A lawyer who uses the public fora as his battleground cannot expect to be protected from public scrutiny.

Controversial cases of public interest cases can be challenging for lawyers. This Court is cognizant of the hardships lawyers must face as they may continually be pressed by media for details of their cases. Nonetheless, it must strike a balance between protecting officers of the court from harassment on one hand, and the interests of freedom of speech on the other. Given this case's factual milieu, the balance is served by denying the petition. In any case, this Court harbors no doubt that

Atty. Roque is an able lawyer who can carry himself with all the dignity this profession requires to defend himself in the administrative proceedings against him.

WHEREFORE, the petition is **DENIED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 216467. February 15, 2017]

PILIPINAS SHELL PETROLEUM CORPORATION, *petitioner, vs.* **CARLOS[*] DUQUE & TERESA DUQUE,** *respondents.*

SYLLABUS

1. CRIMINAL LAW; BATAS PAMBANSA BLG. 22 (BP 22); CIVIL LIABILITY OF THE CORPORATE OFFICER WHO ISSUED A BOUNCING CORPORATE CHECK ATTACHES ONLY IF HE IS CONVICTED OF VIOLATING BP 22.— [I]n the recent case of *Navarra v. People, et al.*, where the petitioner, the Chief Finance Officer of a corporation, who was the signatory of the dishonored corporate checks, was convicted of the offense of violation of BP 22 and was ordered to pay the private complainant civil indemnity in an amount equivalent to the value of the checks which bounced. The Court held thus: **The general rule is that a corporate officer who issues a bouncing corporate check can be held**

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[*] Referred to as "Carlo."

civilly liable when he is convicted. The criminal liability of the person who issued the bouncing checks in behalf of a corporation stands independent of the civil liability of the corporation itself, such civil liability arising from the Civil Code. x x x As held above, it is clear that the civil liability of the corporate officer for the issuance of a bouncing corporate check attaches only if he is convicted.

2. ID.; ID.; WHERE THE CORPORATE OFFICERS WERE ACQUITTED OF THE OFFENSE OF VIOLATING BP 22, THEY CANNOT BE HELD LIABLE FOR THE VALUE OF THE CHECKS ISSUED IN THE NAME OF THE CORPORATION FOR THEY DID NOT BIND THEMSELVES PERSONALLY OR SOLIDARILY LIABLE FOR CORPORATE OBLIGATIONS; DOCTRINE OF PIERCING THE VEIL OF CORPORATE FICTION, NOT APPLICABLE.— [O]nce acquitted of the offense of violating BP 22, a corporate officer is discharged from any civil liability arising from the issuance of the worthless check in the name of the corporation he represents. This is without regard as to whether his acquittal was based on reasonable doubt or that there was a pronouncement by the trial court that the act or omission from which the civil liability might arise did not exist. x x x [N]othing in the records at hand would show that respondents made themselves personally nor solidarity liable for the corporate obligations either as accommodation parties or sureties. On the contrary, there is no dispute that respondents signed the subject check in their capacity as corporate officers and that the check was drawn in the name of FCI as payment for the obligation of the corporation and not for the personal indebtedness of respondents. Neither is there allegation nor proof that the veil of corporate fiction is being used by respondents for fraudulent purposes. The rule is that juridical entities have personalities separate and distinct from its officers and the persons composing it. Generally, the stockholders and officers are not personally liable for the obligations of the corporation except only when the veil of corporate fiction is being used as a cloak or cover for fraud or illegality, or to work injustice, which is not the case here. Hence, respondents cannot be held liable for the value of the checks issued in payment for FCI's obligation. x x x [C]onsistent with the rule established in *Bautista* and *Gosiaco*, respondents' civil liability was extinguished with their criminal liability.

APPEARANCES OF COUNSEL

Angara Abello Concepcion Regala And Cruz for petitioner.
Patricia Marie A. De Guzman for respondents.

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 August 18, 2014 and January 14, 2015, respectively, in CA-G.R. SP No. 124925. The assailed Decision reversed and set aside the March 23, 2012 Order of the Regional Trial Court (*RTC*) of Makati City, which revived its March 16, 2011 Decision in Criminal Case No. 10-1757, while the questioned CA Resolution denied petitioner's Motion for Reconsideration.

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

The instant petition arose from an Information for violation of Batas Pambansa Blg. 22 (*BP 22*) filed with the Metropolitan Trial Court (*MeTC*) of Makati City against herein respondents. The Information reads as follows:

That on or about the 16th day of November 2001, in the City of Makati, Metro Manila, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused being then the authorized signatories of FITNESS CONSULTANTS INC. did then and there wilfully, unlawfully and feloniously make out, draw and issue to PILIPINAS SHELL PETROLEUM CORP., to apply on account or for value the check described below:

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[1] Penned by Associate Justice Apolinario D. Bruselas, Jr., with the concurrence of Presiding Justice Andres B. Reyes and Associate Justice Samuel H. Gaerlan, Annex "A" to Petition, *rollo,* pp. 58-67.

[2] Annex "B" to Petition, *id.* at 68-70.

Check No.	:	6000012386
Drawn Against	:	International Exchange Bank
In the amount of	:	₱105,518.55
Postdated/Dated	:	November 16, 2001
Payable to	:	Pilipinas Shell Corporation

said accused well knowing that at the time of issue thereof, said accused did not have sufficient funds in or credit with the drawee bank for the payment in full of the face amount of such check upon its presentment which check when presented for payment within reasonable time from date thereof, was subsequently dishonored by the drawee bank for the reason "ACCOUNT CLOSED" and despite receipt of notice of such dishonor, the said accused failed to pay said payee the face amount of said check or to make arrangement for full payment thereof within five (5) banking days after receiving notice.

CONTRARY TO LAW.[3]

It appears from the records at hand that herein petitioner Pilipinas Shell Petroleum Corporation (*PSPC*) is a lessee of a building known as Shell House at 156 Valero Street, Salcedo Village, Makati City. On August 23, 2000, PSPC subleased a 500-meter portion of the 2nd Floor of the Shell Building to the The Fitness Center (*TFC*).[4] Thereafter, TFC encountered problems in its business operations. Thus, with the conformity of PSPC, TFC assigned to Fitness Consultants, Inc, (*FCI*) all its rights and obligations under the contract of sublease executed by PSPC in its favor.[5] Respondent Carlos Duque is the proprietor, while respondent Teresa Duque is the corporate secretary of FCI. Subsequently, FCI failed to pay its rentals to PSPC. FCI subsequently issued a check, with respondents as signatories, which would supposedly cover FCI's obligations to PSPC. However, the check was dishonored, thus, leading to the filing of a criminal complaint against respondents for their alleged violation of BP 22.

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[3] See CA Decision, *rollo*, p. 60.

[4] Annex "E" to Petition, *rollo,* pp. 151-160.

[5] Annex "F" to Petition, *id.* at 161-162.

The parties then went to trial, which subsequently resulted in a verdict finding herein respondents guilty as charged. The dispositive portion of the Decision of the MeTC of Makati City, Branch 66, dated May 17, 2010, reads thus:

WHEREFORE, in view of the foregoing, the prosecution having proven the guilt of the accused beyond reasonable doubt, the Court renders judgment finding accused **Carlo Duque** and **Teresa Duque GUILTY** of the offense of Violation of B.P. 22 and hereby sentences them to pay a **FINE** of ₱105,516.55 with subsidiary imprisonment in case of insolvency. Both accused are further ordered to civilly indemnify the private complainant Pilipinas Shell Petroleum Corporation (PSPC) the amount of ₱105,516.55 with interest of 12% *per annum* from the time the complaint was filed on October 4, 2002 until the amount is fully paid, attorney's fees of ₱50,000.00 and to pay the costs.

SO ORDERED.[6]

Respondents appealed the above MeTC Decision with the RTC of Makati.

On March 16, 2011, the RTC of Makati City, Branch 143, rendered judgment acquitting respondents and disposing the case as follows:

WHEREFORE, premised considered, the [MeTC] Decision dated May 17, 2010 is modified as follows:

The Court hereby renders judgment ACQUITTING the accused CARLO DUQUE and TERESA DUQUE of violation of B.P. Blg. 22. However, the Court maintains the court *a quo's* finding in ordering the accused to pay the complainant Pilipinas Shell Petroleum Corporation (*PSC*) the amount of One Hundred Five Thousand Five Hundred Sixteen Pesos and Fifty Five Centavos (Php105,516.55) as civil indemnity with interest of 12% *per annum* from the time the complaint was filed on 04 October 2002 until the amount is fully paid, attorney's fees of Fifty Thousand Pesos (Php50,000.00) and to pay the costs.

SO ORDERED.[7]

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[6] Annex "W" to Petition, *rollo,* pp. 200-201. (Emphasis in the original)

[7] Annex "X" to Petition, *id.* at 208.

Respondents filed a Motion for Partial Reconsideration[8] of the RTC Decision contending that they could not be held civilly liable because their acquittal was due to the failure of the prosecution to establish the elements of the offense charged. In addition, they assert that they, being corporate officers, may not be held personally and civilly liable for the debts of the corporation they represent, considering that they had been acquitted of criminal liability.

In an Order[9] dated September 2, 2011, the RTC found merit in respondents' Motion for Partial Reconsideration. The RTC ruled, in essence, that respondents may not be held civilly liable for the value of the subject check because they have not been convicted of the offense with which they had been charged. In addition, the RTC found that the check was drawn against the current account of FCI and the obligations sought to be paid were corporate debts and, as such, FCI, not respondents, should be held civilly liable. The RTC likewise held that the veil of corporate fiction was not used as cloak for fraud as there was no evidence that respondents agreed to be personally liable for the corporation's obligations.

PSPC filed a Motion for Reconsideration[10] citing the rule that the extinction of the penal action does not carry with it the extinction of the civil action and alleging that the RTC erred in ruling that respondents may not be held liable for the obligations of FCI on the ground that there was no basis to pierce the corporate veil.

On March 23, 2012, the RTC issued an Order[11] granting PSPC's motion for reconsideration, thus, reviving the RTC Decision of March 16, 2011. The RTC ruled that respondents' acquittal, the same having been based on the prosecution's failure

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[8] *Rollo,* pp. 106-109.

[9] *Id.* at 110-111.

[10] *Id.* at 112-123.

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

to prove all the elements of the offense charged, did not include the extinguishment of their civil liability. Citing Section 1 of BP 22, the RTC held that the person who actually signed the corporate check shall be held liable, without any condition, qualification or limitation. The RTC also found that the records show that FCI, through respondents, was civilly liable to PSPC.

Aggrieved by the March 23, 2012 Order of the RTC, respondents filed a petition for review with the CA contending that the RTC erred in holding them liable for the civil liability of FCI even if they were acquitted of the crime of violating BP 22.[12]

In its assailed Decision, the CA ruled in favor of respondents and disposed of the case as follows:

WHEREFORE, the petition is **GRANTED** and the assailed 23 March 2012 RTC decision is **REVERSED** and **SET ASIDE**. The Order dated 2 September 2011 is **REINSTATED**.

IT IS SO ORDERED.[13]

The CA basically held that, upon acquittal, the civil liability of a corporate officer in a BP 22 case is extinguished with the criminal liability, without prejudice to an independent civil action which may be pursued against the corporation.

Petitioner filed a motion for reconsideration, but the CA denied it in its Resolution dated January 14, 2015.

Hence, the present petition for review on *certiorari* based on the following arguments:

A.

THE COURT OF APPEALS GRAVELY ERRED IN ABSOLVING RESPONDENTS FROM CIVIL LIABILITY ARISING FROM THEIR VIOLATION OF BATAS PAMBANSA BLG. 22 DUE TO THEIR ACQUITTAL FROM THE SAID CRIME, SINCE THE ORDER

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[12] Annex "C" to Petition, *id.* at 71-82.

[13] *Rollo,* p. 66. (Emphasis in the original)

THAT DECREED THEIR ACQUITTAL DID NOT MAKE AN EXPRESS MENTION THAT THE FACTS FROM WHICH THEIR CIVIL LIABILITY MAY ARISE DID NOT EXIST.

B.

THE COURT OF APPEALS GRAVELY ERRED IN RELYING ON *GOSIACO V. CHING* IN RULING THAT RESPONDENTS ARE ABSOLVED FROM CIVIL LIABILITY

C.

THE COURT OF APPEALS GRAVELY ERRED IN RULING THAT THE CIVIL OBLIGATION COVERED BY THE DISHONORED CHECKS WERE CORPORATE DEBTS FOR WHICH ONLY FCI SHOULD BE HELD LIABLE.[14]

The petition lacks merit.

The only issue in the present case is whether or not respondents, as corporate officers, may still be held civilly liable despite their acquittal from the criminal charge of violation of BP 22.

The Court rules in the negative, as this matter has already been settled by jurisprudence. In the case of *Gosiaco v. Ching,*[15] this Court enunciated the rule that a corporate officer who issues a bouncing corporate check can only be held civilly liable when he is convicted. In the said case, the Court ruled that:

> When a corporate officer issues a worthless check in the corporate name he may be held personally liable for violating a penal statute. The statute imposes criminal penalties on anyone who with intent to defraud another of money or property, draws or issues a check on any bank with knowledge that he has no sufficient funds in such bank to meet the check on presentment. Moreover, the personal liability of the corporate officer is predicated on the principle that he cannot shield himself from liability from his own acts on the ground that it was a corporate act and not his personal act.[16]

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[14] *Id.* at 33-34.

[15] G.R. No. 173807, April 16, 2009, 585 SCRA 471.

[16] *Gosiaco v. Ching, supra,* at 477.

The Court, citing the case of *Bautista v. Auto Plus Traders, Incorporated, et al.,*[17] nonetheless categorically held that the civil liability of a corporate officer in a BP 22 case is extinguished with the criminal liability."[18]

The above rule is reiterated in the recent case of *Navarra v. People, et al.,*[19] where the petitioner, the Chief Finance Officer of a corporation, who was the signatory of the dishonored corporate checks, was convicted of the offense of violation of BP 22 and was ordered to pay the private complainant civil indemnity in an amount equivalent to the value of the checks which bounced. The Court held thus:

> **The general rule is that a corporate officer who issues a bouncing corporate check can be held civilly liable when he is convicted.** The criminal liability of the person who issued the bouncing checks in behalf of a corporation stands independent of the civil liability of the corporation itself, such civil liability arising from the Civil Code. But BP 22 itself fused this criminal liability with the corresponding civil liability of the corporation itself by allowing the complainant to recover such civil liability, not from the corporation, but from the person who signed the check in its behalf.[20]

As held above, it is clear that the civil liability of the corporate officer for the issuance of a bouncing corporate check attaches only if he is convicted. Conversely, therefore, it will follow that once acquitted of the offense of violating BP 22, a corporate officer is discharged from any civil liability arising from the issuance of the worthless check in the name of the corporation he represents. This is without regard as to whether his acquittal was based on reasonable doubt or that there was a pronouncement by the trial court that the act or omission from which the civil liability might arise did not exist.

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[17] 583 Phil. 218 (2008).

[18] *Gosiaco v. Ching, supra* note 15, at 478.

[19] G.R. No. 203750, June 6, 2016.

[20] *Navarra v. People, supra.* (Emphasis ours)

Moreover, in the present case, nothing in the records at hand would show that respondents made themselves personally nor solidarily liable for the corporate obligations either as accommodation parties or sureties. On the contrary, there is no dispute that respondents signed the subject check in their capacity as corporate officers and that the check was drawn in the name of FCI as payment for the obligation of the corporation and not for the personal indebtedness of respondents. Neither is there allegation nor proof that the veil of corporate fiction is being used by respondents for fraudulent purposes. The rule is that juridical entities have personalities separate and distinct from its officers and the persons composing it.[21] Generally, the stockholders and officers are not personally liable for the obligations of the corporation except only when the veil of corporate fiction is being used as a cloak or cover for fraud or illegality, or to work injustice,[22] which is not the case here. Hence, respondents cannot be held liable for the value of the checks issued in payment for FCI's obligation.

The cases of *Mitra v. People, et al.*[23] and *Llamado v. Court of Appeals, et. al.*,[24] which were cited by petitioner, may not be made as bases to rule against respondents because the accused in the said cases were found guilty of violating BP 22. Thus, the general rule that a corporate officer who issues a bouncing corporate check can be held civilly liable when convicted, applies to them. In the present case, however, respondents were acquitted of the offense charged. As such, consistent with the rule established in *Bautista* and *Gosiaco*, respondents' civil liability was extinguished with their criminal liability. In the same manner, the Court agrees with the CA that the case of *Alferez v. People, et al.*[25] is neither applicable to the present case on the ground

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[21] *Bautista v. Auto Plus Traders, Inc., supra* note 17, at 225.

[22] *Id.*

[23] 637 Phil. 645 (2010).

[24] 337 Phil. 153 (1997).

[25] 656 Phil. 116 (2011).

that, while Alferez was acquitted from the charge of violation of BP 22, the checks which bounced were issued by Alferez in his personal capacity and in payment of his personal obligations.

WHEREFORE, the instant petition is **DENIED**. The Decision and Resolution of the Court of Appeals, dated August 18, 2014 and January 14, 2015, respectively, in CA-G.R. SP No. 124925 are **AFFIRMED**.

SO ORDERED.

Carpio (*Chairperson*), *Mendoza, Reyes,*[**] and *Leonen, JJ.,* concur.

FIRST DIVISION

[G.R. No. 218901. February 15, 2017]

PHILIPPINE BANK OF COMMUNICATIONS, *petitioner, vs.* **HON. COURT OF APPEALS, HON. HONORIO E. GUANLAO, JR., IN HIS CAPACITY AS PRESIDING JUDGE OF THE REGIONAL TRIAL COURT, MAKATI CITY, BRANCH 56, TRAVELLER KIDS INC., CELY L. GABALDON-CO AND JEANNIE L. LUGMOC,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; RULE 45 PETITION, NOT PETITION FOR *CERTIORARI* UNDER RULE 65, IS THE PROPER REMEDY TO ASSAIL THE DECISION OF THE COURT OF APPEALS; THE COURT SET ASIDE THE PROCEDURAL MISTAKE IN CONSIDERATION OF PETITIONER'S RIGHT TO APPEAL AND THE AMPLEST OPPORTUNITY TO PROPERLY DETERMINE ITS CAUSE.— [T]he Court notes that PBCOM availed of the wrong

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[**] Designated Additional Member per Special Order No. 2416-K, dated January 4, 2017.

mode of appeal in bringing the case before the Court. A petition for certiorari under Rule 65 is not the proper remedy to assail the July 31, 2014 Decision and May 5, 2015 Resolution of the CA. In *Mercado v. Valley Mountain Mines Exploration, Inc.*, this Court held that: The proper remedy of a party aggrieved by a decision of the Court of Appeals is a petition for review under Rule 45 which is not similar to a petition for *certiorari* under Rule 65 of the Rules of Court. x x x However, under exceptional circumstances, as when stringent application of the rules will result in manifest injustice, the Court may set aside technicalities and proceed with the appea1. In *Tanenglian v. Lorenzo,* the Court recognized the broader interest of justice and gave due course to the appeal even if it was a wrong mode of appeal and was even filed beyond the reglementary period provided by the rules. x x x Considering that what is at stake in the present case is PBCOM's statutory right to appeal and the amplest opportunity for the proper and just determination of its cause, the Court resolves to set aside PBCOM's procedural mistake and give due course to its petition.

2. ID.; ID.; TRIAL COURT'S ORDER DISALLOWING A NOTICE OF APPEAL IS NOT A DECISION OR FINAL ORDER FROM WHICH AN APPEAL MAY BE TAKEN; THE SUITABLE REMEDY THEREFOR IS TO ELEVATE THE MATTER THROUGH A RULE 65 PETITION.— [I]n its petition before the CA, PBCOM assailed the RTC Order denying due course to its notice of appeal. In *Neplum, Inc. v. Orbeso*, this Court ruled that a trial court's order disallowing a notice of appeal, which is tantamount to a disallowance or dismissal of the appeal itself, is not a decision or final order from which an appeal may be taken. The suitable remedy for the aggrieved party is to elevate the matter through a special civil action under Rule 65. Clearly, contrary to the CA's finding, PBCOM availed itself of the correct remedy in questioning the disallowance of its notice of appeal.

3. ID.; SPECIAL CIVIL ACTIONS; PETITION FOR *CERTIORARI*; A MOTION FOR RECONSIDERATION IS REQUIRED BEFORE FILING THE PETITION; EXCEPTIONS, ENUMERATED AND APPLIED.— [W]hile it is a settled rule that a special civil action for *certiorari* under Rule 65 will not lie unless a motion for reconsideration is filed before the respondent court; there are well-defined exceptions established by jurisprudence, such as (a) **where the order is a patent nullity, as where the court *a quo* has no jurisdiction;**

(b) where the questions raised in the certiorari proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court; (c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable; (d) where, under the circumstances, a motion for reconsideration would be useless; (e) where petitioner was deprived of due process and there is extreme urgency for relief; (f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable; (g) where the proceedings in the lower court are a nullity for lack of due process; (h) where the proceedings were *ex parte* or in which the petitioner had no opportunity to object; and (i) where the issue raised is one purely of law or where public interest is involved. The first exception applies in this case.

4. ID.; APPEALS; THE AUTHORITY TO DISMISS AN APPEAL FOR BEING AN IMPROPER REMEDY IS VESTED WITH THE COURT OF APPEALS.— In *Salvan v. People*, this Court held that the power of the RTC to dismiss an appeal is limited to the instances specified in [Section 13, Rule 41 of the Rules on Civil Procedure]. In other words, the RTC has no jurisdiction to deny a notice of appeal on an entirely different ground – such as "that an appeal is not a proper remedy." The authority to dismiss an appeal for being an improper remedy is specifically vested upon the CA and not the RTC.

APPEARANCES OF COUNSEL

Alba And Partners for petitioners.
Bohol, Bohol II, Jimenez Law Offices for private respondents.

D E C I S I O N

CAGUIOA, *J.:*

This Petition for Certiorari and Mandamus[1] filed by petitioner Philippine Bank of Communications (PBCOM) seeks to reverse

[1] *Rollo,* pp. 3-42.

and set aside the Decision dated July 31, 2014[2] and Resolution dated May 5, 2015[3] of the Court of Appeals (CA) in CA-G.R. SP No. 120884, and prays that Judge Honorio E. Guanlao, Jr. of the Regional Trial Court (RTC) of Makati City, Branch 56, be ordered to approve PBCOM's notice of appeal and to transmit the case records to the CA. The CA dismissed PBCOM's Petition for Certiorari and Mandamus and sustained the Order dated June 2, 2011[4] issued by the RTC, which denied due course to PBCOM's Notice of Appeal on the ground that said appeal was not the proper remedy.

Facts

This case originated from a Complaint[5] for collection of a sum of money in the amount of ₱8,971,118.06 filed by PBCOM against private respondents before the RTC of Makati City, Branch 56 and docketed as Civil Case No. 10-185.

Private respondents moved for the dismissal of the Complaint alleging that their obligation had already been paid in full and that the RTC had no jurisdiction over the case because PBCOM failed to pay the correct docket fees.[6]

On September 29, 2010, the RTC issued an Order[7] directing PBCOM to pay additional docket fees in the amount of ₱24,765.70, within fifteen days from receipt of thereof.

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[2] *Id*. at 47-55. Penned by Associate Justice Leoncia Real-Dimagiba, with Associate Justices Rebecca De Guia-Salvador and Ricardo R. Rosario concurring.

[3] *Id*. at 57-58. Penned by Associate Justice Leoncia R. Dimagiba, with Associate Justices Ricardo R. Rosario and Victoria Isabel A. Paredes concurring.

[4] CA *rollo*, p. 22. Penned by Pairing Judge Honorio E. Guanlao, Jr.

[5] *Rollo,* pp. 63-68.

[6] *Id*. at 85-91 and 107-110.

[7] *Id*. at 257.

On October 21, 2010, PBCOM paid the additional docket fees but filed its Compliance with the RTC only on November 11, 2010.[8]

In the interim, however, the RTC issued an Order dated November 4, 2010,[9] dismissing PBCOM's Complaint, which reads:

> For failure of the plaintiff to comply with the Order dated September 29, 2010, this case is hereby DISMISSED.
>
> SO ORDERED.[10]

PBCOM filed a Motion for Reconsideration dated November 22, 2010,[11] stating that it had paid the additional docket fees within the period prescribed by the court as evidenced by the Official Receipt attached thereto.

In an Order dated May 3, 2011,[12] the RTC denied PBCOM's motion for reconsideration, pertinent portions of which read as follows:

> As per registry return slip, the plaintiff received a copy of the said order on October 7, 2010. Hence, it had until October 22, 2010 within which to pay the additional docket fee.
>
> There being no proof [of] payment of the additional fee submitted to the Court by the plaintiff on or before October 23, 2010, the Court, in its Order dated November 4, 2010 dismissed the case, pursuant to Section 3, Rule 17 of the 1997 Rules of Civil Procedure.
>
> It is only on November 11, 2010 that plaintiff filed with the Court a Compliance with the Order of the Court dated September 29, 2010 but without any plausible explanation relative to its failure to submit such proof of compliance on or before October 23, 2010.
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> x x x x x x x x x

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[8] *Id*. at 258-261.

[9] *Id*. at 262.

[10] *Id*.

[11] *Id*. at 263-268.

[12] *Id*. at 279-280.

The Court finds to be impressed with merit the observation of the defendants in their comment/opposition in this wise:

> "The Compliance dated November 11, 2010 filed by the plaintiff is suspicious because it was filed several weeks after it allegedly paid the additional docket fees on October 21, 2010.
>
> Moreover, the subject Official Receipt was only signed by a certain Liza Maia Esteves Sirios who allegedly prepared the same. Amazingly, there is no signature above the name of Engracio M. Escasinas, Jr., Clerk of Court VII, who is supposed to receive said payment. Hence, the subject Official Receipt is highly irregular."

WHEREFORE, for reasons afore-stated, the motion for reconsideration is hereby DENIED.

SO ORDERED.[13]

Undaunted, PBCOM timely filed a Notice of Appeal dated May 26, 2011.[14]

On June 2, 2011, the RTC issued an Order (Assailed Order), denying due course to PBCOM's Notice of Appeal on the ground that said appeal is not the proper remedy.[15]

Without filing a motion for reconsideration, PBCOM filed a Petition for Certiorari and Mandamus with the CA.[16]

On July 31, 2014, the CA issued the assailed Decision[17] denying PBCOM's Petition for Certiorari and Mandamus and affirming the order of the RTC. The CA reasoned that, apart from availing itself of a wrong mode of appeal, PBCOM failed to comply with the mandatory requirement of a motion for reconsideration. The CA emphasized that the filing of a motion

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[13] *Id.*

[14] *Id.* at 281-283.

[15] *Supra* note 4.

[16] *Id.* at 3-21.

[17] *Supra* note 2.

for reconsideration is a condition *sine qua non* for a petition for certiorari to prosper.

On August 26, 2014, PBCOM filed a Motion for Reconsideration[18] of the aforesaid Decision, but the same was denied by the CA for having been filed out of time.[19]

Hence, the present petition for certiorari and mandamus[20] anchored on the following grounds:

A.

RESPONDENT COURT OF APPEALS ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DENIED PBCOM'S MOTION FOR RECONSIDERATION ON THE GROUND THAT IT WAS FILED ONE (1) DAY LATE.

B.

RESPONDENT COURT OF APPEALS ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DENIED PBCOM'S PETITION FOR CERTIORARI AND MANDAMUS ON THE GROUND THAT A PRIOR MOTION FOR RECONSIDERATION IS REQUIRED.

x x x x x x x x x

C.

RESPONDENT JUDGE SHOULD BE COMPELLED BY MANDAMUS TO APPROVE PBCOM'S NOTICE OF APPEAL AND TO TRANSMIT THE CASE RECORDS TO THE COURT OF APPEALS.

D.

RESPONDENT COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION WHEN IT RULED THAT THE PETITION FOR CERTIORARI AND MANDAMUS IS A WRONG MODE OF APPEAL.[21]

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[18] CA *rollo,* pp. 148-165.

[19] *Supra* note 3.

[20] *Supra* note 1.

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

The Court's Ruling

Prefatorily, the Court notes that PBCOM availed of the wrong mode of appeal in bringing the case before the Court. A petition for certiorari under Rule 65 is not the proper remedy to assail the July 31, 2014 Decision and May 5, 2015 Resolution of the CA. In *Mercado v. Valley Mountain Mines Exploration, Inc.*,[22] this Court held that:

> The proper remedy of a party aggrieved by a decision of the Court of Appeals is a petition for review under Rule 45 which is not similar to a petition for *certiorari* under Rule 65 of the Rules of Court. As provided in Rule 45 of the Rules of Court, decisions, final orders or resolutions of the Court of Appeals in any case, *i.e.*, regardless of the nature of the action or proceedings involved, may be appealed to us by filing a petition for review, which would be but a continuation of the appellate process over the original case. On the other hand, a special civil action under Rule 65 is an independent action based on the specific grounds therein provided and, as a general rule, cannot be availed of as a substitute for the lost remedy of an ordinary appeal, including that under Rule 45. Accordingly, when a party adopts an improper remedy, his petition may be dismissed outright.[23]

However, under exceptional circumstances, as when stringent application of the rules will result in manifest injustice, the Court may set aside technicalities and proceed with the appeal.[24] In *Tanenglian v. Lorenzo*,[25] the Court recognized the broader interest of justice and gave due course to the appeal even if it was a wrong mode of appeal and was even filed beyond the reglementary period provided by the rules. The Court reasoned that:

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[22] 677 Phil. 13 (2011).

[23] *Id*. at 51, citing *Sps. Leynes v. Former Tenth Division of the Court of Appeals*, 655 Phil. 25, 44-45 (2011), further citing *Fortune Guarantee and Insurance Corporation v. Court of Appeals,* 428 Phil. 783, 791 (2002).

[24] See *Sps. Leynes v. Former Tenth Division of the Court of Appeals,* 655 Phil. 25, 45-46 (2011).

[25] 573 Phil. 472 (2008).

We have not been oblivious to or unmindful of the extraordinary situations that merit liberal application of the Rules, allowing us, depending on the circumstances, to set aside technical infirmities and give due course to the appeal. In cases where we dispense with the technicalities, we do not mean to undermine the force and effectivity of the periods set by law. In those rare cases where we did not stringently apply the procedural rules, there always existed a clear need to prevent the commission of a grave injustice. **Our judicial system and the courts have always tried to maintain a healthy balance between the strict enforcement of procedural laws and the guarantee that every litigant be given the full opportunity for the just and proper disposition of his cause.** x x x

x x x x x x x x x

In *Sebastian v. Morales,* we ruled that rules of procedure must be faithfully followed except only when, **for persuasive reasons, they may be relaxed to relieve a litigant of an injustice not commensurate with his failure to comply with the prescribed procedure**, thus:

x x x x x x x x x

The Court has allowed some meritorious cases to proceed despite inherent procedural defects and lapses. This is in keeping with the principle that rules of procedure are mere tools designed to facilitate the attainment of justice and that strict and rigid application of rules which would result in technicalities that tend to frustrate rather than promote substantial justice must always be avoided**. It is a far better and more prudent cause of action for the court to excuse a technical lapse and afford the parties a review of the case to attain the ends of justice, rather than dispose of the case on technicality and cause grave injustice to the parties, giving a false impression of speedy disposal of cases while actually resulting in more delay, if not a miscarriage of justice**.[26] (Emphasis supplied; citations omitted)

Considering that what is at stake in the present case is PBCOM's statutory right to appeal and the amplest opportunity for the proper and just determination of its cause, the Court

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[26] *Id.* at 485-489.

resolves to set aside PBCOM's procedural mistake and give due course to its petition.

In the present petition, PBCOM is asking the Court to rule on the correctness of the CA's dismissal of its Petition for Certiorari and Mandamus on the grounds that (1) a petition for certiorari is a wrong mode of appeal and (2) in any event, PBCOM failed to comply with the mandatory requirement of a motion for reconsideration.

PBCOM argues that the CA should have given due course to its Petition for Certiorari and Mandamus because it is the proper remedy to question the Order dated June 2, 2011 of the RTC denying its Notice of Appeal and that a motion for reconsideration is not required when the order assailed of is a patent nullity for having been issued without jurisdiction.

The Court finds PBCOM's arguments impressed with merit.

In the assailed Decision, the CA appears to have confused the RTC Order dismissing PBCOM's complaint with the RTC Order denying PBCOM's notice of appeal, and mistakenly ruled that the petition for certiorari and mandamus filed by PBCOM was a wrong mode of appeal, *viz*:

> Records will bear that the dismissal of the petitioner's complaint for sum of money was grounded on private respondents' [petitioner] failure to timely comply with the order dated 29 September 2010 of the public respondent which is pursuant to Section 3 Rule 17 of the Rules of Court.
>
> Section 3 Rule 17 of the Rules of Court provides that:
>
> > "Sec. 3. Dismissal due to fault of plaintiff. – If, for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his evidence in chief on the complaint, or to prosecute his action for an unreasonable length of time, or to comply with these Rules or any order of the court, the complaint may be dismissed upon motion of the defendant or upon the court's own motion, without prejudice to the right of the defendant to prosecute his counterclaim in the same or in a separate action. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise declared by the court."

Apparent from the aforesaid is the fact that the dismissal based thereon has the effect of an adjudication upon the merits, unless otherwise declared by court. Here there is no such declaration by the public respondent, thus, the dismissal of petitioner's complaint for sum of money is an adjudication on the merits and should be challenged by appeal within the reglementary period, thus, We cannot give due course to petitioner's petition for certiorari and mandamus not only because it is a wrong mode of appeal but it also failed to comply with the mandatory requirement of a motion for reconsideration.[27]

Notably, in its petition before the CA, PBCOM assailed the RTC Order denying due course to its notice of appeal. In *Neplum, Inc. v. Orbeso*,[28] this Court ruled that a trial court's order disallowing a notice of appeal, which is tantamount to a disallowance or dismissal of the appeal itself, is not a decision or final order from which an appeal may be taken. The suitable remedy for the aggrieved party is to elevate the matter through a special civil action under Rule 65.[29] Clearly, contrary to the CA's finding, PBCOM availed itself of the correct remedy in questioning the disallowance of its notice of appeal.

Moreover, while it is a settled rule that a special civil action for certiorari under Rule 65 will not lie unless a motion for reconsideration is filed before the respondent court;[30] there are well-defined exceptions established by jurisprudence, such as (a) **where the order is a patent nullity, as where the court *a quo* has no jurisdiction**; (b) where the questions raised in the certiorari proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court; (c) where there is an urgent necessity for the resolution of the question and any further

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[27] *Rollo*, p. 52.

[28] 433 Phil. 844, 854 (2002). See also *Fukuzumi v. Sanritsu Great International Corporation,* 479 Phil. 888 (2004).

[29] See *id*. at 854.

[30] *Ermita v. Aldecoa-Delorino*, 666 Phil. 122, 132 (2011), citing *People v. Duca*, 618 Phil. 154, 168 (2009).

delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable; (d) where, under the circumstances, a motion for reconsideration would be useless; (e) where petitioner was deprived of due process and there is extreme urgency for relief; (f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable; (g) where the proceedings in the lower court are a nullity for lack of due process; (h) where the proceedings were *ex parte* or in which the petitioner had no opportunity to object; and (i) where the issue raised is one purely of law or where public interest is involved.[31]

The first exception applies in this case.

Rule 41, Section 13 of the 1997 Rules on Civil Procedure states:

> SEC. 13. *Dismissal of appeal*. – Prior to the transmittal of the original record or the record on appeal to the appellate court, the trial court may, *motu proprio* or on motion, dismiss the appeal for having been taken out of time or for non-payment of the docket and other lawful fees within the reglementary period.[32]

In *Salvan v. People*,[33] this Court held that the power of the RTC to dismiss an appeal is limited to the instances specified in the afore-quoted provision. In other words, the RTC has no jurisdiction to deny a notice of appeal on an entirely different ground – such as "that an appeal is not a proper remedy."

The authority to dismiss an appeal for being an improper remedy is specifically vested upon the CA and not the RTC. Rule 50, Section 1 of the same Rules states:

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[31] *Republic v. Bayao*, 710 Phil. 279, 287-288 (2013), citing *Siok Ping Tang v. Subic Bay Distribution, Inc.*, 653 Phil. 124, 136-137 (2010). Emphasis supplied.

[32] As amended by A.M. No. 00-2-10-SC, May 1, 2000.

[33] 457 Phil. 785, 793 (2003).

SECTION 1. *Grounds for dismissal of appeal.* — An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:

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(i) **The fact that [the] order or judgment appealed from is not appealable.** (Emphasis supplied)

The Court's pronouncement in *Ortigas & Company Limited Partnership v. Velasco*[34] is apropos:

Yet another serious error was the disallowance by His Honor of Ortigas' appeal from the judgment in the reconstitution case, declaring its notice of appeal to be nothing but "a mere scrap of paper." His Honor opined that "Ortigas is x x x not vested with any justiciable interest to be party in (the) case" because it had admittedly "already sold all the subdivision lots which it claims to overlap the disputed two lots (of Molina)," and Ortigas' pleadings "failed to disclose x x x any allegation about its ownership of road lots that may overlap the land covered by the certificate of title of petitioner sought to be reconstituted;" and that therefore Ortigas was not a real party in interest since it would neither derive benefit nor suffer injury from the decision; hence, its opposition could not be entertained and, "by force of law," it could not also appeal the decision.

His Honor was apparently incognizant of the principle that dismissals of appeals from the judgment of a Regional Trial Court by the latter are authorized only in the instances specifically set forth x x x in Section 13, Rule 41 of the Rules of Court. The succeeding provision, Section 14 of said Rule 41, provides that "(a) motion to dismiss an appeal may be filed in the (Regional Trial) Court x x x prior to the transmittal of the record to the appellate court;" and the grounds are limited to those "mentioned in the preceding section," *i.e.*, Section 13 to wit: where "the notice of appeal, appeal bond, or record on appeal is not filed within the period of time herein provided x x x."

These two (2) sections clearly establish "that unless the appeal is abandoned, the only ground for dismissing an appeal in the trial court is the failure of the appellant to file on time the notice of appeal, appeal bond, or record on appeal x x x. (A) trial court

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[34] 304 Phil. 620 (1994).

may not dismiss an appeal as frivolous, or on the ground that the case has become moot and academic, such step devolving upon the appellate courts. Otherwise, the way would be opened for (regional trial) courts x x x to forestall review or reversal of their decisions by higher courts, no matter how erroneous or improper such decisions should be."

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Dismissals of appeal may also be had upon the grounds specified by Rule 50 of the Rules of Court; but it is the Court of Appeals, not the trial court, which is explicitly authorized to dismiss appeals on said grounds. Generally, these grounds do not include matters which go into the merits of the cause or to the right of the plaintiff or defendant to recover. Case law has come to recognize other grounds for dismissal, by way of exception, *e.g.*, that the cause has become moot, or the appeal is frivolous or manifestly dilatory. But, to repeat, authority to dismiss an appeal on the ground that it is frivolous or taken manifestly for delay "is not certainly with the court *a quo* whose decision is an issue, but with the appellate court."[35] (Emphasis supplied; citations omitted)

In fine, the assailed RTC Order, denying due course to PBCOM's notice of appeal on the ground that it was a wrong remedy, is a patent nullity. The RTC acted without or in excess of its jurisdiction.

WHEREFORE, the instant petition is **GRANTED**. The Order dated June 2, 2011 issued by the Regional Trial Court, Branch 56 in Makati City and the assailed Decision dated July 31, 2014 and Resolution dated May 5, 2015 of the Court of Appeals in CA-G.R. SP No. 120884, are hereby **REVERSED** and **SET ASIDE**. The Regional Trial Court, Branch 56 in Makati City is **DIRECTED** to give due course to petitioner's Notice of Appeal dated May 26, 2011 and to elevate the case records to the Court of Appeals for the review of petitioner's appeal. No costs.

SO ORDERED.

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

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[35] *Id.* at 659-661.

FIRST DIVISION

[G.R. No. 222541. February 15, 2017]

RACHEL A. DEL ROSARIO, *petitioner, vs.* **JOSE O. DEL ROSARIO and COURT OF APPEALS**, *respondents.*

SYLLABUS

1. CIVIL LAW; FAMILY CODE; DECLARATION OF NULLITY OF MARRIAGE; PSYCHOLOGICAL INCAPACITY UNDER ARTICLE 36 AS A GROUND TO NULLIFY THE MARRIAGE, EXPLAINED.— The policy of the Constitution is to protect and strengthen the family as the basic social institution, and marriage as the foundation of the family. Because of this, the Constitution decrees marriage as legally inviolable and protects it from dissolution at the whim of the parties. In this regard, psychological incapacity as a ground to nullify the marriage under Article 36 of the Family Code, as amended, should refer to the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage. It should refer to no less than a mental – not merely physical – incapacity that causes a party to be truly incognitive of the basic marital covenants that concomitantly must be assumed and discharged by the parties to the marriage, which, as provided under Article 68 of the Family Code, among others, include their mutual obligations to live together, observe love, respect and fidelity, and render help and support. In other words, it must be a malady that is so grave and permanent as to deprive one of awareness of the duties and responsibilities of the matrimonial bond one is about to assume.

2. ID.; ID.; ID.; CHARACTERISTICS OF PSYCHOLOGICAL INCAPACITY TO BE A GROUND FOR DECLARATION OF NULLITY OF MARRIAGE, REITERATED.— In *Santos v. CA*, the Court declared that psychological incapacity under Article 36 of the Family Code must be characterized by: (*a*) gravity, *i.e.*, it must be grave and serious such that the party would be incapable of carrying out the ordinary duties required in a marriage; (*b*) juridical antecedence, *i.e.*, it must be rooted in the history of the party antedating the marriage, although

the overt manifestations may emerge only after the marriage; and (*c*) incurability, *i.e.*, it must be incurable, or otherwise the cure would be beyond the means of the party involved.

3. ID.; ID.; ID.; ESTABLISHED GUIDELINES IN THE INTERPRETATION AND APPLICATION OF ARTICLE 36, CLARIFIED.— The Court laid down more definitive guidelines in the interpretation and application of Article 36 in *Republic v. Molina* (*Molina*) x x x, that incorporated the basic requirements the Court established in *Santos*. Notwithstanding the *Molina* guidelines, note, however, that an expert opinion is not absolutely necessary and may be dispensed with in a petition under Article 36 of the Family Code if the totality of the evidence shows that psychological incapacity exists and its gravity, juridical antecedence, and incurability can be duly established. The evidence need not necessarily come from the allegedly incapacitated spouse, but can come from persons intimately related to the spouses, *i.e.*, relatives and close friends, who could clearly testify on the allegedly incapacitated spouse's condition at or about the time of the marriage. x x x Thus, in *Dedel v. CA*, the Court declared that therein respondent's emotional immaturity and irresponsibility could not be equated with psychological incapacity as it was not shown that these acts are manifestations of a disordered personality which make her completely unable to discharge the essential obligations of the marital state, not merely due to her youth, immaturity, or sexual promiscuity. In *Toring v. Toring*, the Court emphasized that "irreconcilable differences, sexual infidelity or perversion, emotional immaturity and irresponsibility, and the like, do not by themselves warrant a finding of psychological incapacity, as [these] may only be due to a person's difficulty, refusal, or neglect to undertake the obligations of marriage that is not rooted in some psychological illness that Article 36 of the Family Code addresses."

4. ID.; ID.; IN VIEW OF THE FAILURE TO ESTABLISH THAT THE SPOUSE'S IMMATURITY, IRRESPONSIBILITY, AND INFIDELITY AMOUNT TO PSYCHOLOGICAL INCAPACITY, THE COURT UPHELD THE INDISSOLUBILITY OF THE MARITAL TIE.— Based on the totality of the evidence presented, there exists insufficient factual or legal basis to conclude that Jose's immaturity, irresponsibility, or infidelity amount to psychological incapacity.

> x x x Dr. Tayag's assessment, even when taken together with the various testimonies, failed to show that Jose's immaturity, irresponsibility, and infidelity rise to the level of psychological incapacity that would justify the nullification of the parties' marriage. To reiterate and emphasize, psychological incapacity must be more than just a "difficulty," "refusal" or "neglect" in the performance of the marital obligations; it is not enough that a party prove that the other failed to meet the responsibility and duty of a married person. There must be proof of a natal or supervening disabling factor in the person – an adverse integral element in the personality structure that effectively incapacitates the person from really accepting and thereby complying with the obligations essential to marriage – which must be linked with the manifestations of the psychological incapacity. x x x It is well to reiterate that Article 36 of the Family Code, as amended, is not a divorce law that cuts the marital bond at the time the grounds for divorce manifest themselves; a marriage, no matter how unsatisfactory, is not a null and void marriage. Thus, absent sufficient evidence establishing psychological incapacity within the context of Article 36, the Court is compelled to uphold the indissolubility of the marital tie.

APPEARANCES OF COUNSEL

Brandy L. Marzan for petitioner.
Public Attorney's Office for private respondent.
The Solicitor General for public respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is this petition for review on *certiorari*[1] assailing the Decision[2] dated May 29, 2015 and the

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[1] *Rollo*, pp. 8-21. The Petition was denominated as "Petition for Review on *Certiorari*" but stated that it was filed under Rule 65 of the Rules of Court.

[2] *Id*. at 23-33. Penned by Associate Justice Isaias P. Dicdican with Associate Justices Victoria Isabel A. Paredes and Melchor Q.C. Sadang concurring.

Resolution[3] dated December 1, 2015 of the Court of Appeals (CA) in CA-G.R. CV No. 102745, which reversed the Decision[4] dated April 23, 2014 of the Regional Trial Court of Makati City, Branch 136 (RTC) in Civil Case No. 11-891 declaring the marriage of Jose O. Del Rosario (Jose) and Rachel A. Del Rosario (Rachel) void on the ground of psychological incapacity pursuant to Article 36[5] of the Family Code, as amended.[6]

The Facts

Rachel, then fifteen (15) years old, met Jose, then seventeen (17) years old, sometime in December 1983 at a party in Bintawan, Bagabag, Nueva Vizcaya.[7] Very soon, they became romantically involved.[8]

Sometime in 1988, Rachel went to Hongkong to work as a domestic helper. During this period, Rachel allegedly provided for Jose's tuition fees for his college education. Rachel and Jose eventually decided to get married on December 28, 1989 in a civil rites ceremony held in San Jose City, Nueva Ecija, and were blessed with a son, named Wesley, on December 1, 1993. On February 19, 1995, they renewed their vows in a

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[3] *Id*. at 34-35. Penned by Associate Justice Melchor Q.C. Sadang with Associate Justices Ricardo R. Rosario and Victoria Isabel A. Paredes concurring.

[4] *Id*. at 205-214. Penned by Presiding Judge Rico Sebastian D. Liwanag.

[5] Article 36 of the Family Code states:

> Art. 36. A marriage contracted by any party who, at the time of the celebration, was psychologically incapacitated to comply with the essential marital obligations of marriage, shall likewise be void even if such incapacity becomes manifest only after its solemnization.

[6] Amended by Executive Order No. 227, entitled "AMENDING EXECUTIVE ORDER NO. 209, OTHERWISE KNOWN AS THE FAMILY CODE OF THE PHILIPPINES" (August 3, 1988).

[7] "Nueva Ecija" in the CA Decision, *rollo,* p. 24.

[8] See *id*.

church ceremony held in the Philippine Independent Church, Bagabag, Nueva Vizcaya.[9]

In 1998, Rachel went back to Hongkong to work as domestic helper/caregiver and has been working there ever since, only returning to the Philippines every year for a vacation. Through her efforts, she was able to acquire a house and lot in Rufino Homes Subdivision, San Jose, Nueva Ecija.[10]

In September 2011, Rachel filed a petition[11] for declaration of nullity of marriage before the RTC, docketed as Civil Case No. 11-891, alleging that Jose was psychologically incapacitated to fulfill his essential marital obligations. In support of her petition, Rachel claimed that: during their marriage, Jose conspicuously tried to avoid discharging his duties as husband and father. According to Rachel, Jose was hot tempered and violent; he punched her in the shoulder a few days before their church wedding, causing it to swell, when she refused to pay for the transportation expenses of his parents; he hit his own father with a pipe, causing the latter to fall unconscious, which forced them to leave Jose's parents' house where they were then staying; and he even locked her out of their house in the middle of the night sometime in December 2007 when she fetched her relatives from the bus terminal, which he refused to perform. Rachel added that Jose would represent himself as single, would flirt openly, and had an extra-marital affair which she discovered when Jose mistakenly sent a text message to her sister, Beverly A. Juan (Beverly), stating: "*love, kung ayaw mo na akong magpunta diyan, pumunta ka na lang dito.*" [12] Another text message read: "*Dumating lang ang asawa mo, ayaw mo na akong magtext at tumawag sa'yo.*" On one occasion, she, together

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[9] *Id*.

[10] See *id*. at 25 and 206. See also Transfer Certificate of Title No. 29077; *id*. at 60.

[11] Dated August 4, 2011. *Id*. at 95-100. Rachel filed an Amended Petition dated July 19, 2013 sometime in July 2013; See *id*. at 198-204. See also *id*. at 13.

[12] *Id*. at 25 and 207.

with Wesley and Beverly, caught Jose and the other woman with their child inside their conjugal dwelling. Finally, she claimed that Jose would refuse any chance of sexual intimacy between them as they slowly drifted apart.[13]

Rachel, however, admitted that their married life ran smoothly during its early years, and it was only later in their marriage that Jose started frequenting bars and engaging in drinking sessions.[14]

Rachel also presented the testimonies of Wesley[15] and her sisters, Beverly and Jocelyn Cabusora,[16] which corroborated her allegations, as well as the testimony[17] of Dr. Nedy L. Tayag (Dr. Tayag), who prepared the Psychological Report[18] (Report) on Rachel. The remarks section of Dr. Tayag's Report, which was primarily based on her interview with Rachel and Wesley, stated that Jose suffered from Antisocial Personality Disorder (APD) characterized by: (*a*) his lack of empathy and concern for Rachel; (*b*) his irresponsibility and his pleasure-seeking attitude that catered only to his own fancies and comfort; (*c*) his selfishness marked by his lack of depth when it comes to

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[13] See *id*. at 24-25 and 96-99. See also Amended Petition, *id*. at 200-202; and Judicial Affidavit of Rachel Afalla Del Rosario in Question and Answer Form in Lieu of her Direct Testimony dated April 12, 2012, *id*. at 81-85.

[14] *Id*. at 25.

[15] Per the RTC Decision, Wesley's statement was made before the court social worker; see *id*. at 207-208.

[16] See *id*. at 209-210. See also Judicial Affidavit of Jocelyn A. Cabusora in Question and Answer Form in lieu of her Direct Testimony dated November 21, 2012; *id*. at 90-93.

[17] See *id*. at 208. See also Nedy Tayag's Affidavit in the Form of Question and Answer in lieu of Direct Testimony *id*. at 87-88; and TSN, July 10, 2012, *id*. at 173-193.

[18] See A Report on the Psychological Condition of Rachel Afalla Del Rosario, Petitioner for the Nullity of Her Marriage Against Jose Orfin Del Rosario dated January 17, 2011; *id*. at 45-59.

his marital commitments; and (*d*) his lack of remorse for his shortcomings.[19]

For his part, Jose denied all the allegations in the petition. Jose maintained that: (*a*) he had dutifully performed all of his marital and parental duties and obligations to his family; (*b*) he had provided for his family's financial and emotional needs; and (*c*) he contributed to the building and maintenance of their conjugal home. He claimed that although they occasionally had misunderstandings, they nevertheless had a blissful relationship, pointing out that their first major argument was when Rachel decided to go to Hongkong to work; that they continued to communicate through mail during her stay overseas; and that he remained supportive of Rachel and would advise her to give her family the financial aid that they need so long as she would not sacrifice her well-being. Finally, he denied the alleged extra-marital affair and having laid hand on Rachel and their son.[20] Jose presented as well the testimony of Faustino Rigos to support his allegations.[21]

The RTC Ruling

In a Decision[22] dated April 23, 2014, the RTC declared the marriage between Jose and Rachel void on the ground of psychological incapacity. It relied on the findings and testimony of Dr. Tayag, declaring that Jose's APD interferes with his capacity to perform his marital and paternal duties, as he in fact even refused to take responsibility for his actions, notwithstanding the overwhelming evidence against him.[23]

Jose appealed[24] to the CA, arguing that his alleged refusal to seek employment, squandering of their money on vices, violent

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[19] See *id*. at 56-57.

[20] See *id*. at 26.

[21] See *id*. at 28 and 210-211.

[22] *Id*. at 205-214.

[23] See *id*. at 213.

[24] See Brief for the Respondent-Appellant dated January 14, 2015; *id*. at. 216-233.

nature, and infidelity are not the serious, grave, and permanent psychological condition that incapacitates him to perform his marital obligations required by Article 36 of the Family Code, as amended. At most, they are personality defects, *i.e.,* immaturity, irresponsibility, and unfaithfulness, which may be considered as grounds for legal separation under Article 55[25] of the same code.[26]

The CA Ruling

In a Decision[27] dated May 29, 2015, the CA reversed the ruling of the RTC,[28] holding that the totality of the evidence Rachel presented was not enough to sustain a finding that Jose is psychologically incapacitated to comply with the essential

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[25] Article 55 of the Family Code provides:

Art. 55. A petition for legal separation may be filed on any of the following grounds:

(1) Repeated physical violence or grossly abusive conduct directed against the petitioner, a common child, or a child of the petitioner;
(2) Physical violence or moral pressure to compel the petitioner to change religious or political affiliation;
(3) Attempt of respondent to corrupt or induce the petitioner, a common child, or a child of the petitioner, to engage in prostitution, or connivance in such corruption or inducement;
(4) Final judgment sentencing the respondent to imprisonment of more than six years, even if pardoned;
(5) Drug addiction or habitual alcoholism of the respondent;
(6) Lesbianism or homosexuality of the respondent;
(7) Contracting by the respondent of a subsequent bigamous marriage, whether in the Philippines or abroad;
(8) Sexual infidelity or perversion;
(9) Attempt by the respondent against the life of the petitioner; or
(10) Abandonment of petitioner by respondent without justifiable cause for more than one year.

For purposes of this Article, the term "child" shall include a child by nature or by adoption.

[26] See *rollo*, pp. 226-228.

[27] *Id.* at 23-33.

[28] See *id.* at 32-33.

obligations of marriage.[29] Particularly, the CA declared that Jose's alleged infidelity, his refusal to seek employment, his act of squandering their money on his vices, and his temper and alleged propensity for violence were not so grave and permanent as to deprive him of awareness of the duties and responsibilities of the matrimonial bond sufficient to nullify the marriage under Article 36 of the Family Code; at best, they showed that Jose was irresponsible, insensitive, or emotionally immature which nonetheless do not amount to the downright incapacity that the law requires. Additionally, the CA pointed out that the root cause of the alleged psychological incapacity, its incapacitating nature, and the incapacity itself were not sufficiently explained as Dr. Tayag's Report failed to show the relation between Jose's "deprived childhood" and "poor home condition," on one hand, and grave and permanent psychological malady, on the other. Finally, it observed that while Dr. Tayag's testimony was detailed, it only offered a general evaluation on the supposed root cause of Jose's personality disorder.[30]

Rachel moved for reconsideration,[31] which was, however, denied by the CA in a Resolution[32] dated December 1, 2015; hence, this petition.

The Issue Before the Court

The essential issue for the Court's resolution is whether or not the CA erred in reversing the RTC's finding of psychological incapacity.

The Court's Ruling

The petition lacks merit.

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[29] See *id*. at 29-30.

[30] See *id*. at 30-32.

[31] See motion for reconsideration dated June 29, 2015, *id*. at 234-241.

[32] *Id*. at 34-35.

The policy of the Constitution is to protect and strengthen the family as the basic social institution,[33] and marriage as the foundation of the family.[34] Because of this, the Constitution decrees marriage as legally inviolable and protects it from dissolution at the whim of the parties. In this regard, psychological incapacity as a ground to nullify the marriage under Article 36[35] of the Family Code, as amended, should refer to the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage.[36] It should refer to no less than a mental – not merely physical – incapacity that causes a party to be truly incognitive of the basic marital covenants that concomitantly must be assumed and discharged by the parties to the marriage, which, as provided under Article 68[37] of the Family Code, among others,[38] include their mutual obligations to live together, observe love, respect and fidelity, and render help and support.[39] In other words, it must be a malady that is so grave and permanent as to deprive one of awareness of the

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[33] See Article II, Section 12 of the 1987 Constitution.

[34] See Article XV, Section 2 of the 1987 Constitution.

[35] Article 36 of the Family Code states:

Art. 36. A marriage contracted by any party who, at the time of the celebration, was psychologically incapacitated to comply with the essential marital obligations of marriage, shall likewise be void even if such incapacity becomes manifest only after its solemnization.

[36] See *Republic v. Romero,* G.R. Nos. 209180 and 209253, February 24, 2016; citations omitted.

[37] Article 68 of the Family Code reads:

Art. 68. The husband and wife are obliged to live together, observe mutual love, respect and fidelity, and render mutual help and support.

[38] The parties' mutual obligations include those provided under Articles 68 to 71, as regards the husband and wife, and Articles 220, 221 and 225, with regard to parents and their children, all of the Family Code. (See Guideline 6 in *Republic v. Molina*, 335 Phil. 664, 678 [1997].)

[39] *Republic v. De Gracia,* 726 Phil. 502, 509 (2014).

duties and responsibilities of the matrimonial bond one is about to assume.[40]

In *Santos v. CA*,[41] the Court declared that psychological incapacity under Article 36 of the Family Code must be characterized by: (*a*) gravity, *i.e.,* it must be grave and serious such that the party would be incapable of carrying out the ordinary duties required in a marriage; (*b*) juridical antecedence, *i.e.,* it must be rooted in the history of the party antedating the marriage, although the overt manifestations may emerge only after the marriage; and (*c*) incurability, *i.e.,* it must be incurable, or otherwise the cure would be beyond the means of the party involved.[42] The Court laid down more definitive guidelines in the interpretation and application of Article 36 in *Republic v. Molina*[43] (*Molina*) whose salient points are footnoted below,[44] that incorporated the basic requirements the Court established in *Santos.*

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[40] *Republic v. Romero, supra* note 36, citing *Navales v. Navales,* 578 Phil. 826, 840 (2008).

[41] 310 Phil. 21 (1995).

[42] See *id*. at 39; citation omitted.

[43] *Supra* note 38.

[44] "(1) The burden of proof to show the nullity of the marriage belongs to the plaintiff. Any doubt should be resolved in favor of the existence and continuation of the marriage and against its dissolution and nullity. This is rooted in the fact that both our Constitution and our laws cherish the validity of marriage and unity of the family. Thus, our Constitution devotes an entire Article on the Family, recognizing it 'as the foundation of the nation.' It decrees marriage as legally 'inviolable,' thereby protecting it from dissolution at the whim of the parties. Both the family and marriage are to be 'protected' by the state.

The Family Code echoes this constitutional edict on marriage and the family and emphasizes their permanence, inviolability, and solidarity.

(2) The root cause of the psychological incapacity must be:

(a) medically or clinically identified, (b) alleged in the complaint, (c) sufficiently proven by experts and (d) clearly explained in the decision. Article 36 of the Family Code requires that the incapacity must be psychological – not physical, although its manifestations and/or symptoms

Notwithstanding the *Molina* guidelines, note, however, that an expert opinion is not absolutely necessary and may be dispensed with in a petition under Article 36 of the Family

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may be physical. The evidence must convince the court that the parties, or one of them, was mentally or psychically ill to such an extent that the person could not have known the obligations he was assuming, or knowing them, could not have given valid assumption thereof. Although no example of such incapacity need be given here so as not to limit the application of the provision under the principle of *ejusdem generis*, nevertheless such root cause must be identified as a psychological illness and its incapacitating nature fully explained. Expert evidence may be given by qualified psychiatrists and clinical psychologists.

(3) The incapacity must be proven to be existing at 'the time of the celebration' of the marriage. The evidence must show that the illness was existing when the parties exchanged their 'I do's.' The manifestation of the illness need not be perceivable at such time, but the illness itself must have attached at such moment, or prior thereto.

(4) Such incapacity must also be shown to be medically or clinically permanent or incurable. Such incurability may be absolute or even relative only in regard to the other spouse, not necessarily absolutely against everyone of the same sex. Furthermore, such incapacity must be relevant to the assumption of marriage obligations, not necessarily to those not related to marriage, like the exercise of a profession or employment in a job. x x x.

(5) Such illness must be grave enough to bring about the disability of the party to assume the essential obligations of marriage. Thus, 'mild characteriological peculiarities, mood changes, occasional emotional outbursts' cannot be accepted as *root* causes. The illness must be shown as downright incapacity or inability, not a refusal, neglect or difficulty, much less ill will. In other words, there is a natal or supervening disabling factor in the person, an adverse integral element in the personality structure that effectively incapacitates the person from really accepting and thereby complying with the obligations essential to marriage.

(6) The essential marital obligations must be those embraced by Articles 68 up to 71 of the Family Code as regards the husband and wife as well as Articles 220, 221 and 225 of the same Code in regard to parents and their children. Such non-complied marital obligation(s) must also be stated in the petition, proven by evidence and included in the text of the decision.

(7) Interpretations given by the National Appellate Matrimonial Tribunal of the Catholic Church in the Philippines, while not controlling or decisive, should be given great respect by our courts. x x x.

x x x x x x x x x

Code if the totality of the evidence shows that psychological incapacity exists and its gravity, juridical antecedence, and incurability can be duly established.[45] The evidence need not necessarily come from the allegedly incapacitated spouse, but can come from persons intimately related to the spouses, *i.e.*, relatives and close friends, who could clearly testify on the allegedly incapacitated spouse's condition at or about the time of the marriage.[46] In other words, the *Molina* guidelines continue to apply but its application calls for a more flexible approach in considering petitions for declaration of nullity of marriages based on psychological incapacity.[47] To be clear, however, the totality of the evidence must still establish the characteristics that *Santos* laid down: gravity, incurability, and juridical antecedence.

Thus, in *Dedel v. CA*,[48] the Court declared that therein respondent's emotional immaturity and irresponsibility could

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(8) The trial court must order the prosecuting attorney or fiscal and the Solicitor General to appear as counsel for the state. No decision shall be handed down unless the Solicitor General issues a certification, which will be quoted in the decision, briefly stating therein his reasons for his agreement or opposition, as the case may be, to the petition. The Solicitor General, along with the prosecuting attorney, shall submit to the court such certification within fifteen (15) days from the date the case is deemed submitted for resolution of the court. The Solicitor General shall discharge the equivalent function of the *defensor vinculi* contemplated under Canon 1095." (*Id*. at 676-680.)

[45] See *Marcos v. Marcos*, 397 Phil. 840, 850 (2000). Subsequent to this ruling, the Court promulgated A.M. No. 02-11-10-SC, entitled "Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages" (March 15, 2003), which provided that "the complete facts should allege the physical manifestations, if any, as are indicative of psychological incapacity at the time of the celebration of the marriage but expert opinion need not be alleged.

[46] See *Toring v. Toring,* 640 Phil. 434, 451 (2010).

[47] See *Republic v. Galang*, 665 Phil. 658, 669-673 (2011), clarifying the guidelines in determining psychological incapacity under Article 36 of the Family Code, as amended.

[48] 466 Phil. 226 (2004).

not be equated with psychological incapacity as it was not shown that these acts are manifestations of a disordered personality which make her completely unable to discharge the essential obligations of the marital state, not merely due to her youth, immaturity, or sexual promiscuity.[49] In *Toring v. Toring*,[50] the Court emphasized that "irreconcilable differences, sexual infidelity or perversion, emotional immaturity and irresponsibility, and the like, do not by themselves warrant a finding of psychological incapacity, as [these] may only be due to a person's difficulty, refusal, or neglect to undertake the obligations of marriage that is not rooted in some psychological illness that Article 36 of the Family Code addresses."[51] The Court equally did not consider as tantamount to psychological incapacity the emotional immaturity, irresponsibility, sexual promiscuity, and other behavioral disorders invoked by the petitioning spouses in *Pesca v. Pesca,*[52] *Republic v. Encelan,*[53] *Republic v. De Gracia,*[54] and *Republic v. Romero,*[55] to name a few, and thus dismissed their petitions for declaration of nullity of marriage.

The Court maintains a similar view in this case and, thus, denies the petition. Based on the totality of the evidence presented, there exists insufficient factual or legal basis to conclude that Jose's immaturity, irresponsibility, or infidelity amount to psychological incapacity.

Particularly, the Court notes that Rachel's evidence merely showed that Jose: (1) would often indulge in drinking sprees; (2) tends to become violent when he gets drunk; (2) avoids

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[49] *Id*. at 233.

[50] 640 Phil. 434 (2010).

[51] *Id*. at 457.

[52] 408 Phil. 713 (2001).

[53] 701 Phil. 192 (2013).

[54] *Supra* note 39.

[55] *Supra* note 36.

discharging his duties as a father to Wesley and as a husband to Rachel, which includes sexual intimacy; (3) flirts openly and represented himself as single; and (4) engaged in an extra-marital affair with a bar girl who he brought to the conjugal dwelling on several occasions. Significantly, Rachel admitted that their married life ran smoothly in its early years. Dr. Tayag's findings, on the other hand, simply summarized Rachel and Wesley's narrations as she diagnosed Jose with APD and proceeded to conclude that Jose's "personality flaw is deemed to be severe, grave, and have become deeply embedded within his adaptive systems since early childhood years, thereby rendering such to be a permanent component of his life [and] [t]herefore x x x incurable and beyond repair despite any form of intervention."[56]

It should be pointed out that Dr. Tayag's Report does not explain in detail how Jose's APD could be characterized as grave, deeply rooted in his childhood, and incurable within the jurisprudential parameters for establishing psychological incapacity. Particularly, the Report did not discuss the concept of APD which Jose allegedly suffers from, *i.e.,* its classification, cause, symptoms, and cure, or show how and to what extent Jose exhibited this disorder or how and to what extent his alleged actions and behavior correlate with his APD, sufficiently clear to conclude that Jose's condition has no definite treatment, making it incurable within the law's conception. Neither did the Report specify the reasons why and to what extent Jose's APD is serious and grave, and how it incapacitated him to understand and comply with his marital obligations. Lastly, the Report hastily concluded that Jose had a "deprived childhood" and "poor home condition" that automatically resulted in his APD equivalent to psychological incapacity without, however, specifically identifying the history of Jose's condition antedating the marriage, *i.e.,* specific behavior or habits during his adolescent years that could explain his behavior during the marriage.

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[56] *Rollo,* p. 58.

Moreover, Dr. Tayag did not personally assess or interview Jose to determine, at the very least, his background that could have given her a more accurate basis for concluding that his APD is rooted in his childhood or was already existing at the inception of the marriage. To be sure, established parameters do not require that the expert witness personally examine the party alleged to be suffering from psychological incapacity provided corroborating evidence are presented sufficiently establishing the required legal parameters.[57] Considering that her Report was based solely on Rachel's side whose bias cannot be doubted, the Report and her testimony deserved the application of a more rigid and stringent standards which the RTC failed to apply.

In sum, Dr. Tayag's assessment, even when taken together with the various testimonies, failed to show that Jose's immaturity, irresponsibility, and infidelity rise to the level of psychological incapacity that would justify the nullification of the parties' marriage. To reiterate and emphasize, psychological incapacity must be more than just a "difficulty," "refusal" or "neglect" in the performance of the marital obligations; it is not enough that a party prove that the other failed to meet the responsibility and duty of a married person.[58] There must be proof of a natal or supervening disabling factor in the person – an adverse integral element in the personality structure that effectively incapacitates the person from really accepting and thereby complying with the obligations essential to marriage – which must be linked with the manifestations of the psychological incapacity.[59]

A final note. It is well to reiterate that Article 36 of the Family Code, as amended, is not a divorce law that cuts the marital bond at the time the grounds for divorce manifest

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[57] See *Navales v. Navales, supra* note 40, at 844-845.

[58] *Republic v. Galang*, *supra* note 47, at 673-674, citing *Republic v. Cuison-Melgar*, 520 Phil. 702, 719 (2006).

[59] See *id*. at 674.

themselves;[60] a marriage, no matter how unsatisfactory, is not a null and void marriage. Thus, absent sufficient evidence establishing psychological incapacity within the context of Article 36, the Court is compelled to uphold the indissolubility of the marital tie.

WHEREFORE, the petition is **DENIED**. The Decision dated May 29, 2015 and the Resolution dated December 1, 2015 of the Court of Appeals in CA-G.R. CV No. 102745 are hereby **AFFIRMED**. Accordingly, the petition for declaration of nullity of marriage filed under Article 36 of the Family Code, as amended, is **DISMISSED**.

SO ORDERED.

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

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[60] See *Republic v. Romero*, *supra* note 36, citing *Perez-Ferraris v. Ferraris*, 527 Phil. 722, 732-733 (2006).

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mind might accept as adequate to support a conclusion; it is more than a mere imputation of wrongdoing or violation that would warrant a finding of liability against the person charged. (Mayor Mamba *vs.* Bueno, G.R. No. 191416, Feb. 7, 2017) p. 359

— The local government officials are not at liberty to disregard the respondent's constitutionally guaranteed rights to life, liberty and security, even if has committed a crime. (*Id.*)

— The Rules of Court applies suppletorily to A.M. No. 07-9-12- SC insofar as it is not inconsistent with the latter; there being no express prohibition to the contrary, the rules on motions for reconsideration under the Rules of Court apply suppletorily to the Rule on the Writ of *Amparo*. (*Id.*)

— The writ of *amparo* is a protective remedy aimed at providing judicial relief consisting of the appropriate remedial measures and directives that may be crafted by the court, in order to address specific violations or threats of violation of the constitutional rights to life, liberty or security; the petition for a writ of *amparo* is a remedy available to any person whose rights to life, liberty and security is violated or threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or entity; the writ shall cover extralegal killings and enforced disappearances or threats thereof. (*Id.*)

— The writ of *amparo* likewise covers violations of the right to security; at the core of the guarantee of the right to security, as embodied in Sec. 2, Art. III of the Constitution is the immunity of one's person, including the extensions of his/her person, *i.e.*, houses, papers and effects, against unwarranted government intrusion. (*Id.*)

— The writ of *amparo* serves both preventive and curative roles in addressing the problem of extralegal killings

discretionary execution of appealed judgments may be allowed under Sec. 2 (a) of Rule 39 of the Revised Rules of Civil Procedure upon concurrence of the following requisites: (a) there must be a motion by the prevailing party with notice to the adverse party; (b) there must be a good reason for execution pending appeal; and (c) the good reason must be stated in a special order. (Abenion *vs.* Pilipinas Shell Petroleum Corp., G.R. No. 200749, Feb. 6, 2017) p. 167-169

— Sec. 2 of Rule 39, allows a court to act upon a motion for execution pending appeal while it retains jurisdiction over the action; a party's appeal by notice of appeal is deemed perfected as to him upon the filing of the notice of appeal in due time; in appeals by notice of appeal, the court loses jurisdiction over the case upon the perfection of the appeals filed in due time and the expiration of the time to appeal of the other parties; in either case, prior to the transmittal of the original record or the record on appeal, the court may issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal, approve compromises, permit appeals of indigent litigants, order execution pending appeal in accordance with Sec. 2 of Rule 39, and allow withdrawal of the appeal. (*Id.*)

Factual findings of quasi-judicial bodies — Factual findings by a quasi-judicial body which has acquired expertise because its jurisdiction is confined to specific matters, are accorded not only with respect but even finality if they are supported by substantial evidence; factual findings of the construction arbitrators are not beyond review. (Werr Corp. Int'l *vs.* Highlands Prime, Inc., G.R. No. 187543, Feb. 8, 2017) p. 415

— Factual findings of administrative or quasi-judicial bodies, including labor tribunals, are accorded much respect by this Court as they are specialized to rule on matters falling within their jurisdiction especially when these are supported by substantial evidence. (De Leon *vs.* Maunlad Trans, Inc., G.R. No. 215293, Feb. 8, 2017) p. 531

— In a Rule 45 review, the Supreme Court considers the correctness of the assailed CA decision, in contrast with the review for jurisdictional error that the SC undertakes under Rule 65; Rule 45 is limited to the review of questions of law raised against the assailed CA decision; in ruling for legal correctness, SC has to view the CA decision in the same context that the petition for *certiorari* it ruled upon was presented to it; SC has to examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, not on the basis of whether the NLRC decision on the merits of the case was correct. (PNCC Skyway Corp. (PSC) *vs.* Sec. of Labor & Employment, G.R. No. 196110, Feb. 6, 2017) p. 155

— Petitions for review on *certiorari* under Rule 45 distinguished with petitions for *certiorari* under Rule 65; it is the latter which is required to be filed within a period of not later than 60 days from notice of the judgment, order or resolution; if a motion for new trial or reconsideration is filed, the 60-day period shall be counted from notice of the denial of the motion; a party litigant wishing to file a petition for review on *certiorari* must do so within 15 days from notice of the judgment, final order or resolution sought to be appealed. (*Id.*)

— Supreme Court is not a trier of facts and does not normally embark in the evaluation of evidence adduced during trial; it is not this Court's function to analyze or weigh all over again the evidence already considered in the proceedings below, the Court's jurisdiction being limited to reviewing only errors of law that may have been committed by the lower court. (Sitel Phils. Corp. [Formerly Clientlogic Phils., Inc.] *vs.* Commissioner of Internal Revenue, G.R. No. 201326, Feb. 8, 2017) p. 464

— The proper remedy of a party aggrieved by a decision of the Court of Appeals is a petition for review under Rule 45 which is not similar to a petition for *certiorari* under Rule 65 of the Rules of Court; however, under exceptional circumstances, as when stringent application of the rules

— The indiscriminate grant of additional allowances would be tantamount to additional compensation, which is proscribed by Sec. 8, Art. IX (B) of the Constitution. (*Id*.)

COMPREHENSIVE AGRARIAN REFORM PROGRAM [CARP] LAW OF 1988 (R.A. NO. 6657)

Just compensation — In applying the basic formula prescribed by the DAR in determining just compensation, it is important that the values to be used are documented, verified and accurate. (Mateo *vs.* Department of Agrarian Reform, G.R. No. 186339, Feb. 15, 2017) p. 707

CONTEMPT

Contempt of court — The power of contempt should be balanced with the right to freedom of expression, especially when it may have the effect of stifling comment on public matters; freedom of expression must always be protected to the fullest extent possible; the power to punish for contempt is not exercised without careful consideration of the circumstances of the allegedly contumacious act and the purpose of punishing the act; especially where freedom of speech and press is involved, this Court has given a restrictive interpretation as to what constitutes contempt. (Atty. Roque, Jr. *vs.* AFP, G.R. No. 214986, Feb. 15, 2017) p. 921

— The Press Statement's coverage of the disbarment complaint was a brief, unembellished report that a complaint had been filed; such an announcement does not, in and of itself, violate the confidentiality rule, particularly considering that it did not discuss the disbarment complaint itself. (*Id.*)

CONTRACTS

Compromise agreement — A contract whereby the parties, make reciprocal concessions to avoid a litigation or put an end to one already commenced; in a compromise, the parties adjust their difficulties in the manner they have agreed upon, disregarding the possible gain in litigation

COURTS

Hierarchy of courts — The doctrine of hierarchy of courts is not an iron-clad rule; The Supreme Court has full discretionary power to take cognizance and assume jurisdiction over special civil actions for *certiorari* filed directly with it for exceptionally compelling reasons or if warranted by the nature of the issues clearly and specifically raised in the petition. (Maza *vs.* Hon. Turla, G.R. No. 187094, Feb. 15, 2017) p. 736

DAMAGES

Attorney's fees — Attorney's fees may be awarded when exemplary damages are awarded, or a party is compelled to litigate or incur expenses to protect his interest or where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim. (Sps. Fernando *vs.* Northwest Airlines, Inc., G.R. No. 212038, Feb. 8, 2017) p. 501

— Commencement of an action does not *per se* make the action wrongful and subject the action to damages, for the law could not have meant to impose a penalty on the right to litigate. (*Id.*)

Exemplary damages — Awarded by way of example or correction for the public good, may be recovered in contractual obligations, if defendant acted in wanton, fraudulent, reckless, oppressive, or malevolent manner; they are designed by our civil law to permit the courts to reshape behavior that is socially deleterious in its consequence by creating negative incentives or deterrents against such behavior. (Sps. Fernando *vs.* Northwest Airlines, Inc., G.R. No. 212038, Feb. 8, 2017) p. 501

Liquidated damages — The industry practice that substantial compliance excuses the contractor from payment of liquidated damages applies to the Agreement. (Werr Corp. Int'l. *vs.* Highlands Prime, Inc., G.R. No. 187543, Feb. 8, 2017) p. 415

financial reverses or otherwise; (2) the number of employees to be awarded; (3) the capacity of the employers to satisfy the awards, taken into account their prevailing financial status as borne by the records; (4) the employer's grant of other termination benefits in favor of the employees; and (5) whether there was a *bona fide* attempt to comply with the notice requirements as opposed to giving no notice at all. (PNCC Skyway Corp. (PSC) *vs.* Sec. of Labor & Employment, G.R. No. 196110, Feb. 6, 2017) p. 155

— The required written notice under Art. 283 of the Labor Code is to inform the employees of the specific date of termination or closure of business operations and must be served upon them at least one (1) month before the date of effectivity to give them sufficient time to make the necessary arrangements; the purpose of this requirement is to give employees time to prepare for the eventual loss of their jobs, as well as to give DOLE the opportunity to ascertain the veracity of the alleged cause of termination. (*Id.*)

— Three requirements are necessary for a valid cessation of business operations: (a) service of a written notice to the employees and to the DOLE at least one month before the intended date thereof; (b) the cessation of business must be *bona fide* in character; and (c) payment to the employees of termination pay amounting to one month pay or at least one-half month pay for every year of service, whichever is higher. (*Id.*)

— Where the dismissal is for an authorized cause, the lack of statutory due process should not nullify the dismissal, or render it illegal, or ineffectual; however, the employer should indemnify the employee, in the form of nominal damages, for the violation of his right to statutory due process. (*Id.*)

Illegal dismissal — An illegally dismissed employee is entitled to two separate reliefs: full backwages and reinstatement; in such case where reinstatement is no longer an option,

this conduct shall be acted upon, or at least influenced by the other party; and (c) knowledge, actual or constructive, of the actual facts. (De La Salle Araneta University *vs.* Bernardo, G.R. No. 190809, Feb. 13, 2017) p. 580

EVIDENCE

Admission against interest — Admissions against interest are those made by a party to a litigation or by one in privity with or identified in legal interest with such party and are admissible whether or not the declarant is available as a witness; an admission against interest is the best evidence that affords the greatest certainty of the facts in dispute, based on the presumption that no man would declare anything against himself unless such declaration is true. (BP Oil and Chemicals Int'l. Phils., Inc. *vs.* Total Distribution & Logistic Systems, Inc., G.R. No. 214406, Feb. 6, 2017) p. 244

Burden of evidence — In criminal litigation, the evidence of the prosecution must stand or fall on its own merits and cannot draw strength from the weakness of the defense; the burden of proof rests on the State; thus, the failure of the prosecution to discharge its burden of evidence in this case entitles appellant to an acquittal. (People *vs.* Tionloc *y* Marquez, G.R. No. 212193, Feb. 15, 2017) p. 907

Dying declaration — For a dying declaration to be deemed an exception to the hearsay rule, the following conditions must concur: (a) the declaration must concern the cause and surrounding circumstances of the declarant's death; (b) that at the time the declaration was made, the declarant was conscious of his impending death; (c) the declarant was competent as a witness; and (d) the declaration is offered in a criminal case for Homicide, Murder, or Parricide where the declarant is the victim. (People *vs.* Calinawan, G.R. No. 226145, Feb. 13, 2017) p. 673

civil register or a final judgment, filiation may still be established after the death of a putative parent through an admission of filiation in a public document or a private handwritten instrument, signed by the parent concerned. (*Id.*)

Psychological incapacity — An expert opinion is not absolutely necessary and may be dispensed with in a petition under Art. 36 of the Family Code if the totality of the evidence shows that psychological incapacity exists and its gravity, juridical antecedence and incurability can be duly established; the evidence need not necessarily come from the allegedly incapacitated spouse, but can come from persons intimately related to the spouses, *i.e.*, relatives and close friends, who could clearly testify on the allegedly incapacitated spouse's condition at or about the time of the marriage; irreconcilable differences, sexual infidelity or perversion, emotional immaturity and irresponsibility and the like, do not by themselves warrant a finding of psychological incapacity, as these may only be due to a person's difficulty, refusal, or neglect to undertake the obligations of marriage that is not rooted in some psychological illness that Art. 36 of the Family Code addresses. (Del Rosario *vs.* Del Rosario, G.R. No. 222541, Feb. 15, 2017) p. 978

— Psychological incapacity as a ground to nullify the marriage under Art. 36 of the Family Code, as amended, should refer to the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage; it should refer to no less than a mental, not merely physical, incapacity that causes a party to be truly incognitive of the basic marital covenants that concomitantly must be assumed and discharged by the parties to the marriage, which, as provided under Art. 68 of the Family Code, among others, include their mutual obligations to live together, observe love, respect and fidelity, and render help and support. (*Id.*)

pending appeal and at the same time questions the decision on the merits in a regular appeal before the appellate court. (*Id.*)

GUARANTY

Contract of — A contract of guaranty gives rise to a subsidiary obligation on the part of the guarantor; a guarantor agrees that the creditor, after proceeding against the principal, may proceed against the guarantor if the principal is unable to pay; he contracts to pay if, by the use of due diligence, the debt cannot be made out of the principal debtor. (Dev't. Bank of the Phils. *vs.* Hon. Carpio, G.R. No. 195450, Feb. 1, 2017) p. 99

INJUNCTION

Preliminary injunction — A provisional remedy to prevent irreparable injury pending the final determination of the action, injunction can bind only the parties in the action or their privies or successors-in-interest; no person who has not been impleaded and duly served with the summons should be adversely affected by the outcome of the action. (Power Sector Assets and Liabilities Mgmt. Corp. (PSALM) *vs.* CA [21st Div.], G.R. No. 194226, Feb. 15, 2017) p. 786

INSOLVENCY LAW

Venue — Sec. 14 of the Insolvency Law specifies that the proper venue for a petition for voluntary insolvency is the Regional Trial Court of the province or city where the insolvent debtor has resided in for six (6) months before the filing of the petition. (Pilipinas Shell Petroleum Corp. *vs.* Royal Ferry Services, Inc., G.R. No. 188146, Feb. 1, 2017) p. 13

INTERESTS

Forberance of money — Forbearance is an arrangement other than a loan where a person agrees to the temporary use of his money, goods, or credits subject to the fulfillment of certain conditions. (Dev't. Bank of the Phils. *vs.*

a privilege or a right that can be availed of at any time, as the Court will grant it only if there is a showing that it is merited; clemency, as an act of mercy removing any disqualification, should be balanced with the preservation of public confidence in the courts. (Concerned Lawyers of Bulacan *vs.* Presiding Judge Villalon-Pornillos, A.M. No. RTJ-09-2183, Feb. 14, 2017) p. 688

— Requirements to grant judicial clemency: 1. There must be proof of remorse and reformation; these shall include but should not be limited to certifications or testimonials of the officer(s) or chapter(s) of the Integrated Bar of the Philippines, judges or judges associations and prominent members of the community with proven integrity and probity; a subsequent finding of guilt in an administrative case for the same or similar misconduct will give rise to a strong presumption of non-reformation; 2. sufficient time must have lapsed from the imposition of the penalty to ensure a period of reformation; 3. the age of the person asking for clemency must show that he still has productive years ahead of him that can be put to good use by giving him a chance to redeem himself; 4. there must be a showing of promise such as intellectual aptitude, learning or legal acumen or contribution to legal scholarship and the development of the legal system or administrative and other relevant skills, as well as potential for public service; and 5. there must be other relevant factors and circumstances that may justify clemency. (*Id.*)

JUDGMENTS

Execution of — An execution pending appeal is deemed an exception to the general rule, which allows an execution as a matter of right only in any of the following instances: (a) when the judgment has become final and executory; (b) when the judgment debtor has renounced or waived his right of appeal; (c) when the period for appeal has lapsed without an appeal having been filed; or (d) when, having been filed, the appeal has been resolved and the records of the case have been returned to the court of

— The trial court could then determine the propriety of rendering a summary judgment dismissing the case based on the disclosures made at the pre-trial or a judgment based on the pleadings, evidence identified and admissions made during pre-trial. (*Id.*)

Void judgment — A void judgment, being non-existent in legal contemplation, does not become final and executory even with the belated filing of an appeal; because a void judgment does not attain finality, a petition for *certiorari* to declare its nullity should not be dismissed for untimeliness. (Hon. Buenaflor *vs.* Ramirez, Jr., G.R. No. 201607, Feb. 15, 2017) p. 853

JURISDICTION

Distinguished from venue — Jurisdiction is the power to hear and determine cases of the general class to which the proceedings in question belong; jurisdiction is a matter of substantive law; venue is the place of trial or geographical location in which an action or proceeding should be brought; in civil cases, venue is a matter of procedural law. (Pilipinas Shell Petroleum Corp. *vs.* Royal Ferry Services, Inc., G.R. No. 188146, Feb. 1, 2017) p. 13

Jurisdiction over the subject matter — The jurisdiction of a court over the subject matter of a particular action is determined by the plaintiff's allegations in the complaint and the principal relief he seeks in the light of the law that apportions the jurisdiction of courts; jurisdiction over the subject matter is conferred only by the Constitution or the law; it cannot be acquired through a waiver; it cannot be enlarged by the omission of the parties; it cannot be conferred by the acquiescence of the court. (Hon. Buenaflor *vs.* Ramirez, Jr., G.R. No. 201607, Feb. 15, 2017) p. 853

Residual jurisdiction — Refers to the authority of the trial court to issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal; to approve compromises; to permit appeals by indigent litigants; to order execution

said proceedings, provided that said allegations or statements are relevant to the issues, and the answers are responsive to the questions propounded to said witnesses. (Belen *vs.* People, G.R. No. 211120, Feb. 13, 2017) p. 628

— Administrative Circular No. 08-2008, or the Guidelines in the Observance of a Rule of Preference in the Imposition of Penalties in Libel Cases; preference on the matter of imposition of penalties for the crime of libel bearing in mind the following principles: 1. This Administrative Circular does not remove imprisonment as an alternative penalty for the crime of libel under Art. 355 of the Revised Penal Code; 2. The Judges concerned may, in the exercise of sound discretion, and taking into consideration the peculiar circumstances of each case, determine whether the imposition of a fine alone would best serve the interests of justice or whether forbearing to impose imprisonment would depreciate the seriousness of the offense, work violence on the social order, or otherwise be contrary to the imperative of justice; and 3. Should only a fine be imposed and the accused be unable to pay the fine, there is no legal obstacle to the application of the Revised Penal Code provision on subsidiary imprisonment. (*Id.*)

— Elements of libel as defined in Art. 353 of the Revised Penal Code, namely: (1) imputation of a crime, vice or defect, real or imaginary, or any act, omission, condition, status or circumstance; (2) publicity or publication; (3) malice; (4) direction of such imputation at a natural or juridical person; and (5) tendency to cause the dishonour, discredit or contempt of the person defamed; the twin rule for the purpose of determining the meaning of any publication alleged to be libelous: (1) that construction must be adopted which will give to the matter such a meaning as is natural and obvious in the plain and ordinary sense in which the public would naturally understand what was uttered; and (2) the published matter alleged to libelous must be construed as a whole. (*Id.*)

must also be shown to be medically or clinically permanent or incurable; such incurability may be absolute or even relative only in regard to the other spouse, not necessarily absolutely against everyone of the same sex; (5) such illness must be grave enough to bring about the disability of the party to assume the essential obligations of marriage; and (6) the essential marital obligations must be those embraced by Arts. 68 up to 71 of the Family Code as regards the husband and wife as well as Arts. 220, 221 and 225 of the same Code in regard to parents and their children. (Castillo *vs.* Rep. of the Phils., G.R. No. 21406, Feb. 6, 2017) p. 209

— Irreconcilable differences, sexual infidelity or perversion, emotional immaturity and irresponsibility and the like, do not by themselves warrant a finding of psychological incapacity under Art. 36, as the same may only be due to a person's refusal or unwillingness to assume the essential obligations of marriage; in order for sexual infidelity to constitute as psychological incapacity, the respondent's unfaithfulness must be established as a manifestation of a disordered personality, completely preventing the respondent from discharging the essential obligations of the marital state. (*Id.*)

— Psychological incapacity has been intended by law to be confined to the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage; psychological incapacity must be characterized by: (a) gravity, *i.e.*, it must be grave and serious such that the party would be incapable of carrying out the ordinary duties required in a marriage; (b) juridical antecedence, *i.e.*, it must be rooted in the history of the party antedating the marriage, although the overt manifestations may emerge only after the marriage; and (c) incurability, *i.e.*, it must be incurable, or even if it were otherwise, the cure would be beyond the means of the party involved. (*Id.*)

NOTARIES PUBLIC

the victim's testimony. (People *vs.* Palanay *y* Minister, G.R. No. 224583, Feb. 1, 2017) p. 116

— Elements of rape by sexual intercourse under par. 1, Art. 266-A of the RPC, to wit: (1) the offender is a man; (2) the offender had carnal knowledge of a woman; and (3) such act was accomplished by using force, threat or intimidation. (People *vs.* Tionloc *y* Marquez, G.R. No. 212193, Feb. 15, 2017) p. 907

— In cases of qualified rape, moral ascendancy or influence supplants the element of violence or intimidation; physical resistance need not be established when intimidation is brought to bear on the victim and the latter submits herself out of fear; the failure to shout or offer tenuous resistance does not make voluntary the victim's submission to the criminal acts of the accused. (*Id.*)

— The age gap between the victim and appellant negates force, threat or intimidation. (*Id.*)

— There is no standard form of reaction for a woman when facing a shocking and horrifying experience such as a sexual assault; the workings of the human mind placed under emotional stress are unpredictable, and people react differently as some may shout, some may faint, and some may be shocked into insensibility, while others may openly welcome the intrusion. (*Id.*)

— Victim's resistance should be made right from the start; failure to put up resistance or any sign of rejection of appellant's sexual advances is fatal to the prosecution. (*Id.*)

Qualified rape — In a conviction for qualified rape, the prosecution must prove all the elements thereof, which are: (1) sexual congress; (2) with a woman; (3) done by force, threat, or intimidation without consent; (4) the victim is under eighteen years of age at the time of the rape; and (5) the offender is a parent, ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree of the victim, or the common-

— In a claim for tax refund or tax credit, the applicant must prove not only entitlement to the grant of the claim under substantive law, he must also show satisfaction of all the documentary and evidentiary requirements for an administrative claim for a refund or tax credit and compliance with the invoicing and accounting requirements mandated by the NIRC, as well as by revenue regulations implementing them; the NIRC requires that the creditable input VAT should be evidenced by a VAT invoice or official receipt, which may only be considered as such when the TIN-VAT is printed thereon, as required by Sec. 4.108-1 of RR 7-95. (*Id.*)

Value-added tax — Under Sec. 112 (c) of the NIRC, the CIR is given 120 days within which to grant or deny a claim for refund; upon receipt of CIR's decision or ruling denying the said claim or upon the expiration of the 120-day period without action from the CIR, the taxpayer has thirty (30) days within which to file a petition for review with the CTA. (Sitel Phils. Corp. [Formerly Clientlogic Phils., Inc.] *vs.* Commissioner of Internal Revenue, G.R. No. 201326, Feb. 8, 2017) p. 464

TERCERIA

Remedy of — For the remedy of terceria to prosper, the claim of ownership or right of possession to the levied property by the third-party claimant must first be unmistakably established; upon due application by the third person and after summary hearing, the court may command that the property be released from the mistaken levy and restored to the rightful owner or possessor. (Power Sector Assets and Liabilities Mgmt. Corp. [Psalm] *vs.* Maunlad Homes, Inc., G.R. No. 215933, Feb. 8, 2017) p. 544

— The denial of the third-party claim is not appealable as provided under Sec. 16, Rule 39 of the Rules of Court since the remedy of a third party claimant is to file a separate and independent action to vindicate his claim of ownership or right of possession of the levied properties against the judgment creditor or the purchaser of the property at the public auction sale; it is in this separate

product in the belief that he is purchasing another, in which case defendant's goods are then bought as the plaintiffs and its poor quality reflects badly on the plaintiff's reputation; the other is "confusion of business" wherein the goods of the parties are different but the defendant's product can reasonably (though mistakenly) be assumed to originate from the plaintiff, thus deceiving the public into believing that there is some connection between the plaintiff and defendant which, in fact, does not exist; in determining the likelihood of confusion, the Court must consider: [a] the resemblance between the trademarks; [b] the similarity of the goods to which the trademarks are attached; [c] the likely effect on the purchaser; and [d] the registrant's express or implied consent and other fair and equitable considerations. (*Id.*)

— Trademark is defined under Sec. 121.1 of R.A. No. 8293 as any visible sign capable of distinguishing the goods; it is susceptible to registration if it is crafted fancifully or arbitrarily and is capable of identifying and distinguishing the goods of one manufacturer or seller from those of another; a mark cannot be registered if it is identical with a registered mark belonging to a different proprietor or a mark with an earlier filing or priority date, in respect of: i. The same goods or services, or ii. Closely related goods or services, or iii. If it nearly resembles such a mark as to be likely to deceive or cause confusion; e. Is identical with, or confusingly similar to, or constitutes a translation of a mark which is considered by the competent authority of the Philippines to be well-known internationally and in the Philippines, whether or not it is registered here, as being already the mark of a person other than the applicant for registration, and used for identical or similar goods or services: provided, that in determining whether a mark is well-known, account shall be taken of the knowledge of the relevant sector of the public, rather than of the public at large, including knowledge in the Philippines which has been obtained as a result of the promotion of the mark. (*Id.*)

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