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SUPREME COURT

OF THE

PHILIPPINES

FROM

MARCH 8, 2017 TO MARCH 22, 2017

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MANILA
2018

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

SECOND DIVISION

[A.C. No. 11043. March 8, 2017]

LIANG FUJI, *complainant, vs.* **Atty. GEMMA ARMI M. DELA CRUZ**, *respondent.*

SYLLABUS

1. **LEGAL ETHICS; DISBARMENT AND DISCIPLINE OF ATTORNEYS; THE SUPREME COURT GENERALLY DEFERS FROM TAKING COGNIZANCE OF DISBARMENT COMPLAINT AGAINST LAWYER IN GOVERNMENT SERVICE ARISING FROM THEIR ADMINISTRATIVE DUTIES; EXCEPTION IN CASE AT BAR.—** Generally, this Court defers from taking cognizance of disbarment complaints against lawyers in government service arising from their administrative duties, and refers the complaint first either to the proper administrative body that has disciplinary authority over the erring public official or employee or the Ombudsman. x x x This case is an exception. Unlike the circumstances in *Spouses Buffe* and *Alicias, Jr.*, the records here show that the Office of the Ombudsman had previously dismissed Fuji's administrative complaint due to the pendency of his Verified Petition and Administrative Complaint before the Bureau of Immigration, and considered the case closed. The Bureau of Immigration subsequently granted Fuji's petition to reopen his case and ordered his release. However, it was silent as to the culpability of respondent on the charges levelled by Fuji. Thus, with the termination of the administrative

proceedings before the Office of the Ombudsman and the apparent inaction of the Bureau of Immigration on complainant's administrative complaint, this Court considers it proper to take cognizance of this case, and to determine whether there is sufficient ground to discipline respondent under its "plenary disciplinary authority" over members of the legal profession.

2. **ID.; ID.; AN AFFIDAVIT OF DESISTANCE IS NOT SUFFICIENT TO DISMISS AN ADMINISTRATIVE COMPLAINT AGAINST A LAWYER; RATIONALE.—** Contrary to respondent's stance, Fuji's purported Affidavit of Desistance is not sufficient cause to dismiss this administrative complaint. This Court has previously held that proceedings of this nature cannot be "interrupted or terminated by reason of desistance, settlement, compromise, restitution, withdrawal of the charges or failure of the complainant to prosecute the same." The primary object of disciplinary proceedings is to determine the fitness of a member to remain in the Bar. It is conducted solely for the public welfare, and the desistance of the complainant is irrelevant. What will be decisive are the facts borne out by the evidence presented by the parties. In *Rayos-Ombac v. Rayos*: A case of suspension or disbarment may proceed regardless of interest or lack of interest of the complainant. What matters is whether, on the basis of the facts borne out by the record, the charge of deceit and grossly immoral conduct has been duly proven. This rule is premised on the nature of disciplinary proceedings.

3. **ID.; ID.; MISCONDUCT IN THE DISCHARGE OF DUTY AS A GOVERNMENT OFFICIAL; IF THE MISCONDUCT AS A GOVERNMENT OFFICIAL ALSO CONSTITUTES A VIOLATION OF THE OATH AS A LAWYER AND THE CODE OF PROFESSIONAL RESPONSIBILITY, THEN THE GOVERNMENT OFFICIAL MAY BE SUBJECT TO DISCIPLINARY SANCTION BY THE SUPREME COURT; CASE AT BAR.—** Generally, a lawyer who holds a government office may not be disciplined as a member of the Bar for misconduct in the discharge of her duties as a government official. However, if said misconduct as a government official also constitutes a violation of her oath as a lawyer and the Code of Professional Responsibility, then she may be subject to disciplinary sanction by this Court. Atty. Dela Cruz failed to observe Rule 18.03 of the Code of the Professional

Responsibility, which mandates that "a lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable." As a special prosecutor in the Bureau of Immigration, she is the representative, not of any private party, but of the State. Her task was to investigate and verify facts to determine whether a ground for deportation exists, and if further administrative action — in the form of a formal charge — should be taken against an alien.

4. **ID.; ID.; ID.; LAWYERS IN GOVERNMENT SERVICE SHOULD BE MORE CONSCIENTIOUS WITH THEIR PROFESSIONAL OBLIGATIONS CONSISTENT WITH THE TIME-HONORED PRINCIPLE OF PUBLIC OFFICE BEING A PUBLIC TRUST; CASE AT BAR.—** Simple neglect of duty is defined as a failure to give attention to a task due to carelessness or indifference. In this case, respondent's negligence shows her indifference to the fundamental right of every person, including aliens, to due process and to the consequences of her actions. Lawyers in government service should be more conscientious with their professional obligations consistent with the time-honored principle of public office being a public trust. The ethical standards under the Code of Professional Responsibility are rendered even more exacting as to government lawyers because they have the added duty to abide by the policy of the State to promote a high standard of ethics, competence, and professionalism in public service. In this case, respondent's negligence evinces a failure to cope with the strict demands and high standards of public service and the legal profession.

5. **ID.; ID.; ID.; SIMPLE NEGLECT OF DUTY; IMPOSABLE PENALTY.—** The appropriate sanction is discretionary upon this Court. Under the Civil Service Rules, the penalty for simple neglect of duty is suspension for one (1) month and one (1) day to six (6) months. In previous cases, this Court imposed the penalty of suspension of three (3) months to six (6) months for erring lawyers, who were negligent in handling cases for their clients. We find appropriate the penalty of suspension of three (3) months considering the consequence of respondent's negligence. This suspension includes her desistance from performing her functions as a special prosecutor in the Bureau of Immigration.

RESOLUTION

LEONEN, *J.*:

Failure to exercise utmost prudence in reviewing the immigration records of an alien, which resulted in the alien's wrongful detention, opens the special prosecutor in the Bureau of Immigration to administrative liability.

Before this Court is an administrative complaint[1] dated November 23, 2015 filed by Liang Fuji (Fuji) and his family, against Bureau of Immigration Special Prosecutor Gemma Armi M. Dela Cruz (Special Prosecutor Dela Cruz) for gross misconduct and gross ignorance of the law in relation to her issuance of a Charge Sheet against Fuji for overstaying.

Through a letter[2] dated December 8, 2015, Deputy Clerk of Court and Bar Confidant Atty. Ma. Cristina B. Layusa directed the complainants to file a verified complaint "with supporting documents duly authenticated and/or affidavits of persons having personal knowledge of the facts alleged"[3] in the complaint.

Complainants replied[4] by furnishing this Court with copies of the Verified Petition to Reopen S.D. O. No. BOC-2015-357 (B.L.O. No. SBM-15-420) and for Relief of Judgment with Urgent Prayer for Immediate Consideration, and Administrative Complaint (Verified Petition and Administrative Complaint),[5] which Fuji filed with the Board of Commissioners of the Bureau of Immigration, and prayed that the same be treated as their verified complaint. Complainants further informed this Court that they had difficulty obtaining certified true copies of the November 21, 2013 Order of the Board of Commissioners, which

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[1] *Rollo*, p. 1.

[2] *Id*. at 3.

[3] *Id*.

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

[5] *Id*. at 8-12.

granted Fuji's Section 9(g) visa, Summary Deportation Order dated June 17, 2015, and Warrant of Deportation from the Bureau of Immigration personnel who just gave them the "run[-]around."[6] They alleged that the Bureau of Immigration personnel were not particularly helpful, and did not treat Fuji's case with urgency.[7]

The facts of this case show that in a Summary Deportation Order[8] dated June 17, 2015, Fuji, a Chinese national, was ordered deported for overstaying. From the Order, it appears that Special Prosecutor Dela Cruz was the special prosecutor who brought the formal charge against Fuji and another person upon her finding that Fuji's work visa had expired on May 8, 2013, with extension expired on December 6, 2013.[9] Special Prosecutor Dela Cruz found that Fuji had overstayed for one (1) year and six (6) months in violation of Commonwealth Act No. 613, Section 37(a)(7).[10] Her investigation was triggered by a complaint-affidavit dated April 30, 2015 of a certain Virgilio Manalo alleging that Fuji and another person had defrauded him.[11]

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[6] *Id*. at 5.

[7] *Id*.

[8] *Id*. at 13-14. The Summary Deportation Order was signed by the Board of Commissioners Chairperson Siegfred B. Mison, and Members Abdullah S. Mangotara, and Gilberto U. Repizo.

[9] *Id*.

[10] Com. Act No. 613, Sec. 37 provides:

Section 37. (a) The following aliens shall be arrested upon the warrant of the Commissioner of Immigration or of any other officer designated by him for the purpose and deported upon the warrant of the Commissioner of Immigration after a determination by the Board of Commissioners of the existence of the ground for deportation as charged against the alien:

. . . .

(7) Any alien who remains in the Philippines in violation of any limitation or condition under which he was admitted as a non-immigrant[.]

[11] *Id*. at 13.

On June 29, 2015, Fuji filed his Motion for Reconsideration.[12]

On July 28, 2015, the Bureau of Immigration Intelligence Division served Fuji's Warrant of Deportation, and thereafter arrested him at Brgy. Maloma, San Felipe, Zambales with the assistance from local police.[13] Fuji was brought to and detained at the Bureau of Immigration Detention Facility, National Capital Region Police Office, Taguig City.[14]

On October 9, 2015, the Board of Commissioners denied Fuji's Motion for Reconsideration.[15]

On November 23, 2015, Fuji filed his Verified Petition and Administrative Complaint.[16] Subsequently, on March 10, 2016, Fuji filed an Omnibus Motion to Reopen and Lift S.D.O. BOC-2015-357, and Release on Bail through counsel.[17]

On March 22, 2016, the Board of Commissioners issued a Resolution dismissing the deportation charge against Fuji on the ground that "[t]he records show that Liang has a working visa valid until 30 April 2016 under Jiang Tuo Mining Philippines, Inc. as Marketing Liason."[18] Fuji was directed to be released from Bureau of Immigration-Warden's Facility on March 23, 2016.[19]

In his administrative complaint, Fuji alleged that his rights to due process were violated since he was not afforded any hearing or summary deportation proceedings before the deportation order was issued against him.[20] Fuji further alleged

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[12] *Id*. at 26.

[13] *Id*.

[14] *Id*. at 32.

[15] *Id*. at 26.

[16] *Id*. at 8-12.

[17] *Id*. at 57.

[18] *Id*.

[19] *Id*. at 27.

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

that Special Prosecutor Dela Cruz failed miserably in discharging her duties because a simple initial review of the Bureau of Immigration records would have revealed that he was not overstaying because his Section 9(g) work visa was valid until April 30, 2016.[21]

In her August 25, 2016 Comment,[22] respondent Special Prosecutor Dela Cruz denied that she committed any grave misconduct.[23] She claimed that Fuji was accorded due process during the summary deportation proceedings.[24] He was directed, through an Order dated May 14, 2015 of the Legal Division, to submit his Counter-Affidavit/Memorandum, which he failed to do.[25] Fuji was also able to file his motion for reconsideration and verified petition to reopen the case.[26]

Respondent further claimed that the Memorandum dated June 4, 2015 of the Bureau of Immigration – Management Information System (BI-MIS) constituted a substantial evidence of Fuji's overstay in the country, hence, her formal charge had legal basis.[27]

Respondent added that as a civil servant, she enjoyed the presumption of regularity in the performance of her duties.[28] She had no intention to violate any law and did not commit any flagrant disregard of the rules, or unlawfully used her station to procure some benefit for herself or for other persons.[29] Respondent pointed out that the Ombudsman had in fact dismissed the complainant's charges against her.[30] She added

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[21] *Id*. at 9.

[22] *Id*. at 25-31.

[23] *Id*. at 29.

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

[25] *Id*. at 28.

[26] *Id*.

[27] *Id*. at 29.

[28] *Id*. at 31.

[29] *Id*. at 30.

[30] *Id*. at 31.

that Fuji stated in his March 29, 2016 Affidavit of Desistance that he had mistakenly signed some documents including the administrative complaint.[31]

We find respondent administratively liable for her negligence in her failure to ascertain the facts before levying the formal charge against Fuji for overstaying.

I

Generally, this Court defers from taking cognizance of disbarment complaints against lawyers in government service arising from their administrative duties, and refers the complaint first either to the proper administrative body that has disciplinary authority over the erring public official or employee or the Ombudsman.[32]

For instance, in *Spouses Buffe v. Gonzales*,[33] this Court dismissed the disbarment complaint against former Secretary of Justice Raul M. Gonzalez, former Undersecretary of Justice Fidel J. Exconde, Jr., and former Congressman Eleandro Jesus F. Madrona, holding that the respondents were public officials being charged for actions involving their official functions during their tenure, which should be resolved by the Office of the Ombudsman.[34] In that case, one (1) of the respondents sought to dismiss the complaint on the ground of forum-shopping because he allegedly received an order from the Office of the Ombudsman directing him to file a counter-affidavit based on

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

[32] *Spouses Buffe v. Gonzalez,* A.C. No. 8168, October 12, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/october2016/8168.pdf> [Per *Acting C.J.* Carpio, Second Division]; *Alicias, Jr. v. Macatangay,* A.C. No. 7478, January 11, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/january2017/7478.pdf> [Per *J.* Carpio, Second Division].

[33] A.C. No. 8168, October 12, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/october2016/8168.pdf> [Per *Acting C.J.* Carpio, Second Division].

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

the same administrative complaint filed before the Office of the Bar Confidant.[35]

Again, in the fairly recent case of *Alicias, Jr. v. Macatangay,*[36] the Court dismissed the complaint against respondents — government lawyers in the Civil Service Commission. The Court held that the acts or omissions alleged in the complaint were "connected with their . . . official functions in the [Civil Service Commission] and within the administrative disciplinary jurisdiction of their superior or the Office of the Ombudsman."[37] It would seem that the complainant directly instituted a disbarment complaint with this Court instead of filing an administrative complaint before the proper administrative body.

This case is an exception. Unlike the circumstances in *Spouses Buffe* and *Alicias, Jr.*, the records here show that the Office of the Ombudsman had previously dismissed Fuji's administrative complaint due to the pendency of his Verified Petition and Administrative Complaint before the Bureau of Immigration, and considered the case closed.[38]

The Bureau of Immigration subsequently granted Fuji's petition to reopen his case and ordered his release. However, it was silent as to the culpability of respondent on the charges levelled by Fuji.

Thus, with the termination of the administrative proceedings before the Office of the Ombudsman and the apparent inaction of the Bureau of Immigration on complainant's administrative complaint, this Court considers it proper to take cognizance of this case, and to determine whether there is sufficient ground

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[35] *Id*. at 4.

[36] A.C. No. 7478, January 11, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/january2017/7478.pdf> [Per *J*. Carpio, Second Division].

[37] *Id*. at 5.

[38] *Rollo,* pp. 53-54; Letter dated February 19, 2016 signed by Acting Director Julita M. Calderon of the Public Assistance Bureau and noted by Assistant Ombudsman Evelyn A. Baliton.

to discipline respondent under its "plenary disciplinary authority"[39] over members of the legal profession.[40]

Contrary to respondent's stance, Fuji's purported Affidavit of Desistance is not sufficient cause to dismiss this administrative complaint. This Court has previously held that proceedings of this nature cannot be "interrupted or terminated by reason of desistance, settlement, compromise, restitution, withdrawal of the charges or failure of the complainant to prosecute the same."[41] The primary object of disciplinary proceedings is to determine the fitness of a member to remain in the Bar. It is conducted solely for the public welfare,[42] and the desistance of the complainant is irrelevant. What will be decisive are the facts borne out by the evidence presented by the parties. In *Rayos-Ombac v. Rayos*:[43]

> A case of suspension or disbarment may proceed regardless of interest or lack of interest of the complainant. What matters is whether, on the basis of the facts borne out by the record, the charge of deceit and grossly immoral conduct has been duly proven. This rule is premised on the nature of disciplinary proceedings. A proceeding for suspension or disbarment is not in any sense a civil action where the complainant is a plaintiff and the respondent lawyer is a defendant. Disciplinary proceedings involve no private interest and afford no redress for private grievance. They are undertaken and prosecuted solely for the public welfare. They are undertaken for the purpose

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[39] *Bernardino v. Santos,* A.C. Nos. 10583 & 10584, February 18, 2015 < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/february2015/10583.pdf> 13 [Per *J.* Leonen, Second Division] citing *Zaldivar v. Sandiganbayan,* 248 Phil. 542 (1988) [*Per Curiam*, *En Banc*].

[40] *Bernardino v. Santos,* A.C. Nos. 10583 & 10584, February 18, 2015 < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/february2015/10583.pdf> 13 [Per *J.* Leonen, Second Division].

[41] *Ali v. Atty. Bubong,* 493 Phil. 172, 184 (2005) [*Per Curiam, En Banc*].

[42] *Bautista v. Atty. Bernabe,* 517 Phil. 236, 241 (2006) [Per *J.* Ynares-Santiago, First Division]; *De Vera v. Commissioner Pineda,* 288 Phil. 318, 328 (1992) [Per *J.* Padilla, *En Banc*].

[43] 349 Phil. 7 (1998) [Per *J.* Puno, *En Banc*].

of preserving courts of justice from the official ministration of persons unfit to practice in them. The attorney is called to answer to the court for his conduct as an officer of the court. The complainant or the person who called the attention of the court to the attorney's alleged misconduct is in no sense a party, and has generally no interest in the outcome except as all good citizens may have in the proper administration of justice.[44]

II

Respondent Dela Cruz claimed that she issued the formal charge against Fuji for overstaying on the basis of the Memorandum dated June 4, 2015 of the BI-MIS.[45] A copy of the Memorandum with attachments was attached to respondent's Comment.[46]

However, nowhere in the Memorandum was it stated that Fuji "overstayed" or that "Liang's working visa expired on 8 May 2013 and his TVV expired on 6 December 2013"[47] as respondent claims. Relevant portions of the Memorandum read:

For : ATTY. GEMMA ARMI M. DELA CRUZ
From : ACTING CHIEF, MIS DIVISION
Re : REQUEST FOR IMMIGRATION STATUS; VISA EXTENSION PAYMENT, LATEST TRAVEL AND DEROGATORY OF THE FOLLOWING:
1. MR./MS. LIANG FUJI
2. MR./MS. CHEN XIANG HE
3. MR./MS. JACKY CHANG HE
Date : 04 June 2015

Further to your request for verification of Immigration Status; Visa Extension Payment and TRAVEL RECORD/S, please find the result/s as follows:

. . . .

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[44] *Id*. at 15.

[45] *Id*. at 29.

[46] *Id*. at 74-102.

[47] *Id*. at 29.

Result/s : 1. LIANG FUJI
- Derogatory Record Not Found
- Latest Travel Record Found (Please see the attached files for your ready reference. NOTE: DOB: 18 October 1991)
- Immigration Status Found
- Latest Payment Record Found in BI-Main (Please see the attached files for your ready reference. NOTE: DOB: 18 October 1991)[48]

. . . .

The Memorandum merely transmitted copies of immigration records showing details of filing of applications, such as official receipts, — and travel record of Fuji. It was respondent Dela Cruz who made the determination that Fuji overstayed on the basis of the documents transmitted to her by the BI-MIS.

Among the documents transmitted by the BI-MIS were computer print-outs showing details of official receipts dated June 14, 2013, August 7, 2013, and November 19, 2013 for temporary visitor visa extension and official receipt dated July 15, 2013 for an application for change of immigration status. Also, the travel records of Fuji show the following details:

Date & Time : 4 June 2015 3:05 PM
Verifier : DIMARUCOT J
Database : **TRAVEL – ARRIVAL**

TRAVEL DATE	TRAVEL TIME	FLIGHT NO	IMMIG STATUS	PORT	OFFIC3ER	ACTION	REMARKS
10-FEBRUARY-2014	11:34PM	CZ377	9G	NAIA1	MIJARES	ALLOWED	
06-JANUARY-2012	11:51PM	CZ377	9A	NAIA1	PARANGUE	ALLOWED	
22-SEPTEMBER-2011	11:25PM	CZ377	9A	NAIA1	NUNEZ	ALLOWED[49]	

Fuji's travel records as of June 4, 2015 show his arrival in the Philippines on February 10, 2014 under a work visa

[48] *Id*. at 74.

[49] *Id*. at 83.

immigration status.[50] Simple prudence dictates that respondent Atty. Dela Cruz should have verified whether or not the July 15, 2013 application for change of status had been approved by the Bureau of Immigration Commissioners, especially since she had complete and easy access to the immigration records.

Respondent failed in the performance of her basic duties. Special prosecutors in the Bureau of Immigration should exercise such degree of vigilance and attention in reviewing the immigration records, whenever the legal status and documentation of an alien are at issue. For while a deportation proceeding does not partake of the nature of a criminal action, it is however, a harsh and extraordinary administrative proceeding affecting the freedom and liberty of a person.[51]

Respondent was expected to be reasonably thorough in her review of the documents transmitted to her by the BI-MIS, especially as it may ultimately result in the deprivation of liberty of the prospective deportee. She should not have simply relied on the handwritten note by a personnel from the BI-MIS at the bottom portion of the receipt dated November 19, 2013 for 9A visa extension stating "Valid until: 06-Dec-2013." Had she inquired further, she would have discovered that Fuji's application dated July 15, 2013 for conversion from temporary visitor visa (9A) to work visa (9G) was approved by the Board of Commissioners on November 21, 2013 — or one (1) year and seven (7) months earlier — with validity until April 30, 2016. Thus, even if Fuji's temporary visitor (9A) visa had expired on December 6, 2013 his stay in the country was still valid under the 9G work visa.

Generally, a lawyer who holds a government office may not be disciplined as a member of the Bar for misconduct in the

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[50] *Id.*

[51] *Domingo v. Scheer,* 466 Phil. 235, 271 (2004) [Per *J.* Callejo, Sr., Second Division] citing *Lao Gi v. Court of Appeals*, 259 Phil. 1247, 1254 (1989) [Per *J.* Gancayco, First Division].

discharge of her duties as a government official.[52] However, if said misconduct as a government official also constitutes a violation of her oath as a lawyer and the Code of Professional Responsibility,[53] then she may be subject to disciplinary sanction by this Court.

Atty. Dela Cruz failed to observe Rule 18.03 of the Code of the Professional Responsibility, which mandates that "a lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable." As a special prosecutor in the Bureau of Immigration, she is the representative, not of any private party, but of the State. Her task was to investigate and verify facts to determine whether a ground for deportation exists, and if further administrative action — in the form of a formal charge — should be taken against an alien.

Had respondent carefully reviewed the records of Fuji, she would have found out about the approval of Fuji's application, which would negate her finding of overstaying. Because of her negligence, Fuji was deprived of his liberty for almost eight (8) months, until his release on March 23, 2016.

Simple neglect of duty is defined as a failure to give attention to a task due to carelessness or indifference.[54] In this case, respondent's negligence shows her indifference to the fundamental right of every person, including aliens, to due process and to the consequences of her actions.

Lawyers in government service should be more conscientious with their professional obligations consistent with the time-

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[52] *Facturan v. Barcelona, Jr.,* A.C. No. 11069, June 8, 2016, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/june2016/11069.pdf> 4 [Per *J.* Perlas-Bernabe, First Division]; *Vitriolo v. Dasig,* A.C. No. 4984, April 1, 2003, 448 Phil.199, 207 (2003) [*Per Curiam, En Banc*].

[53] *Lim-Santiago v. Sagucio,* 520 Phil. 538, 551–552 (2006) [Per *J.* Carpio, *En Banc*].

[54] *Atty. Salumbides v. Office of the Ombudsman*, 633 Phil. 325, 339 (2010) [Per *J.* Carpio Morales, *En Banc*].

honored principle of public office being a public trust.[55] The ethical standards under the Code of Professional Responsibility are rendered even more exacting as to government lawyers because they have the added duty to abide by the policy of the State to promote a high standard of ethics, competence, and professionalism in public service.[56] In this case, respondent's negligence evinces a failure to cope with the strict demands and high standards of public service and the legal profession.

The appropriate sanction is discretionary upon this Court.[57] Under the Civil Service Rules,[58] the penalty for simple neglect of duty is suspension for one (1) month and one (1) day to six (6) months. In previous cases,[59] this Court imposed the penalty of suspension of three (3) months to six (6) months for erring lawyers, who were negligent in handling cases for their clients.

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[55] *Ramos v. Imbang,* 557 Phil. 507, 513 (2007) [*Per Curiam, En Banc*].

[56] *Far Eastern Shipping Co. v. Court of Appeals,* 357 Phil. 703, 723 (1998) [Per *J*. Regalado, *En Banc*]; Rep. Act No. 6713 (1989) or Code of Conduct and Ethical Standards for Public Officials and Employees, Sec. 4.

[57] *Uy v. Tansinsin,* 610 Phil. 709, 716 (2009) [Per *J*. Nachura, Third Division].

[58] CSC Res. No. 1101502 (2011) or the Revised Rules on Administrative Cases in the Civil Service, Rule 10, Sec. 46(D) provides:

Section 46. Classification of Offenses. – Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service.

. . . .

D. The following less grave offenses are punishable by suspension of one (1) month and one (1) day suspension to six (6) months for the first offense; and dismissal from the service for the second offense:

1. Simple Neglect of Duty[.]

[59] *See Layos v. Villanueva,* A.C. No. 8085, December 1, 2014, 743 SCRA 334 [Per *J*. Perlas-Bernabe, First Division]; *Penilla v. Alcid, Jr.,* 717 Phil. 210 (2013) [Per *J*. Villarama, Jr., First Division]; *Baldado v. Mejica,* 706 Phil. 1 (2013) [Per *J*. Villarama, Jr., First Division]*; Vda. de Enriquez v. San Jose,* 545 Phil. 379 (2007) [Per *J*. Quisumbing, Second Division]; *Perla Compania de Seguros, Inc. v. Saquilabon,* 337 Phil. 555 (1997) [Per *J*. Vitug, First Division].

We find appropriate the penalty of suspension of three (3) months considering the consequence of respondent's negligence. This suspension includes her desistance from performing her functions as a special prosecutor in the Bureau of Immigration.

WHEREFORE, respondent Atty. Gemma Armi M. Dela Cruz is **SUSPENDED** from the practice of law for three (3) months.

The respondent, upon receipt of this Resolution, shall immediately serve her suspension. She shall formally manifest to this Court that her suspension has started, and copy furnish all courts and quasi-judicial bodies where she has entered her appearance, within five (5) days upon receipt of this Resolution. Respondent shall also serve copies of her manifestation on all adverse parties in all the cases she entered her formal appearance.

Let a copy of this Resolution be furnished the Office of the Bar Confidant to be attached to Atty. Gemma Armi M. Dela Cruz's personal record. Copies of this Resolution should also be served on the Integrated Bar of the Philippines for its proper disposition, and the Office of the Court Administrator for circulation to all courts in the country.

SO ORDERED.

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

THIRD DIVISION

[A.C. No. 11346. March 8, 2017]

DR. BASILIO MALVAR, *complainant, vs.* **ATTY. CORA JANE P. BALEROS**, *respondent.*

SYLLABUS

1. **LEGAL ETHICS; 2004 RULES ON NOTARIAL PRACTICE (ADMINISTRATIVE MATTER NO. 02-8-13-SC); ASIDE FROM FORBIDDING NOTARIZATION WITHOUT THE PERSONAL PRESENCE OF THE AFFIANT, THE NOTARIAL RULES DEMAND THE SUBMISSION OF COMPETENT EVIDENCE OF IDENTITY; CASE AT BAR.—** A *jurat* as sketched in jurisprudence lays emphasis on the paramount requirements of the physical presence of the affiant as well as his act of signing the document before the notary public. The respondent indeed transgressed Section 2(b) of Rule IV of the Notarial Rules by affixing her official signature and seal on the notarial certificate of the affidavit contained in the Application for Certification of Alienable and Disposable Land in the absence of the complainant and for failing to ascertain the identity of the affiant. x x x The physical presence of the affiant ensures the proper execution of the duty of the notary public under the law to determine whether the former's signature was voluntarily affixed. Aside from forbidding notarization without the personal presence of the affiant, the Notarial Rules demands the submission of competent evidence of identity such as an identification card with photograph and signature which requirement can be dispensed with provided that the notary public personally knows the affiant.

2. **ID.; ID.; CASE LAW ECHOES THAT THE NON-PRESENTATION OF THE AFFIANT'S COMPETENT PROOF OF IDENTIFICATION IS PERMITTED IF THE NOTARY PUBLIC PERSONALLY KNOWS THE FORMER.—** The *jurat* is that end part of the affidavit in which the notary certifies that the instrument is sworn to before her, thus, making the notarial certification essential. x x x On the basis of the very definition of a *jurat* under Section 6 of Rule II of the Notarial Rules, case law echoes that the non-presentation of the affiant's competent proof of identification is permitted if the notary public personally knows the former. A '*jurat*' refers to an act in which an individual on a single occasion: (a) appears in person before the notary public and presents an instrument or document; (b) is **personally known to the notary public or identified by the notary public through competent evidence of identity**; (c) signs the instrument or document in the presence

of the notary; and (d) takes an oath or affirmation before the notary public as to such instrument or document.

3. **ID.; ID.; DELEGATING THE NOTARIAL FUNCTION OF RECORDING ENTRIES IN THE NOTARIAL REGISTER TO THE LAWYER'S STAFF IS A CLEAR CONTRAVENTION OF THE EXPLICIT PROVISION OF THE NOTARIAL RULES DICTATING THAT SUCH DUTY BE FULFILLED BY THE NOTARY PUBLIC HIMSELF; CASE AT BAR.—** It is axiomatic that notarization is not an empty, meaningless or routinary act. It is through the act of notarization that a private document is converted into a public one, making it admissible in evidence without need of preliminary proof of authenticity and due execution. "If the document or instrument does not appear in the notarial records and there is no copy of it therein, doubt is engendered that the document or instrument was not really notarized, so that it is not a public document and cannot bolster any claim made based on this document." The respondent's delegation of her notarial function of recording entries in her notarial register to her staff is a clear contravention of the explicit provision of the Notarial Rules dictating that such duty be fulfilled by her and not somebody else. This likewise violates Canon 9, Rule 9.01 of the CPR which provides that: A lawyer shall not delegate to any unqualified person the performance of any task which by law may only be performed by a member of the Bar in good standing.

4. **ID.; ID.; DERELICTION OF THE NOTARY PUBLIC'S DUTIES; IMPOSABLE PENALTIES.—** Failure to enter the notarial acts in one's notarial register, notarizing a document without the personal presence of the affiants and the failure to properly identify the person who signed the questioned document constitute dereliction of a notary public's duties which warrants the revocation of a lawyer's commission as a notary public. x x x Following jurisprudential precedents and as a reminder to notaries public that their solemn duties which are imbued with public interest are not to be taken lightly, the Court deems it proper to revoke the notarial register of the respondent if still existing and to disqualify her from appointment as a notary public for two (2) years. She is also suspended from the practice of law for six (6) months. Contrary to the complainant's proposition to have the respondent disbarred, the Court is of

the belief that her acts do not merit such a grave penalty and the sanctions so imposed suffice. The Court held in an array of cases that "removal from the Bar should not really be decreed when any punishment less severe — reprimand, temporary suspension or fine would accomplish the end desired."

APPEARANCES OF COUNSEL

Michael V. Nebrija for complainant.
Baleros Bilaoen and Salanga Law Offices for respondent.

D E C I S I O N

REYES, *J.*:

Before the Court is a complaint for disbarment[1] filed on June 30, 2014 by Dr. Basilio Malvar (complainant) against Atty. Cora Jane P. Baleros (respondent) for acts amounting to grave misconduct consisting of falsification of public document, violation of Administrative Matter No. 02-8-13-SC or the 2004 Rules on Notarial Practice (Notarial Rules) and the Code of Professional Responsibility (CPR).

Antecedent Facts

The complainant is the owner of a parcel of land located in Barangay Pagudpud, San Fernando City, La Union.[2] On January 7, 2011, the complainant executed a Deed of Absolute Sale[3] in favor of Leah Mallari (Mallari) over the said lot for the amount of Five Hundred Thousand Pesos (₱500,000.00). This transaction was acknowledged by the children of the complainant through a document denominated as Confirmation of Sale.[4]

The process of conveying the title of the lot in the name of Mallari spawned the legal tussle between the parties. According

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

[2] *Id.* at 118.

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

[4] *Id.* at 27.

to the complainant, an agreement was made between him and Mallari wherein he undertook to facilitate the steps in order to have the title of the lot transferred under Mallari's name.[5] However, without his knowledge and consent, Mallari who was not able to withstand the delay in the delivery of the title of the land sold to her allegedly filed an Application for Certification of Alienable and Disposable Land[6] as a preliminary step for the segregation and titling of the same before the Community Environment and Natural Resources Office of the Department of Environment and Natural Resources (DENR), San Fernando City, La Union using the complainant's name and signing the said application.[7] A civil case for collection of sum of money was instituted by Mallari before the Municipal Trial Court (MTC) of Aringay, La Union seeking reimbursement for the expenses she incurred by reason of the transfer and titling of the property she purchased.[8] A compromise agreement[9] was forged between the parties which failed because two out of the four checks issued by the complainant were unfunded.[10] This prompted Mallari to file a criminal case for violation of Batas Pambansa Bilang 22, otherwise known as The Bouncing Checks Law, against the complainant before the MTC of Aringay, La Union.[11]

Ultimately, a criminal case for falsification of public document against Mallari was filed before the Office of the Prosecutor and now pending before the Municipal Trial Court in Cities (MTCC) of San Fernando City, La Union, Branch 1.[12] The complainant alleged that it was through the conspiracy of Mallari and the respondent that the crime charged was consummated.[13]

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[5] *Id*. at 127.

[6] *Id*. at 92.

[7] *Id*. at 118.

[8] *Id*. at 55.

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

[10] *Id*. at 55-56.

[11] *Id*. at 56.

[12] *Id*. at 118.

[13] *Id*. at 119.

Notwithstanding the Office of the Prosecutor's determination that the evidence presented was insufficient to establish conspiracy between Mallari and the respondent, thereby dropping the latter's name from the indictment, the complainant remained unfazed and thus, initiated the present petition for disbarment seeking the imposition of disciplinary sanction against the respondent.[14] The complainant claimed that the respondent, by notarizing the assailed Application for Certification of Alienable and Disposable Land, made it appear that he executed the same when the truth of the matter was he never went to the office of the respondent for he was in Manila at the time of the alleged notarization and was busy performing his duties as a doctor.[15]

On August 19, 2014, the Commission on Bar Discipline (CBD) of the Integrated Bar of the Philippines (IBP) issued a Notice of Mandatory Conference[16] requiring both parties to appear before it on November 18, 2014. However, the scheduled mandatory conference was reset to December 2, 2014[17] where the complainant personally appeared while the respondent was represented by her attorney-in-fact and counsel.[18]

The complainant buttressed in his position paper that the respondent consummated the crime of falsification of public document as delineated under Article 171 of the Revised Penal Code and thus, the presumption of regularity in the notarization of the contested document has been overthrown and cannot work in her favor.[19] He recapped that he never appeared before the respondent to have the subject document notarized.[20] The complainant stressed that the respondent made a mockery of

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[14] *Id.*

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

[16] *Id.* at 30.

[17] *Id.* at 31.

[18] *Id.* at 33.

[19] *Id.* at 119.

[20] *Id.* at 120.

the Notarial Rules by notarizing the Application for Certification of Alienable and Disposable Land in his absence.

In her Position Paper,[21] the respondent refuted the allegations against her by narrating that Benny Telles, the complainant and his sons came to her office to have the subject document notarized and that she is certain as to the identity of the complainant.[22] Moreover, she argued that the charges filed against her were all part of the complainant's scheme to avoid his obligations to Mallari as the buyer of his lot.[23]

Ruling of the IBP

On June 15, 2015, Commissioner Maria Angela Esquivel (Commissioner Esquivel) found that the respondent was negligent in the performance of her duties as a notary public and violated the Notarial Rules, thereby recommending disciplinary imposition against her. The pertinent portion of the Report and Recommendation[24] reads:

> WHEREFORE, in view of the foregoing, it is hereby recommended that the Respondent's commission as a notary public be revoked; that she be disqualified for being a notary public for two (2) years with a stern warning that a repetition of similar offense shall be dealt with more severely.[25]

In a Resolution[26] dated June 20, 2015, the IBP Board of Governors adopted and approved Commissioner Esquivel's report and recommendation with modification, to wit:

> *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*

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

[22] *Id*. at 58.

[23] *Id*. at 94.

[24] *Id*. at 162-174.

[25] *Id*. at 173.

[26] *Id*. at 160-161.

made part of this Resolution as Annex "A", for failure of Respondent to observe due diligence in the performance of her duties and obligations as a Notary Public specifically Rule VI, Section 2 of the Notarial Law. Thus, [the respondent's] notarial commission, if presently commissioned, is immediately ***REVOKED.*** *Furthermore, [she] is* ***DISQUALIFIED from being commissioned as a Notary Public for two (2) years and SUSPENDED from the practice of law for six (6) months****.*[27] (Emphasis and italics in the original)

The Issues

Whether administrative liability should attach to the respondent by reason of the following acts alleged to have been committed by her:

1. Falsification of the Application for Certification of Alienable and Disposable Land;
2. Notarization of the aforesaid document in the absence of the complainant; and
3. Double Entries in the Notarial Registry.

Ruling of the Court

After a close scrutiny of the facts of the case, the Court finds no compelling reason to deviate from the resolution of the IBP Board of Governors.

With regard to the imputation of falsification of public document, the Court shall not inquire into the merits of the said criminal case pending adjudication before the MTCC and make a ruling on the matter. Commissioner Esquivel correctly declined to resolve the falsification case pending resolution before the regular court to which jurisdiction properly pertains. Though disbarment proceedings are *sui generis* as they belong to a class of their own and are distinct from that of civil or criminal actions, it is judicious for an administrative body like IBP-CBD not to pre-empt the course of action of the regular courts in order to avert contradictory findings.[28]

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[27] *Id*. at 160.

[28] *Tan v. IBP Commission on Bar Discipline,* 532 Phil. 605, 612 (2006).

The Court concurs with the conclusion of Commissioner Esquivel that the respondent violated several provisions of the Notarial Rules. The complainant insists that the Application for Certification of Alienable and Disposable Land was notarized sans his presence. An affidavit requiring a *jurat* which the respondent admittedly signed and notarized on August 18, 2010 forms part of the subject document. The *jurat* is that end part of the affidavit in which the notary certifies that the instrument is sworn to before her, thus, making the notarial certification essential.[29] The unsubstantiated claim of the respondent that the complainant appeared before her and signed the contested document in her presence cannot prevail over the evidence supplied by the complainant pointing that it was highly improbable if not impossible for him to appear before the respondent on the date so alleged that the subject document was notarized. The complainant furnished in his Sworn Judicial Affidavit submitted before the court patients' record cards showing that he attended to a number of them on August 18, 2010 in De Los Santos Medical Center, E. Rodriguez, Sr. Avenue, Quezon City.[30]

A *jurat* as sketched in jurisprudence lays emphasis on the paramount requirements of the physical presence of the affiant as well as his act of signing the document before the notary public.[31] The respondent indeed transgressed Section 2(b) of Rule IV of the Notarial Rules by affixing her official signature and seal on the notarial certificate of the affidavit contained in the Application for Certification of Alienable and Disposable Land in the absence of the complainant and for failing to ascertain the identity of the affiant. The thrust of the said provision reads:

SEC. 2. Prohibitions.

x x x x x x x x x

[29] *Bides-Ulaso v. Atty. Noe-Lacsamana,* 617 Phil. 1, 16 (2009).

[30] *Rollo*, pp. 153-157.

[31] *Bides-Ulaso v. Atty. Noe-Lacsamana*, *supra* note 29.

(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 through competent evidence of identity as defined by these Rules.

The physical presence of the affiant ensures the proper execution of the duty of the notary public under the law to determine whether the former's signature was voluntarily affixed.[32] Aside from forbidding notarization without the personal presence of the affiant, the Notarial Rules demands the submission of competent evidence of identity such as an identification card with photograph and signature which requirement can be dispensed with provided that the notary public personally knows the affiant. Competent evidence of identity under Section 12 of Rule II of the Notarial Rules is defined as follows:

Sec. 12. *Competent Evidence of Identity*. – The phrase "competent evidence of identity" refers to the identification of an individual based on:

a) at least one current identification document issued by an official agency bearing the photograph and signature of the individual; or

b) the oath or affirmation of one credible witness not privy to the instrument, document or transaction who is personally known to the notary public and who personally knows the individual, or of two credible witnesses neither of whom is privy to the instrument, document or transaction who each personally knows the individual and shows to the notary public documentary identification.

Granting that the complainant was present before the notary public at the time of the notarization of the contested document

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[32] *Anudon v. Cefra,* A.C. No. 5482, February 10, 2015, 750 SCRA 231, 241.

on August 18, 2010, the respondent remained unjustified in not requiring him to show a competent proof of his identification. She could have escaped administrative liability on this score if she was able to demonstrate that she personally knows the complainant. On the basis of the very definition of a *jurat* under Section 6 of Rule II of the Notarial Rules, case law echoes that the non-presentation of the affiant's competent proof of identification is permitted if the notary public personally knows the former.[33] A '*jurat*' refers to an act in which an individual on a single occasion: (a) appears in person before the notary public and presents an instrument or document; (b) is **personally known to the notary public or identified by the notary public through competent evidence of identity**; (c) signs the instrument or document in the presence of the notary; and (d) takes an oath or affirmation before the notary public as to such instrument or document.[34]

Further, the respondent displayed lack of diligence by the non-observance of the obligations imposed upon her under Section 2 of Rule VI of the Notarial Rules, to wit:

SEC. 2. *Entries in the Notarial Register*.

(a) **For every notarial act, the notary shall record in the notarial register at the time of notarization the following:**

(1) the entry number and page number;
(2) the date and time of day of the notarial act;
(3) the type of notarial act;
(4) the title or description of the instrument, document or proceeding;
(5) the name and address of each principal;
(6) the competent evidence of identity as defined by the Rules if the signatory is not personally known to the notary;
(7) the name and address of each credible witness swearing to or affirming the person's identity;
(8) the fee charged for the notarial act;

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[33] *Jandoquile v. Atty. Revilla, Jr.*, 708 Phil. 337, 341 (2013).

[34] *Id*.

(9) the address where the notarization was performed if not in the notary's regular place of business; and

(10) any other circumstance the notary public may deem of significance or relevance.

x x x x x x x x x

(e) **The notary public shall give to each instrument or document executed, sworn to, or acknowledged before him a number corresponding to the one in his register, and shall also state on the instrument or document the page/s of his register on which the same is recorded. No blank line shall be left between entries.**

x x x x x x x x x

(Emphasis ours)

The same notarial details were assigned by the respondent to two distinct documents. In an order of the MTCC where the criminal case for falsification of document was pending, Clerk of Court Atty. Raquel Estigoy-Andres (Atty. Estigoy-Andres) was directed to transmit the original document of the Application for Certification of Alienable and Disposable Land which was notarized by the respondent.[35] A similar order was issued by the MTCC requiring the DENR for the production of the impugned document.[36] The DENR issued a certification that despite diligent efforts they could not locate the said document but which they were certain was received by their office.[37] Meanwhile, upon Atty. Estigoy-Andres' certification,[38] it was discovered that as per the respondent's notarial register submitted to the Office of the Clerk of Court, Document No. 288, Page No. 59, Book No. LXXIII, Series of 2010 does not pertain to the Application for Certification of Alienable and Disposable Land but to a notarized document denominated as Joint Affidavit of Adjoining Owners[39] executed by Ricardo Sibayan and Cecilia

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[35] *Rollo*, p. 40.

[36] *Id*.

[37] *Id*. at 44.

[38] *Id*. at 42.

[39] *Id*. at 43.

Flores. Undoubtedly, the document entitled Application for Certification of Alienable and Disposable Land nowhere appears in the respondent's notarial register. The respondent further exposed herself to administrative culpability when she regretfully offered plain oversight as an excuse for the non-inclusion of the challenged document in her notarial register and by stating that it is her office staff who usually fills it up.

To reiterate, the respondent admitted having signed and notarized the Application for Certification of Alienable and Disposable Land but based from the foregoing, she indubitably failed to record the assailed document in her notarial book. It is axiomatic that notarization is not an empty, meaningless or routinary act. It is through the act of notarization that a private document is converted into a public one, making it admissible in evidence without need of preliminary proof of authenticity and due execution.[40] "If the document or instrument does not appear in the notarial records and there is no copy of it therein, doubt is engendered that the document or instrument was not really notarized, so that it is not a public document and cannot bolster any claim made based on this document."[41] The respondent's delegation of her notarial function of recording entries in her notarial register to her staff is a clear contravention of the explicit provision of the Notarial Rules dictating that such duty be fulfilled by her and not somebody else. This likewise violates Canon 9, Rule 9.01 of the CPR which provides that:

> A lawyer shall not delegate to any unqualified person the performance of any task which by law may only be performed by a member of the Bar in good standing.

In addition to the above charges, Commissioner Esquivel noted that the respondent failed to retain an original copy in her records and to submit the duplicate copy of the document to the Clerk of Court. However, in a previous case, the Court ruled that the requirement stated under Section 2(h) of Rule

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[40] *Agagon v. Atty. Bustamante*, 565 Phil. 581, 587 (2007).

[41] *Bernardo v. Atty. Ramos*, 433 Phil. 8, 16 (2002).

VI of the Notarial Rules applies only to an instrument acknowledged before the notary public and not to the present document which contains a *jurat.*[42] "A *jurat* is a distinct creature from an acknowledgment."[43] It is that part of an affidavit in which the notary certifies that before him or her, the document was subscribed and sworn to by the executor; while an acknowledgment is the act of one who has executed a deed in going before some competent officer or court and declaring it to be his act or deed.[44] Hence, no liability can be ascribed to the respondent relative to such ground.

The Court finds unacceptable the respondent's defiance of the Notarial Rules. Under the circumstances, the respondent should be made liable not only as a notary public who failed to discharge her duties as such but also as a lawyer who exhibited utter disregard to the integrity and dignity owing to the legal profession. The acts committed by the respondent go beyond being mere lapses in the fulfilment of her duties under the Notarial Rules, they comprehend a parallel breach of the CPR particularly Canon 9, Rule 9.01, Canon 1, Rule 1.01 which provides that "a lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct" and the Lawyer's Oath which amplifies the undertaking to do no falsehood and adhere to laws and the legal system being one of their primordial tasks as officers of the court. Given the evidentiary value accorded to notarized documents, the failure of the notary public to record the document in her notarial register corresponds to falsely making it appear that the document was notarized when, in fact, it was not.[45] It cannot be overemphasized that notaries public are urged to observe with utmost care and utmost fidelity

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[42] *Atty. Benigno T. Bartolome v. Atty. Christopher A. Basilio*, A.C. No. 10783, October 14, 2015.

[43] *Tigno v. Sps. Aquino*, 486 Phil. 254, 264 (2004).

[44] *In-N-Out Burger, Inc., v. Sehwani, Incorporated and/or Benita's Frites, Inc.*, 595 Phil. 1119, 1139 (2008).

[45] *See* Court Third Division Resolution dated February 8, 2010 in A.C. No. 8062 entitled *Gregorio Z. Robles v. Atty. Isagani M. Jungco*.

the basic requirements in the performance in the integrity of noratized deeds will be undermined.[46]

In a number of cases, the Court has subjected lawyers who were remiss in their duties as notaries public to disciplinary sanction. Failure to enter the notarial acts in one's notarial register, notarizing a document without the personal presence of the affiants and the failuare to properly identify the person who signed the questioned document constitute dereliction of a notary public's duties which warrants the revocation of a lawyer's commission as a notary public.[47] Upholding the role of notaries public in deterring illegal or immoral arrangenements, the Court in the case of *Dizon v. Atty. Cabucana, Jr*.[48] probitited the respondent for a period of two (2) years from being commissioned as a notary public for notarizing a compromise agreement without the presence of all the parties. In the case of *Atty. Benigno T. Bartolome v. Atty. Christopher A. Basilio*,[49] which factual miliue is similar to the present case, the Court meted out against therein respondent the penalty of revocation of notarial commission and disqualification for two (2) years from being appointed as a notary public and suspension for six (6) months from the practice of law due to various infringement of the Notarial Rules such as failure to record a notarized document in his notarial register and notarizing a document without the physical presence of the affiant.

Following jurisprudential precedents and as a remider to notaries public that their solemn duties which are imbued with public interest are not to be taken lightly, the Court deems it proper to revoke the notarial register of the respondent if still existing and to disqualify her from appointment as a notary public for two (2) years. She is also suspended from the practice of law for six (6) months. Contrary to the complainant's proposition

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[46] *Lee v. Atty. Tambago,* 586 Phil. 363, 375 (2008).

[47] *Agadan, et al. v. Atty. Kilaan,* 720 Phil. 625, 634 (2013).

[48] 729 Phil. 109 (2014).

[49] A.C. No. 10783, October 14, 2015.

to have the respondent disbarred, the Court is of the belief that her acts do not merit such a grave penalty and the sanctions so imposed suffice. The Court held in an array of cases that "removal from the Bar should not really be decreed when any punishment less severe — reprimand, temporary suspension or fine — would accomplish the end desired."[50]

WHEREFORE, respondent Atty. Cora Jane P. Baleros is **GUILTY** of violating the 2004 Rules on Notarial Practice, the Code of Professional Responsibility and the Lawyer's Oath. Her notarial commission, if still existing, is hereby **REVOKED**, and she is hereby **DISQUALIFIED** from reappointment as Notary Public for a period of two (2) years. She is likewise **SUSPENDED** from the practice of law for six (6) months effective immediately. Further, she is **WARNED** that a repetition of the same or similar acts in the future shall be dealt with more severely.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 188400. March 8, 2017]

MARIA TERESA B. TANI-DE LA FUENTE, *petitioner, vs.* **RODOLFO DE LA FUENTE, JR.,** *respondent.*

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[50] *Maria v. Atty. Cortez,* 685 Phil. 331, 339 (2012).

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

SYLLABUS

CIVIL LAW; FAMILY CODE; MARRIAGE; DECLARATION OF ABSOLUTE NULLITY OF MARRIAGE; PSYCHOLOGICAL INCAPACITY, AS A GROUND; BY THE NATURE OF ARTICLE 36 OF THE FAMILY CODE, THE COURTS, DESPITE HAVING THE ULTIMATE TASK OF DECISION-MAKING, MUST GIVE DUE REGARD TO EXPERT OPINION ON THE PSYCHOLOGICAL AND MENTAL DISPOSITION OF THE PARTIES; CASE AT BAR.— *Camacho-Reyes v. Reyes* states that the non-examination of one of the parties will not automatically render as hearsay or invalidate the findings of the examining psychiatrist or psychologist, since "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." *Marcos v. Marcos* emphasizes that *Molina* does not require a physician to examine a person and declare him/her to be psychologically incapacitated. What matters is that the totality of evidence presented establishes the party's psychological condition. Dr. Lopez's testimony, as corroborated by petitioner, sufficiently proved that respondent suffered from psychological incapacity. Respondent's paranoid personality disorder made him distrustful and prone to extreme jealousy and acts of depravity, incapacitating him to fully comprehend and assume the essential obligations of marriage. x x x By the very nature of Article 36, courts, despite having the ultimate task of decision-making, must give due regard to expert opinion on the psychological and mental disposition of the parties. The root cause of respondent's paranoid personality disorder was hereditary in nature as his own father suffered from a similar disorder. Dr. Lopez stated that respondent's own psychological disorder probably started during his late childhood years and developed in his early adolescent years. Dr. Lopez explained that respondent's psychological incapacity to perform his marital obligations was likely caused by growing up with a pathogenic parental model. Coercive control is a form of psychological abuse, which refers to a pattern of behavior meant to dominate a partner through different tactics such as physical and sexual violence, threats, emotional insults, and economic deprivation. Although not specifically named, coercive control as a form

of psychological abuse or harm has been recognized in Republic Act No. 9262 or the Anti-Violence Against Women and Children Act of 2004.

APPEARANCES OF COUNSEL

Rexie Efren A. Bugaring for petitioner.
Joel Joselito G. Parong for respondent.

D E C I S I O N

LEONEN, *J*.:

Psychological incapacity is a mental illness that leads to an inability to comply with or comprehend essential marital obligations.

This resolves the Petition for Review[1] filed by Maria Teresa B. Tani-De La Fuente (Maria Teresa) assailing the Court of Appeals Decision[2] and Resolution[3] dated August 29, 2008 and May 25, 2009, respectively, in CA-G.R. CV. No. 76243, which reversed the Decision[4] dated August 14, 2002 of Branch 107 of the Regional Trial Court of Quezon City in Civil Case No. Q-99-37829.

Petitioner Maria Teresa and respondent Rodolfo De La Fuente, Jr. (Rodolfo) first met when they were students at the University of Sto. Tomas. Soon thereafter, they became sweethearts.[5]

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[1] *Rollo,* pp. 12–35.

[2] *Id*. at 37-53. The Decision, docketed as CA-G.R. CV. No. 76243, was penned by Associate Justice Lucas P. Bersamin and concurred in by Associate Justices Estela M. Perlas-Bernabe and Ramon M. Bato, Jr. of the Seventeenth Division, Court of Appeals, Manila.

[3] *Id*. at 55-56. The Resolution was penned by Associate Justice Ramon M. Bato, Jr. and concurred in by Associate Justices Mariano C. Del Castillo and Estela M. Perlas-Bernabe of the Special Former Seventeenth Division, Court of Appeals, Manila.

[4] *Id*. at 82-95. The Decision was penned by Presiding Judge Rosalina L. Luna Pison.

[5] *Id*. at 83.

After graduating from college, Maria Teresa found work at the University of Sto. Tomas Treasurer's Office.[6] Meanwhile, Rodolfo, who was unable to finish his college degree, found continued employment at his family's printing press business.[7]

While they were still sweethearts, Maria Teresa already noticed that Rodolfo was an introvert and was prone to jealousy.[8] She also observed that Rodolfo appeared to have no ambition in life and felt insecure of his siblings, who excelled in their studies and careers.[9]

On June 21, 1984, Maria Teresa and Rodolfo got married in Mandaluyong City. They had two children: Maria Katharyn, who was born on May 23, 1985, and Maria Kimberly, who was born on April 6, 1986.[10]

Rodolfo's attitude worsened as they went on with their marital life. He was jealous of everyone who talked to Maria Teresa, and would even skip work at his family's printing press to stalk her.[11] Rodolfo's jealousy was so severe that he once poked a gun at his own 15-year old cousin who was staying at their house because he suspected his cousin of being Maria Teresa's lover.[12]

In addition, Rodolfo treated Maria Teresa like a sex slave. They would have sex four (4) or five (5) times a day.[13] At times, Rodolfo would fetch Maria Teresa from her office during her lunch break, just so they could have sex.[14] During sexual

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[6] *Id*. at 84.

[7] *Id*.

[8] *Id*.

[9] *Id*.

[10] *Id*.

[11] *Id*. at 85.

[12] *Id*.

[13] *Id*.

[14] *Id*.

intercourse, Rodolfo would either tie her to the bed or poke her with things.[15] Rodolfo also suggested that they invite a third person with them while having sex, or for Maria Teresa to have sex with another man in Rodolfo's presence.[16] Rodolfo's suggestions made Maria Teresa feel molested and maltreated.[17] Whenever Maria Teresa refused Rodolfo's advances or suggestions, he would get angry and they would quarrel.[18]

Maria Teresa sought the advice of a doctor, a lawyer, and a priest, as well as any person she thought could help her and Rodolfo.[19] Maria Teresa also suggested that she and Rodolfo undergo marriage counselling, but Rodolfo refused and deemed it as mere "*kalokohan*".[20]

Sometime in 1986, the couple quarrelled because Rodolfo suspected that Maria Teresa was having an affair.[21] In the heat of their quarrel, Rodolfo poked a gun at Maria Teresa's head. Maria Teresa, with their two (2) daughters in tow, left Rodolfo and their conjugal home after the gun-poking incident. Maria Teresa never saw Rodolfo again after that, and she supported their children by herself.[22]

On June 3, 1999, Maria Teresa filed a petition for declaration of nullity of marriage[23] before the Regional Trial Court of Quezon City. The case was initially archived because Rodolfo failed to file a responsive pleading.[24] Maria Teresa moved for the

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[15] *Id*. at 86.

[16] *Id*.

[17] *Id*.

[18] *Id*.

[19] *Id*.

[20] *Id*.

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

[22] *Id*. at 87.

[23] *Id*. at 151. Comment of the Office of the Solicitor General.

[24] *Id*. at 153.

revival of the Petition.[25] The trial court granted the motion and referred the case to the Office of the City Prosecutor for collusion investigation.[26] Assistant City Prosecutor Jocelyn S. Reyes found no collusion and recommended the trial of the case on the merits.[27]

Despite notice, Rodolfo failed to attend the scheduled pre-trial conference.[28] The pre-trial conference was declared closed and terminated, and Maria Teresa was allowed to present her evidence.[29]

Aside from Maria Teresa, Dr. Arnulfo V. Lopez (Dr. Lopez), a clinical psychologist, was presented as an expert witness.[30] Dr. Lopez testified that he conducted an in-depth interview with Maria Teresa to gather information on her family background and her marital life with Rodolfo, and subjected her to a battery of psychological tests.[31] Dr. Lopez also interviewed Rodolfo's best friend.[32]

After subjecting Maria Teresa to interviews and tests, Dr. Lopez concluded that Maria Teresa was not suffering from any severe mental disorder and had no indication of any organic or functional impairment.[33] Although Dr. Lopez found that Maria Teresa had an emotionally disturbed personality, he opined that this was not severe enough to constitute psychological incapacity.[34]

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[25] *Id*.

[26] *Id*.

[27] *Id*. at 83.

[28] *Id*.

[29] *Id*.

[30] *Id.* at 87.

[31] *Id*.

[32] *Id*.

[33] *Id*. at 88.

[34] *Id*.

Dr. Lopez affirmed that he sent Rodolfo a letter of invitation through registered mail.[35] After two (2) months, Rodolfo contacted Dr. Lopez and said, *"Doctor, ano ba ang pakialam niyo sa amin, hindi niyo naman ako kilala*." Dr. Lopez explained that he only wanted to hear Rodolfo's side of the story, but Rodolfo replied with, *"[I]nuulit ko doktor, wala kayong pakialam sa akin*."[36]

Dr. Lopez diagnosed Rodolfo with "paranoid personality disorder manifested by [Rodolfo's] damaging behavior like reckless driving and extreme jealousy; his being distrustful and suspicious; his severe doubts and distrust of friends and relatives of [Maria Teresa]; his being irresponsible and lack of remorse; his resistance to treatment; and his emotional coldness and severe immaturity."[37]

Dr. Lopez stated that Rodolfo's disorder was one of the severe forms of personality disorder, even more severe than the other personality disorders like borderline and narcissistic personality disorders.[38] Dr. Lopez explained that Rodolfo's personality disorder was most probably caused by a pathogenic parental model.[39] Rodolfo's family background showed that his father was a psychiatric patient, and Rodolfo might have developed psychic contamination called double insanity, a symptom similar to his father's.[40] Dr. Lopez further claimed that Rodolfo's disorder was serious and incurable because of his severe paranoia.[41]

Dr. Lopez recommended that Maria Teresa and Rodolfo's marriage be annulled due to Rodolfo's incapacity to perform his marital obligations.[42]

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[35] *Id*.

[36] *Id*.

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

[38] *Id*. at 89.

[39] *Id*.

[40] *Id*.

[41] *Id*.

[42] *Id*. at 90.

Summons was served upon Rodolfo but he did not file any responsive pleading.[43] He likewise did not appear during the pre-trial conference.[44] He was given a specific date to present evidence but he still failed to appear.[45] The trial court eventually deemed his non-appearance as a waiver of his right to present evidence.[46]

On June 26, 2002, the trial court directed the Office of the Solicitor General to submit its comment on Maria Teresa's formal offer of evidence.[47] The Office of the Solicitor General was also directed to submit its certification.[48] The Office of the Solicitor General, however, failed to comply with the trial court's orders; thus, the case was submitted for decision without the certification and comment from the Office of the Solicitor General.[49]

On August 14, 2002, the trial court promulgated its Decision[50] granting the petition for declaration of nullity of marriage.

While Dr. Lopez was not able to personally examine Rodolfo, the trial court gave credence to his findings as they were based on information gathered from credible informants. The trial court held that the marriage between Maria Teresa and Rodolfo should be declared null and void because "[Rodolfo's] psychological incapacity [was] grave, serious and incurable."[51] The dispositive portion of the trial court's decision reads:

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[43] *Id.*

[44] *Id.*

[45] *Id.*

[46] *Id.*

[47] *Id.* at 41.

[48] *Id.*

[49] *Id.*

[50] *Id.* at 82-95.

[51] *Id.* at 93.

WHEREFORE IN VIEW OF THE FOREGOING, judgment is hereby rendered, to wit:

(1) Declaring the marriage of petitioner, MARIA TERESA B. TANI DE LA FUENTE to respondent, RODOLFO DE LA FUENTE, JR. null and void on the ground of respondent's psychological incapacity pursuant to Article 36 of the Family Code. Their conjugal partnership (sic) property relations is hereby dissolved. There being no mention of properties acquired by the parties, no pronouncement as to its liquidation and partition is hereby made;

(2) Their children, Maria Katharyn and Maria Kimberly, both surnamed De la Fuente shall remain legitimate. They shall remain in the custody of the petitioner.

(3) Both parties must support their children. There being no evidence presented as to the capability of the respondent to give support, no pronouncement is hereby made in the meantime;

(4) Henceforth, the petitioner shall be known by her maiden name, TANI.

Let copies of this Decision be furnished the Local Civil Registrars of Quezon City and Mandaluyong City where the marriage was celebrated upon the finality of this Decision.

SO ORDERED.[52] (Emphasis in the original)

On August 20, 2002, the Office of the Solicitor General filed a motion for reconsideration.[53] The Office of the Solicitor General explained that it was unable to submit the required certification because it had no copies of the transcripts of stenographic notes.[54] It was also unable to inform the trial court of its lack of transcripts due to the volume of cases it was handling.[55]

On September 13, 2002, the trial court denied the motion for reconsideration, with the dispositive portion reading:

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

[53] *Id*. at 42.

[54] *Id*.

[55] *Id*.

WHEREFORE, considering the foregoing, the Motion for Reconsideration filed by the Office of the Solicitor General is hereby deemed moot and academic.

This Court would like to call the attention of the Office of the Solicitor General that this case was filed on June 3, 1999 and there should be no more delay in the disposition of the case.[56]

The Office of the Solicitor General filed an appeal before the Court of Appeals.[57] It argued that the trial court erred a) in deciding the case without the required certification from the Office of the Solicitor General,[58] and b) in giving credence to Dr. Lopez's conclusion of Rodolfo's severe personality disorder. It held that Dr. Lopez's finding was based on insufficient data and did not follow the standards set forth in the *Molina* case.[59]

The Court of Appeals granted[60] the Office of the Solicitor General's appeal.

The Court of Appeals ruled that the testimony of Dr. Lopez was unreliable for being hearsay, thus, the trial court should not have given it weight.[61] The Court of Appeals also disagreed with Dr. Lopez's finding that Rodolfo's behavior descended from psychological illness contemplated under Article 36 of the Family Code.[62]

In addition, the Court of Appeals emphasized that Maria Teresa's admission that she married Rodolfo with the belief that he would change, and that they were in a relationship for five (5) years before getting married, showed that they were in good terms during the early part of their marriage. It also negated

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[56] *Id*.

[57] *Id*.

[58] *Id*.

[59] *Id*. at 83.

[60] *Id*. at 37-53.

[61] *Id*. at 50.

[62] *Id*. at 51.

her claim that Rodolfo's psychological defect existed at the time of the celebration of their marriage, and that it deprived him of the ability to assume the essential duties of marriage.[63] The dispositive portion of the Court of Appeals decision reads:

WHEREFORE, the **DECISION DATED AUGUST 14, 2002** is **REVERSED** and the petition for declaration of nullity of the marriage of the parties is **DISMISSED**.

SO ORDERED.[64] (Emphasis in the original)

Maria Teresa moved for reconsideration[65] but this was denied by the Court of Appeals in its Resolution[66] dated May 25, 2009.

On July 24, 2009, Maria Teresa filed a Petition for Review on *Certiorari*.[67]

Petitioner argued that based on current jurisprudence, trial courts had a wider discretion on whether expert opinion was needed to prove psychological incapacity.[68] Petitioner further argued that for as long as the trial court had basis in concluding that psychological incapacity existed, such conclusion should be upheld.[69]

Rodolfo filed a Comment[70] stating that he was not opposing Maria Teresa's Petition since "[h]e firmly believes that there is in fact no more sense in adjudging him and petitioner as married."[71]

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[63] *Id*. at 52.

[64] *Id*.

[65] *Id*. at 64-71.

[66] *Id*. at 55-56.

[67] *Id*. at 12-35.

[68] *Id*. at 28.

[69] *Id*.

[70] *Id*. at 104-105.

[71] *Id*. at 104.

The Office of the Solicitor General, in its Comment,[72] agreed that a physician was not required to declare a person psychologically incapacitated but emphasized that the evidence presented must be able to adequately prove the presence of a psychological condition. The Office of the Solicitor General maintained that Maria Teresa was unable to sufficiently prove Rodolfo's alleged psychological incapacity.[73]

The Office of the Solicitor General pointed out that Dr. Lopez's psychological report stated that his assessment was based on interviews he made with petitioner and two (2) of the parties' common friends. However, Dr. Lopez did not name the two (2) common friends in the report.[74] Furthermore, during trial, Dr. Lopez testified that he only interviewed petitioner and Rodolfo's best friend, not two (2) friends as indicated in his report.[75] The Office of the Solicitor General insisted that the finding of Rodolfo's psychological incapacity should be dismissed as hearsay as it was based solely on information given by petitioner to Dr. Lopez.[76]

The only issue raised for the resolution of this Court is whether the Court of Appeals erred in denying the Petition for Declaration of Nullity of Marriage because petitioner's evidence was insufficient to prove that Rodolfo was psychologically incapacitated to fulfill his marital obligations.

The Petition is granted.

The 1995 case of *Santos v. Court of Appeals*[77] was the first case that attempted to lay down the standards for determining psychological incapacity under Article 36 of the Family Code. *Santos* declared that "psychological incapacity must be

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[72] *Id*. at 149-184.

[73] *Id*. at 164.

[74] *Id*. at 168.

[75] *Id*.

[76] *Id*.

[77] 310 Phil. 21 (1995) [Per *J*. Vitug*, En Banc*].

characterized by (a) gravity, (b) juridical antecedence, and (c) incurability."[78] Furthermore, the incapacity "should refer to no less than a mental (not 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[.]"[79]

Two (2) years later, *Republic v. Court of Appeals and Molina,*[80] provided the guidelines to be followed when interpreting and applying Article 36 of the Family Code:

(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 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

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[78] *Id*. at 39.

[79] *Id*. at 40.

[80] 335 Phil. 664 (1997) [Per *J*. Panganiban, *En Banc*].

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. Hence, a pediatrician may be effective in diagnosing illnesses of children and prescribing medicine to cure them but may not be psychologically capacitated to procreate, bear and raise his/her own children as an essential obligation of marriage.

(5) Such illness must be *grave* enough to bring about the disability of the party to assume the essential obligations of marriage. Thus, "mild characterological 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. It is clear that Article 36 was taken by the Family Code Revision Committee

from Canon 1095 of the New Code of Canon Law, which became effective in 1983 and which provides:

> "The following are incapable of contracting marriage: Those who are unable to assume the essential obligations of marriage due to causes of psychological nature."

Since the purpose of including such provision in our Family Code is to harmonize our civil laws with the religious faith of our people, it stands to reason that to achieve such harmonization, great persuasive weight should be given to decisions of such appellate tribunal. Ideally – subject to our law on evidence – what is decreed as canonically invalid should also be decreed civilly void.

This is one instance where, in view of the evident source and purpose of the Family Code provision, contemporaneous religious interpretation is to be given persuasive effect. Here, the State and the Church – while remaining independent, separate and apart from each other – shall walk together in synodal cadence towards the same goal of protecting and cherishing marriage and the family as the inviolable base of the nation.

(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.[81] (Emphasis in the original)

Contrary to the ruling of the Court of Appeals, we find that there was sufficient compliance with *Molina* to warrant the nullity of petitioner's marriage with respondent. Petitioner was able to discharge the burden of proof that respondent suffered from psychological incapacity.

The Court of Appeals chided the lower court for giving undue weight to the testimony of Dr. Lopez since he had no chance

[81] *Id*. at 676-680.

to personally conduct a thorough study and analysis of respondent's mental and psychological condition. The Court of Appeals cited *Republic v. Dagdag*,[82] where this Court held that "the root cause of psychological incapacity must be medically or clinically identified and sufficiently proven by experts."[83] The Court of Appeals then ruled that "[o]bviously, this requirement is not deemed complied with where no psychiatrist or medical doctor testifies on the alleged psychological incapacity of one party."[84]

The Court of Appeals is mistaken.

Camacho-Reyes v. Reyes[85] states that the non-examination of one of the parties will not automatically render as hearsay or invalidate the findings of the examining psychiatrist or psychologist, since "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."[86]

Marcos v. Marcos[87] emphasizes that *Molina* does not require a physician to examine a person and declare him/her to be psychologically incapacitated. What matters is that the totality of evidence presented establishes the party's psychological condition.[88]

Dr. Lopez's testimony, as corroborated by petitioner, sufficiently proved that respondent suffered from psychological incapacity. Respondent's paranoid personality disorder made him distrustful and prone to extreme jealousy and acts of depravity, incapacitating him to fully comprehend and assume the essential obligations of marriage. As the trial court found:

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[82] 404 Phil. 249 (2001) [Per *J.* Quisumbing, Second Division].

[83] *Rollo,* p. 50.

[84] *Id*.

[85] 642 Phil. 602 (2010) [Per *J.* Nachura, Second Division].

[86] *Id*. at 627.

[87] 397 Phil. 840 (2000) [Per *J.* Panganiban, Third Division].

[88] *Id*. at 850.

Dr. Lopez testified that he arrived at his conclusion of respondent'[s] personality by taking into consideration the psychological impression and conclusion he gathered from the analysis of the different behaviors he manifested during the time that he and petitioner were living together. According to him, under the Diagnostic Statistical Manual, he found the respondent to be suffering from a paranoid personality disorder manifested by the respondent's damaging behavior like reckless driving and extreme jealousy; his being distrustful and suspicious; his severe doubts and distrust of friends and relatives of the petitioner; his being irresponsible and lack of remorse; his resistance to treatment; and his emotional coldness and severe immaturity. He also testified that this kind of disorder is actually one of the severe forms of personality disorder even more severe than the other personality disorders like the borderline and narcissistic personality disorders.

As to the *root cause*, [h]e explained that this must have been caused by a pathogenic parental model. As he investigated the family background of the respondent, Dr. Lopez discovered that his father was a psychiatric patient such that the respondent developed a similar symptom or psychic contamination which is called double insanity. This, according to Dr. Lopez is usually developed among close family members, bestfriends (sic), sweethearts and even couples who are close to one another; that people close to one another get psychically contaminated; that surprisingly, the symptom that the father manifested is the same as those of the respondent. The said disorder started during respondent's late childhood years and developed in his early adolescent years.

He further testified that this disorder is very severe, serious and incurable because of the severe paranoia of the patient; that patients with this kind of personality disorder could never accept that there is something wrong with them and if ever forced to seek treatment, they would rather engage in an intellectual battle with the therapist rather than cooperate with them.

Dr. Lopez concluded that because of respondent's personality disorder, he is incapacitated to perform his marital obligations of giving love, respect, and support to the petitioner. He recommends that the marriage be annulled.[89] (Emphasis supplied)

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[89] *Rollo*, pp. 88-90.

By the very nature of Article 36, courts, despite having the ultimate task of decision-making, must give due regard to expert opinion on the psychological and mental disposition of the parties.[90]

The root cause of respondent's paranoid personality disorder was hereditary in nature as his own father suffered from a similar disorder. Dr. Lopez stated that respondent's own psychological disorder probably started during his late childhood years and developed in his early adolescent years. Dr. Lopez explained that respondent's psychological incapacity to perform his marital obligations was likely caused by growing up with a pathogenic parental model.

The juridical antecedence of respondent's psychological incapacity was also sufficiently proven during trial. Petitioner attested that she noticed respondent's jealousy even before their marriage, and that he would often follow her to make sure that she did not talk to anyone or cheat on him.[91] She believed that he would change after they got married;[92] however, this did not happen. Respondent's jealousy and paranoia were so extreme and severe that these caused him to poke a gun at petitioner's head.[93]

The incurability and severity of respondent's psychological incapacity were likewise discussed by Dr. Lopez. He vouched that a person with paranoid personality disorder would refuse to admit that there was something wrong and that there was a need for treatment. This was corroborated by petitioner when she stated that respondent repeatedly refused treatment. Petitioner consulted a lawyer, a priest, and a doctor, and suggested couples counselling to respondent; however, respondent refused all of her attempts at seeking professional help. Respondent also refused to be examined by Dr. Lopez.

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[90] *Halili v. Santos-Halili,* 607 Phil. 1, 4 (2009) [Per *J.* Corona, Special First Division].

[91] *Rollo,* p. 85.

[92] *Id.* at 84.

[93] *Id.* at 87.

Article 68 of the Family Code obligates the husband and wife "to live together, observe mutual love, respect and fidelity, and render mutual help and support." In this case, petitioner and respondent may have lived together, but the facts narrated by petitioner show that respondent failed to, or could not, comply with the obligations expected of him as a husband. He was even apathetic that petitioner filed a petition for declaration of nullity of their marriage.

This Court also noticed respondent's repeated acts of harassment towards petitioner, which show his need to intimidate and dominate her, a classic case of coercive control. At first, respondent only inflicted non-physical forms of mistreatment on petitioner by alienating her from her family and friends due to his jealousy, and stalking her due to his paranoia. However, his jealousy soon escalated into physical violence when, on separate instances, he poked a gun at his teenage cousin, and at petitioner.

Coercive control is a form of psychological abuse, which refers to a pattern of behavior meant to dominate a partner through different tactics such as physical and sexual violence, threats, emotional insults, and economic deprivation.[94] Although not specifically named, coercive control as a form of psychological abuse or harm has been recognized in Republic Act No. 9262 or the Anti-Violence Against Women and Children Act of 2004:

SECTION 3. Definition of Terms. – As used in this Act,

(a) "Violence against women and their children" refers to any act or a series of acts committed by any person against a woman who is his wife, former wife, or against a woman with whom the person has or had a sexual or dating relationship, or with whom he has a common child, or against her child whether legitimate or illegitimate, within or without the family abode, which result in or is likely to result in physical, sexual, psychological harm or suffering, or economic abuse including threats of such acts, battery, assault, coercion, harassment

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[94] Kuennen, Tamara L. *Analyzing the Impact of Coercion on Domestic Violence Victims: How Much is Too Much?,* 22 BERKELEY JOURNAL OF GENDER, LAW & JUSTICE 8 (2013).

or arbitrary deprivation of liberty. It includes, but is not limited to, the following acts:

> . . . .
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> C. "Psychological violence" refers to acts or omissions causing or likely to cause mental or emotional suffering of the victim such as but not limited to intimidation, harassment, stalking, damage to property, public ridicule or humiliation, repeated verbal abuse and mental infidelity. It includes causing or allowing the victim to witness the physical, sexual or psychological abuse of a member of the family to which the victim belongs, or to witness pornography in any form or to witness abusive injury to pets or to unlawful or unwanted deprivation of the right to custody and/or visitation of common children.

Respondent's repeated behavior of psychological abuse by intimidating, stalking, and isolating his wife from her family and friends, as well as his increasing acts of physical violence, are proof of his depravity, and utter lack of comprehension of what marriage and partnership entail. It would be of utmost cruelty for this Court to decree that petitioner should remain married to respondent. After she had exerted efforts to save their marriage and their family, respondent simply refused to believe that there was anything wrong in their marriage. This shows that respondent truly could not comprehend and perform his marital obligations. This fact is persuasive enough for this Court to believe that respondent's mental illness is incurable.

In granting the petition and declaring void the marriage of Maria Teresa and Rodolfo, this Court reiterates the pronouncement we made in an opinion in *Mallilin v. Jamesolamin:*[95]

> Our choices of intimate partners define us – inherent ironically in our individuality. Consequently, when the law speaks of the nature, consequences, and incidents of marriage governed by law, this refers to responsibility to children, property relations, disqualifications, privileges, and other matters limited to ensuring the stability of society.

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[95] G.R. No. 192718, February 18, 2015, 751 SCRA 1 [Per *J*. Mendoza, Second Dvision].

The state's interest should not amount to unwarranted intrusions into individual liberties.

Since the State's interest must be toward the stability of society, the notion of psychological incapacity should not only be based on a medical or psychological disorder, but should consist of the inability to comply with essential marital obligations such that public interest is imperiled.[96]

Lastly, this Court takes note of *Ngo Te v. Gutierrez Yu Te*'s observation that a straitjacket application of the *Molina* guidelines "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."[97] Ironically, the ultimate effect of such stringent application of the *Molina* guidelines is the perversion of the family unit, the very institution that our laws are meant to protect.

WHEREFORE, premises considered, the Petition is **GRANTED**. The marriage of Maria Teresa Tani-De La Fuente and Rodolfo De La Fuente is declared **NULL and VOID**. The Decision and Resolution of the Court of Appeals dated August 29, 2008 and May 25, 2009, respectively, in CA-G.R. CV. No. 76243 are **REVERSED** and **SET ASIDE**. The Decision dated August 14, 2002 of Branch 107, Regional Trial Court of Quezon City in Civil Case No. Q-99-37829 is **REINSTATED**.

SO ORDERED.

Carpio (Chairperson), Leonardo-de Castro, Peralta, and *Mendoza, JJ.,* concur.

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[96] Dissenting Opinion of *J.* Leonen in *Mallilin v. Jamesolamin,* G.R. No.192718, February 18, 2015, 751 SCRA 1, 46 [Per *J.* Mendoza, Second Division].

[97] *Ngo Te v. Gutierrez Yu-Te,* 598 Phil. 666, 696 (2009) [Per *J.* Nachura, Third Division].

THIRD DIVISION

[G.R. No. 188681. March 8, 2017]

FRANCISCO T. BACULI, *petitioner, vs.* **OFFICE OF THE PRESIDENT,** *respondent.*

[G.R. No. 201130. March 8, 2017]

THE SECRETARY OF AGRARIAN REFORM, and THE REGIONAL DIRECTOR OF AGRARIAN REFORM, REGION 2, *petitioners, vs.* **FRANCISCO T. BACULI,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; THE CIVIL SERVICE DECREE OF THE PHILIPPINES (PRESIDENTIAL DECREE NO. 807); ADMINISTRATIVE CASES AGAINST NON-PRESIDENTIAL APPOINTEES; PRESIDENTIAL APPOINTEES COME UNDER THE DIRECT DISCIPLINING AUTHORITY OF THE PRESIDENT PURSUANT TO THE WELL-SETTLED PRINCIPLE THAT, IN THE ABSENCE OF A CONTRARY LAW, THE POWER TO REMOVE OR TO DISCIPLINE IS LODGED IN THE SAME AUTHORITY IN WHOM THE POWER TO APPOINT IS VESTED; THE SECRETARY OF THE DEPARTMENT OF AGRARIAN REFORM (DAR) HAS NO DISCIPLINARY JURISDICTION OVER A PRESIDENTIAL APPOINTEE.—** Section 38(a) of Presidential Decree No. 807 has drawn a definite distinction between subordinate officers or employees who were presidential appointees, on the one hand, and subordinate officers or employees who were non-presidential appointees, on the other. Without a doubt, substantial distinctions that set apart presidential appointees from non-presidential appointees truly existed. For one, presidential appointees come under the direct disciplining authority of the President pursuant to the well-settled principle that, in the absence of a contrary law, the power to remove or to discipline is lodged in the same authority in whom the power to appoint is vested. Having the power to remove or to discipline

presidential appointees, therefore, the President has the corollary authority to investigate them and look into their conduct in office. Thus, Baculi, as a presidential appointee, came under the disciplinary jurisdiction of the President in line with the principle that the "power to remove is inherent in the power to appoint." As such, the DAR Secretary held no disciplinary jurisdiction over him. Verily, Presidential Decree No. 807 has expressly specified the procedure for disciplinary actions involving presidential appointees.

2. **ID.; ID.; ID.; ID.; THE REPORT RENDERED BY THE REGIONAL INVESTIGATING COMMITTEE OF THE DEPARTMENT OF AGRARIAN REFORM (DAR--RIC) DECLARED VALID AS THERE WAS NO LAW OR ADMINISTRATIVE ISSUANCE BARRING THE DAR-RIC FROM CONDUCTING ITS OWN INVESTIGATION OF A POLITICAL APPOINTEE WHEN THERE WAS NO COMPLAINT BEING FIRST FILED AGAINST HIM.—** [D]AR General Memorandum Order No. 5, Series of 1990, whose pertinent text expressly vested in the DAR's Office of Legal Affairs the authority to investigate administrative complaints against presidential appointees, presupposed the *actual existence* of the administrative complaints. In respect of Baculi, however, there was yet no administrative complaint when the DAR-RIC conducted its investigation. Such administrative complaint came to exist only when Secretary Garilao brought the formal charge for gross dishonesty, abuse of authority, grave misconduct and conduct prejudicial to the best interest of the service. Such formal charge became the administrative complaint contemplated by law. As a consequence, the DAR-RIC's investigation was separate and apart from the investigation that the DAR Office of Legal Affairs could have conducted once a formal charge had been initiated. In the absence of a law or administrative issuance barring the DAR-RIC from conducting its own investigation of Baculi even when there was no complaint being first filed against him, the eventual report rendered after investigation was valid.

3. **ID.; ID.; ID.; DOCTRINE OF QUALIFIED POLITICAL AGENCY; ALTHOUGH THE POWERS AND FUNCTIONS OF THE CHIEF EXECUTIVE HAVE BEEN EXPRESSLY REPOSED BY THE CONSTITUTION IN THE PRESIDENT OF THE PHILIPPINES, IT WOULD BE UNNATURAL TO**

EXPECT THE PRESIDENT TO PERSONALLY EXERCISE AND DISCHARGE ALL SUCH POWERS AND FUNCTIONS; THUS, THE EXERCISE AND DISCHARGE OF MOST OF THESE POWERS AND FUNCTIONS HAVE BEEN DELEGATED TO OTHERS, PARTICULARLY TO THE MEMBERS OF THE CABINET, CONFORMABLY TO THE DOCTRINE OF QUALIFIED POLITICAL AGENCY.— [I]t was of no moment to the validity and efficacy of the dismissal that only Acting Deputy Executive Secretary for Legal Affairs Gaite had signed and issued the order of dismissal. In so doing, Acting Deputy Executive Secretary Gaite neither exceeded his authority, nor usurped the power of the President. Although the powers and functions of the Chief Executive have been expressly reposed by the Constitution in one person, the President of the Philippines, it would be unnatural to expect the President to personally exercise and discharge all such powers and functions. Somehow, the exercise and discharge of most of these powers and functions have been delegated to others, particularly to the members of the Cabinet, conformably to the doctrine of qualified political agency. Accordingly, we have expressly recognized the extensive range of authority vested in the Executive Secretary or the Deputy Executive Secretary as an official who ordinarily acts for and in behalf of the President. As such, the decisions or orders emanating from the Office of the Executive Secretary are attributable to the Executive Secretary even if they have been signed only by any of the Deputy Executive Secretaries. Given the foregoing, the dismissal of Baculi through the order of June 25, 2003, being by authority of the President, was entitled to full faith and credit as an act of the President herself.

4. **ID.; ID.; ID.; PREVENTIVE SUSPENSION; KINDS; NATURE OF PREVENTIVE SUSPENSION PENDING INVESTIGATION, EXPLAINED.—** By law, Baculi should have been automatically reinstated at the end of the 90-day period of his preventive suspension because his case was not finally decided within the said period. We have to point out that preventive suspension is of two kinds. The first is the preventive suspension pending investigation, and the second is the preventive suspension pending appeal where the penalty imposed by the disciplining authority is either suspension or dismissal but after review the respondent official or employee is exonerated. The nature of preventive suspension pending

investigation has been explained in the following manner: x x x Preventive suspension pending investigation is not a penalty. It is a measure intended to enable the disciplining authority to investigate charges against respondent by preventing the latter from intimidating or in any way influencing witnesses against him. If the investigation is not finished and a decision is not rendered within that period, the suspension will be lifted and the respondent will automatically be reinstated. If after investigation, respondent is found innocent of the charges and is exonerated, he should be reinstated.

5. **ID.; ID.; ID.; IF THE PROPER DISCIPLINARY AUTHORITY DOES NOT FINALLY DECIDE THE ADMINISTRATIVE CASE WITHIN A PERIOD OF 90 DAYS FROM THE START OF PREVENTIVE SUSPENSION PENDING INVESTIGATION, AND THE RESPONDENT IS NOT A PRESIDENTIAL APPOINTEE, THE PREVENTIVE SUSPENSION IS LIFTED AND THE RESPONDENT IS AUTOMATICALLY REINSTATED IN THE SERVICE; IN THE CASE OF PRESIDENTIAL APPOINTEES, THE PREVENTIVE SUSPENSION PENDING INVESTIGATION SHALL BE FOR A REASONABLE TIME AS THE CIRCUMSTANCES OF THE CASE MAY WARRANT, BUT THERE SHALL BE NO INDEFINITE SUSPENSION PENDING INVESTIGATION, WHETHER THE RESPONDENT OFFICIALS ARE PRESIDENTIAL OR NON-PRESIDENTIAL APPOINTEES.—** Preventive suspension pending investigation is not violative of the Constitution because it is not a penalty. It is authorized by law whenever the charge involves dishonesty, oppression or grave misconduct, or neglect in the performance of duty, or whenever there are reasons to believe that the respondent is guilty of charges that would warrant removal from the service. If the *proper disciplinary authority* does not finally decide the administrative case within a period of 90 days from the start of preventive suspension pending investigation, *and the respondent is not a presidential appointee*, the preventive suspension is lifted and the respondent is "automatically reinstated in the service." In the case of presidential appointees, the preventive suspension pending investigation shall be "for a reasonable time as the circumstances of the case may warrant." Nonetheless, there shall be no indefinite suspension pending investigation, *whether the respondent officials are presidential or non-presidential appointees*. The

law abhors indefinite preventive suspension because the indefiniteness violates the constitutional guarantees under the due process and equal protection clauses, as well as the right of public officers and employees to security of tenure.

6. **ID.; ID.; ID.; REINSTATEMENT OF RESPONDENT AND PAYMENT OF HIS BACK SALARIES, WARRANTED.—** [W]e hold that the CA correctly decreed that Baculi should be paid his back salaries and other benefits *for the entire time that he should have been automatically reinstated* at the rate owing to his position that he last received prior to his preventive suspension on September 4, 1992. Such time corresponded to the period from December 4, 1992 until June 25, 2003, but excluding the interval from March 12, 2001 until December 31, 2001 when he was briefly reinstated.

APPEARANCES OF COUNSEL

Reynaldo A. Deray for Francisco T. Baculi.
Office of the Solicitor General for public respondents.

D E C I S I O N

BERSAMIN, *J.*:

The law abhors the indefinite preventive suspension of public officials and employees, whether they are presidential appointees or not. For presidential appointees, the suspension should last only within a reasonable time. For non-presidential appointees, the maximum period of preventive suspension is 90 days. Once the allowable period of preventive suspension had been served, the public officials and employees must be automatically reinstated.

The Case

Under consideration are the consolidated appeals docketed as G.R. No. 188681 and G.R. No. 201130. The appeals relate to the right of a public officer who had been invalidly dismissed from the service to recover his salaries, benefits and other emoluments corresponding to the period beyond the period of

his preventive suspension pending investigation until the time of his valid dismissal from the service.

G.R. No. 188681 is the appeal of petitioner Francisco T. Baculi assailing the decision promulgated on October 29, 2008,[1] whereby the Court of Appeals (CA) upheld in CA-G.R. SP No. 82629 the decision of the Office of the President dismissing him from the service.

On the other hand, G.R. No. 201130 is the appeal of the Secretary of Agrarian Reform and the Regional Director of Agrarian Reform for Region 2 assailing the decision promulgated on June 16, 2011,[2] whereby the CA, in CA-G.R. SP No. 115934, reversed and set aside the decision of the Regional Trial Court (RTC), Branch 3, in Tuguegarao City granting Baculi's petition for *mandamus* brought to compel the payment of his salaries, benefits and other emoluments corresponding to the period following the lapse of his preventive suspension.

Antecedents

The factual and procedural antecedents relevant to G.R. No. 188681 are rendered by the CA in the assailed decision promulgated in CA-G.R. SP No. 82629, as follows:

> On July 16, 1988, the petitioner was appointed as Provincial Agrarian Reform Officer (PARO) II of the Department of Agrarian Reform (DAR) – Cagayan by then President Corazon C. Aquino. In 1991, acting in his capacity as PARO II, he entered into several contracts with various suppliers for the lease of typewriters, computers, computer printers, and other accessories. Separate reports from the DAR Commission on Audit and the DAR Regional Investigating Committee of Cagayan, however, revealed that the foregoing transactions were tainted with irregularities. Both bodies found that

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[1] *Rollo* (G.R. No. 188681), pp. 110-126; penned by Associate Justice Amelita G. Tolentino, with Associate Justice Japar B. Dimaampao and Associate Justice Sixto C. Marella, Jr. concurring.

[2] *Rollo* (G.R. No. 201130), pp. 33-51; penned by Associate Justice Romeo F. Barza, with Associate Justice Rosalinda Asuncion-Vicente and Associate Justice Edwin D. Sorongon concurring.

the petitioner entered into contracts beyond the scope of his signing or approving authority, which was up to ₱50,000.00, as provided in DAR General Memorandum Order No. 4, Series of 1990; that he executed and approved contracts of lease without the corresponding Certificate of Availability of Funds as provided in Section 86 of Presidential Decree No. 1445, otherwise known as the Auditing Code of the Philippines; and that there was no public bidding held for the purpose in violation of the Commission on Audit Circular No. 85-55-A. Based on the said reports, then DAR Secretary Ernesto D. Garilao, finding the existence of *prima facie* case, issued on September 4, 1992 a formal charge against the petitioner for gross dishonesty, abuse of authority, grave misconduct, and conduct prejudicial to the best interest of the service. Simultaneous to the charge, the petitioner was placed under preventive suspension for ninety (90) days pending the investigation of the complaint. He was also required to submit his answer in writing and to state therein whether or not he elects a formal investigation.

On October 25, 1992, through counsel, the petitioner submitted his Answer with Prayer to Dismiss Charges and to Lift Preventive Suspension, alleging in his defense that he acted purely for the benefit of the DAR Provincial Office. In support of his prayer for dismissal of the complaint, he alleged that the formal charge issued by Secretary Garilao was null and void because it was based on the report of the DAR Regional Investigating Committee, a body bereft of authority to investigate administrative complaints against presidential appointees like him pursuant to DAR Memorandum Order No. 5, Series of 1990.

Thereafter, acting on the formal charge, the DAR Legal Affairs Office conducted a formal investigation on November 16, 17, and 18, 1992. On May 17, 1994, then DAR Assistant Secretary for Legal Affairs Hector D. Soliman issued an order dismissing the petitioner from the service. Secretary Garilao affirmed the said order on August 2, 1994.

The petitioner then appealed to the Civil Service Commission (CSC). Seeing no reversible error, CSC affirmed the dismissal of the petitioner. He filed a motion for reconsideration but the CSC refused to reconsider its previous resolution.

Unsatisfied, he found his way to this Court through a petition for review. His effort was not put to naught when this Court, in its decision promulgated on August 31, 2000, set aside the order of dismissal of Secretary Garilao and ruled that the former is bereft of disciplinary

jurisdiction over presidential appointees. Hence, his order to remove the petitioner was a total nullity. In the same fashion, the resolutions of the CSC affirming such order were likewise held null and void. The DAR Secretary, however, was given the prerogative to forward his findings and recommendations to the Office of the President for a more appropriate action. The dispositive portion of the said decision reads:

> **WHEREFORE, IN VIEW OF THE FOREGOING**, this petition is hereby **GRANTED**. CSC Resolution Nos. 981412 dated June 9, 1998 and 982476 dated September 23, 1998 are **ANNULLED** and **SET ASIDE**. The Secretary of Agrarian Reform may, however, forward his findings and recommendations to the Office of the President. No pronouncement as to costs.
>
> SO ORDERED.

On the strength of the foregoing decision, the petitioner, through a letter dated January 9, 2001, requested from then DAR Secretary Horacio Morales to issue an order of reinstatement in his favor. But, as thus appear on record, he failed to be formally reinstated. Meanwhile, in line with this Court's decision, succeeding DAR Secretary Hernani A. Braganza forwarded his findings and his recommendation to dismiss the petitioner from the service, as well as records of the case, to the Office of the President for proper disposition through a memorandum dated July 4, 2002.

Acting on the said memorandum, then Acting Deputy Executive Secretary for Legal Affairs Manuel B. Gaite, acting by authority of the President, issued the assailed order, the dispositive portion of which reads:

> **WHEREFORE,** premises considered, and as recommended by the DAR, Francisco T. Baculi is hereby dismissed from the service, with all its accessory penalties of forfeiture of financial benefits, including disqualification from entering government service. Accordingly, the request for reinstatement is hereby **DENIED**.
>
> **SO ORDERED**.[3]

The factual and procedural antecedents relevant to G.R. No. 201130 take off from where the foregoing antecedents end.

[3] *Rollo* (G.R. No. 188681), pp. 110-113.

The CA summed up such antecedents in its decision in CA-G.R. SP No. 115934, to wit:

Armed with the decision of the Court of Appeals [promulgated on August 31, 2000], petitioner demanded from the DAR Secretary that he be reinstated. According to the petitioner, he was not reinstated. But in the decision of the court *a quo* which the petitioner did not refute, it is stated therein that "*petitioner reported for work at the DAR Regional Office No. 2 on March 12, 2001 until December 31, 2001 during which period, his salary and other emoluments and benefits were paid in full*".

The DAR Secretary forwarded his findings and recommendations to the Office of the President on July 4, 2002. On **June 26, 2003**, the Office of the President in its Order in OP Case No. 03-11-488, dismissed petitioner from the service. For reference, the dismissal order of the Office of the President is being referred to by petitioner as his "second dismissal".

Petitioner appealed the order of dismissal of the Office of the President to the Court of Appeals docketed as CA-G.R. SP No. 82629. For failure of petitioner to attach a copy of CA-G.R. SP No. 82629, this Court secured a copy of the Court's decision from the Record's Division and it appears that this Court, through the 13th Division, promulgated a decision on October 29, 2008, wherein it DISMISSED the petition filed by the petitioner. According to the petitioner, the second dismissal order is now before the Supreme Court awaiting resolution.

Persistent that his monetary claim be given to him, petitioner sought recourse before the court *a quo* for *Mandamus* to compel the DAR Secretary to pay his basic salaries, other emoluments and benefits with legal rate of interest, covering the periods of August 2, 1994, when the DAR Secretary dismissed him from service, to June 25, 2003, a day before the Office of the President rendered its decision declaring him dismissed from the service.

Finding that petitioner is not entitled to the relief prayed for, the court *a quo* rendered its judgment on May 27, 2010, declaring that:

WHEREFORE, premises considered, the petition is dismissed.

No pronouncement as to cost.[4]

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[4] *Rollo* (G.R. No. 201130), pp. 36-37.

Issues

Although the CA had ruled in favor of Baculi in CA-G.R. SP No. 49656 to the effect that the resolutions issued by the Civil Service Commission (CSC) affirming his dismissal were void on the ground that the DAR Secretary had been bereft of disciplinary jurisdiction over him as a presidential appointee,[5] the CA upheld his dismissal pursuant to the order of the Office of the President[6] in CA-G.R. SP No. 82629.[7]

As a consequence of the dismissal of Baculi by the Office of the President, the CA reversed the dismissal by the RTC of his petition for *mandamus* and instead decreed in its decision promulgated on June 16, 2011 in CA-G.R. SP No. 115934,[8] as follows:

> **WHEREFORE**, the *Mandamus on Appeal* is hereby **GRANTED**. The decision appealed from is **REVERSED** and **SET ASIDE**. Petitioner **FRANCISCO T. BACULI** is granted the back salaries and other benefits owing his position at the rate last received before the suspension was imposed from September 4, 1992 to June 25, 2003, except the 90-day period of suspension and the period from March 12, 2001 to December 31, 2001, wherein petitioner was briefly reinstated.
>
> **SO ORDERED**.[9]

It is significant to observe at this juncture that Baculi had not impugned his preventive suspension pending investigation upon the filing of the formal charges against him for gross dishonesty, abuse of authority, grave misconduct, and conduct prejudicial to the best interest of the service. His challenge had been focused on his first dismissal by DAR Secretary Garilao, and his non-reinstatement upon the end of his preventive suspension on December 3, 1992.

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[5] *Rollo* (G.R. No. 188681), pp. 70-81.

[6] *Id*. at 86-88.

[7] *Id*. at 110-126.

[8] *Supra* note 2.

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

As we see it, the issue submitted in G.R. No. 188681 is whether or not the order of dismissal issued by the Acting Deputy Executive Secretary for Legal Affairs was valid; while the issues in G.R. No. 201130 are: (1) whether or not the CA erred in reversing the findings of the RTC, and in granting the petition for *mandamus*; and (2) whether or not the pendency of the case questioning the legality of the order of dismissal posed a prejudicial question.

Ruling of the Court

We deny the petitions for review on *certiorari*, and affirm the assailed decisions of the CA promulgated in CA-G.R. SP No. 82629 and CA-G.R. SP No. 115934.

1.
The first dismissal of Baculi was void

DAR Secretary Ernesto D. Garilao brought charges against Baculi for gross dishonesty, abuse of authority, grave misconduct and conduct prejudicial to the best interest of the service based on the reports issued by the Regional Investigating Committee of the DAR (DAR-RIC) and the Commission on Audit (COA) about his having violated Presidential Decree No. 1445 (*Government Auditing Code of the Philippines*) as well as relevant DAR rules and regulations. He was immediately placed under preventive suspension for 90 days (*i.e*., from September 4 to December 3, 1992) as a consequence.

Eventually, DAR Secretary Garilao dismissed Baculi from the service based on the findings and recommendations of Assistant Secretary Hector Soliman of the DAR Legal Affairs Office.

The CSC affirmed the dismissal of Baculi with modification. It anchored its affirmance on the vesting of disciplinary jurisdiction in the Department Secretaries, among others, as provided in Section 47(2), Chapter 7, of Book V of the *Administrative Code of 1987*, *viz*.:

Section 47. Disciplinary Jurisdiction. —

x x x x x x x x x

(2) The Secretaries and heads of agencies and instrumentalities, provinces, cities and municipalities shall have jurisdiction to investigate and decide matters involving disciplinary action against officers and employees under their jurisdiction.

x x x x x x x x x

The foregoing provision seemingly vested the DAR Secretary with the authority to investigate and decide matters involving disciplinary actions because Baculi, then a Provincial Agrarian Reform Officer II, was under his administrative supervision and control. This is based on Section 6 and Section 7(5), Chapter 2, Book IV of the *Administrative Code of 1987*, to wit:

Section 6. *Authority and Responsibility of the Secretary*. — The authority and responsibility for the exercise of the mandate of the Department and for the discharge of its powers and functions shall be vested in the Secretary, who shall have supervision and control of the Department.

Section 7. *Powers and Functions of the Secretary*. — The Secretary shall:

x x x x x x x x x

(5) Exercise disciplinary powers over officers and employees under the Secretary in accordance with law, including their investigation and the designation of a committee or officer to conduct such investigation.

x x x x x x x x x

On appeal, however, the CA set aside the dismissal, holding in its decision promulgated on August 31, 2000, that the DAR Secretary had no disciplinary authority over Baculi due to his being a presidential appointee.

Whether or not Baculi belonged to the category of officers and employees under the DAR Secretary's disciplinary jurisdiction was a question to be determined in conjunction with Section 38(a) of Presidential Decree No. 807 (*Civil Service Decree*), as follows:

Section 38. Procedure in Administrative Cases **Against Non-Presidential Appointees**.

(a) Administrative proceedings may be commenced against a subordinate officer or employee by the head of department or office of equivalent rank, or head of local government, or chiefs or agencies, regional directors, or upon sworn, written complaint of any other persons.

x x x x x x x x x

Section 38(a) of Presidential Decree No. 807 has drawn a definite distinction between subordinate officers or employees who were presidential appointees, on the one hand, and subordinate officers or employees who were non-presidential appointees, on the other. Without a doubt, substantial distinctions that set apart presidential appointees from non-presidential appointees truly existed.[10] For one, presidential appointees come under the direct disciplining authority of the President pursuant to the well-settled principle that, in the absence of a contrary law, the power to remove or to discipline is lodged in the same authority in whom the power to appoint is vested.[11] Having the power to remove or to discipline presidential appointees, therefore, the President has the corollary authority to investigate them and look into their conduct in office.[12]

Thus, Baculi, as a presidential appointee, came under the disciplinary jurisdiction of the President in line with the principle that the "power to remove is inherent in the power to

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[10] *Pichay, Jr. v. Office of the Deputy Executive Secretary for Legal Affairs-Investigative and Adjudicatory Division*, G.R. No. 196425, July 24, 2012, 677 SCRA 408, 429.

[11] *Id.*, citing *Ambas v. Buenseda,* G.R. No. 95244, September 4, 1991, 201 SCRA 308, 314; and *Lacanilao v. De Leon*, No. 76532, January 26, 1987, 147 SCRA 286, 298; see also *Umali v. Guingona, Jr.*, G.R. No. 131124, March 29, 1999, 305 SCRA 533, 541; *Larin v. Executive Secretary,* G.R. No. 112745, October 16, 1997, 280 SCRA 713, 723; *David v. Villegas*, No. L-36479, February 28, 1978, 171 SCRA 572, 648.

[12] *Supra*, note 10, citing *Garcia v. Pajaro*, G.R. No. 141149, July 5, 2002, 384 SCRA 122, 135.

appoint."[13] As such, the DAR Secretary held no disciplinary jurisdiction over him. Verily, Presidential Decree No. 807 has expressly specified the procedure for disciplinary actions involving presidential appointees.

2.
The second dismissal of Baculi was valid

On July 4, 2002, Secretary Garilao forwarded his findings and recommendations to the Office of the President. On June 26, 2003, Acting Deputy Executive Secretary for Legal Affairs Manuel B. Gaite, acting by authority of the President, issued the order dismissing Baculi from the service. Baculi treated this as a second dismissal.

Baculi challenges his second dismissal on two grounds. The first ground is that the DAR-RIC lacked the authority to investigate administrative complaints against presidential appointees like him. He submits that such authority pertained to the DAR's Office of Legal Affairs pursuant to DAR General Memorandum Order No. 5, Series of 1990; and that the DAR-RIC's lack of authority rendered its adverse report null and void, and such invalidity made the formal charge against him baseless.[14] The second ground is that the order for his second dismissal should have been issued by the President who should have personally exercised the power to remove him, not by the Acting Deputy Executive Secretary for Legal Affairs.

We cannot sustain the challenges of Baculi.

First of all, DAR General Memorandum Order No. 5, Series of 1990, whose pertinent text expressly vested in the DAR's Office of Legal Affairs the authority to investigate administrative complaints against presidential appointees,[15] presupposed the

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[13] See *Umali v. Guingona, Jr.*, G.R. No. 131124, March 29, 1999, 305 SCRA 533, 541; *Larin v. Executive Secretary,* G.R. No. 112745, October 16, 1997, 280 SCRA 713, 723. See also *David v. Villegas*, No. L-36479, February 28, 1978, 171 SCRA 572.

[14] *Rollo* (G.R. No. 188681), p. 118.

[15] The pertinent provision of DAR General Memorandum Order No. 5, Series of 1990, follows:

actual existence of the administrative complaints. In respect of Baculi, however, there was yet no administrative complaint when the DAR-RIC conducted its investigation. Such administrative complaint came to exist only when Secretary Garilao brought the formal charge for gross dishonesty, abuse of authority, grave misconduct and conduct prejudicial to the best interest of the service. Such formal charge became the administrative complaint contemplated by law.[16] As a consequence, the DAR-RIC's investigation was separate and apart from the investigation that the DAR Office of Legal Affairs could have conducted once a formal charge had been initiated.

In the absence of a law or administrative issuance barring the DAR-RIC from conducting its own investigation of Baculi even when there was no complaint being first filed against him, the eventual report rendered after investigation was valid.

And, secondly, it was of no moment to the validity and efficacy of the dismissal that only Acting Deputy Executive Secretary for Legal Affairs Gaite had signed and issued the order of dismissal. In so doing, Acting Deputy Executive Secretary Gaite neither exceeded his authority, nor usurped the power of the President. Although the powers and functions of the Chief Executive have been expressly reposed by the Constitution in one person, the President of the Philippines, it would be unnatural

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O. **Administrative Complaints and Imposition of Penalties**.

1. **Administrative complaints concerning Presidential Appointees shall be investigated by the Legal Affairs Office to determine whether or not a *prima facie* case exist prior to submission to the Office of the President for proper action**. (Bold underscoring supplied for emphasis)

[16] See *Gaoiran v. Alcala*, G.R. No. 150178, November 26, 2004, 444 SCRA 428, where the Court explained that "xxx the letter-complaint of respondent x x x is not a "complaint" within the purview of the provisions mentioned above. In the fairly recent case of *Civil Service Commission v. Court of Appeals*, this Court held that the "complaint" under E.O. No. 292 and CSC rules on administrative cases "both refer to the *actual charge* to which the person complained of is required to answer and indicate whether or not he elects a formal investigation should his answer be deemed not satisfactory."

to expect the President to personally exercise and discharge all such powers and functions. Somehow, the exercise and discharge of most of these powers and functions have been delegated to others, particularly to the members of the Cabinet, conformably to the doctrine of qualified political agency.[17] Accordingly, we have expressly recognized the extensive range of authority vested in the Executive Secretary or the Deputy Executive Secretary as an official who ordinarily acts for and in behalf of the President.[18] As such, the decisions or orders

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[17] See *Carpio v. Executive Secretary*, G.R. No. 96409, February 14, 1992, 206 SCRA 290, 295-296, where the Court expounded on the reality of the President as the Chief Executive acting through subordinate officials like the members of the Cabinet, *viz.*:

> Equally well accepted, as a corollary rule to the control powers of the President, is the "Doctrine of Qualified Political Agency". **As the President cannot be expected to exercise his control powers all at the same time and in person, he will have to delegate some of them to his Cabinet members.**
>
> **Under this doctrine, which recognizes the establishment of a single executive, "all executive and administrative organizations are adjuncts of the Executive Department, the heads of the various executive departments are assistants and agents of the Chief Executive, and, except in cases where the Chief Executive is required by the Constitution or law to act in person on the exigencies of the situation demand that he act personally, the multifarious executive and administrative functions of the Chief Executive are performed by and through the executive departments, and the** ***acts of the Secretaries of such departments, performed and promulgated in the regular course of business, are, unless disapproved or reprobated by the Chief Executive presumptively the acts of the chief Executive."*** (italics ours).
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> **Thus, and in short, "the President's power of control is directly exercised by him over the members of the Cabinet who, in turn, and by his authority, control the bureaus and other offices under their respective jurisdictions in the executive department**. (Bold underscoring supplied for emphasis; italicized portions are part of the original text)

[18] See *Lacson-Magallanes Co., Inc. v. Paño*, No. L- 27811, November 17, 1967, 21 SCRA 895, 900, where the Court observed:

> **The President is not expected to perform in person all the multifarious executive and administrative functions. The Office**

emanating from the Office of the Executive Secretary are attributable to the Executive Secretary even if they have been signed only by any of the Deputy Executive Secretaries.[19]

Given the foregoing, the dismissal of Baculi through the order of June 25, 2003, being by authority of the President, was entitled to full faith and credit as an act of the President herself.[20]

3.
The CA properly granted backwages

After the CA nullified his first dismissal through the decision promulgated in CA-G.R. SP No. 49656, Baculi commenced in the RTC the special civil action for *mandamus* to compel the DAR, represented by the DAR Secretary and its Regional Director of Agrarian Reform for Region 2, to pay his basic salaries, benefits and other emoluments corresponding to the period from August 2, 1994 — the date of the first dismissal— until June 25, 2003 — the date when the Office of the President dismissed him from the service, plus interest at the legal rate.

The DAR countered in that suit that Baculi's monetary claim was unfounded because he had not been exonerated from the offenses charged against him. It reminded that the decision of the CA did not exculpate him, but even suggested that the DAR Secretary could still forward the findings against him to the Office of the President for proper action.

After the RTC dismissed the petition for *mandamus*, Baculi appealed to the CA to reverse the dismissal of his petition (CA-G.R. SP No. 115934).

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of the Executive Secretary is an auxillary unit which assists the President. The rule which has thus gained recognition is that "under our constitutional set-up, the Executive Secretary who acts for and in behalf of the President and by authority of the President, has undisputed jurisdiction to affirm, modify, or even reverse any order" that the Secretary of Natural Resources and including the Director of Lands may issue. (Bold underscoring supplied for emphasis)

[19] *Barte v. Dichoso*, No. L-28715, September 28, 1972, 47 SCRA 77, 85-86.

[20] *Echeche v. Court of Appeals*, G.R. No. 89865, June 27, 1991, 198 SCRA 577, 585.

Ultimately, on June 16, 2011, the CA reversed the RTC,[21] and decreed in its decision promulgated in CA-G.R. SP No. 115934 that Baculi was entitled to the back salaries and other benefits owing to his position at the rate last received before the suspension was imposed from September 4, 1992 to June 25, 2003 except the 90-day period of preventive suspension and the period from March 12, 2001 to December 31, 2001 during which he was briefly reinstated.

We affirm the CA.

By law, Baculi should have been automatically reinstated at the end of the 90-day period of his preventive suspension because his case was not finally decided within the said period.

We have to point out that preventive suspension is of two kinds. The first is the preventive suspension pending investigation, and the second is the preventive suspension pending appeal where the penalty imposed by the disciplining authority is either suspension or dismissal but after review the respondent official or employee is exonerated.[22] The nature of preventive suspension pending investigation has been explained in the following manner:

> x x x Preventive suspension pending investigation is not a penalty. It is a measure intended to enable the disciplining authority to investigate charges against respondent by preventing the latter from intimidating or in any way influencing witnesses against him. If the investigation is not finished and a decision is not rendered within that period, the suspension will be lifted and the respondent will automatically be reinstated. If after investigation, respondent is found innocent of the charges and is exonerated, he should be reinstated.[23]

Preventive suspension pending investigation is not violative of the Constitution because it is not a penalty.[24] It is authorized

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[21] *Supra* note 2.

[22] *Civil Service Commission v. Alfonso*, G.R. No. 179452, June, 11, 2009, 589 SCRA 89.

[23] *Id*. at 100.

[24] *Gonzaga v. Sandiganbayan*, G.R. No. 96131, September 6, 1991, 201 SCRA 417, 426.

by law whenever the charge involves dishonesty, oppression or grave misconduct, or neglect in the performance of duty, or whenever there are reasons to believe that the respondent is guilty of charges that would warrant removal from the service.[25] If the *proper disciplinary authority* does not finally decide the administrative case within a period of 90 days from the start of preventive suspension pending investigation, *and the respondent is not a presidential appointee*, the preventive suspension is lifted and the respondent is "automatically reinstated in the service."[26] In the case of presidential appointees, the preventive suspension pending investigation shall be "for a reasonable time as the circumstances of the case may warrant."[27]

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[25] Section 51 of Executive Order No. 292 (*Administrative Code of 1987*) states:

Section 51. *Preventive Suspension*. — The proper disciplining authority may preventively suspend any subordinate officer or employee under his authority pending an investigation, if the charge against such officer or employee involves dishonesty, oppression or grave misconduct, or neglect in the performance of duty, or if there are reasons to believe that the respondent is guilty of charges which would warrant his removal from the service.

[26] Section 52 of Executive Order No. 292 declares:

Section 52. *Lifting of Preventive Suspension Pending Administrative Investigation.* — When the administrative case against the officer or employee under preventive suspension is not finally decided by the disciplining authority within the period of ninety (90) days after the date of suspension of the respondent who is not a presidential appointee, the respondent shall be automatically reinstated in the service: *Provided*, That when the delay in the disposition of the case is due to the fault, negligence or petition of the respondent, the period of delay shall not be counted in computing the period of suspension herein provided.

To the same effect is Section 42 of P.D. No. 807, to wit:

Section 42. Lifting of Preventive Suspension Pending Administrative Investigation. — When the administrative case against the officer or employee under preventive suspension is not finally decided by the disciplining authority within the period of ninety (90) days after the date of suspension of the respondent who is not a presidential appointee, the respondent shall be automatically reinstated in the service: Provided, That when the delay in the disposition of the case is due to the fault, negligence or petition of the respondent, the period of delay shall not be counted in computing the period of suspension herein provided.

[27] *Supra*, note 24, at 428.

Nonetheless, there shall be no indefinite suspension pending investigation, *whether the respondent officials are presidential or non-presidential appointees*. The law abhors indefinite preventive suspension because the indefiniteness violates the constitutional guarantees under the due process and equal protection clauses,[28] as well as the right of public officers and employees to security of tenure. The abhorrence of indefinite suspensions impelled the Court in *Gonzaga v. Sandiganbayan*[29] to delineate rules on preventive suspensions pending investigation, *viz.*:

To the extent that there may be cases of indefinite suspension imposed either under Section 13 of Rep. Act 3019, or Section 42 of Pres. Decree 807, it is best for the guidance of all concerned that this Court set forth the rules on the period of preventive suspension under the aforementioned laws, as follows:

1. Preventive suspension under Section 13, Rep. Act 3019 as amended shall be limited to a maximum period of ninety (90) days, from issuance thereof, and this applies to all public officers, (as defined in Section 2(b) of Rep. Act 3019) who are validly charged under said Act.

2. Preventive suspension under Section 42 of Pres. Decree 807 shall apply to all officers or employees whose positions are embraced in the Civil Service, as provided under Sections 3 and 4 of said Pres. Decree 807; and shall be limited to a maximum period of ninety (90) days from issuance, except where there is delay in the disposition of the case, which is due to the fault, negligence or petition of the respondent, in which case the period of delay shall not be counted in computing the period of suspension herein stated; provided that if the person suspended is a presidential appointee, the continuance of his suspension shall be for a reasonable time as the circumstances of the case may warrant.[30]

It cannot be validly argued that in the case of presidential appointees the preventive suspension pending investigation can be indefinite. The Court discredited such argument in *Garcia*

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[28] Section 1, Article III of the Constitution provides that "no person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the laws."

[29] *Supra* note 24.

[30] *Id.* at 427-428.

v. The Executive Secretary,[31] and directed the immediate reinstatement of a presidential appointee whose preventive suspension had lasted for nearly seven months, declaring:

> **To adopt the theory of respondents that an officer appointed by the President, facing administrative charges, can be preventively suspended indefinitely, would be to countenance a situation where the preventive suspension can, in effect, be the penalty itself without a finding of guilt after due hearing, contrary to the express mandate of the Constitution and the Civil Service law. This, it is believed, is not conducive to the maintenance of a robust, effective and efficient civil service, the integrity of which has, in this jurisdiction, received constitutional guarantee, as it places in the hands of the Chief Executive a weapon that could be wielded to undermine the security of tenure of public officers.** Of course, this is not so in the case of those officers holding office at the pleasure of the President. But where the tenure of office is fixed, as in the case of herein petitioner, which according to the law he could hold "for 6 years and shall not be removed therefrom except for cause", to sanction the stand of respondents would be to nullify and render useless such specific condition imposed by the law itself. If he could be preventively suspended indefinitely, until the final determination of the administrative charges against him (and under the circumstances, it would be the President himself who would decide the same at a time only he can determine) then the provisions of the law both as to the fixity of his tenure and the limitation of his removal to only for cause would be meaningless. In the guise of a preventive suspension, his term of office could be shortened and he could, in effect, be removed without a finding of a cause duly established after due hearing, in violation of the Constitution. This would set at naught the laudible (*sic*) purpose of Congress to surround the tenure of office of the Chairman of the National Science Development Board, which is longer than that of the President himself, with all the safeguards compatible with the purpose of maintaining the office of such officer, considering its highly scientific and technological nature, beyond extraneous influences, and of insuring continuity of research and development activities in an atmosphere of stability and detachment so necessary for the fulfillment of its mission, uninterrupted by factors other than removal for cause.[32] (Bold underscoring supplied for emphasis)

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[31] G.R. No. L-19748, September 13, 1962, 6 SCRA 1.

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

In *Layno*, *Sr. v. Sandiganbayan*,[33] the Court has further reminded that preventive suspension pending investigation for an indefinite period of time, like one that would last until the case against the incumbent official would have been finally terminated, would "outrun the bounds of reason and result in sheer oppression," and would be a denial of due process.

Conformably with the foregoing disquisitions, we hold that the CA correctly decreed that Baculi should be paid his back salaries and other benefits *for the entire time that he should have been automatically reinstated* at the rate owing to his position that he last received prior to his preventive suspension on September 4, 1992. Such time corresponded to the period from December 4, 1992 until June 25, 2003, but excluding the interval from March 12, 2001 until December 31, 2001 when he was briefly reinstated.

We no longer find the need to dwell on and resolve whether or not G.R. No. 188681 posed a prejudicial question in relation to G.R. No. 201130. Such issue was rendered moot by the consolidation of the appeals.

WHEREFORE, the Court:

1. **DENIES** the petition for review on *certiorari* in G.R. No. 188681, and **AFFIRMS** the decision promulgated in CA-G.R. SP No. 82629; and

2. **DENIES** the petition for review on *certiorari* in G.R. No. 201130, and **AFFIRMS** the decision promulgated in CA-G.R. SP No. 115934.

No pronouncement on cost of suit.

SO ORDERED.

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

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[33] G.R. No. 65848, May 24, 1985, 136 SCRA 541-542.

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

SECOND DIVISION

[G.R. No. 199141. March 8, 2017]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **HEIRS OF JOSE TAPULADO, namely, TOMASA, LORENZO, TERESITA, JOSE, JR., ELISA, ROMEO, LETECIA, all surnamed TAPULADO,** *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; REPUBLIC ACT NO. 6657 (COMPREHENSIVE AGRARIAN REFORM LAW OF 1988); DETERMINATION OF JUST COMPENSATION; ALTHOUGH THE DETERMINATION OF JUST COMPENSATION IS ESSENTIALLY A JUDICIAL FUNCTION, THE REGIONAL TRIAL COURT (RTC), SITTING AS SPECIAL AGRARIAN COURT (SAC), MUST CONSIDER THE FACTORS MENTIONED IN SECTION 17 OF R.A. NO. 6657, OTHERWISE, SAID COURT IS DUTY BOUND TO EXPLAIN AND JUSTIFY IN CLEAR TERMS THE REASON FOR ANY DEVIATION FROM THE PRESCRIBED FACTORS AND FORMULA; CASE AT BAR.—** [A]ll agrarian reform cases where the masterlists of agrarian reform beneficiaries had already been finalized on or before July 1, 2009 **or** where the claim folders had been transmitted to and received by LBP on or before the said date, the determination of just compensation should be in accordance with the pertinent DAR regulations, applying Section 17 of R.A. No. 6657. In the case at bench, the subject property was awarded to the farmer-beneficiaries in 1978. On March 24, 1980, LBP approved its initial valuation. Clearly, the process of the determination of just compensation should be governed by Section 17 of R.A. No. 6657. x x x Although the determination of just compensation is essentially a judicial function, the RTC, sitting as a SAC, must consider the factors mentioned in Section 17 of R.A. No. 6657. The RTC is bound to observe the basic factors and formula prescribed by the DAR pursuant to Section 17 of R.A. No. 6657. Nonetheless, when the RTC is faced with situations that do not warrant the strict application of the formula, it may, in the exercise of its discretion, relax the formula's

application to fit the factual situations before it. In such a case, however, the RTC is duty bound to explain and justify in clear terms the reason for any deviation from the prescribed factors and formula. x x x Though the Court is fully aware that the subject properties have been taken by the government since 1972, it has no option but to affirm the CA order of remand to the RTC for the computation of the just compensation in accordance with Section 17 of R.A. No. 6657 because the basis for the RTC determination of just compensation was not clear.

2. **ID.; ID.; ID.; GUIDING PRINCIPLES IN THE DETERMINATION OF JUST COMPENSATION, CITED. —** In the determination of just compensation, the RTC should be guided by the following: 1. Just compensation must be valued at the time of taking, or the time when the owner was deprived of the use and benefit of his property, that is, the date when the title or the emancipation patents were issued in the names of the farmer-beneficiaries. 2. Just compensation must be determined pursuant to the guidelines set forth in Section 17 of R.A. No. 6657, as amended, prior to its amendment by R.A. No. 9700. Nevertheless, while it should take into account the different formulas created by the DAR in arriving at the just compensation, it is not strictly bound thereto if the situations before it do not warrant their application. In which case, the RTC must clearly explain the reasons for deviating therefrom, and for using other factors or formulas in arriving at a reasonable just compensation. 3. Interest may be awarded as warranted by the circumstances of the case and based on prevailing jurisprudence. In previous cases, the Court had allowed the grant of legal interest in expropriation cases where there was delay in the payment since the just compensation due to the landowners was deemed to be an effective forbearance on the part of the State. Legal interest on the unpaid balance shall be fixed at the rate of 12% per annum from the time of taking and 6% per annum from the finality of the decision until fully paid.

APPEARANCES OF COUNSEL

LBP Legal Services Group, Carp Legal Services Department for petitioner.

Pejo Aquino & Associates for respondents.

D E C I S I O N

MENDOZA, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the June 17, 2011 Consolidated Decision[1] and the October 24, 2011 Resolution[2] of the Court of Appeals, Cagayan de Oro City *(CA),* in CA-G.R. SP No. 01186 and CA-G.R. SP No. 01441, affirming with modification the February 16, 2006 Decision[3] of the Regional Trial Court, Branch 15, Davao City *(RTC),* fixing the valuation of just compensation at ₱200,000.00 per hectare in Civil Case No. 29,507-03, entitled *"Heirs of Jose Tapulado namely, Tomasa, Lorenzo, Teresita, Jose, Jr., Elisa, Romeo, Letecia, all surnamed Tapulado v. Department of Agrarian Reform and Land Bank of the Philippines."*

The Antecedents:

Jose Tapulado *(Tapulado)*, now deceased, was the owner of two *(2)* parcels of land covered by Original Certificate of Title *(OCT)* No. (P-17535) P-2788[4] with an area of 17.8393 hectares located in Kiblagon, Sulop, Davao del Sur, and OCT No. (P-4518) P-1277[5] with an area of 11.1359 hectares situated in Kisulan, Kiblawan, Davao del Sur.

In 1972, the Department of Agrarian Reform *(DAR)* placed the subject lands under the coverage of the Operation Land Transfer *(OLT)* Program pursuant to Presidential Decree *(P.D.)* No. 27; and in 1978, awarded them to the farmer-beneficiaries. Tapulado, however, did not receive any compensation from the government.

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[1] *Rollo*, pp. 52-65. Penned by Associate Justice Edgardo T. Lloren and concurred in by Associate Justices Romulo V. Borja and Rodrigo F. Lim, Jr.

[2] *Id*. at 68-69.

[3] *Id*. at 167-173. Penned by Judge Jesus Quitain.

[4] *Id*. at 226-230.

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

Actually, it was only on March 24, 1980, that the DAR and the Land Bank of the Philippines *(LBP)* computed the value of the subject lands, placing them at ₱38,002.47 or ₱ 1,315.00 per hectare.

The respondents, the Heirs of Tapulado *(Tapulados)*, rejected the valuation of the subject lands. They filed a petition for determination of just compensation before the DAR Adjudication Board *(DARAB)*. The DARAB, in turn, referred their petition to the Provincial Agrarian Reform Office of Davao del Sur *(PARO)* for the recomputation of the value of the subject lands under P.D. No. 27 in relation to DAR Administrative Order (A.O.) No. 13.

On January 24, 2003, without waiting for the completion of PARO's re-evaluation of the land, the Tapulados filed a petition before the RTC, sitting as Special Agrarian Court *(SAC)*, for the determination and payment of just compensation. The resort to the RTC was not contested.

The Ruling of the RTC

In its February 16, 2006 Decision, the RTC pegged the amount of ₱200,000.00 per hectare as the reasonable compensation for their properties considering that the Tapulados lost the subject lands and were deprived of the fruits thereof since 1972. The RTC also awarded the amounts of ₱300,000.00 as moral damages and ₱100,000.00 as attorney's fees. Thus, the dispositive portion of the RTC decision reads:

> WHEREFORE, judgment is rendered ordering the respondents to solidarily pay the petitioners the following sums:
>
> 1. Two Hundred Pesos per square meter for the two hundred eighty nine thousand seven hundred fifty two square meters.
> 2. Three Hundred Thousand pesos as moral damages, shock, fright-wounded feelings.
> 3. One Hundred Thousand pesos as atty.'s fees.
> 4. The costs of suit.
>
> SO ORDERED.[6]

[6] *Id*. at 173.

Petitioner LBP filed its motion for reconsideration,[7] but it was denied in the RTC Order,[8] dated July 3, 2006.

The Ruling of the CA

On appeal, in its June 17, 2011 Consolidated Decision,[9] the CA agreed with the RTC that the computation of the just compensation should be in accordance with R.A. No. 6657 because the compensation had remained unsettled up to the passage of the new law. The CA wrote that for purposes of computing the just compensation, the value of the property at the time of its taking should be considered. As the copies of the emancipation patents were not attached, the CA ordered the remand of the case to the RTC for further reception of evidence as regards the date of the emancipation patents to serve as the reckoning point of the computation of just compensation. The CA deleted the award of moral damages and attorney's fees for lack of merit. The dispositive portion reads:

> Accordingly, the Decision dated 16 February 2006 is AFFIRMED with MODIFICATION that the award for moral damages, attorney's fees and cost of the suit are hereby DELETED. The records of the case is ordered REMANDED to the Special Agrarian Court, Branch 15, of the Regional Trial Court of Davao City, for further reception of evidence as to the date of the grant of the emancipation patents which shall serve as the basis for the computation of just compensation in accordance with the market-data approach pursuant to Republic Act No. 6657.
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> SO ORDERED.[10]

Upon the denial of its motion for partial reconsideration,[11] the LBP filed this petition. In its Memorandum,[12] the petitioner raised this

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[7] *Id*. at 176-205.

[8] *Id*. at 174.

[9] *Id*. at 52-65.

[10] *Id*. at 64.

[11] *Id*. at 68-69.

[12] *Id*. at 386-413.

SOLE ISSUE

WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ERROR OF LAW WHEN IT ORDERED THE REMAND OF THE CASE TO THE SAC FOR THE RECEPTION OF EVIDENCE AS TO THE DATE OF THE GRANT OF EMANCIPATION PATENT AND THE COMPUTATION OF JUST COMPENSATION IN ACCORDANCE WITH THE MARKET-DATA APPROACH DESPITE THE CLEAR MANDATE OF DAR A.O. NO. 1, SERIES OF 2010, IMPLEMENTING REPUBLIC ACT NO. 9700 AS TO THE FORMULA TO BE USED AND THAT THE RECKONING DATE IN COMPUTING JUST COMPENSATION IS JUNE 30, 2009.[13]

Petitioner LBP avers that in fixing the just compensation for the subject properties, the guidelines set forth in DAR A.O. No. 1, Series of 2010, pursuant to R.A. No. 9700, should be applied.

The Tapulados, on the other hand, contend that though they agree with the CA that the date of taking for purposes of judicial determination of just compensation should be reckoned from the date of the issuance of the Emancipation Patents, but remanding the case to the RTC for another computation would only entail injustice and prejudice to them as their lands had long been taken since 1972 and thereafter distributed to the farmer-beneficiaries.

The Court's Ruling

The Court agrees with the CA that the case should be remanded to the RTC for the computation of just compensation.

Prior to the enactment of R.A. No. 9700,[14] the Court had consistently ruled that when a property had been taken pursuant

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[13] *Id*. at 394-395.

[14] Republic Act No. 9700, entitled "An Act Strengthening the Comprehensive Agrarian Reform Program (CARP), Extending the Acquisition and Distribution of all Agricultural Lands, Instituting Necessary Reforms, Amending for the Purpose Certain Provisions of Republic Act No. 6657,

to P.D. No. 27 and the agrarian process was still incomplete because the payment of just compensation was still to be settled after the enactment of R.A. No. 6657, the computation of just compensation should be determined using the factors provided under Section 17[15] thereof, to wit:

> Section 17. Determination of Just Compensation. – In determining just compensation, the cost of acquisition of the land, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, and the assessment made by the government assessors shall be considered. The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property, as well as the non-payment of taxes or loans secured from any government financing institution on the said land, shall be considered as additional factors to determine its valuation.

With the enactment of R.A. No. 9700, the LBP agreed with the order of remand for the computation of just compensation conformably with the said law. A reading of R.A. No. 9700, however, reveals that the case still falls within the ambit of Section 17 of R.A. No. 6657, as amended. Section 5 of R.A. No. 9700, clearly provides that "previously acquired lands wherein the valuation is subject to challenge shall be completed and resolved pursuant to Section 17 of R.A. No. 6657, as amended."[16] Thus:

> Section 5. Section 7 of Republic Act. No 6657, as amended, is hereby further amended to read as follows:
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>> SEC. 7. *Priorities.–* The DAR, in coordination with the Presidential Agrarian Reform Council (PARC) shall plan and

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otherwise known as the Comprehensive Agrarian Reform Law of 1988, as amended, and Appropriating Funds Therefore."

[15] *Land Bank of the Philippines v. Santiago, Jr.,* 696 Phil. 142, 159 (2012); *Land Bank of the Philippines v. Pacita Agricultural Multi-Purpose Cooperative,* 596 Phil. 315, 330 (2009); *Land Bank of the Philippines v. Natividad,* 497 Phil. 738, 746; *Land Bank of the Philippines v. J.L. Jocson and Sons,* 619 Phil. 359, 370 (2009).

[16] *Land Bank of the Philippines v. Santiago, Jr.,* 696 Phil. 142, 159 (2012).

program the final acquisition and distribution of all remaining unacquired and undistributed agricultural lands from the effectivity of this Act until June 30, 2014. Lands shall be acquired and distributed as follows:

Phase One : During the five (5)-year extension period hereafter all remaining lands above fifty (50) hectares shall be covered for purposes of agrarian reform upon the effectivity of this Act. All private agricultural lands of landowners with aggregate land holdings in excess of fifty (50) hectares which have already been subjected to a notice of coverage issued on or before December 10, 2008; rice and corn lands under Presidential Decree No. 27; all idle or abandoned lands; all private lands voluntarily offered by the owners for agrarian reform: Provided, That with respect to voluntary land transfer only those submitted by June 30, 2009 shall be allowed. Provided, further, That after June 30, 2009, the modes of acquisition shall be limited to voluntary offer to sell and compulsory acquisition: **Provided, furthermore, That all previously acquired lands wherein valuation is subject to challenge by landowners shall be completed and finally resolved pursuant to Section 17 of Republic Act No. 6657, *as amended***: Provided, finally, as mandated by the Constitution, Republic Act No. 6657, as amended, and Republic Act No. 3844, as amended, only farmers (tenants or lessees) and regular farmworkers actually tilling the lands, as certified under oath by the Barangay Agrarian Reform Council (BARC) and attested under oath by the landowners; are the qualified beneficiaries. The intended beneficiaries shall state under oath before the judge of the city or municipal court that he/she is willing to work on the land to make it productive and to assume the obligation of paying the amortization for the compensation of the land and the land taxes thereon; all lands foreclosed by government financial institutions; all lands acquired by the Presidential Commission on Good Government (PCGG); and all other lands owned by the government devoted to or suitable for agriculture, which shall be acquired and distributed immediately upon the effectivity of this Act, with the implementation to be completed by June 30, 2012. (Emphasis supplied)

This provision was further clarified by DAR A.O. No. 02-09, the "Rules and Procedures Governing the Acquisition and

Distribution of Agricultural Lands under R.A. No. 6657, as amended by RA No. 9700," which provides that:

VI. TRANSITORY PROVISION

With respect to cases where the Master List of ARBs[17] has been finalized on or before July 1, 2009 pursuant to Administrative Order No. 7, Series of 2003, the acquisition and distribution of landholdings shall continue to be processed under the provisions of R.A. No. 6657 prior to its amendment by R.A. No. 9700.

However, with respect to land valuation, **all Claim Folders received by LBP prior to July 1, 2009 shall be valued in accordance with Section 17 of R.A. No. 6657** prior to its amendment by R.A. No. 9700. (Emphasis supplied)

Thus, all agrarian reform cases where the masterlists of agrarian reform beneficiaries had already been finalized on or before July 1, 2009 **or** where the claim folders had been transmitted to and received by LBP on or before the said date, the determination of just compensation should be in accordance with the pertinent DAR regulations, applying Section 17 of R.A. No. 6657.

In the case at bench, the subject property was awarded to the farmer-beneficiaries in 1978. On March 24, 1980, LBP approved its initial valuation. Clearly, the process of the determination of just compensation should be governed by Section 17 of R.A. No. 6657.

Accordingly, the Court sets aside the RTC valuation of their property at ₱200,000.00 per hectare. The RTC valuation failed to comply with the parameters of Section 17 of R.A. No. 6657 and DAR regulation. In fact, the RTC neither used any formula in coming up with the valuation of the subject land nor explained its reason for deviating therefrom. It simply declared the amount of ₱200,000.00 per hectare as the fair and reasonable amount of compensation, without any clear basis.

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[17] Abbreviation for "Agrarian Reform Beneficiaries," as shown in I. Prefatory Statement of DAR AO No. 02-09.

Although the determination of just compensation is essentially a judicial function, the RTC, sitting as a SAC, must consider the factors mentioned in Section 17 of R.A. No. 6657.[18] The RTC is bound to observe the basic factors and formula prescribed by the DAR pursuant to Section 17 of R.A. No. 6657.[19] Nonetheless, when the RTC is faced with situations that do not warrant the strict application of the formula, it may, in the exercise of its discretion, relax the formula's application to fit the factual situations before it. In such a case, however, the RTC is duty bound to explain and justify in clear terms the reason for any deviation from the prescribed factors and formula.[20] In the recent case of *Alfonso v. Land Bank of the Philippines*,[21] the Court stressed that:

> For the guidance of the bench, the bar, and the public, we reiterate the rule: Out of regard for the DAR's expertise as the concerned implementing agency, courts should henceforth consider the factors stated in Section 17 of RA 6657, as amended, as translated into the applicable DAR formulas in their determination of just compensation for the properties covered by the said law. If, in the exercise of their judicial discretion, courts find that a strict application of said formulas is not warranted under the specific circumstances of the case before them, they may deviate or depart therefrom, provided that this departure or deviation is supported by a reasoned explanation grounded on the evidence on record. In other words, **courts of law possess the power to make a final determination of just compensation**. (Emphasis supplied)

Though the Court is fully aware that the subject properties have been taken by the government since 1972, it has no option but to affirm the CA order of remand to the RTC for the computation of the just compensation in accordance with Section 17 of R.A. No. 6657 because the basis for the RTC determination of just compensation was not clear.

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[18] *Land Bank of the Philippines v. Barrido,* 642 Phil. 595, 600 (2010).

[19] *Land Bank of the Philippines v. Kho,* G.R. No. 214901, June 15, 2016.

[20] *Land Bank of the Philippines v. Eusebio, Jr.,* 738 Phil. 7, 22 (2014).

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

In the determination of just compensation, the RTC should be guided by the following:

> 1. Just compensation must be valued at the time of taking, or the time when the owner was deprived of the use and benefit of his property, that is, the date when the title or the emancipation patents were issued in the names of the farmer-beneficiaries.
>
> 2. Just compensation must be determined pursuant to the guidelines set forth in Section 17 of R.A. No. 6657, as amended, prior to its amendment by R.A. No. 9700. Nevertheless, while it should take into account the different formulas created by the DAR in arriving at the just compensation, it is not strictly bound thereto if the situations before it do not warrant their application. In which case, the RTC must clearly explain the reasons for deviating therefrom, and for using other factors or formulas in arriving at a reasonable just compensation.
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> 3. Interest may be awarded as warranted by the circumstances of the case and based on prevailing jurisprudence. In previous cases, the Court had allowed the grant of legal interest in expropriation cases where there was delay in the payment since the just compensation due to the landowners was deemed to be an effective forbearance on the part of the State. Legal interest on the unpaid balance shall be fixed at the rate of 12% per annum from the time of taking and 6% per annum from the finality of the decision until fully paid.[22]

The Court is not unaware that the properties have been awarded to the farmer beneficiaries in 1978. Since then the Tapulados have not received any compensation for their lands. Remanding the case to the RTC would further delay the payment of just compensation due them. So as not to prolong the agony of the Tapulados, the RTC should conduct a preliminary summary hearing to determine the amount that the LBP is willing to pay

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[22] *Land Bank of the Philippines v. Kho*, *supra* note 19.

and order the payment thereof to the Tapulados *pendente lite*. Thereafter, the RTC should proceed to conduct the hearing proper to determine the balance due to the Tapulados.

WHEREFORE, the petition is **DENIED**. The case is ordered **REMANDED** to the Regional Trial Court, Branch 15, Davao City, for the immediate determination of just compensation in the foregoing.

In the interest of justice, the RTC is ordered to conduct a preliminary summary hearing to determine the amount the LBP is willing to pay and order the payment thereof to the Tapulados *pendente lite*.

Thereafter, the RTC should proceed with dispatch to hear the parties on the balance due to the Tapulados and to submit to the Court a report on its findings and recommendations within sixty (60) days from notice of this disposition.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 202088. March 8, 2017]

MANUEL L. BAUTISTA, SPOUSES ANGEL SAHAGUN and CARMELITA BAUTISTA, and ANIANO L. BAUTISTA, *petitioners, vs.* **MARGARITO L. BAUTISTA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; FILING OF PLEADINGS; WHERE THE PLEADING WAS FILED

THROUGH A PRIVATE COURIER, THE DATE OF ACTUAL RECEIPT BY THE COURT IS DEEMED THE DATE OF FILING.— The Rules provide that pleadings may be filed in court either personally or by registered mail. In the first case, the date of filing is the date of receipt. In the second case, the date of mailing is the date of receipt. Though filing of pleadings thru a private courier is not prohibited by the Rules, it is established in jurisprudence that the date of actual receipt of pleadings by the court is deemed the date of filing of such pleadings, and not the date of delivery thereof to a private letter-forwarding agency. Records reveal that respondent received a copy of the Decision on February 23, 2009. In an Order dated March 5, 2009, the trial court acknowledged that it received the motion for reconsideration filed by respondent on March 4, 2009, or on the 9th day, which is still within the reglementary period.

2. **ID.; SPECIAL CIVIL ACTIONS; PARTITION; CONCEPT.—** It is to be noted that the present action stemmed from an action for partition and accounting. A special civil action of judicial partition under Rule 69 of the Rules of Court is a judicial controversy between persons who, being co-owners or coparceners of common property, seek to secure a division or partition thereof among themselves, giving to each one of them the part corresponding to him. The object of partition is to enable those who own property as joint tenants, or coparceners, or tenants in common to put an end to the joint tenancy so as to vest in each a sole estate in specific property or an allotment in the lands or tenements. It is typically brought by a person claiming to be the owner of a specified property against a defendant or defendants whom the plaintiff recognizes to be his co-owners and is premised on the existence or non-existence of co-ownership between the parties. Hence, unless and until the issue of co-ownership is definitively resolved, it would be premature to effect a partition of an estate.

3. **ID.; ID.; ID.; WHERE CIRCUMSTANCES SHOW THAT THERE ARE SEVERAL CO-OWNERS OF THE PROPERTY ALTHOUGH IT WAS TITLED TO ONLY ONE OF THEIR SIBLINGS, IMPLIED RESULTING TRUST EXISTED AMONG THEM AND PARTITION OF THE SAID PROPERTY IS IN ORDER.—** [P]etitioners established the manner in which they acquired several properties

through their business and have them registered under their names. Even the compromise agreement they entered into, which was approved by the RTC, reflected their claim and admission that they co-owned the properties although titled to only one of their siblings. It was, thus, logical for the RTC to conclude that it was through this practice that they also acquired the Sta. Monica property. Moreover, several other circumstances buttressed petitioners' claim, among which is that they have proven that their lending business has the financial capacity to acquire the Sta. Monica property; that Florencia, who was co-manager of the business, entered into several mortgage transactions with Amelia; and that the blank *Kasulatan* was in their possession. They even opposed the issuance of a second owner's duplicate copy of TCT No. T-2371 since the original TCT was in their safekeeping and was not actually lost. x x x [A]s found by the RTC and based on the List of Exhibits, aside from his bare allegations and testimony, Margarito neither identified nor presented the deed of sale during trial nor formally offered the same as his evidence. It is elementary that he who alleges a fact has the burden of proving it and a mere allegation is not evidence. It appears that Margarito's evidence of exclusive ownership are the certificate of title, the tax declarations pertaining thereto, his bank deposits, and other mortgage contracts involving different mortgagors. Despite all these, Margarito failed to prove that Amelia conveyed the Sta. Monica property exclusively in his name. x x x As for the TCT No. T-59882 in the name of Margarito, like in the case at bar, although a certificate of title is the best proof of ownership of a piece of land, the mere issuance of the same in the name of any person does not foreclose the possibility that the real property may be under co-ownership with persons not named in the certificate or that the registrant may only be a trustee or that other parties may have acquired interest subsequent to the issuance of the certificate of title. x x x From the foregoing, this Court finds that an implied resulting trust existed among the parties. The pieces of evidence presented demonstrate their intention to acquire the Sta. Monica property in the course of their business, just like the other properties that were also the subjects of the partition case and the compromise agreement they entered into. Although the Sta. Monica property was titled under the name of Margarito, the surrounding circumstances as to its acquisition speak of the intent that the equitable or beneficial ownership

of the property should belong to the Bautista siblings. Inevitably, the RTC's Order of partition of the Sta. Monica property was erroneously set aside by the CA and this Court is convinced that petitioners satisfactorily established that they are co-owners of the property and are entitled to the reliefs prayed for.

APPEARANCES OF COUNSEL

Carlos Mayorico E. Caliwara for petitioners.
Maria Helen Aileen M. Reyes for respondent.

D E C I S I O N

PERALTA, *J*.:

Assailed in this petition for review on *certiorari* filed by petitioners Manuel L. Bautista, Spouses Angel Sahagun and Carmelita Bautista, and Aniano L. Bautista before this Court is the Decision[1] dated March 6, 2012 and Resolution[2] dated May 25, 2012 of the Court of Appeals (*CA*) which reversed the Decision[3] dated February 16, 2009 of the Regional Trial Court (*RTC*) of San Pablo City, Branch 32, declaring that the subject property covered by Transfer Certificate of Title (*TCT*) No. T-59882 is exclusively owned by respondent Margarito L. Bautista (*Margarito*).

The factual and procedural antecedents follow:

The present case stemmed from a Complaint for Partition and Accounting with Prayer for Temporary Restraining Order and/or Writ of Preliminary Injunction filed by the petitioners against Margarito and the other defendants over several properties allegedly co-owned by them, which included the subject property.

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[1] Penned by Associate Justice Florito S. Macalino, with Associate Justices Remedios S. Salazar-Fernando and Ramon M. Bato, Jr., concurring, *rollo,* pp. 40-49.

[2] *Id.* at 51-53.

[3] Penned by Judge Agripino G. Morga; *id*. at 72-81.

The Bautista siblings — Margarito, Manuel L. Bautista, Carmelita Bautista Sahagun (*Carmelita*), Aniano L. Bautista (*Aniano*), Florencia Bautista de Villa (*Florencia*), and Ester Bautista Cabrera (*Ester*) — established a lending business through a common fund from the proceeds of the sale of a parcel of coconut land they inherited from their mother Consorcia Lantin Bautista.[4] Margarito, Florencia, and Ester managed the business with Reginald Sahagun, Carmelita's son, as credit investigator.[5] Senen Cabrera, Ester's husband, prepared the documents for mortgage and reported the status of the lending business to the Bautista siblings.[6] Through the said lending business, the siblings acquired several real properties in San Pablo City.[7]

On March 2, 1998, Amelia V. Mendoza (*Amelia*) obtained a loan in the amount of ₱690,000.00 from Florencia, and secured the same with a real estate mortgage over a 25,518-square-meter parcel of land she owned situated at Barangay Sta. Monica, San Pablo City, denominated as Lot 2, Plan Psu-45117 and covered by Transfer Certificate of Title (*TCT*) No. T-2371 (Sta. Monica property).[8] They later extended the mortgage through a *Kasulatan ng Pagdaragdag ng Sanla*, for an additional loan of ₱115,000.00 on April 6, 1998.[9]

On May 13, 1998, Amelia and Florencia renewed the mortgage for ₱1,085,000.00[10] and cancelled the previous loan of ₱690,000.00 through a "Cancellation and Discharge of Mortgage."[11]

Subsequently, on April 12, 1999, Amelia and Florencia executed another *Kasulatan ng Pagdaragdag ng Sanla* in the

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[4] *Rollo*, p. 41.

[5] *Id*. at 42.

[6] *Id.*

[7] *Id*. at 41.

[8] *Id*. at 74.

[9] *Id.*

[10] *Id.* at 43.

[11] *Id.*

amount of ₱57,500.00.[12] Florencia, thereafter, received the owner's duplicate copy of TCT No. T-2371, which she, in turn, entrusted to Carmelita when she went overseas.

On November 28, 2002, Amelia allegedly sold the subject property to Margarito through a *Kasulatan ng Bilihang Tuluyan*[13] for ₱500,000.00 and, likewise, cancelled the ₱1,085,000.00 loan through another "Cancellation and Discharge of Mortgage."[14] On the same date, Florencia filed a Petition for the Issuance of a Second Owner's Duplicate of TCT No. T-2371 before the RTC of San Pablo City, Branch 29.[15] She alleged that she was the mortgagee of the subject property, and that she could not locate, despite diligent search, the owner's duplicate title in her possession, which she misplaced sometime in September 2002.[16] Florencia also executed a Special Power of Attorney in favor of Margarito to represent her in the proceedings.[17]

Petitioners tried to oppose the issuance,[18] but on January 30, 2003, the RTC granted the petition and TCT No. T-59882 was later issued in the name of Margarito.[19] On January 12, 2004, petitioners registered an Adverse Claim over the Sta. Monica property, which was annotated on TCT No. T-59882.[20]

Failing to settle their differences, petitioners subsequently instituted a Complaint for Partition and Accounting with Prayer for Temporary Restraining Order and/or Writ of Preliminary Injunction docketed as Civil Case No. SP-6064(04) before the RTC of San Pablo City, Branch 32, over several properties

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[12] *Id.* at 74.

[13] *Id.* at 43.

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

[15] *Id.* at 43.

[16] *Id.*

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

[18] *Id.* at 44.

[19] *Id.*

[20] *Id.* at 76.

against herein respondent Margarito, the Spouses Marconi de Villa and Florencia Bautista, and the Spouses Senen Cabrera and Ester Bautista.[21] Petitioners averred that Margarito and the others refused to heed their oral and written demands for the partition of the properties they co-owned, which included the Sta. Monica property.[22]

On April 23, 2004, the parties filed a "Partial Settlement" manifesting that they have entered into an amicable settlement over the other properties involved in the complaint.[23] In a Decision[24] dated April 28, 2004, the RTC approved the compromise agreement.

Since no settlement was reached as regards the Sta. Monica property, petitioners presented copies of their bank transactions with Far East Bank to support their claim of co-ownership over the same.[25] They also presented an undated, unnotarized, and without the name of the vendee *Kasulatan ng Bilihang Tuluyan* (blank *Kasulatan*), which Amelia purportedly executed and signed disposing the subject property in favor of the Bautista siblings.[26] Petitioner Carmelita also alleged that the duplicate copy of TCT No. T-2371 in the name of Amelia was in her possession and was never lost.

For his part, Margarito asseverated that he exclusively owns the property in controversy since he used his personal funds in purchasing the land.[27] Margarito presented TCT No. T-59882 covering the Sta. Monica property, and the Tax Declaration and Receipts thereof.[28]

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[21] *Id*. at 44.

[22] *Id.*

[23] *Id.* at 45.

[24] Penned by Judge Zorayda Herradura-Salcedo; records, Vol. 1, pp. 110-113.

[25] *Rollo*, p. 45.

[26] *Id.*

[27] *Id.*

[28] *Id.*

On February 16, 2009, the RTC ruled in favor of the petitioners and declared, among other things, that the Sta. Monica property was commonly owned by the siblings.[29] The RTC also ordered that the property be partitioned among all of them and that an accounting of its income be held. The dispositive portion of the decision reads:

WHEREFORE, judgment is hereby rendered, as follows:

a. Declaring the lot covered by Transfer Certificate of Title No. T-59882, with an area of 25,578 square meters, situated at Barangay Sta. Monica, San Pablo City, as commonly owned by the plaintiffs and defendants;
b. Ordering the partition of the lot covered by Transfer Certificate of Title No. T-59882 between and among Manuel L. Bautista, Carmelita B. Sahagun, Margarito L. Bautista, Florencia Bautista De Villa, Aniano L. Bautista and Ester B. Cabrera;
c. Ordering defendant Margarito Bautista to render an accounting of all the income from the subject lot in litigation from November 28, 2002, up to the present, until the rendition of the account; and
d. Directing defendant Margarito Bautista to deliver to the plaintiffs and the other defendant their respective shares of the income derived from the lot in litigation starting November 28, 2002.

No pronouncement as to the award of damages, attorney's fees, and costs.

SO ORDERED.[30]

On March 3, 2009, Margarito filed a Motion for Reconsideration,[31] but the RTC denied it in an Order[32] dated April 2, 2009.

Aggrieved, Margarito elevated the case before the CA. In a Decision dated March 6, 2012, the CA reversed and set aside the decision of the RTC. The *fallo* of the decision reads:

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[29] *Id*. at 72-81.

[30] *Id*. at 81.

[31] Records, Vol. 2, pp. 459-465.

[32] *Id.* at 481-486.

WHEREFORE, premises considered, the Appeal is GRANTED. The Decision dated February 16, 2009 of the Regional Trial Court of San Pablo City, Branch 32 is hereby SET ASIDE. The subject property covered by Transfer Certificate of Title (TCT) No. T-59882 under the name of defendant-appellant Margarito L. Bautista is declared exclusively owned by defendant-appellant Margarito L. Bautista.

SO ORDERED.[33]

The CA concluded that petitioners failed to establish that they are co-owners of the Sta. Monica property. It held that the TCT under Margarito's name was an indefeasible and incontrovertible title to the property and has more probative weight than the blank *Kasulatan* adduced by the petitioners. Consequently, petitioners' action for partition and accounting cannot be acted upon because they failed to prove that they are co-owners of the Sta. Monica property.

Petitioners filed a Motion for Reconsideration, but it was denied in the Resolution dated May 25, 2012.

Hence, the present recourse raising the following errors on the part of the appellate court:

A. The Court of Appeals seriously erred when it relied on the case of *Manuel Catindig vs. Aurora Irene Vda. de Meneses* which led to a conclusion that the TCT held by the defendant-appellant serves as an indefeasible and incontrovertible title to said property.

B. The Decision promulgated on March 06, 2012 subject of this Petition failed to consider the fact that the appealed Decision dated February 16, 2009 of the court *a quo* is already final and executory, and for which reason, the Court of Appeal[s] has no jurisdiction to entertain the Appeal.

C. The Court of Appeals erred when it failed to appreciate the fact that there was a compromise decision based on an agreement by all the parties which included property where some of the titles are already in the names of the siblings concerned.

D. The Court of Appeals thus erred when it did not give weight to the evidence presented by the petitioners-appellees and

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[33] *Rollo,* p. 48.

> this is notwithstanding the findings of the court *a quo* in their favor.

The petition is impressed with merit.

As a general rule, the jurisdiction of this Court in cases brought before it from the CA is limited to the review and revision of errors of law allegedly committed by the appellate court in petitions for review under Rule 45 of the Rules of Court.[34] We note that the arguments raised here would necessarily require a re-evaluation of the parties' submissions and the CA's factual findings. Nevertheless, the need to make a definitive finding on the factual issue in light of the conflicting rulings rendered by the RTC and the CA justifies this Court's review.[35]

At the outset, petitioners maintain that the CA has no jurisdiction to entertain the appeal since the Decision dated February 16, 2009 of the RTC was already final and executory. They claim that the motion for reconsideration filed by Margarito before the RTC was not in accordance with the Rules because a copy of the said motion was served or received by them through a private courier service and that there was a defect in the verification or affidavit of service.[36]

The Rules provide that pleadings may be filed in court either personally or by registered mail.[37] In the first case, the date of filing is the date of receipt. In the second case, the date of

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[34] *Tong, et al. v. Go Tiat Kun, et al.*, 733 Phil. 581, 590 (2014).

[35] *Id.*

[36] *Rollo*, pp. 32-33.

[37] Sec. 3. *Manner of filing.* — The filing of pleadings, appearances, motions, notices, orders, judgments and all other papers shall be made by presenting the original copies thereof, plainly indicated as such, personally to the clerk of court or by sending them by registered mail. In the first case, the clerk of court shall endorse on the pleading the date and hour of filing. In the second case, the date of the mailing of motions, pleadings, or any other papers or payments or deposits, as shown by the post office stamp on the envelope or the registry receipt, shall be considered as the date of their filing, payment, or deposit in court. The envelope shall be attached to the record of the case.

mailing is the date of receipt. Though filing of pleadings thru a private courier is not prohibited by the Rules, it is established in jurisprudence that the date of actual receipt of pleadings by the court is deemed the date of filing of such pleadings, and not the date of delivery thereof to a private letter-forwarding agency.[38] Records reveal that respondent received a copy of the Decision on February 23, 2009. In an Order[39] dated March 5, 2009, the trial court acknowledged that it received the motion for reconsideration filed by respondent on March 4, 2009, or on the 9th day, which is still within the reglementary period.

The RTC gave petitioners 15 days from notice to file a comment on the motion for reconsideration filed by respondent. Petitioners filed its Opposition to the Motion for Reconsideration on March 12, 2009.[40] In their Opposition, petitioners pointed the defect in the service of the motion when the same was delivered through LBC, a private courier. They also alleged therein that the motion should be denied as it would prejudice their rights. From the foregoing, the RTC gave petitioners the opportunity to be heard, and sufficient time to study the motion and meaningfully oppose the same. It was not even alleged nor proven that the motion for reconsideration was filed out of time. Considering the circumstances, the purpose of the service of the motion was substantially complied with. The Rules should be liberally construed as long as their purpose is sufficiently met and no violation of due process and fair play takes place.[41]

While We disagree with the petitioners on the procedural issues, this Court, however, finds cogent reasons to grant the petition based on the substantial issues raised in the case at bar.

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[38] *Heirs of Numeriano Miranda, Sr. v. Miranda,*713 Phil. 541, 550 (2013), citing *Philippine National Bank v. Commissioner of Internal Revenue*, 678 Phil. 660, 673 (2011). (Emphases supplied)

[39] Records, Vol. 2, p. 467.

[40] *Id.* at 468-471.

[41] *People v. Court of Appeals,* G.R. No. 183652, February 25, 2015, 751 SCRA 675, 693.

It is to be noted that the present action stemmed from an action for partition and accounting. A special civil action of judicial partition under Rule 69 of the Rules of Court is a judicial controversy between persons who, being co-owners or coparceners of common property, seek to secure a division or partition thereof among themselves, giving to each one of them the part corresponding to him.[42] The object of partition is to enable those who own property as joint tenants, or coparceners, or tenants in common to put an end to the joint tenancy so as to vest in each a sole estate in specific property or an allotment in the lands or tenements.[43] It is typically brought by a person claiming to be the owner of a specified property against a defendant or defendants whom the plaintiff recognizes to be his co-owners[44] and is premised on the existence or non-existence of co-ownership between the parties.[45] Hence, unless and until the issue of co-ownership is definitively resolved, it would be premature to effect a partition of an estate.[46]

Consequently, the first stage of an action for judicial partition and/or accounting is concerned with the determination of whether or not a co-ownership in fact exists and a partition is proper.[47] In the case at bar, petitioners aver that although the Sta. Monica property was registered solely in Margarito's name, they are co-owners of the property because it was acquired through the siblings' lending business, as such, they are entitled to partition and the conveyance to them of their respective shares.

To support their allegations, petitioners presented several mortgage contracts evidencing the transactions between Amelia and Florencia, computer printouts of their bank transactions,

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[42] *Oribello v. Court of Appeals,* G.R. No. 163504, August 5, 2015, 765 SCRA 18, 32-33.

[43] *Id.* at 33.

[44] *De Mesa v. Court of Appeals,* 301 Phil. 783, 792 (1994).

[45] *Spouses Villafria v. Plazo,* G.R. No. 187524, August 5, 2015, 765 SCRA 227, 250.

[46] *Id*.

[47] *De Mesa v. Court of Appeals, supra* note 44.

and the blank *Kasulatan*. In Carmelita's direct testimony, she illustrated how they acquired properties through their lending business and how ownership of the properties was transferred under their names. She also testified that the money used in the purchase of the Sta. Monica property came from their common fund. The pertinent portions of her testimony read:

ATTY. JAVIER
Q: And **how did you acquire these properties**?
A: **Through our lending activities**, sir.

Q: Would you care to illustrate the actual acquisition or demonstrate the acquisition?
A: If the **borrower failed to pay, she or he [is] requested to secure the Deed of Sale**, sir.

COURT

Paano, paano? Tagalugin nga.

A: We foreclosed the mortgage, sir.

ATTY. JAVIER
Q: But there was the mentioning of a Deed of Sale?
A: **We asked the borrower to execute the Deed of Sale, sir.**

Q: And by these sales, in whose names were these properties put?
A**: To us, on our names, sir.**

x x x x x x x x x

ATTY: JAVIER
Q: Now, I am asking you, how about the Sta. Monica property?
A: The Sta. Monica is co-owned also by six (6), sir.

Q: Why do you say so?
A: **Because the money acquired… Ang pera… The money used in buying that property came from the common funds, sir.**

Q: Do you have tangible proof of this?
A: The computer [printout] as to the one withdrawn in our bank account, sir.

Q: Is this the one you are referring to?
A: Yes, this [is] what I mean, all the transactions are here, sir.

Q: Do you have other than these computer [printouts], Exhibit "B," do you have any tangible proof that the Sta. Monica property is co-owned by the six (6) Bautista siblings?

A: The **blank Deed of Sale issued**, sir.

Q: I am now showing to you a Kasulatan ng Bilihang Tuluyan already previously marked as Exhibit "E" and consisting of two (2) pages, could this be that Kasulatan?

A: This is the document I am referring to, sir.

ATTY. JAVIER

For the record, we wish that it be reflected that the **Kasulatan does not indicate although it indicates the vendor, does not indicate the vendee, Your Honor. And the same has not been notarized.**[48]

From the foregoing, petitioners established the manner in which they acquired several properties through their business and have them registered under their names. Even the compromise agreement they entered into, which was approved by the RTC, reflected their claim and admission that they co-owned the properties although titled to only one of their siblings. It was, thus, logical for the RTC to conclude that it was through this practice that they also acquired the Sta. Monica property.

Moreover, several other circumstances buttressed petitioners' claim, among which is that they have proven that their lending business has the financial capacity to acquire the Sta. Monica property; that Florencia, who was co-manager of the business, entered into several mortgage transactions with Amelia; and that the blank *Kasulatan* was in their possession. They even opposed the issuance of a second owner's duplicate copy of TCT No. T-2371 since the original TCT was in their safekeeping and was not actually lost.

As for Margarito, he narrated in his direct testimony how the ownership of the property was allegedly transferred to him:

ATTY. REYES

Q: Will you kindly tell the Honorable Court, how it came about this property in Sta. Monica, San Pablo City was purchased

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[48] TSN, December 20, 2005, pp. 13-14; 17-19. (Emphases ours).

by you, I am referring to the Deed of Sale of Amelia Mendoza from the start up to the final deed of sale?

A: That property was mortgaged to my sister Florencia de Villa, and part of the money came from my own money. At that time Amelia Mendoza informed me that she would like to sell that property to both of us[,] Florencia and I, and then Florencia de Villa asked me if I am interested to buy that property.

Q: What was your answer?

A: I told her that I am interested.

Q: What finally happened, when Amelia Mendoza informed you about that Deed of Sale, what was the final consideration of the Deed of Sale?

A: **What was stated in the Absolute Deed of Sale was [₱]500,000.00**.

Q: But again that was actually paid by you?

A: **What was stated in the annotation at the back of the title plus Amelia Mendoza asked for additional amount of ₱50,000.00.**

x x x x x x x x x

ATTY. REYES

Q: Do you remember Mr. Witness, when did you execute the Deed of Sale with Amelia Mendoza?

A: More or less on November 28, 2002.

Q: Do you have a copy of that document?

A: **I will try to look with the files I have on hand. I have here the document stating the amount of [₱]500,000.00 only**.

Q: **Why [did it take] you four (4) years in order to execute that Deed of Sale**?

A: **Because the mortgage to sell was prepared in order for them to redeem the property and at the same time to return the money we have given**.

x x x x x x x x x[49]

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[49] TSN, April 29, 2008, pp. 8-9; 15-16. (Emphases ours)

The CA held that Margarito presented pieces of evidence, including a deed of sale between Amelia and Margarito. However, as found by the RTC and based on the List of Exhibits, aside from his bare allegations and testimony, Margarito neither identified nor presented the deed of sale during trial nor formally offered the same as his evidence.[50] It is elementary that he who alleges a fact has the burden of proving it and a mere allegation is not evidence.[51] It appears that Margarito's evidence of exclusive ownership are the certificate of title, the tax declarations pertaining thereto, his bank deposits, and other mortgage contracts involving different mortgagors. Despite all these, Margarito failed to prove that Amelia conveyed the Sta. Monica property exclusively in his name. It is also quite intriguing why he did not even bother to present the testimony of Amelia or of Florencia, who could have enlightened the court about their transactions. In addition, We find it incredible that a property, which secured a loan roughly over a million pesos, would be sold for considerably less than that amount or for only ₱550,000.00.

As for the TCT No. T-59882 in the name of Margarito, like in the case at bar, although a certificate of title is the best proof of ownership of a piece of land, the mere issuance of the same in the name of any person does not foreclose the possibility that the real property may be under co-ownership with persons not named in the certificate or that the registrant may only be a trustee or that other parties may have acquired interest subsequent to the issuance of the certificate of title.[52] The principle that a trustee who puts a certificate of registration in his name cannot repudiate the trust by relying on the registration is one of the well-known limitations upon a title.[53]

There is an implied trust when a property is sold and the legal estate is granted to one party but the price is paid by another for the purpose of having the beneficial interest of the

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[50] *Rollo*, p. 79.

[51] *Luxuria Homes, Inc. v. CA,* 361 Phil. 989, 1000 (1999).

[52] *Lee Tek Sheng v. CA*, 354 Phil. 556, 561-562 (1998).

[53] *Tong v. Go Tiat Kun, supra* note 35, at 593.

property.[54] This is sometimes referred to as a *purchase money resulting trust*, the elements of which are: (a) an actual payment of money, property or services, or an equivalent, constituting valuable consideration; and (b) such consideration must be furnished by the alleged beneficiary of a resulting trust.[55]

A trust, which derives its strength from the confidence one reposes on another especially between families, does not lose that character simply because of what appears in a legal document.[56] From the foregoing, this Court finds that an implied resulting trust existed among the parties. The pieces of evidence presented demonstrate their intention to acquire the Sta. Monica property in the course of their business, just like the other properties that were also the subjects of the partition case and the compromise agreement they entered into. Although the Sta. Monica property was titled under the name of Margarito, the surrounding circumstances as to its acquisition speak of the intent that the equitable or beneficial ownership of the property should belong to the Bautista siblings.

Inevitably, the RTC's Order of partition of the Sta. Monica property was erroneously set aside by the CA and this Court is convinced that petitioners satisfactorily established that they are co-owners of the property and are entitled to the reliefs prayed for.

WHEREFORE, the petition is hereby **GRANTED.** The Decision dated March 6, 2012 and the Resolution dated May 25, 2012 of the Court of Appeals in CA-G.R. CV No. 93562 are **REVERSED and SET ASIDE**. Consequently, the Decision dated February 16, 2009 of the Regional Trial Court of San Pablo City, Branch 32, in Civil Case No. SP-6064(04) is **REINSTATED.**

SO ORDERED.

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

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[54] Article 1448 of the Civil Code.

[55] *Tong v. Go Tiat Kun*, *supra* note 35, at 592-593.

[56] *Id*. at 593.

SECOND DIVISION

[G.R. No. 205745. March 8, 2017]

CAPISTRANO DAAYATA, DEXTER SALISI, and BREGIDO MALACAT, JR., *petitioners, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; RULE 45 PETITION; MAY RAISE ONLY PURE QUESTIONS OF LAW; EXCEPTIONS, ENUMERATED AND APPLIED; THE COURT REVIEWED THE FACTUAL FINDINGS AND FOUND GROSS MISAPPREHENSION OF FACTS ON THE PART OF THE LOWER COURTS.—** Petitioners seek relief from this Court through a Petition for Review on Certiorari under Rule 45 of the Rules of Court. It is basic that Rule 45 petitions may only raise pure questions of law, and that the factual findings of lower courts are generally binding and conclusive on this Court. Still, there are recognized exceptions permitting this Court to overturn the factual findings with which it is confronted. These exceptions are: (1) When the conclusion is a finding grounded entirely on speculation, surmises and 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) When the findings 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 petitioners' main and reply briefs are not disputed by the respondents; and (10) When the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record. x x x A careful review of this case and of the body of evidence that was available for the Regional Trial Court's

perusal reveals that there has been a gross misapprehension of facts on the part of the Regional Trial Court and the Court of Appeals.

2. **ID.; EVIDENCE; PROOF BEYOND REASONABLE DOUBT; THE PROSECUTION FAILED TO DISCHARGE ITS BURDEN OF PROVING PETITIONERS' GUILT BEYOND REASONABLE DOUBT.—** Conviction in criminal actions demands proof beyond reasonable doubt. x x x While not impelling such a degree of proof as to establish absolutely impervious certainty, the quantum of proof required in criminal cases nevertheless charges the prosecution with the immense responsibility of establishing moral certainty, a certainty that ultimately appeals to a person's very conscience. While indeed imbued with a sense of altruism, this imperative is borne, not by a mere abstraction, but by constitutional necessity[.] x x x The details pointed out by the defense reveal how the prosecution failed to establish the moral certainty and conscientious satisfaction that attends proof of guilt beyond reasonable doubt. While not per se demonstrating the veracity and blamelessness of the defense's entire version of events, they nevertheless disclose how the prosecution's case is unable to stand on its own merits. They cast doubt on whether the complainant and his companion were actually stopped in their tracks to be assaulted, and support the possibility that they may have instead deliberately intended to bring themselves to Vicente's house to provoke or challenge one (1) of the petitioners. They also cast doubt on whether the complainant was relentlessly assaulted, with the specific purpose of ending his life; whether the ostensible fatal blow was dealt to complainant by one (1) of the petitioners or was dealt upon him by his own violent imprudence; and whether petitioners had actually brandished implements for maiming and killing. Not only do these doubts persist, details disclosed by the prosecution itself — taken together with how the defense accounted for the events of December 16 and 17, 1995 — demonstrate the dubiety of the prosecution's claims.

APPEARANCES OF COUNSEL

Del Castillo Law Office for petitioners.
Office of the Solicitor General for respondent.

DECISION

LEONEN, *J*.:

Pride, when unchecked, can waste our youth and cause the forfeiture of all meaning in life, even in the most inconsequential things: in this case, a basketball game.

Proof beyond reasonable doubt charges the prosecution with the immense responsibility of establishing moral certainty. The prosecution's case must rise on its own merits, not merely on relative strength as against that of the defense. Should the prosecution fail to discharge its burden, acquittal must follow as a matter of course.

This resolves a Petition for Review on Certiorari[1] under Rule 45,[2] praying that the assailed May 31, 2012 Decision[3] and January 14, 2013 Resolution[4] of the Court of Appeals in CA-G.R. CR. No. 27951 be reversed and set aside, and that petitioners be acquitted of the offense of which they are charged.

The Court of Appeals' assailed Decision affirmed the April 24, 2003 Decision[5] of the Regional Trial Court of Cagayan de Oro City, Branch 37, which found petitioners guilty beyond reasonable doubt of frustrated murder. The Court of Appeals' assailed January 14, 2013 Resolution denied petitioners' motion for reconsideration.

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[1] *Rollo,* pp. 4-23.

[2] 1997 Rules of Court.

[3] *Rollo*, pp. 100-116. The Decision was penned by Associate Justice Carmelita Salandanan Manahan and concurred in by Associate Justices Romulo V. Borja and Pedro B. Corales of the Twenty-First Division, Court of Appeals, Cagayan de Oro City.

[4] *Id*. at 125-129. The Resolution was penned by Associate Justice Romulo V. Borja and concurred in by Associate Justices Ma. Luisa C. Quijano-Padilla and Marie Christine Azcarraga-Jacob of the Twenty-First Division, Court of Appeals, Cagayan de Oro City.

[5] *Id*. at 24-42. The Decision was penned by Judge Jose L. Escobido of Branch 37, Regional Trial Court, Misamis Oriental, Cagayan de Oro City.

In an Information, petitioners Capistrano Daayata (Daayata), Dexter Salisi (Salisi), and Bregido Malacat, Jr. (Malacat) were charged with frustrated murder, as follows:

> That on December 17, 1995, at about 6:00 O'clock in the morning at Zone 3, San Simon, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with evident premeditation and taking advantage of their superior strength, conspiring, confederating together and mutually helping one another, did then and there willfully, unlawfully and feloniously and with intent to kill, attack, assault[,] box and struck one Rolando O. Bahian with a stone and hitting the latter's head and several parts of his body, thereby inflicting injuries[,] to wit: "Depressed Fracture, Open frontal bone, left, and advised for surgery,["] thus performing all the acts of execution which would produce the crime of Murder, but nevertheless did not produce it by reason of some cause independent of the will of the accused, that is, by the timely and able medical attendance rendered to the said offended party which prevented his death.[6]

Upon arraignment, all three accused, now petitioners, pleaded not guilty.[7] Trial then ensued.[8]

Five (5) witnesses testified for the prosecution: the offended party, Rolando Bahian (Bahian); Kagawad Leonardo Abalde (Kagawad Abalde) of Barangay San Simon, Cagayan de Oro City; Barangay Captain Reynaldo Yañez (Barangay Captain Yañez); Dr. Percy H. Arreza (Dr. Arreza) of the Cagayan de Oro City Hospital; and Dr. John Mata (Dr. Mata), the surgeon who tended to Bahian.[9]

According to the prosecution, on December 16, 1995, at about 6:00 p.m., Bahian went to the house of Kagawad Abalde.[10] Bahian recounted to Kagawad Abalde a violent altercation

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[6] *Rollo*, p. 24.

[7] *Id*. at 102.

[8] *Id*.

[9] *Id*.

[10] *Id*.

between him and the petitioners in the course of a basketball game earlier that afternoon.[11] Bahian claimed that Salisi had committed a foul against him, making him fall to the ground.[12] He complained to the referee and this infuriated Salisi. In response, he threatened Salisi, telling him that "he would just get even with him."[13] Malacat heard his threat and positioned himself to punch Bahian. Bahian, however, dodged the blow.[14] Daayata then came, pointing a gun at Bahian.[15] Bahian then backed off and pleaded that they should not fight as they were friends.[16]

Kagawad Abalde advised Bahian to bring the matter to the attention of Barangay Captain Yañez.[17]

Accordingly, the following morning, Bahian and Kagawad Abalde made their way to Barangay Captian Yañez' house.[18] While on their way, they were blocked by petitioners.[19] Daayata hit Bahian on the left part of his chest.[20] Bahian staggered and fell onto a parked jeep.[21] Salisi then hit Bahian with a stone on the left side of his forehead, causing Bahian to fall to the ground.[22] While Bahian was lying prostrate on the ground, petitioners boxed and kicked Bahian.[23] Kagawad Abalde tried

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

[12] *Id*. at 103.

[13] *Id*.

[14] *Id*.

[15] *Id*.

[16] *Id*.

[17] *Id*.

[18] *Id*.

[19] *Id*.

[20] *Id*.

[21] *Id*.

[22] *Id*.

[23] *Id*.

his best to get Bahian away but to no avail.[24] All he could do was to shout for help.[25] Daayata then poked a gun at Bahian, Malacat unsheathed a bolo, and Salisi wielded an iron bar.[26]

Barangay Captain Yañez rushed to the scene.[27] There, Bahian lay on the ground as Kagawad Abalde tried to ward off his attackers.[28] Barangay Captain Yañez shouted to petitioners to stop.[29] Shortly after, they retreated.[30] Barangay Captain Yañez and Kagawad Abalde then brought Bahian to Barangay Captain Yañez' house, and later to Cagayan de Oro City Hospital.[31]

Upon examination, Dr. Arreza made the following findings on Bahian: "depressed fracture, open frontal bone, left."[32]

Bahian was noted to have possibly died, if not for the timely medical intervention.[33] Dr. Mata subsequently performed surgery on Bahian.[34]

The defense offered a different version of events. Apart from the three petitioners, it offered the testimonies of Delfin Yañez (Delfin),[35] Rodolfo Yañez (Rodolfo), Danzon Daayata (Danzon) and Rosemarie Daayata (Rosemarie).[36]

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[24] *Id.*

[25] *Id.* at 104.

[26] *Id.*

[27] *Id.*

[28] *Id.*

[29] *Id.*

[30] *Id.*

[31] *Id.*

[32] *Id.*

[33] *Id.*

[34] *Id.*

[35] *Id.* at 12.

[36] *Id.* at 105.

Petitioners Salisi and Malacat claimed that they were having coffee at the house of Vicente Daayata (Vicente), brother of petitioner Daayata, in the morning of December 17, 1995.[37] Bahian arrived, together with Kagawad Abalde, and called for Salisi to come out.[38] When Salisi acceded, Bahian challenged him to a fight and threw the first punch that started a scuffle.[39] In the course of the melee, Bahian took a swing for Salisi, who ducked, causing Bahian to lose his balance. Bahian then fell on the pavement and hit his head.[40] Kagawad Abalde then drew a gun, poked it at Salisi, and threatened to kill him.[41]

For his part, petitioner Daayata claimed that he was in his house, some 50 meters away from Vicente's house when the incident recalled by petitioners Salisi and Malacat transpired.[42] He rushed to Vicente's house upon hearing a commotion.[43] There, he saw Bahian and Kagawad Abalde, who was pointing a gun at Malacat.[44]

All three (3) petitioners claimed that it was not until an hour after the incident that Barangay Captain Yañez arrived.[45] They also acknowledged that an altercation did take place during a basketball game the day before, or on December 16, 1995.[46] They added however, that in the evening of December 16, while they were on their way home, Bahian waited for them to pass

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[37] *Id*.

[38] *Id*.

[39] *Id*.

[40] *Id*.

[41] *Id*. at 106.

[42] *Id*.

[43] *Id*.

[44] *Id*.

[45] *Id*.

[46] *Id*.

by his house, where he challenged them to a fight.[47] Defense witness Rodolfo allegedly pacified Bahian.[48]

In its Decision[49] dated April 24, 2003, the Regional Trial Court, Branch 37, Cagayan de Oro City found petitioners guilty beyond reasonable doubt of frustrated murder. The dispositive portion of its Decision read:

WHEREFORE, premises considered, this Court finds accused Capistrano Daayata, Dexter Salisi, and Br[e]gido Malacat, Jr., guilty beyond reasonable doubt of the crime of frustrated murder committed against Rolando Bahian, and they conspired in committing the crime, and, accordingly, each of the said accused is sentenced to suffer the penalty of imprisonment of nine (9) years of prision mayor medium as the minimum term to sixteen (16) years of reclusion temporal medium as the maximum term.

Moreover, all the three accused are sentenced and ordered (1) to pay Rolando Bahian jointly and severally the sum of Fifty Seven Thousand Pesos (₱57,000.00) by way of reimbursement for the expenses he incurred for medicines; (2) to pay Rolando Bahian jointly and severally the sum of Eighty Thousand Pesos (₱80,000.00) for the income that Rolando Bahian could have earned for two (2) years as a farmer; (3) to pay Rolando Bahian jointly and severally the sum of Thirty Thousand Pesos (₱30,000.00) by way of moral damages; and (4) to pay the costs of suit.

SO ORDERED.[50]

On appeal, the Court of Appeals sustained the Regional Trial Court's conclusions. It affirmed the penalty imposed by the Regional Trial Court, but replaced the award of actual damages to temperate damages amounting to ₱25,000. The Court of Appeals also deleted the award for loss of earning capacity, there being no proof in support of it. It also awarded ₱20,000

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[47] *Id*.

[48] *Id*.

[49] *Id*. at 24-42.

[50] *Id*. at 41-42.

as civil indemnity. The dispositive portion of its assailed May 31, 2012 Decision[51] read:

> **WHEREFORE**, premises considered, the appealed Decision dated April 24, 2003 of the Regional Trial Court, Branch 37 of Cagayan de Oro City in Criminal Case No. 96-266 is hereby **AFFIRMED** as to the penalty imposed **with MODIFICATION** as to the award of damages.
>
> All three (3) accused-appellants, CAPISTRANO DAAYATA, DEXTER SALIS[I] and BREGIDO MALACAT, JR., are ordered to pay jointly and severally Rolando Bahian the following amounts:
>
> 1. Php20,000.00 as civil indemnity;
> 2. Php30,000.00 as moral damages; and
> 3. Php25,000.00 as temperate damages.
>
> **SO ORDERED**.[52] (Emphasis in the original)

Following the denial of their Motion for Reconsideration, petitioners filed the present Petition,[53] where they insist on their version of events. They emphasize several factual details and maintain that they did not initiate an assault on Bahian. They assert that Bahian sustained the injury on his forehead through his own fault; thus, they could not be held liable for acting with intent to kill Bahian.

On July 24, 2013, respondent People of the Philippines, through the Office of the Solicitor General, filed its Comment.[54] It insisted that it was supposedly improper for this Court to re-evaluate the factual findings of the Regional Trial Court and the Court of Appeals in the context of the present Rule 45 Petition.[55] Apart from pleading the nature of a Rule 45 Petition, the five (5)-page Comment devoted a singular paragraph to

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[51] *Id*. at 100-116.

[52] *Id*. at 115.

[53] *Id*. at 4-23.

[54] *Id*. at 145-149.

[55] *Id*.

arguing that the positive identification of the petitioners as Bahian's supposed attackers must prevail.[56]

On May 12, 2014, petitioners filed their Reply,[57] noting that respondent failed to directly confront the factual issues they had raised.

For resolution is the sole issue of whether petitioners are guilty beyond reasonable doubt of frustrated murder.

I

Petitioners seek relief from this Court through a Petition for Review on Certiorari under Rule 45 of the Rules of Court. It is basic that Rule 45 petitions may only raise pure questions of law,[58] and that the factual findings of lower courts are generally binding and conclusive on this Court. Still, there are recognized exceptions permitting this Court to overturn the factual findings with which it is confronted. These exceptions are:

(1) When the conclusion is a finding grounded entirely on speculation, surmises and 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) When the findings are contrary to those of the trial court;

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[56] *Id*. at 149.

[57] *Id*. at 161-163.

[58] RULES OF COURT, Rule 45, Sec. 1:

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.

(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 petitioners' main and reply briefs are not disputed by the respondents; and

(10) When the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record.[59]

Specifically concerning criminal cases, this Court has stated that "in exceptional circumstances, such as when the trial court overlooked material and relevant matters . . . this Court will re-calibrate and evaluate the factual findings of the [lower courts]."[60]

A careful review of this case and of the body of evidence that was available for the Regional Trial Court's perusal reveals that there has been a gross misapprehension of facts on the part of the Regional Trial Court and the Court of Appeals. Thus, we reverse and acquit petitioners Capistrano Daayata, Dexter Salisi, and Bregido Malacat, Jr.

II

The defense points out several facts, which lend greater plausibility to its claim that the possibly fatal injury sustained by Bahian on his forehead was not inflicted by any of the petitioners, and that petitioners did not initiate an assault against Bahian. Negating the fact of the alleged perpetrators' assault and infliction of a potentially fatal injury negates the *corpus delicti* of the offense charged.

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[59] *Marasigan y De Guzman v. Fuentes,* G.R. No. 201310, January 11, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/january2016/201310.pdf> 5–6 [Per *J.* Leonen, Second Division], citing *Cirtek Employees Labor Union-Federation of Free Workers v. Cirtek Electronics, Inc.*, 665 Phil. 784, 789-790 (2011) [Per *J.* Carpio-Morales, Third Division].

[60] *People of the Philippines v. Esteban,* G.R. No. 200290, June 9, 2014 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/june2014/200920.pdf> 6 [Per *J.* Reyes, First Division].

First, it appears that the location where the altercation occurred between Bahian and Kagawad Abalde, on the one hand, and petitioners, on the other, is not as plain and austere as the prosecution made it seem. The prosecution merely claimed that Bahian and Kagawad Abalde were on their way to Barangay Captain Yañez's house when they were suddenly blocked and assaulted by petitioners.[61] However, it was actually settled during trial — consistent with the defense's contention — that the confrontation took place in the vicinity of the house of Vicente.[62]

This detail does not intrinsically weigh in favor of either the prosecution or the defense. For indeed, it may simply have been necessary to pass by Vicente's house en route to Barangay Captain Yañez's house and, consistent with what the prosecution claimed, that it may have merely been the spot where Bahian's attackers chose to launch their assault. But while specificity of location may ultimately be inconsequential to the prosecution's case, it is the genesis of the defense's case. As the defense asserts, the altercation was precipitated by Bahian and Kagawad Abalde's arrival outside Vicente's residence, where Bahian then called out and challenged Salisi.[63]

Second, while the prosecution painted a picture of a relentless assault that lasted for as much as 30 minutes[64] — with petitioners supposedly not content with Bahian falling onto a parked jeep, but even attacking him until he lay on the pavement, and thereafter still continuing to punch and kick him[65] — Bahian's "medical certificate showed no injury other than that on [his] forehead."[66]

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[61] *Rollo*, p. 103.

[62] *Id*. at 6.

[63] *Id*. at 105.

[64] *Id*. at 13 and 17.

[65] *Id*. at 103.

[66] *Id*. at 13.

"Physical evidence is evidence of the highest order. It speaks more eloquently than a hundred witnesses."[67] They have been characterized as "that mute but eloquent manifestations of truth which rate high in our hierarchy of trustworthy evidence."[68] Thus, in *People v. Vasquez*,[69] this Court refused to undiscerningly lend credence to the incriminating assertions of prosecution witnesses as to an alleged mauling, and stated that "[t]his Court cannot be persuaded by the prosecution's claim of perpetration of physical violence in the absence of any marked physical injuries on the various parts of the victim's face and body."[70]

As the defense correctly points out, if the prosecution's assertion of a relentless assault were true, the greater probability was that Bahian must have been "black and blue all over."[71] Quite contrary to the sort of physical evidence that a purported relentless and prolonged assault should have reasonably yielded, however, there was but one injury that Bahian was noted to have sustained.

Third, Bahian himself was noted to have admitted that his head injury was "caused by [him] hitting the edge of the concrete pavement." As the following excerpt from Bahian's cross-examination reveals:[72]

Q - And on February of 1995, your forehead was operated on by a certain Dr. John Mata, is that correct?

A - Yes.

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[67] *People v. Sacabin*, 156 Phil. 707, 713 (1974) [Per *J*. Fernandez, Second Division].

[68] *People v. Vasquez*, 345 Phil. 380, 395 (1997) [Per *J*. Hermosisima, Jr., First Division], citing *People v. Uycoque*, 316 Phil. 930, 942 (1995) [Per *J*. Puno, Second Division].

[69] 345 Phil. 380 (1997) [Per *J.* Hermosisima, Jr., First Division].

[70] *Id*. at 395.

[71] *Rollo*, p. 14.

[72] *Id*. at 9.

Q - And you told Dr. Mata that the wound on your forehead was caused by you hitting the edge of the concrete pavement, is that correct?

A - Yes, I told him a lie so that I could be treated.

Q - But nobody in the German Doctors told you that you would not be operated if that was caused by a stone or in a fight?

A - He asked me the reason why I got this injury?

Q - And then?

A - Then I told him the reason how I got this injury.

Q - That you hit the edge of the concrete pavement?

A - Yes.

Q- And that was the first time you talked to him before the operation?

A - Yes.

Q - The first time you talked to him, you lied to him?

A - Yes, I told a lie because I wanted to be operated.[73] (Citations omitted)

As the Court of Appeals has pointed out, it is true that the prosecution has sought to extenuate the weight of Bahian's admission by having him explain that he only lied to Dr. Mata because otherwise, "he would not have been admitted to the hospital and his injury would have not been operated on."[74] However, even this extenuating explanation does not completely diminish the significance of his admission.

As the same excerpt from Bahian's cross-examination indicated, nobody intimated to Bahian that he would not have been operated on if his injury arose from a violent altercation. Confronted with this detail, Bahian never offered a direct response, and instead appeared to have evaded the question.

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[73] *Id*. at 8-10.

[74] *Id*. at 109.

He merely reiterated that, "Yes, I told a lie because I wanted to be operated."[75] Thus, the defense's revelation that Bahian's alleged lie was not predicated on a rational basis stands unrefuted.

Moreover, in the present Petition, the defense points out the curious parallelism between, on the one hand, the admission or otherwise lie made by Bahian to Dr. Mata, and on the other hand, the defense's main contention that Bahian sustained a head injury through his own fault:

> There is no showing that petitioners knew that complainant told his doctor that he hit his head on the edge of the concrete pavement. They came to know of it only when they heard him admit it on cross-examination. And yet, that's exactly what they have always been asserting right from the very start, even during the preliminary investigation, or long before they heard him say it on the witness stand.
>
> It is too much of a coincidence that petitioners and the complainant should say exactly the same thing, that he hit his head on the edge of the concrete pavement – unless it is true.[76]

Finally, several witnesses – both from the defense and the prosecution – have belied the prosecution's claim that petitioners Daayata, Malacat, and Salisi wielded a gun, a bolo and an iron bar, respectively.

The most compromising of these witnesses is the prosecution's own, Barangay Captain Yañez. He categorically stated that he was well in a position to "see or identify if they were armed."[77] Ultimately, however, his observation was to the contrary:

> Q - They were armed or not?
>
> A - Who?
>
> Q - The three of them?
>
> A - I could see or identify if they were armed.

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[75] *Id*. at 10.

[76] *Id*. at 10.

[77] *Id*. at 13.

Q - Nobody brought a bolo?

A - When I arrived there, I did not see anybody holding a bolo.

Q - Nobody brought a steel pipe?

A - I have not seen.

Q - You did not see anybody holding a gun?

Q - No.[78] (Citation omitted)

Danzon, a defense witness whom the prosecution never bothered to cross-examine, stated:

Q - Tell us what was that unusual incident all about?

A - What I could say is that: I heard noise outside and because I was watching them, I saw Kag. Abalde holding a gun pointing upward and I saw Rolando Bahian already wounded on his face.[79] (Citation omitted)

Two (2) other defense witnesses — Rosemarie and Delfin — were noted to have made the same observations.[80]

III

Conviction in criminal actions demands proof beyond reasonable doubt. Rule 133, Section 2 of the Revised Rules on Evidence states:

Section 2. Proof beyond reasonable doubt. — In a criminal case, the accused is entitled to an acquittal, unless his guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.

While not impelling such a degree of proof as to establish absolutely impervious certainty, the quantum of proof required

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

[79] *Id.* at 12.

[80] *Id.*

in criminal cases nevertheless charges the prosecution with the immense responsibility of establishing moral certainty, a certainty that ultimately appeals to a person's very conscience. While indeed imbued with a sense of altruism, this imperative is borne, not by a mere abstraction, but by constitutional necessity:

> This rule places upon the prosecution the task of establishing the guilt of an accused, relying on the strength of its own evidence, and not banking on the weakness of the defense of an accused. Requiring proof beyond reasonable doubt finds basis not only in the due process clause of the Constitution, but similarly, in the right of an accused to be "presumed innocent until the contrary is proved." "Undoubtedly, it is the constitutional presumption of innocence that lays such burden upon the prosecution." Should the prosecution fail to discharge its burden, it follows, as a matter of course, that an accused must be acquitted. As explained in *Basilio v. People of the Philippines*:
>
> We ruled in *People v. Ganguso*:
>
>> An accused has in his favor the presumption of innocence which the Bill of Rights guarantees. Unless his guilt is shown beyond reasonable doubt, he must be acquitted. This reasonable doubt standard is demanded by the due process clause of the Constitution which protects the accused from conviction except upon proof beyond reasonable doubt of every fact necessary to constitute the crime with which he is charged. The burden of proof is on the prosecution, and unless it discharges that burden the accused need not even offer evidence in his behalf, and he would be entitled to an acquittal. Proof beyond reasonable doubt does not, of course, mean such degree of proof as, excluding the possibility of error, produce absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind. The conscience must be satisfied that the accused is responsible for the offense charged.
>
> Well-entrenched in jurisprudence is the rule that the conviction of the accused must rest, not on the weakness of the defense, but on the strength of the prosecution. The burden is on the prosecution to prove guilt beyond reasonable doubt, not on the accused to prove his innocence.[81] (Citations omitted)

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[81] *Macayan, Jr. y Malana v. People*, G.R. No. 175842, March 18, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/

The details pointed out by the defense reveal how the prosecution failed to establish the moral certainty and conscientious satisfaction that attends proof of guilt beyond reasonable doubt. While not per se demonstrating the veracity and blamelessness of the defense's entire version of events, they nevertheless disclose how the prosecution's case is unable to stand on its own merits.

They cast doubt on whether the complainant and his companion were actually stopped in their tracks to be assaulted, and support the possibility that they may have instead deliberately intended to bring themselves to Vicente's house to provoke or challenge one (1) of the petitioners;

They also cast doubt on whether the complainant was relentlessly assaulted, with the specific purpose of ending his life; whether the ostensible fatal blow was dealt to complainant by one (1) of the petitioners or was dealt upon him by his own violent imprudence; and whether petitioners had actually brandished implements for maiming and killing.

Not only do these doubts persist, details disclosed by the prosecution itself – taken together with how the defense accounted for the events of December 16 and 17, 1995 — demonstrate the dubiety of the prosecution's claims.

As Bahian himself recalled to Kagawad Abalde, it was he who threatened Salisi that "he would just get even with him."[82] By his own recollection too, he acknowledged that it was only upon his utterance of that threat that Malacat and Daayata responded with correlative aggression. He conceded having been put in a situation where he had to back off. By his own recollection, the clash between him and petitioners could have

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march2015/175842.pdf> 7-8 [Per *J.* Leonen, Second Division], citing Const., Art. III, Sec. 1; Const., Art. III, Sec. 14 (2); *People of the Philippines v. Solayao*, 330 Phil. 811, 819 (1996) [Per *J.* Romero, Second Division]; and *Basilio v. People of the Philippines*, 591 Phil. 508, 521-522 (2008) [Per *J.* Velasco, Jr., Second Division].

[82] *Rollo*, p. 103.

ended there, yet it did not. It appears that, rather than letting the better part of reason and modesty prevail, Bahian elected to make good on his threat to eventually just get even with his adversaries. Along the way, it even appears that he enlisted the aid of Kagawad Abalde, whose participation in the clash in the morning of December 17, 1995, as the defense recounted, was not as a pacifier but also as an aggressor. Unfortunately for Bahian, it appears that his own hubris and lack of fighting prowess not only prolonged his quarrel, but even brought him potentially fatal physical harm.

Taking off from the events in the basketball game of December 16, 1995, the prosecution unravelled a narrative of petitioners' supposed vindictiveness. Yet the contrary is apparent. The confluence of Bahian's admissions of a prior altercation, his self-issued threat, how he was constrained to desist, and his own account to Dr. Mata of how he sustained his injury, as well as the glaring dissonance noted by the defense and backed by physical evidence, demonstrate how the prosecution has fallen far too short of discharging its burden of proving petitioners' guilt beyond reasonable doubt.

WHEREFORE, the Petition is **GRANTED**. The Decision of the Court of Appeals in CA G.R. CR No. 27951 is **REVERSED and SET ASIDE**. Petitioners Capistrano Daayata, Dexter Salisi, and Bregido Malacat, Jr. are hereby **ACQUITTED** for failure of the prosecution to prove their guilt beyond reasonable doubt. Any amount they each paid by way of a bail bond is ordered **RETURNED**.

SO ORDERED.

Carpio (Chairperson), Velasco, Jr.,[*] *Peralta,* and *Mendoza, JJ.,* concur.

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[*] Designated as Fifth Member per S.O. No. 2416-U dated January 4, 2017.

THIRD DIVISION

[G.R. No. 211504. March 8, 2017]

FEDERAL BUILDERS, INC., *petitioner, vs.* **POWER FACTORS, INC.,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; CONSTRUCTION INDUSTRY ARBITRATION LAW (E.O. NO. 1008); FOR CONSTRUCTION INDUSTRY ARBITRATION COMMISSION (CIAC) TO ACQUIRE JURISDICTION, ALL THAT IS REQUIRED IS FOR THE PARTIES TO AGREE TO SUBMIT THEIR DISPUTE TO ARBITRATION IN WRITING; LIBERALITY IN THE APPLICATION OF PROCEDURAL RULES APPLIES AS TO THE FORM BY WHICH THE PARTIES AGREE.—** The need to establish a proper arbitral machinery to settle disputes expeditiously was recognized by the Government in order to promote and maintain the development of the country's construction industry. With such recognition came the creation of the CIAC through Executive Order No. 1008 (E.O. No. 1008), also known as *The Construction Industry Arbitration Law*. x x x Under the CIAC *Revised Rules of Procedure Governing Construction Arbitration* (CIAC *Revised Rules*), all that is required for the CIAC to acquire jurisdiction is for the parties of any construction contract to agree to submit their dispute to arbitration. Also, Section 2.3 of the CIAC *Revised Rules* states that the agreement may be reflected in an arbitration clause in their contract or by subsequently agreeing to submit their dispute to voluntary arbitration. The CIAC *Revised Rules* clarifies, however, that the agreement of the parties to submit their dispute to arbitration need not be signed or be formally agreed upon in the contract because it can also be in the form of other modes of communication in writing[.] x x x The liberal application of procedural rules as to the form by which the agreement is embodied is the objective of the CIAC *Revised Rules*. Such liberality conforms to the letter and spirit of E.O. No. 1008 itself which emphasizes that the modes of voluntary dispute resolution like arbitration are always preferred because they settle disputes in a speedy and amicable manner. They likewise

help in alleviating or unclogging the judicial dockets. Verily, E.O. No. 1008 recognizes that the expeditious resolution of construction disputes will promote a healthy partnership between the Government and the private sector as well as aid in the continuous growth of the country considering that the construction industry provides employment to a large segment of the national labor force aside from its being a leading contributor to the gross national product.

2. **ID.; ID.; ID.; JURISDICTION OF THE CIAC IS OVER THE DISPUTE NOT OVER THE CONTRACT BETWEEN THE PARTIES; FORMALITIES OF THE CONTRACT HAVE NOTHING TO DO WITH THE JURISDICTION OF THE CIAC.—** Worthy to note is that the jurisdiction of the CIAC is over the dispute, not over the contract between the parties. Section 2.1, Rule 2 of the CIAC *Revised Rules* particularly specifies that the CIAC has original and exclusive jurisdiction over *construction disputes*, whether such *disputes arise* from or are merely *connected with* the construction contracts entered into by parties, and whether such disputes arise *before* or *after* the completion of the contracts. Accordingly, the execution of the contracts and the effect of the agreement to submit to arbitration are different matters, and the signing or non-signing of one does not necessarily affect the other. In other words, the formalities of the contract have nothing to do with the jurisdiction of the CIAC.

3. **ID.; ID.; ID.; THE WRITTEN COMMUNICATION OR AGREEMENT TO SUBMIT THE DISPUTE TO ARBITRATION NEED NOT BE SIGNED BY THE PARTIES.—** The agreement contemplated in the CIAC *Revised Rules* to vest jurisdiction of the CIAC over the parties' dispute is not necessarily an arbitration clause to be contained only in a signed and finalized construction contract. The agreement could also be in a separate agreement, or any other form of written communication, as long as their intent to submit their dispute to arbitration is clear. The fact that a contract was signed by both parties has nothing to do with the jurisdiction of the CIAC, and this is the explanation why the CIAC *Revised Rules* itself expressly provides that the written communication or agreement need not be signed by the parties. Although the agreement to submit to arbitration has been expressly required to be in writing and signed by the parties therein by Section 4

of Republic Act No. 876 (*Arbitration Law*), the requirement is conspicuously absent from the CIAC *Revised Rules*, which even expressly allows such agreement not to be signed by the parties therein. Brushing aside the obvious contractual agreement in this case warranting the submission to arbitration is surely a step backward. Consistent with the policy of encouraging alternative dispute resolution methods, therefore, any doubt should be resolved in favor of arbitration. In this connection, the CA correctly observed that the act of Atty. Albano in manifesting that Federal had agreed to the form of arbitration was unnecessary and inconsequential considering the recognition of the value of the Contract of Service despite its being an unsigned draft.

APPEARANCES OF COUNSEL

Atienza Formento Aquino & Alzate for petitioner.
Erlich V. Barraquias for respondent.

D E C I S I O N

BERSAMIN, *J*.:

An agreement to submit to voluntary arbitration for purposes of vesting jurisdiction over a construction dispute in the Construction Industry Arbitration Commission (CIAC) need not be contained in the construction contract, or be signed by the parties. It is enough that the agreement be in writing.

The Case

Federal Builders Inc. (Federal) appeals to reverse the decision promulgated on August 12, 2013,[1] whereby the Court of Appeals (CA) affirmed the adverse decision rendered on May 12, 2010 by the Construction Industry Arbitration Commission (CIAC) with modification of the total amount awarded.[2]

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[1] *Rollo,* pp. 32-45; penned by Associate Justice Leoncia R. Dimagiba and concurred in by Associate Justice Rosmari D. Carandang and Associate Justice Ricardo R. Rosario.

[2] *Id*. at 98-128.

Antecedents

Federal was the general contractor of the Bullion Mall under a construction agreement with Bullion Investment and Development Corporation (BIDC). In 2004, Federal engaged respondent Power Factors Inc. (Power) as its subcontractor for the electric works at the Bullion Mall and the Precinct Building for ₱18,000,000.00.[3]

On February 19, 2008, Power sent a demand letter to Federal claiming the unpaid amount of ₱11,444,658.97 for work done by Power for the Bullion Mall and the Precinct Building. Federal replied that its outstanding balance under the original contract only amounted to ₱1,641,513.94, and that the demand for payment for work done by Power after June 21, 2005 should be addressed directly to BIDC.[4] Nonetheless, Power made several demands on Federal to no avail.

On October 29, 2009, Power filed a request for arbitration in the CIAC invoking the arbitration clause of the Contract of Service reading as follows:

> 15. ARBITRATION COMMITTEE — All disputes, controversies or differences, which may arise between the parties herein, out of or in relation to or in connection with this Agreement, or for breach thereof shall be settled by the Construction Industry Arbitration Commission (CIAC) which shall have original and exclusive jurisdiction over the aforementioned disputes.[5]

On November 20, 2009, Atty. Vivencio Albano, the counsel of Federal, submitted a letter to the CIAC manifesting that Federal agreed to arbitration and sought an extension of 15 days to file its answer, which request the CIAC granted.

On December 16, 2009, Atty. Albano filed his withdrawal of appearance stating that Federal had meanwhile engaged another counsel.[6]

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[3] *Id*. at 33.

[4] *Id*.

[5] *Id*. at 44.

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

Federal, represented by new counsel (Domingo, Dizon, Leonardo and Rodillas Law Office), moved to dismiss the case on the ground that CIAC had no jurisdiction over the case inasmuch as the Contract of Service between Federal and Power had been a mere draft that was never finalized or signed by the parties. Federal contended that in the absence of the agreement for arbitration, the CIAC had no jurisdiction to hear and decide the case.[7]

On February 8, 2010, the CIAC issued an order setting the case for hearing, and directing that Federal's motion to dismiss be resolved after the reception of evidence of the parties.[8]

Federal did not thereafter participate in the proceedings until the CIAC rendered the Final Award dated May 12, 2010,[9] disposing:

In summary: Respondent Federal Builders, Inc. is hereby ordered to pay claimant Power Factors, Inc. the following sums:

1. Unpaid balance on the original contract	₱4,276,614.75;
2. Unpaid balance on change order nos. 1, 2, 3, 4, 5, 6, 7, 8, & 9	3,006,970.32;
3. Interest to May 13, 2010	1,686,149.94;
4. Attorney's Fees	250,000.00;
5. Cost of Arbitration	149,503.86;
	₱9,369,238.87

The foregoing amount shall earn legal interest at the rate of 6% per annum from the date of this Final Award until this award becomes final and executory, Claimant shall then be entitled to 12% per annum until the entire amount is fully satisfied by Respondent.

Federal appealed the award to the CA insisting that the CIAC had no jurisdiction to hear and decide the case; and that the amounts thereby awarded to Power lacked legal and factual bases.

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[7] *Id*. at 35.

[8] *Id*.

[9] *Supra* note 2.

On August 12, 2013, the CA affirmed the CIAC's decision with modification as to the amounts due to Power,[10] *viz.*:

WHEREFORE, the CIAC Final Award dated 12 May 2010 in CIAC Case No. 31-2009 is hereby **AFFIRMED** with **MODIFICATION**. As modified, FEDERAL BUILDERS, INC. is ordered to pay POWER FACTORS, INC. the following:

1. Unpaid balance on the original contract	₱4,276,614.75;
2. Unpaid balance on change orders	2,864,113.32;
3. Attorney's Fees	250,000.00;
4. Cost of Arbitration	149,503.86;

The interest to be imposed on the net award (unpaid balance on the original contract and change order) amounting to ₱7,140,728.07 awarded to POWER FACTORS INC. shall be six (6%) per annum, reckoned from 4 July 2006 until this Decision becomes final and executory. Further, the total award due to POWER FACTORS INC. shall be subjected to an interest of twelve percent (12%) per annum computed from the time this judgment becomes final and executory, until full satisfaction.

SO ORDERED.[11]

Anent jurisdiction, the CA explained that the CIAC *Revised Rules of Procedure* stated that the agreement to arbitrate need not be signed by the parties; that the consent to submit to voluntary arbitration was not necessary in view of the arbitration clause contained in the Contract of Service; and that Federal's contention that its former counsel's act of manifesting its consent to the arbitration stipulated in the draft Contract of Service did not bind it was inconsequential on the issue of jurisdiction.[12]

Concerning the amounts awarded, the CA opined that the CIAC should not have allowed the increase based on labor-cost escalation because of the absence of the agreement between

[10] *Supra* note 1.

[11] *Id*. at 44-45.

[12] *Id*. at 38.

the parties on such escalation and because there was no authorization in writing allowing the adjustment or increase in the cost of materials and labor.[13]

After the CA denied Federal's motion for reconsideration on February 19, 2004,[14] Federal has come to the Court on appeal.

Issue

The issues to be resolved are: (a) whether the CA erred in upholding CIAC's jurisdiction over the present case; and (b) whether the CA erred in holding that Federal was liable to pay Power the amount of ₱7,140,728.07.

Ruling of the Court

The appeal is bereft of merit.

1.
The parties had an effective agreement to submit to voluntary arbitration; hence, the CIAC had jurisdiction

The need to establish a proper arbitral machinery to settle disputes expeditiously was recognized by the Government in order to promote and maintain the development of the country's construction industry. With such recognition came the creation of the CIAC through Executive Order No. 1008 (E.O. No. 1008), also known as *The Construction Industry Arbitration Law.* Section 4 of E.O. No. 1008 provides:

Sec. 4. *Jurisdiction.* — The CIAC shall have original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines, whether the dispute arises before or after the completion of the contract, or after the abandonment or breach thereof. These disputes may involve government or private contracts. **For the Board to acquire jurisdiction, the parties to a dispute must agree to submit the same to voluntary arbitration.** x x x

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[13] *Id.* at 42-43.

[14] *Rollo,* p. 47.

Under the CIAC *Revised Rules of Procedure Governing Construction Arbitration* (CIAC *Revised Rules*), all that is required for the CIAC to acquire jurisdiction is for the parties of any construction contract to agree to submit their dispute to arbitration.[15] Also, Section 2.3 of the CIAC *Revised Rules* states that the agreement may be reflected in an arbitration clause in their contract or by subsequently agreeing to submit their dispute to voluntary arbitration. The CIAC *Revised Rules* clarifies, however, that the agreement of the parties to submit their dispute to arbitration need not be signed or be formally agreed upon in the contract because it can also be in the form of other modes of communication in writing, *viz.*:

RULE 4 - EFFECT OF AGREEMENT TO ARBITRATE

SECTION 4.1. Submission to CIAC jurisdiction - An arbitration clause in a construction contract or a submission to arbitration of a construction dispute **shall be deemed an agreement to submit an existing or future controversy to CIAC jurisdiction**, notwithstanding the reference to a different arbitration institution or arbitral body in such contract or submission.

4.1.1 When a contract contains a clause for the submission of a future controversy to arbitration, it is not necessary for the parties to enter into a submission agreement before the Claimant may invoke the jurisdiction of CIAC.

4.1.2 An **arbitration agreement** or a **submission to arbitration** shall be in **writing**, but it **need not be signed by the parties**, **as long as the intent is clear that the parties agree to submit a present or future controversy arising from a construction contract to arbitration**. I**t may be in the form of exchange of letters sent by post or by telefax, telexes, telegrams, electronic mail or any other mode of communication.**

The liberal application of procedural rules as to the form by which the agreement is embodied is the objective of the CIAC *Revised Rules*. Such liberality conforms to the letter and spirit of E.O. No. 1008 itself which emphasizes that the modes of

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[15] Rule 4, *CIAC Revised Rules*; *LICOMCEN, Inc. v. Foundation Specialists, Inc.,* G.R. Nos. 167022 & 169678, April 4, 2011, 647 SCRA 83, 97.

voluntary dispute resolution like arbitration are always preferred because they settle disputes in a speedy and amicable manner. They likewise help in alleviating or unclogging the judicial dockets. Verily, E.O. No. 1008 recognizes that the expeditious resolution of construction disputes will promote a healthy partnership between the Government and the private sector as well as aid in the continuous growth of the country considering that the construction industry provides employment to a large segment of the national labor force aside from its being a leading contributor to the gross national product.[16]

Worthy to note is that the jurisdiction of the CIAC is over the dispute, not over the contract between the parties.[17] Section 2.1, Rule 2 of the CIAC *Revised Rules* particularly specifies that the CIAC has original and exclusive jurisdiction over *construction disputes*, whether such *disputes arise* from or are merely *connected with* the construction contracts entered into by parties, and whether such disputes arise *before* or *after* the completion of the contracts. Accordingly, the execution of the contracts and the effect of the agreement to submit to arbitration are different matters, and the signing or non-signing of one does not necessarily affect the other. In other words, the formalities of the contract have nothing to do with the jurisdiction of the CIAC.

Federal contends that there was no mutual consent and no meeting of the minds between it and Power as to the operation and binding effect of the arbitration clause because they had rejected the draft service contract.

The contention of Federal deserves no consideration.

Under Article 1318 of the *Civil Code*, a valid contract should have the following essential elements, namely: (*a*) consent of the contracting parties; (*b*) object certain that is the subject matter of the contract; and (*c*) cause or consideration. Moreover,

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[16] See perambulatory clauses of E.O. No. 1008.

[17] *National Irrigation Administration v. Court of Appeals,* G.R. No. 129169, November 17, 1999, 318 SCRA 255, 269.

a contract does not need to be in writing in order to be obligatory and effective unless the law specifically requires so. Pursuant to Article 1356[18] and Article 1357[19] of the *Civil Code*, contracts shall be obligatory in whatever form they may have been entered into, provided that all the essential requisites for their validity are present. Indeed, there was a contract between Federal and Power even if the Contract of Service was unsigned. Such contract was obligatory and binding between them by virtue of all the essential elements for a valid contract being present.

It clearly appears that the works promised to be done by Power were already executed albeit still incomplete; that Federal paid Power ₱1,000,000.00 representing the originally proposed downpayment, and the latter accepted the payment; and that the subject of their dispute concerned only the amounts still due to Power. The records further show that Federal admitted having drafted the Contract of Services containing the following clause on submission to arbitration, to wit:

> 15. ARBITRATION COMMITTEE – All disputes, controversies or differences, which may arise between the Parties herein, out of or in relation to or in connection with this Agreement, or for breach thereof shall be settled by the Construction Industry Arbitration Commission (CIAC) which shall have original and exclusive jurisdiction over the aforementioned disputes.[20]

With the parties having no issues on the provisions or parts of the Contract of Service other than that pertaining to the

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[18] Article 1356. Contracts shall be obligatory, in whatever form they may have been entered into, provided all the essential requisites for their validity are present. However, when the law requires that a contract be in some form in order that it may be valid or enforceable, or that a contract be proved in a certain way, that requirement is absolute and indispensable. In such cases, the right of the parties stated in the following article cannot be exercised.

[19] Article 1357. If the law requires a document or other special form, as in the acts and contracts enumerated in the following article, the contracting parties may compel each other to observe that form, once the contract has been perfected. This right may be exercised simultaneously with the action upon the contract.

[20] *Rollo*, p. 34.

downpayment that Federal was supposed to pay, Federal could not validly insist on the lack of a contract in order to defeat the jurisdiction of the CIAC. As earlier pointed out, the CIAC *Revised Rules* specifically allows any written mode of communication to show the parties' intent or agreement to submit to arbitration their present or future disputes arising from or connected with their contract.

The CIAC and the CA both found that the parties had disagreed on the amount of the downpayment. On its part, Power indicated after receiving and reviewing the draft of the Contract of Service that it wanted 30% as the downpayment. Even so, Power did not modify anything else in the draft, and returned the draft to Federal after signing it. It was Federal that did not sign the draft because it was not amenable to the amount as modified by Power. It is notable that the arbitration clause written in the draft of Federal was unchallenged by the parties until their dispute arose.

Moreover, Federal asserted the original contract to support its claim against Power. If Federal would insist that the remaining amount due to Power was only ₱1,641,513.94 based on the original contract,[21] it was really inconsistent for Federal to rely on the draft when it is beneficial to its side, and to reject its efficacy and existence just to to relieve itself from the CIAC's unfavorable decision.

The agreement contemplated in the CIAC *Revised Rules* to vest jurisdiction of the CIAC over the parties' dispute is not necessarily an arbitration clause to be contained only in a signed and finalized construction contract. The agreement could also be in a separate agreement, or any other form of written communication, as long as their intent to submit their dispute to arbitration is clear. The fact that a contract was signed by both parties has nothing to do with the jurisdiction of the CIAC, and this is the explanation why the CIAC *Revised Rules* itself expressly provides that the written communication or agreement need not be signed by the parties.

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[21] *Id.*

Although the agreement to submit to arbitration has been expressly required to be in writing and signed by the parties therein by Section 4[22] of Republic Act No. 876 (*Arbitration Law*),[23] the requirement is conspicuously absent from the CIAC *Revised Rules*, which even expressly allows such agreement not to be signed by the parties therein.[24] Brushing aside the obvious contractual agreement in this case warranting the submission to arbitration is surely a step backward.[25] Consistent with the policy of encouraging alternative dispute resolution methods, therefore, any doubt should be resolved in favor of arbitration.[26] In this connection, the CA correctly observed that the act of Atty. Albano in manifesting that Federal had agreed to the form of arbitration was unnecessary and inconsequential considering the recognition of the value of the Contract of Service despite its being an unsigned draft.

2.
Amounts as modified by the CA are correct

We find no reversible error regarding the amounts as modified by the CA. Power did not sufficiently establish that the change or increase of the cost of materials and labor was to be separately determined and approved by both parties as provided under

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[22] Section 4. *Form of arbitration agreement*. – A contract to arbitrate a controversy thereafter arising between the parties, as well as a submission to arbitrate an existing controversy, shall be in writing and subscribed by the party sought to be charged, or by his lawful agent.

The making of a contract or submission for arbitration described in section two hereof, providing for arbitration of any controversy, shall be deemed a consent of the parties of the province or city where any of the parties resides, to enforce such contract of submission.

[23] *An Act to Authorize the Making of Arbitration and Submission Agreements, to Provide for the Appointment of Arbitrators and the Procedure for Arbitration in Civil Controversies, and for Other Purposes*; June 19, 1953.

[24] Subsection 4.1.2, Rule 4 of the CIAC *Revised Rules*.

[25] *LM Power Engineering Corporation v. Capitol Industrial Construction Groups, Inc.*, G.R. No. 141833, March 26, 2003, 399 SCRA 562, 569.

[26] *Id*. at 570.

Article 1724 of the *Civil Code*. As such, Federal should not be held liable for the labor cost escalation.

WHEREFORE, the Court **AFFIRMS** the decision promulgated on August 12, 2013; and **ORDERS** the petitioner to pay the costs of suit.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 215383. March 8, 2017]

HON. KIM S. JACINTO-HENARES, in her official capacity as COMMISSIONER OF THE BUREAU OF INTERNAL REVENUE, *petitioner, vs.* **ST. PAUL COLLEGE OF MAKATI,** *respondent.*

SYLLABUS

REMEDIAL LAW; ACTIONS; MOOT AND ACADEMIC; AN ACTION QUESTIONING THE CONSTITUTIONALITY OF REVENUE MEMORANDUM ORDER (RMO) NO. 20-2013; WITH THE ISSUANCE OF RMO NO. 44-2016, A SUPERVENING EVENT HAS TRANSPIRED THAT RENDERED THIS PETITION MOOT AND ACADEMIC.— A moot and academic case is one that ceases to present a justiciable controversy by virtue of supervening events, so that an adjudication of the case or a declaration on the issue would be of no practical value or use. Courts generally decline

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

jurisdiction over such case or dismiss it on the ground of mootness. With the issuance of RMO No. 44-2016, a supervening event has transpired that rendered this petition moot and academic, and subject to denial. The CIR, in her petition, assails the RTC Decision finding RMO No. 20-2013 unconstitutional because it violated the non-stock, non-profit **educational** institutions' tax exemption privilege under the Constitution. However, subsequently, RMO No. 44-2016 clarified that non-stock, non-profit **educational** institutions are excluded from the coverage of RMO No. 20-2013. Consequently, the RTC Decision no longer stands, and there is no longer any practical value in resolving the issues raised in this petition.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Padilla Law Office for respondent.

R E S O L U T I O N

CARPIO, *J.*:

The Case

This petition for review[1] assails the Decision dated 25 July 2014[2] and Joint Resolution dated 29 October 2014[3] of the Regional Trial Court, Branch 143, Makati City (RTC), in Civil Case No. 13-1405, declaring Revenue Memorandum Order (RMO) No. 20-2013 unconstitutional.

The Facts

On 22 July 2013, petitioner Kim S. Jacinto-Henares, acting in her capacity as then Commissioner of Internal Revenue (CIR), issued RMO No. 20-2013, "*Prescribing the Policies and Guidelines in the Issuance of Tax Exemption Rulings to*

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[1] *Rollo,* pp. 11-50. Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] *Id*. at 58-61. Penned by Presiding Judge Maximo M. De Leon.

[3] *Id*. at 62-66.

Qualified Non-Stock, Non-Profit Corporations and Associations under Section 30 of the National Internal Revenue Code of 1997, as Amended."

On 29 November 2013, respondent St. Paul College of Makati (SPCM), a non-stock, non-profit educational institution organized and existing under Philippine laws, filed a Civil Action to Declare Unconstitutional [Bureau of Internal Revenue] RMO No. 20-2013 with Prayer for Issuance of Temporary Restraining Order and Writ of Preliminary Injunction[4] before the RTC. SPCM alleged that "RMO No. 20-2013 imposes as a prerequisite to the enjoyment by non-stock, non-profit educational institutions of the privilege of tax exemption under Sec. 4(3) of Article XIV of the Constitution both a registration and approval requirement, i.e., that they submit an application for tax exemption to the BIR subject to approval by CIR in the form of a Tax[]Exemption Ruling (TER) which is valid for a period of [three] years and subject to renewal."[5] According to SPCM, RMO No. 20-2013 adds a prerequisite to the requirement under Department of Finance Order No. 137-87,[6] and makes failure to file an annual information return a ground for a non-stock, non-profit educational institution to "automatically lose its income tax-exempt status."[7]

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[4] *Id*. at 85-100.

[5] *Id*. at 87. RMO No. 20-2013, Section 10 states: "Tax Exemption Rulings may be renewed upon filing of a subsequent Application for Tax Exemption/Revalidation, under same requirements and procedures provided herein. Otherwise, the exemption shall be deemed revoked upon the expiration of the Tax Exemption Ruling. The new Tax Exemption Ruling shall be valid for another period of three (3) years, unless sooner revoked or cancelled."

[6] Rules and Regulations Implementing Section 4(3), Article XIV of the New Constitution. Dated 16 December 1987.

[7] RMO No. 20-2013, Section 11 states: "If a corporation or association which has been issued a Tax Exemption Ruling fails to file its annual information return, it shall automatically lose its income tax-exempt status beginning the taxable year for which it failed to file an annual information return, in addition to the sanctions imposed under Section 250 of the NIRC, as amended."

In a Resolution dated 27 December 2013,[8] the RTC issued a temporary restraining order against the implementation of RMO No. 20-2013. It found that failure of SPCM to comply with RMO No. 20-2013 would necessarily result to losing its tax-exempt status and cause irreparable injury.

In a Resolution dated 22 January 2014,[9] the RTC granted the writ of preliminary injunction after finding that RMO No. 20-2013 appears to divest non-stock, non-profit educational institutions of their tax exemption privilege. Thereafter, the RTC denied the CIR's motion for reconsideration. On 29 April 2014, SPCM filed a Motion for Judgment on the Pleadings under Rule 34 of the Rules of Court.

The Ruling of the RTC

In a Decision dated 25 July 2014, the RTC ruled in favor of SPCM and declared RMO No. 20-2013 unconstitutional. It held that "by imposing the x x x [prerequisites alleged by SPCM,] and if not complied with by non-stock, non-profit educational institutions, [RMO No. 20-2013 serves] as diminution of the constitutional privilege, which even Congress cannot diminish by legislation, and thus more so by the [CIR] who merely exercise[s] quasi-legislative function."[10]

The dispositive portion of the Decision reads:

> WHEREFORE, in view of all the foregoing, the Court hereby declares BIR RMO No. 20-2013 as UNCONSTITUTIONAL for being violative of Article XIV, Section 4, paragraph 3. Consequently, all Revenue Memorandum Orders subsequently issued to implement BIR RMO No. 20-2013 are declared null and void.
>
> The writ of preliminary injunction issued on 03 February 2014 is hereby made permanent.
>
> SO ORDERED.[11]

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[8] *Rollo,* pp. 110-112.

[9] *Id*. at 113-115.

[10] *Id*. at 61.

[11] *Id*.

On 18 September 2014, the CIR issued RMO No. 34-2014,[12] which clarified certain provisions of RMO No. 20-2013, as amended by RMO No. 28-2013.[13]

In a Joint Resolution dated 29 October 2014, the RTC denied the CIR's motion for reconsideration, to wit:

> WHEREFORE, viewed in the light of the foregoing premises, the Motion for Reconsideration filed by the respondent is hereby DENIED for lack of merit.
>
> Meanwhile, this Court clarifies that the phrase "Revenue Memorandum Order" referred to in the second sentence of its decision dated July 25, 2014 refers to "issuance/s" of the respondent which tends to implement RMO 20-2013 for if it is otherwise, said decision would be useless and would be rendered nugatory.
>
> SO ORDERED.[14]

Hence, this present petition.

The Issues

The CIR raises the following issues for resolution:

> WHETHER THE TRIAL COURT CORRECTLY CONCLUDED THAT RMO [NO.] 20-2013 IMPOSES A PREREQUISITE BEFORE A NON-STOCK, NON-PROFIT EDUCATIONAL INSTITUTION MAY AVAIL OF THE TAX EXEMPTION UNDER SECTION 4(3), ARTICLE XIV OF THE CONSTITUTION.

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[12] "*Clarifying Certain Provisions of Revenue Memorandum Order (RMO) No. 20-2013, as amended by RMO No. 28-2013, on the issuance of Tax Exemption Rulings for Qualified Non-Stock, Non-Profit Corporations and Associations under Section 30 of the National Internal Revenue Code of 1997, as amended.*"

[13] RMO No. 28-2013 (dated 29 October 2013) amends Section 10 of RMO No. 20-2013 as follows: "SEC. 10. Tax Exemption Rulings may be renewed upon filing of a subsequent Application for Tax Exemption/Revalidation, under same requirements and procedures provided herein. Failure to renew the Tax Exemption Ruling shall be deemed revocation thereof upon the expiration of the three (3)-year period. The new Tax Exemption Ruling shall be valid for another period of three (3) years, unless sooner revoked or cancelled."

[14] *Rollo,* p. 66.

WHETHER THE TRIAL COURT CORRECTLY CONCLUDED THAT RMO NO. 20-2013 ADDS TO THE REQUIREMENT UNDER DEPARTMENT OF FINANCE ORDER NO. 137-87.[15]

The Ruling of the Court

We deny the petition on the ground of mootness.

We take judicial notice that on 25 July 2016, the present CIR Caesar R. Dulay issued RMO No. 44-2016, which provides that:

> **SUBJECT: Amending Revenue Memorandum Order No. 20-2013, as amended (Prescribing the Policies and Guidelines in the Issuance of Tax Exemption Rulings to Qualified Non-Stock, Non-Profit Corporations and Associations under Section 30 of the National Internal Revenue Code of 1997, as Amended)**
>
> **In line with the Bureau's commitment to put in proper context the nature and tax status of non-profit, non-stock educational institutions, this Order is being issued to exclude non-stock, non-profit educational institutions from the coverage of Revenue Memorandum Order No. 20-2013, as amended.**
>
> SECTION 1. Nature of Tax Exemption. — **The tax exemption of non-stock, non-profit educational institutions is directly conferred by paragraph 3, Section 4, Article XIV of the 1987 Constitution, the pertinent portion of which reads:**
>
> > ***"All revenues and assets of non-stock, non-profit educational institutions used actually, directly and exclusively for educational purposes shall be exempt from taxes and duties."***
>
> This constitutional exemption is reiterated in Section 30 (H) of the 1997 Tax Code, as amended, which provides as follows:
>
> > "Sec. 30. Exempt 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

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[15] *Id*. at 30.

(H) A non-stock and non-profit educational institution;
x x x."

It is clear and unmistakable from the aforequoted constitutional provision that non-stock, non-profit educational institutions are constitutionally exempt from tax on all revenues derived in pursuance of its purpose as an educational institution and used actually, directly and exclusively for educational purposes. This constitutional exemption gives the non-stock, non-profit educational institutions a distinct character. And for the constitutional exemption to be enjoyed, jurisprudence and tax rulings affirm the doctrinal rule that there are only two requisites: (1) The school must be non-stock and non-profit; and (2) The income is actually, directly and exclusively used for educational purposes. There are no other conditions and limitations.

In this light, the constitutional conferral of tax exemption upon non-stock and non-profit educational institutions should not be implemented or interpreted in such a manner that will defeat or diminish the intent and language of the Constitution.

SECTION 2. Application for Tax Exemption. — Non-stock, non-profit educational institutions shall file their respective Applications for Tax Exemption with the Office of the Assistant Commissioner, Legal Service, Attention: Law Division.

SECTION 3. Documentary Requirements. —The non-stock, non-profit educational institution shall submit the following documents:

a. Original copy of the application letter for issuance of Tax Exemption Ruling;

b. Certified true copy of the Certificate of Good Standing issued by the Securities and Exchange Commission;

c. Original copy of the Certification under Oath of the Treasurer as to the amount of the income, compensation, salaries or any emoluments paid to its trustees, officers and other executive officers;

d. Certified true copy of the Financial Statements of the corporation for the last three (3) years;

e. Certified true copy of government recognition/permit/accreditation to operate as an educational institution issued by the Commission on Higher Education (CHED), Department of Education (DepEd), or Technical Education and Skills Development Authority

(TESDA); Provided, that if the government recognition/permit/ accreditation to operate as an educational institution was issued five (5) years prior to the application for tax exemption, an original copy of a current Certificate of Operation/Good Standing, or other equivalent document issued by the appropriate government agency (i.e., CHED, DepEd, or TESDA) shall be submitted as proof that the non-stock and non-profit education is currently operating as such; and

f. Original copy of the Certificate of utilization of annual revenues and assets by the Treasurer or his equivalent of the non-stock and non-profit educational institution.

SECTION 4. Request for Additional Documents. — In the course of review of the application for tax exemption, the Bureau may require additional information or documents as the circumstances may warrant.

SECTION 5. Validity of the Tax Exemption Ruling. — Tax Exemption Rulings or Certificates of Tax Exemption of non-stock, non-profit educational institutions shall remain valid and effective, unless recalled for valid grounds. They are not required to renew or revalidate the Tax exemption rulings previously issued to them.

The Tax Exemption Ruling shall be subject to revocation if there are material changes in the character, purpose or method of operation of the corporation which are inconsistent with the basis for its income tax exemption.

SECTION 6. Transitory Provisions.— To update the records of the Bureau and for purposes of a better system of monitoring, non-stock, non-profit educational institutions with Tax Exemption Rulings or Certificates of Exemption issued prior to June 30, 2012 are required to apply for new Tax Exemption Rulings.

SECTION 7. Repealing Clause.— Any revenue issuance which is inconsistent with this Order is deemed revoked, repealed, or modified accordingly.

SECTION 8. Effectivity. — This Order shall take effect immediately. (Emphases supplied)

A moot and academic case is one that ceases to present a justiciable controversy by virtue of supervening events, so that an adjudication of the case or a declaration on the issue would

be of no practical value or use.[16] Courts generally decline jurisdiction over such case or dismiss it on the ground of mootness.[17]

With the issuance of RMO No. 44-2016, a supervening event has transpired that rendered this petition moot and academic, and subject to denial. The CIR, in her petition, assails the RTC Decision finding RMO No. 20-2013 unconstitutional because it violated the non-stock, non-profit **educational** institutions' tax exemption privilege under the Constitution. However, subsequently, RMO No. 44-2016 clarified that non-stock, non-profit **educational** institutions are excluded from the coverage of RMO No. 20-2013. Consequently, the RTC Decision no longer stands, and there is no longer any practical value in resolving the issues raised in this petition.

WHEREFORE, we **DENY** the petition on the ground of mootness. We **SET ASIDE** the Decision dated 25 July 2014 and Joint Resolution dated 29 October 2014 of the Regional Trial Court, Branch 143, Makati City, declaring Revenue Memorandum Order No. 20-2013 unconstitutional. The writ of preliminary injunction is superseded by this Resolution.

SO ORDERED.

Peralta, Mendoza, Reyes,[*] and *Leonen, JJ.,* concur.

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[16] *Timbol v. Commission on Elections,* 751 Phil. 456 (2015); *Carpio v. Court of Appeals,* 705 Phil. 153 (2013), citing *Osmeña III v. Social Security System of the Philippines,* 559 Phil. 723 (2007); *Abdul v. Sandiganbayan,* 722 Phil. 485 (2013).

[17] *Carpio v. Court of Appeals,* 705 Phil. 153 (2013), citing *Osmeña III v. Social Security System of the Philippines,* 559 Phil. 723 (2007).

[*] Designated Fifth Member per Special Order No. 2416-BB dated 4 January 2017.

THIRD DIVISION

[G.R. No. 225562. March 8, 2017]

WILLIAM C. LOUH, JR. and IRENE L. LOUH, *petitioners, vs.* **BANK OF THE PHILIPPINE ISLANDS**, *respondent.*

SYLLABUS

1. **CIVIL LAW; LOANS; INTEREST; THE COURT REDUCED THE CUMULATIVE ANNUAL INTEREST OF 114% IMPOSED BY THE BANK TO 12% PER ANNUM.—** In the case at bench, BPI imposed a cumulative annual interest of 114%, plus 25% of the amount due as attorney's fees. Inevitably, the RTC and the CA aptly reduced the charges imposed by BPI upon the Spouses Louh. Note that incorporated in the amount of ₱533,836.27 demanded by BPI as the Spouses Louh's obligation as of August 7, 2010 were the higher rates of finance and late payment charges, which the courts *a quo* had properly directed to be reduced. In the SOA dated October 14, 2009, the principal amount indicated was ₱113,756.83. In accordance with *Macalinao*, the finance and late payment charges to be imposed on the principal amount of ₱113,756.83 are reduced to 12% each *per annum*, reckoned from October 14, 2009, the date when the Spouses Louh became initially remiss in the payment of their obligation to BPI, until full payment.
2. **ID.; DAMAGES; ATTORNEY'S FEES; THE COURT MODIFIED THE AWARD OF ATTORNEY'S FEES FROM 25% TO 5% OF THE TOTAL AMOUNT DUE.—** [T]he Court reduces the attorney's fees to five percent (5%) of the total amount due from the Spouses Louh pursuant to *MCMP* and Article 2227 of the New Civil Code.

APPEARANCES OF COUNSEL

Glenn R. Polinar for petitioners.
Victor Ariel G. Soliven for respondent.

RESOLUTION

REYES, *J.*:

Before the Court is the instant petition for review on *certiorari*[1] filed by William C. Louh, Jr. (William) and Irene L. Louh (Irene) (collectively, the Spouses Louh) to assail the Decision[2] and Resolution,[3] dated August 11, 2015 and May 23, 2016, respectively, of the Court of Appeals (CA) in CA-G.R. CV No. 100754.

Antecedents

The herein respondent, Bank of the Philippine Islands (BPI), issued a credit card in William's name, with Irene as the extension card holder. Pursuant to the terms and conditions of the cards' issuance, 3.5% finance charge and 6% late payment charge shall be imposed monthly upon unpaid credit availments.[4]

The Spouses Louh made purchases from the use of the credit cards and paid regularly based on the amounts indicated in the Statement of Accounts (SOAs). However, they were remiss in their obligations starting October 14, 2009.[5] As of August 15, 2010, their account was unsettled prompting BPI to send written demand letters dated August 7, 2010, January 25, 2011 and May 19, 2011. By September 14, 2010, they owed BPI the total amount of ₱533,836.27. Despite repeated verbal and written demands, the Spouses Louh failed to pay BPI.[6]

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[1] *Rollo*, pp. 5-15.

[2] Penned by Associate Justice Marlene Gonzales-Sison, with Associate Justices Ramon A. Cruz and Melchor Quirino C. Sadang concurring; *id*. at 17-27.

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

[4] RTC records, p. 000112.

[5] *Id*. at 000108-000109.

[6] *Id*. at 000112.

On August 4, 2011, BPI filed before the Regional Trial Court (RTC) of Makati City a Complaint[7] for Collection of a Sum of Money.

On February 21, 2012, William filed before the RTC a Motion for Extension of Time to File an Answer or Responsive Pleading.[8] In its Order[9] dated February 27, 2012, the RTC granted an extension of 15 days or up to March 4, 2012, but the Spouses Louh still failed to comply within the prescribed period.[10]

On June 11, 2012, BPI filed a motion to declare the Spouses Louh in default.[11] Before the RTC can rule on BPI's motion, the Spouses Louh filed an Answer[12] on July 20, 2012 or more than three months after the prescribed period, which ended on March 4, 2012.

On July 24, 2012, the RTC issued an Order[13] declaring the Spouses Louh in default and setting BPI's *ex-parte* presentation of evidence on August 7, 2012. The Branch Clerk of Court thereafter submitted a Commissioner's Report[14] dated September 7, 2012, and the RTC considered the case submitted for decision on November 27, 2012.[15]

On November 29, 2012, the RTC rendered a Decision,[16] the *fallo* of which ordered the Spouses Louh to solidarily pay BPI (1) ₱533,836.27 plus 12% finance and 12% late payment annual

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[7] Docketed as Civil Case No. 11-753, *id*. at 000001-000005.

[8] *Id*. at 000029-000030.

[9] Issued by Presiding Judge Eugene C. Paras; *id*. at 000036.

[10] *Rollo*, pp. 19, 22.

[11] RTC records, pp. 000037-000039.

[12] *Id*. at 000044-000046.

[13] *Id*. at 000047-000048.

[14] *Id*. at 000108-000109.

[15] *Id*. at 000110.

[16] *Id*. at 000111-000113.

charges starting from August 7, 2010 until full payment, and (2) 25% of the amount due as attorney's fees, plus ₱1,000.00 per court hearing and ₱8,064.00 as filing or docket fees; and (3) costs of suit.[17]

The RTC explained that BPI had adduced preponderant evidence proving that the Spouses Louh had in fact availed of credit accommodations from the use of the cards. However, the RTC found the 3.5% finance and 6% late payment monthly charges[18] imposed by BPI as iniquitous and unconscionable. Hence, both charges were reduced to 1% monthly. Anent the award of attorney's fees equivalent to 25% of the amount due, the RTC found the same to be within the terms of the parties' agreement.[19]

The Spouses Louh filed a Motion for Reconsideration,[20] which the RTC denied in the Order[21] issued on April 8, 2013. The appeal[22] they filed was likewise denied by the CA in the herein assailed decision and resolution.

In affirming *in toto* the RTC's judgment, the CA explained that the Spouses Louh were properly declared in default for their failure to file an answer within the reglementary period. The Spouses Louh further filed no motion to set aside the order of default. The CA also found that BPI had offered ample evidence, to wit: (1) delivery receipts pertaining to the credit cards and the terms and conditions governing the use thereof signed by the Spouses Louh; (2) computer-generated authentic copies of the SOAs; and (3) demand letters sent by BPI, which the Spouses Louh received but ignored. As to the award of attorney's fees, the CA ruled that the terms governing the use

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[17] *Id*. at 000113.

[18] 42% and 72% *per annum*, respectively.

[19] RTC records, pp. 000112-000113.

[20] *Id*. at 000114-000118.

[21] *Id*. at 000123.

[22] *Id*. at 000127-000128.

of the cards explicitly stated that should the account be referred to a collection agency, then 25% of the amount due shall be charged as attorney's fees.[23]

In the herein assailed Resolution[24] dated May 23, 2016, the CA denied the Spouses Louh's Motion for Reconsideration.[25]

Issue

Aggrieved, the Spouses Louh are before the Court raising the sole issue of whether or not the CA erred in sustaining BPI's complaint.[26]

The Spouses Louh pray for the dismissal of BPI's suit. They likewise seek a relaxation of procedural rules claiming that their failure to file a timely Answer was due to William's medical condition, which required him to undergo a heart by-pass surgery.[27] They further alleged that BPI failed to establish its case by preponderance of evidence. Purportedly, BPI did not amply prove that the Spouses Louh had in fact received and accepted the SOAs, which were, however, unilaterally prepared by the bank.[28] They allege the same circumstance as to the receipt of the demand letters. The computations likewise did not show the specific amounts pertaining to the principal, interests and penalties. They point out that since their credit limit was only ₱326,000.00, it is evident that the amount of ₱533,836.27 demanded by BPI included unconscionable charges.[29]

BPI failed to file a comment to the instant petition within the prescribed period, which expired on September 23, 2016.

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[23] *Rollo*, pp. 22-26.

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

[25] *Id*. at 28-32.

[26] *Id*. at 9.

[27] *Id*. at 10.

[28] *Id*. at 11.

[29] *Id*. at 12.

Ruling of the Court

The Court affirms the herein assailed decision and resolution, but modifies the principal amount and attorney's fees awarded by the RTC and the CA.

The Spouses Louh reiterate that the RTC wrongly declared them in default since by reason of William's sickness, they were entitled to a relaxation of the rules. Moreover, BPI had failed to offer preponderant evidence relative to the actual amount of the Spouses Louh's indebtedness.

The foregoing claims are untenable.

In *Magsino v. De Ocampo*,[30] the Court instructs that:

> Procedural rules are tools designed to facilitate the adjudication of cases. Courts and litigants alike are thus enjoined to abide strictly by the rules. And while the Court, in some instances, allows a relaxation in the application of the rules, this, we stress, was never intended to forge a bastion for erring litigants to violate the rules with impunity. The liberality in the interpretation and application of the rules applies only in proper cases and under justifiable causes and circumstances. While it is true that litigation is not a game of technicalities, it is equally true that every case must be prosecuted in accordance with the prescribed procedure to insure an orderly and speedy administration of justice.
>
> Like all rules, procedural rules should be followed ***except*** only when, for the most persuasive of reasons, they may be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the prescribed procedure.

The rules were instituted to be faithfully complied with, and allowing them to be ignored or lightly dismissed to suit the convenience of a party like the petitioner was impermissible. Such rules, often derided as merely technical, are to be relaxed only in the furtherance of justice and to benefit the deserving. Their liberal construction in exceptional

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[30] G.R. No. 166944, August 18, 2014, 733 SCRA 202.

situations should then rest on a showing of justifiable reasons and of at least a ***reasonable attempt at compliance with them***. x x x.[31] (Citations omitted and emphasis and italics ours)

In the case at bar, the CA aptly pointed out that the Spouses Louh filed their Answer with the RTC only on July 20, 2012 or more than three months after the prescribed period, which expired on March 4, 2012. When they were thereafter declared in default, they filed no motion to set aside the RTC's order, a remedy which is allowed under Rule 9, Section 3[32] of the Rules of Civil Procedure. The Spouses Louh failed to show that they exerted due diligence in timely pursuing their cause so as to entitle them to a liberal construction of the rules, which can only be made in exceptional cases.

The Spouses Louh claim as well that BPI's evidence are insufficient to prove the amounts of the former's obligation; hence, the complaint should be dismissed. The Court, in *Macalinao v. BPI*,[33] emphatically ruled that:

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[31] *Id.* at 219-220, citing *Republic of the Philippines v. Kenrick Development Corp.*, 529 Phil. 876, 885-886 (2006).

[32] **Section 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.

x x x x x x x x x

[33] 616 Phil. 60 (2009).

Considering the foregoing rule, respondent BPI should not be made to suffer for petitioner Macalinao's failure to file an answer and concomitantly, to allow the latter to submit additional evidence by dismissing or remanding the case for further reception of evidence. Significantly, petitioner Macalinao herself admitted the existence of her obligation to respondent BPI, albeit with reservation as to the principal amount. Thus, a dismissal of the case would cause great injustice to respondent BPI. Similarly, a remand of the case for further reception of evidence would unduly prolong the proceedings of the instant case and render inutile the proceedings conducted before the lower courts.[34]

BPI had offered as evidence the (1) testimony of Account Specialist Carlito M. Igos, who executed a Judicial Affidavit in connection with the case, and (2) documentary exhibits, which included the (a) delivery receipts pertaining to the credit cards and the terms and conditions governing the use thereof signed by the Spouses Louh, (b) computer-generated authentic copies of the SOAs,[35] and (c) demand letters sent by BPI, which the Spouses Louh received.[36] The Clerk of Court subsequently prepared a Commissioner's Report, from which the RTC based its judgment.

The Spouses Louh slept on their rights to refute BPI's evidence, including the receipt of the SOAs and demand letters. BPI cannot be made to pay for the Spouses Louh's negligence, omission or belated actions.

Be that as it may, the Court finds excessive the principal amount and attorney's fees awarded by the RTC and CA. A modification of the reckoning date relative to the computation of the charges is in order too.

In *Macalinao*,[37] where BPI charged the credit cardholder of 3.25% interest and 6% penalty per month,[38] and 25% of the

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[34] *Id*. at 71.

[35] RTC records, pp. 000060-000097.

[36] *Id*. at 000111; *rollo*, p. 25.

[37] *Supra* note 33.

[38] 111% *per annum.*

total amount due as attorney's fees, the Court unequivocally declared that:

[T]his is **not the first time that this Court has considered the interest rate of 36% per annum as excessive and unconscionable**. We held in *Chua vs. Timan*:

> The stipulated interest rates of 7% and 5% per month imposed on respondents' loans must be **equitably reduced to 1% per month or 12% *per annum***. We need not unsettle the principle we had affirmed in a plethora of cases that **stipulated interest rates of 3% per month and higher are excessive, iniquitous, unconscionable and exorbitant**. **Such stipulations are void for being contrary to morals, if not against the law**. While C.B. Circular No. 905-82, which took effect on January 1, 1983, effectively removed the ceiling on interest rates for both secured and unsecured loans, regardless of maturity, nothing in the said circular could possibly be read as granting *carte blanche* authority to lenders to raise interest rates to levels which would either enslave their borrowers or lead to a hemorrhaging of their assets. x x x

Since the stipulation on the interest rate is void, it is as if there was no express contract thereon. Hence, **courts may reduce the interest rate** as reason and equity demand.

The same is true with respect to the penalty charge. x x x Pertinently, Article 1229 of the Civil Code states:

> **Art. 1229.** The judge shall equitably reduce the penalty when the principal obligation has been partly or irregularly complied with by the debtor. Even if there has been no performance, the penalty may also be reduced by the courts if it is iniquitous or unconscionable.

x x x x x x x x x

x x x [T]he **stipulated penalty charge of 3% per month or 36% per annum, in addition to regular interests, is indeed iniquitous and unconscionable**.[39] (Citations and emphasis in the original omitted, and emphasis ours)

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[39] *Macalinao v. BPI*, *supra* note 33, at 69-70.

Thus, in *Macalinao*, the Court reduced both the interest and penalty charges to 12% each, and the attorney's fees to ₱10,000.00.

In *MCMP Construction Corp. v. Monark Equipment Corp.*,[40] the creditor cumulatively charged the debtor 60% annually as interest, penalty and collection fees, and 25% of the total amount due as attorney's fees. The Court similarly found the rates as exorbitant and unconscionable; hence, directed the reduction of the annual interest to 12%, penalty and collection charges to 6%, and attorney's fees to 5%. The Court explained that attorney's fees are in the nature of liquidated damages, which under Article 2227 of the New Civil Code, "*shall be equitably reduced if they are iniquitous or unconscionable*."[41]

In the case at bench, BPI imposed a cumulative annual interest of 114%, plus 25% of the amount due as attorney's fees. Inevitably, the RTC and the CA aptly reduced the charges imposed by BPI upon the Spouses Louh. Note that incorporated in the amount of ₱533,836.27 demanded by BPI as the Spouses Louh's obligation as of August 7, 2010 were the higher rates of finance and late payment charges, which the courts *a quo* had properly directed to be reduced.

In the SOA[42] dated October 14, 2009, the principal amount indicated was ₱113,756.83. In accordance with *Macalinao*, the finance and late payment charges to be imposed on the principal amount of ₱113,756.83 are reduced to 12% each *per annum*, reckoned from October 14, 2009, the date when the Spouses Louh became initially remiss in the payment of their obligation to BPI, until full payment.

Anent BPI's litigation expenses, the Court retains the RTC and CA's disquisition awarding ₱8,064.00 as filing or docket fees, and costs of suit. However, the Court reduces the attorney's fees to five percent (5%) of the total amount due from the

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[40] G.R. No. 201001, November 10, 2014, 739 SCRA 432.

[41] *Id.* at 440-443.

[42] RTC records, pp. 000060-000063.

Spouses Louh pursuant to *MCMP*[43] and Article 2227 of the New Civil Code.

WHEREFORE, the Decision and Resolution, dated August 11, 2015 and May 23, 2016, respectively, of the Court of Appeals in CA-G.R. CV No. 100754, finding the Spouses William and Irene Louh liable to the Bank of the Philippine Islands for the payment of their past credit availments, plus finance and late payment charges of 12% each *per annum*, ₱8,064.00 as filing or docket fees, and costs of suit, are **AFFIRMED**. The principal amount due, reckoning period of the computation of finance and late payment charges, and attorney's fees are, however, **MODIFIED** as follows:

(1) the principal amount due is ₱113,756.83 as indicated in the Statement of Account dated October 14, 2009;

(2) finance and late payment charges of twelve percent (12%) each *per annum* shall be computed from October 14, 2009 until full payment; and

(3) five percent (5%) of the total amount due is to be paid as attorney's fees.

SO ORDERED.

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

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[43] *Supra* note 40.

[*] Additional Member per Raffle dated February 20, 2017 vice Associate Justice Francis H. Jardeleza.

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

FIRST DIVISION

[A.C. No. 5333. March 13, 2017]

ROSA YAP PARAS, *complainant, vs.* **JUSTO DE JESUS PARAS,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; DISBARMENT OR SUSPENSION OF ATTORNEYS; THE INTEGRATED BAR OF THE PHILIPPINES' (IBP) FORMAL INVESTIGATION IS A MANDATORY REQUIREMENT WHICH MAY NOT BE DISPENSED WITH, EXCEPT FOR VALID AND COMPELLING REASONS.—** Generally, the IBP's formal investigation is a mandatory requirement which may not be dispensed with, except for valid and compelling reasons, as it is essential to accord both parties an opportunity to be heard on the issues raised. Absent a valid fact-finding investigation, the Court usually remands the administrative case to the IBP for further proceedings. However, in light of the foregoing circumstances, as well as respondent's own admission that he resumed practicing law even without a Court order lifting his suspension, the Court finds a compelling reason to resolve the matters raised before it even without the IBP's factual findings and recommendation thereon.
2. **ID.; ID.; A LAWYER'S SUSPENSION IS NOT AUTOMATICALLY LIFTED UPON THE LAPSE OF THE SUSPENSION PERIOD, FOR A LAWYER MUST FIRST SUBMIT THE REQUIRED DOCUMENTS AND WAIT FOR AN ORDER FROM THE COURT LIFTING THE SUSPENSION BEFORE HE OR SHE RESUMES THE PRACTICE OF LAW. —** According to jurisprudence, the "practice of law embraces any activity, in or out of court, which requires the application of law, as well as legal principles, practice or procedure[,] and calls for legal knowledge, training[,] and experience." During the suspension period and before the suspension is lifted, a lawyer must desist from practicing law. It must be stressed, however, that a lawyer's suspension is not automatically lifted upon the lapse of the suspension period. The lawyer must submit the required documents and wait for

an order from the Court lifting the suspension before he or she resumes the practice of law. In this case, the OBC correctly pointed out that respondent's suspension period became effective on May 23, 2001 and lasted for one (1) year, or until May 22, 2002. Therafter, respondent filed a motion for the lifting of his suspension. However, soon after this filing and without waiting for a Court order approving the same, respondent admitted to accepting new clients and cases, and even working on an amicable settlement for his client with the Department of Agrarian Reform. Indubitably, respondent engaged in the practice of law without waiting for the Court order lifting the suspension order against him, and thus, he must be held administratively liable therefor.

3. **ID.; ID.; WILLFUL DISOBEDIENCE TO ANY LAWFUL ORDER OF A SUPERIOR COURT AND WILLFULLY APPEARING AS AN ATTORNEY WITHOUT AUTHORITY TO DO SO ARE GROUNDS FOR DISBARMENT OR SUSPENSION FROM THE PRACTICE OF LAW.—** Under Section 27, Rule 138 of the Rules of Court, willful disobedience to any lawful order of a superior court and willfully appearing as an attorney without authority to do so – acts which respondent is guilty of in this case – are grounds for disbarment or suspension from the practice of law. x x x. Anent the proper penalty to be imposed on respondent, prevailing case law shows that the Court consistently imposed an additional suspension of six (6) months on lawyers who continue practicing law despite their suspension. Thus, an additional suspension of six (6) months on respondent due to his unauthorized practice of law is proper. The Court is mindful, however, that suspension can no longer be imposed on respondent considering that just recently, respondent had already been disbarred from the practice of law and his name had been stricken off the Roll of Attorneys in *Paras v. Paras*. In *Sanchez v. Torres*, the Court ruled that the penalty of suspension or disbarment can no longer be imposed on a lawyer who had been previously disbarred. Nevertheless, it resolved the issue on the lawyer's administrative liability for recording purposes in the lawyer's personal file in the OBC. Hence, the Court held that respondent therein should be suspended from the practice of law, although the said penalty can no longer be imposed in view of his previous disbarment. In the same manner, the Court imposes upon respondent herein the penalty of suspension from the practice of law for a period

of six (6) months, although the said penalty can no longer be effectuated in view of his previous disbarment, but nonetheless should be adjudged for recording purposes. That being said, the issue anent the propriety of lifting his suspension is already moot and academic.

APPEARANCES OF COUNSEL

Yap-Siton Law Office for complainant.
Paras and Associates for respondent.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

This administrative case stemmed from the disbarment complaint[1] (1995 complaint) filed by Rosa Yap Paras (complainant) against her husband Justo de Jesus Paras (respondent) for which he was suspended from the practice of law for a year. The issues before the Court now are (*a*) whether respondent should be held administratively liable for allegedly violating his suspension order and (*b*) whether his suspension should be lifted.

The Facts

In a Decision[2] dated October 18, 2000, the Court suspended respondent from the practice of law for six (6) months for falsifying his wife's signature in bank documents and other related loan instruments, and for one (1) year for immorality and abandonment of his family, with the penalties to be served simultaneously.[3] Respondent moved for reconsideration[4]

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[1] Dated April 25, 1995. *Rollo*, Vol. I, pp. 1-19.

[2] 397 Phil. 462 (2000). See also *rollo*, Vol. I, pp. 608-626.

[3] *Id*. at 475-476.

[4] See motion for reconsideration dated November 28, 2000; *rollo*, Vol. I, pp. 509-515.

but the Court denied it with finality in a Resolution[5] dated January 22, 2001.

On March 2, 2001, complainant filed a Motion[6] to declare in contempt and disbar respondent and his associate, Atty. Richard R. Enojo (Atty. Enojo), alleging that respondent continued to practice law, and that Atty. Enojo signed a pleading prepared by respondent, in violation of the suspension order.[7] Moreover, complainant claimed that respondent appeared before a court in Dumaguete City on February 21, 2001, thereby violating the suspension order.[8] On March 26, 2001, complainant filed a second motion for contempt and disbarment,[9] claiming that, on March 13, 2001, Atty. Enojo again appeared for Paras and Associates, in willful disobedience of the suspension order issued against respondent.[10] Complainant filed two (2) more motions for contempt dated June 8, 2001[11] and August 21, 2001[12] raising the same arguments. Respondent and Atty. Enojo filed their respective comments,[13] and complainant filed her replies[14]

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[5] *Id*. at 517.

[6] See Motion to Declare Atty. Justo J. Paras and Atty. Richard R. Enojo in Contempt and to Order Them Disbarred dated March 1, 2001; *id*. at 668-675.

[7] See *id*. at 673-673A.

[8] See *id*. at 673.

[9] Dated March 15, 2001. *Id*. at 686-689.

[10] *Id*. at 687.

[11] See Third Motion for Contempt and Motion for Disbarment; *id.* at 695-699.

[12] See Fourth Motion for Contempt and to Declare Respondent as Disbarred; *id*. at 721-723.

[13] See Comment dated September 25, 2001 filed by respondent and Comment dated October 5, 2001 filed by Atty. Enojo; *id.* at 741-753 and 774-784, respectively.

[14] See Reply to Comment of Respondent Atty. Richard R. Enojo dated October 10, 2001 and Reply to Comment Dated September 25, 2001 dated October 5, 2001; *id*. at 802-804 and 808-815, respectively.

to both comments. Later on, respondent filed a Motion to Lift Suspension[15] dated May 27, 2002, informing the Court that he completed the suspension period on May 22, 2002. Thereafter, respondent admitted that he started accepting new clients and cases after the filing of the Motion to Lift Suspension.[16] Also, complainant manifested that respondent appeared before a court in an election case on July 25, 2002 despite the pendency of his motion to lift suspension. In view of the foregoing, the Court referred the matter to the Integrated Bar of the Philippines (IBP) for report and recommendation.[17]

On March 26, 2003, complainant filed an Ex-Parte Motion for Clarificatory Order[18] on the status of respondent' suspension, essentially inquiring whether respondent can resume his practice prior to the Court's order to lift his suspension.[19] Meanwhile, the Office of the Bar Confidant (OBC) received the same inquiry through a Letter[20] dated March 21, 2003 signed by Acting Municipal Circuit Trial Court (MCTC) Judge Romeo Anasario of the Second MCTC of Negros Oriental. Accordingly, the Court referred the foregoing queries to the OBC for report and recommendation.[21]

In a Report and Recommendation[22] dated June 22, 2004, the OBC recommended that the Court issue an order declaring that respondent cannot engage in the practice of law until his

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[15] *Id*. at 820-821.

[16] See *id*. at 903.

[17] See Resolutions dated December 10, 2001, September 18, 2002, and October 14, 2002; See *id*. at 819, 925, and 983-984, respectively.

[18] Dated March 6, 2003. *Rollo*, Vol. II, pp. 1604-1606.

[19] See *id*. at 1606.

[20] *Id*. at 1614-1615.

[21] See Resolution dated July 7, 2003; *id.* at 1619.

[22] *Id*. at 1623-1625. Penned by Court Attorney III Mercedita C. Cariño, reviewed by Assistant Bar Confidant Corazon G. Ferrer-Flores, and approved by Deputy Clerk of Court and Bar Confidant Ma. Cristina B. Layusa.

suspension is ordered lifted by the Court.[23] Citing case law, the OBC opined that the lifting of a lawyer's suspension is not automatic upon the end of the period stated in the Court's decision and an order from the Court lifting the suspension is necessary to enable him to resume the practice of his profession. In this regard, the OBC noted that: (*a*) respondent's suspension **became effective on May 23, 2001** upon his receipt of the Court resolution denying his motion for reconsideration with finality; and (*b*) considering that the suspensions were to be served simultaneously, the period of suspension **should have ended on May 22, 2002**.[24] To date, however, the Court has not issued any order lifting the suspension.

Soon thereafter, in a Resolution[25] dated August 2, 2004, the Court directed the IBP to submit its report and recommendation on the pending incidents referred to it. Since no report was received until 2013, the Court was constrained to issue a Resolution[26] dated January 20, 2014, requiring the IBP to submit a status report regarding the said incidents. In response, the IBP-Commission on Bar Discipline sent a letter[27] to the Court, conveying that the Board of Governors had passed a Resolution dated April 15, 2013 affirming respondent's suspension from the practice of law.[28] However, in view of the pendency of respondent's motion for reconsideration before it, the IBP undertook to transmit the case records to the Court as soon as said motion is resolved.[29] Thereafter, in a letter[30] dated September 22, 2015, the IBP advised the Court that it denied respondent's

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[23] *Id*. at 1625.

[24] *Id*. at 1624.

[25] *Id*. at 1626.

[26] *Rollo*, Vol. VI, pp. 3266-3268.

[27] Dated March 5, 2014. *Id*. at 3269.

[28] *Id*.

[29] *Id*.

[30] *Id*. at 3556.

motion for reconsideration. The Court received the records and relevant documents only on February 15, 2016.[31]

The IBP's Report and Recommendation

In the Report and Recommendation[32] dated January 16, 2012, instead of resolving only the pending incidents referred to the IBP, the IBP Investigating Commissioner examined anew the 1995 complaint filed against respondent which had been resolved with finality by the Court in its Decision dated October 18, 2000 and Resolution dated January 22, 2001. The Investigating Commissioner recommended that respondent be suspended from the practice of law for two (2) years for falsifying his wife's signature in the bank loan documents and for immorality.[33]

In a Resolution[34] dated April 15, 2013, the IBP Board of Governors adopted and approved the Report and Recommendation dated January 16, 2012, with modification decreasing the recommended penalty to suspension from the practice of law for one (1) year.[35] Aggrieved, respondent filed a motion for reconsideration,[36] alleging that his administrative liability based on the charges in the 1995 complaint had been settled more than a decade ago in the Court's Decision dated October 18, 2000. He added that to suspend him anew for another year based on the same grounds would constitute administrative double jeopardy. He stressed that the post-decision referral of this case to the IBP was limited only to pending incidents relating to the

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[31] See *id*. at 3579.

[32] *Id*. at 3587-3592. Signed by Commissioner Oliver A. Cachapero.

[33] See *id*. at 3590-3592.

[34] See Notice of Resolution in Resolution No. XX-2013-421 signed by Acting Secretary for the Meeting Dennis A. B. Funa; *id*. at 3586.

[35] *Id*.

[36] See Motion for Reconsideration with Manifestation in Accordance with Supreme Court Circular 04-94 and Motion for Consolidation (with Leave of Court) dated September 4, 2015; *id*. at 3559-3571.

motion to declare him in contempt and his motion to lift the suspension. Such motion was, however, denied in a Resolution dated June 7, 2015.[37]

The Issues Before the Court

The core issues in this case are: (*a*) whether respondent should be administratively held liable for practicing law while he was suspended; and (*b*) whether the Court should lift his suspension.

The Court's Ruling

At the outset, the Court notes that the instant matters referred to the IBP for investigation, report, and recommendation pertain to respondent's alleged violation of the suspension order and his request for the Court to lift the suspension order. However, the IBP Investigating Commissioner evidently did not dwell on such matters. Instead, the IBP Investigating Commissioner proceeded to determine respondent's liability based on the 1995 complaint filed by herein complainant — which was already resolved with finality by no less than the Court itself. To make things worse: (*a*) the IBP Board of Governors failed to see the IBP Investigating Commissioner's mishap, and therefore, erroneously upheld the latter's report and recommendation; and (*b*) it took the IBP more than a decade to resolve the instant matters before it. Thus, this leaves the Court with no factual findings to serve as its basis in resolving the issues raised before it.

Generally, the IBP's formal investigation is a mandatory requirement which may not be dispensed with, except for valid and compelling reasons,[38] as it is essential to accord both parties an opportunity to be heard on the issues raised.[39] Absent a valid

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[37] See Notice of Resolution Resolution No. XXI-2015-479* signed National Secretary Nasser A. Marohomsalic; *id*. at 3584.

[38] *Villanueva v. Deloria*, 542 Phil. 1, 6 (2007), citing *Baldomar v. Paras*, 401 Phil. 370, 373-375 (2000).

[39] See *Arandia v. Magalong,* 435 Phil. 199, 202-203 (2002), citing *Baldomar v. Paras, id.* at 373-374; further citation omitted.

fact-finding investigation, the Court usually remands the administrative case to the IBP for further proceedings.[40] However, in light of the foregoing circumstances, as well as respondent's own admission that he resumed practicing law even without a Court order lifting his suspension, the Court finds a compelling reason to resolve the matters raised before it even without the IBP's factual findings and recommendation thereon.

According to jurisprudence, the "practice of law embraces any activity, in or out of court, which requires the application of law, as well as legal principles, practice or procedure[,] and calls for legal knowledge, training[,] and experience."[41] During the suspension period and before the suspension is lifted, a lawyer must desist from practicing law.[42] It must be stressed, however, that a lawyer's suspension is not automatically lifted upon the lapse of the suspension period.[43] The lawyer must submit the required documents and wait for an order from the Court lifting the suspension before he or she resumes the practice of law.[44]

In this case, the OBC correctly pointed out that respondent's suspension period became effective on May 23, 2001 and lasted for one (1) year, or until May 22, 2002. Therafter, respondent filed a motion for the lifting of his suspension. However, soon after this filing and without waiting for a Court order approving the same, respondent admitted to accepting new clients and cases, and even working on an amicable settlement for his client with the Department of Agrarian Reform.[45] Indubitably,

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[40] See *Baldomar v. Paras*, *id*. at 373-375. See also *Delos Santos v. Robiso,* 423 Phil. 515, 519-522 (2001).

[41] *J.K. Mercado and Sons Agricultural Enterprises, Inc. v. De Vera*, 422 Phil. 583, 591-592 (2001).

[42] See *Lingan v. Calubaquib*, 737 Phil. 191, 193 (2014).

[43] See guidelines for lifting an order suspending a lawyer from the practice of law; *Maniago v. De Dios,* 631 Phil. 139, 145-146 (2010).

[44] See *id*. See also *Ibana-Andrade v. Paita-Moya,* A.C. No. 8313, July 14, 2015, 762 SCRA 571, 577-578.

[45] *Rollo*, Vol. I, p. 903.

respondent engaged in the practice of law without waiting for the Court order lifting the suspension order against him, and thus, he must be held administratively liable therefor.

Under Section 27, Rule 138 of the Rules of Court, willful disobedience to any lawful order of a superior court and willfully appearing as an attorney without authority to do so — acts which respondent is guilty of in this case — are grounds for disbarment or suspension from the practice of law,[46] to wit:

> Section 27. *Disbarment or suspension of attorneys by Supreme Court; grounds therefor*. — **A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court** for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before admission to practice, or **for a willful disobedience of any lawful order of a superior court, or for corruptly or willfully appearing as an attorney for a party to a case without authority so to do**. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice. (Emphases and underscoring supplied)

Anent the proper penalty to be imposed on respondent, prevailing case law[47] shows that the Court consistently imposed an additional suspension of six (6) months on lawyers who continue practicing law despite their suspension. Thus, an additional suspension of six (6) months on respondent due to his unauthorized practice of law is proper. The Court is mindful, however, that suspension can no longer be imposed on respondent considering that just recently, respondent had already been disbarred from the practice of law and his name had been stricken off the Roll of Attorneys in *Paras v. Paras*.[48] In *Sanchez v.*

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[46] See *Eustaquio v. Navales*, A.C. No. 10465, June 8, 2016.

[47] See *id*. See also *Ibana-Andrade v. Paita-Moya*, *supra* note 44; *Feliciano v. Bautizta-Lozada*, A.C. No. 7593, March 11, 2015, 752 SCRA 245; *Lingan v. Calubaquib*, *supra* note 42; and *Molina v. Magat*, 687 Phil. 1 (2012).

[48] See A.C. No. 7348, September 27, 2016.

Torres,[49] the Court ruled that the penalty of suspension or disbarment can no longer be imposed on a lawyer who had been previously disbarred.[50] Nevertheless, it resolved the issue on the lawyer's administrative liability for recording purposes in the lawyer's personal file in the OBC. Hence, the Court held that respondent therein should be suspended from the practice of law, although the said penalty can no longer be imposed in view of his previous disbarment. In the same manner, the Court imposes upon respondent herein the penalty of suspension from the practice of law for a period of six (6) months, although the said penalty can no longer be effectuated in view of his previous disbarment, but nonetheless should be adjudged for recording purposes. That being said, the issue anent the propriety of lifting his suspension is already moot and academic.

As for Atty. Enojo, complainant insists that by signing a pleading dated February 21, 2001[51] and indicating therein the firm name Paras and Associates, Atty. Enojo conspired with respondent to violate the suspension order.

Complainant's contention is untenable.

As a lawyer, Atty. Enojo has the duty and privilege of representing clients before the courts. Thus, he can sign pleadings on their behalf. The Court cannot give credence to complainant's unsubstantiated claim that respondent prepared the pleading and only requested Atty. Enojo to sign it. Furthermore, the pleading averted to by complainant was dated February 21, 2001, when respondent's suspension was not yet effective. Thus, the contempt charge against Atty. Enojo must be denied for lack of merit.

As a final note, the Court reminds the IBP to meticulously, diligently, and efficiently act on the matters referred to it for investigation, report, and recommendation, and to submit its

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[49] A.C. No. 10240, November 25, 2014, 741 SCRA 620.

[50] See *id*. at 627.

[51] See Comment on Omnibus Motion of Plaintiff filed before the Metropolitan Trial Court in Cities signed by Atty. Enojo; *rollo*, Vol. I, p. 684.

report with reasonable dispatch so as to ensure proper administration of justice. Any inordinate delay cannot be countenanced.

WHEREFORE, respondent Justo de Jesus Paras is hereby found **GUILTY** of violating Section 27, Rule 138 of the Rules of Court. Accordingly, he is **SUSPENDED** from the practice of law for a period of six (6) months. However, considering that respondent has already been previously disbarred, this penalty can no longer be imposed.

The motion to declare Atty. Richard R. Enojo in contempt is **DENIED** for lack of merit.

Let a copy of this Resolution be furnished the Office of the Bar Confidant to be appended to respondent's personal record as a member of the Bar. Likewise, let copies of the same be served on the Integrated Bar of the Philippines and the Office of the Court Administrator, which is directed to circulate them to all courts in the country for their information and guidance.

SO ORDERED.

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

FIRST DIVISION

[G. R. No. 184917. March 13, 2017]

JESSIE M. DOROTEO (Deceased), represented by his sister, LUCIDA D. HERMIS, *petitioner, vs.* **PHILIMARE INCORPORATED, BONIFACIO GOMEZ, and/or FIL CARGO SHIPPING CORP.,** *respondents.*

[G. R. No. 184932. March 13, 2017]

PHILIMARE INCORPORATED, BONIFACIO GOMEZ, and/or FIL CARGO SHIPPING CORP., *petitioners, vs.* **JESSIE M. DOROTEO (Deceased), represented by his sister, LUCIDA D. HERMIS,** *respondent.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR CODE; EMPLOYEES' COMPENSATION; CLAIMANTS IN COMPENSATION PROCEEDINGS MUST SHOW CREDIBLE INFORMATION THAT THERE IS PROBABLY A RELATION BETWEEN THE ILLNESS AND THE WORK, FOR THEY CANNOT RELY ON THE FACT THAT THE EMPLOYER'S DESIGNATED PHYSICIAN HAD DECLARED THE EMPLOYEE FIT PURSUANT TO THE PRE-EMPLOYMENT MEDICAL EXAMINATION (PEME), SINCE THE PEME CANNOT BE A CONCLUSIVE PROOF THAT THE SEAFARER WAS FREE FROM ANY AILMENT PRIOR TO HIS DEPLOYMENT.—** [T]his Court has held that a worker brings with him possible infirmities in the course of his employment, and while the employer does not insure the health of the employees, he takes the employee as found and assumes the risk of liability. However, claimants in compensation proceedings must show credible information that there is probably a relation between the illness and the work. They cannot rely on the fact that the employer's designated physician had declared the employee fit pursuant to the pre-employment medical examination (PEME), since the PEME cannot be a conclusive proof that the seafarer was free from any ailment — and specifically for cancer — prior to his deployment.

2. **ID.; ID.; ID.; 2000 PHILIPPINE OVERSEAS EMPLOYMENT AGENCY STANDARD EMPLOYMENT CONTRACT (POEA-SEC); TO BE ENTITLED TO COMPENSATION AND BENEFITS, IT IS NOT SUFFICIENT TO ESTABLISH THAT THE ILLNESS OR INJURY WHICH RENDERED THE SEAFARER PERMANENTLY OR PARTIALLY DISABLED WAS CONTRACTED DURING THE TERM OF HIS CONTRACT AND NOT PRE-EXISTING, BUT**

IT MUST ALSO BE SHOWN THAT THERE IS A CAUSAL CONNECTION BETWEEN THE SEAFARER'S ILLNESS OR INJURY AND THE WORK FOR WHICH HE HAD BEEN CONTRACTED FOR.— In *Sealanes Marine Services, Inc. v. National Labor Relations Commission*, we noted that under the 1996 POEA standard contract, proof that the working conditions increased the risk of a disease is not required for a seaman to claim the benefits under his employment contract for the illness acquired by seamen during the course of their employment. Subsequently, the 2000 POEA standard contract was created which specifically required work-relation as a condition for compensation: x x x. Evident from the x x x provision is that the permanent total or partial disability suffered by a seafarer during the term of his contract must be caused by work-related illness or injury. In other words, to be entitled to compensation and benefits under said provision, it is not sufficient to establish that the seafarer's illness or injury has rendered him permanently or partially disabled, but **it must also be shown that there is a causal connection between the seafarer's illness or injury and the work for which he had been contracted for.** This is consistent with the logic behind the court's interpretation of the 1996 POEA standard contract, hence several decisions denying compensability due to the illness proving to be pre-existing. The prevailing rule under the 1996 POEA-SEC was that the illness leading to the eventual death of seafarer need not be shown to be work-related in order to be compensable, but must be proven to have been contracted during the term of the contract and not pre-existing. The evolution of this rule for the 2000 POEA-SEC is that the illness is further required to be work-related, work-caused, or work-aggravated. x x x. [T]here is no clear nexus between the disease Doroteo acquired and the working conditions he encountered. Therefore, the disputable presumption of work-relation cannot be applied, since based on the evidence presented the Court cannot reasonably conclude that his work as an engineer in the engine room led to Doroteo's throat cancer.

3. **CIVIL LAW; THE CIVIL CODE OF THE PHILIPPINES; OBLIGATIONS AND CONTRACTS; DAMAGES; NEGLECTING EMPLOYEE'S IMMEDIATE MEDICAL REQUIREMENT CONSTITUTES GROSS NEGLIGENCE, TANTAMOUNT TO BAD FAITH.—** [T]he CA is equally correct in finding gross negligence on the part of Philimare.

Philimare failed to rebut the allegation made by Doroteo that on several instances, he was refused medical attention by the ship master. In contention thereto, Philimare makes a simple assertion that it had allowed him a medical check-up in Denmark, and repatriated him to the Philippines to be checked by its physician, but did not specifically deny the accusation that the ship master had refused him treatment. In fact, Philimare also failed to rebut Doroteo's claim that the physician asked him for ₱200,000.00 prior to rendering treatment. The disregard shown by Philimare to Doroteo was uncontroverted. Understandably upset, he instead went to a different physician in St. Luke's Medical Center and underwent treatment there, which ultimately failed to save him from the ravages of cancer. In sum, Philimare did not extend any help to its dying seaman both in the immediate time of need while he was still under its employ, and in the throes of his final moments. This is a clear case of gross negligence, tantamount to bad faith.

4. **ID.; ID.; ID.; ID.; ID.; AWARD OF MORAL AND EXEMPLARY DAMAGES, AND ATTORNEY'S FEES, WARRANTED.—** [T]he CA awarded moral damages to Doroteo. From the appellate court's appreciation of the established facts, Philimare clearly violated the provisions of the Labor Code, as well as the civil code provisions on the exercise of rights in good faith with proper legal reasoning. To this we strongly agree. Neglecting employee's immediate medical requirements has a legal consequence. Hence the award of moral damages x x x. Moreover, exemplary damages are also proper. x x x. Thus, apart from the CA's grant of moral damages in the amount of ₱300,000.00, we deem it apt to award exemplary damages in the amount of ₱100,000.00. In furtherance thereof, we also grant attorney's fees valued at 10% of the total monetary award in favor of Doroteo's heirs.

APPEARANCES OF COUNSEL

Azura Quiros & Campos for Philimare, Inc., *et al.*
Rowena A. Martin for Jessie M. Doroteo (deceased).

DECISION

SERENO, *C.J.*:

For resolution by this Court is a consolidated case involving Jessie M. Doroteo, now deceased and represented by his sister, and his employer Philimare, Incorporated, a dispute springing from Doroteo's claims for disability and other monetary claims against Philimare.[1] G.R. No. 184917 is a petition filed by Doroteo contesting the Decision and Resolution of the Court of Appeals (CA) dated 4 April 2008 and 9 October 2008 respectively, that partially granted damages to Doroteo in the amount of ₱300,000 but denied all other claims against Philimare.[2] G.R. No. 184932 is a petition filed by Philimare against the same Decision and Resolution, contesting the award of damages to Doroteo. The CA Decision and Resolution had partly granted Doroteo's petition against the Resolutions of the National Labor Relations Commission (NLRC) dated 28 February 2007[3] and 31 May 2007,[4] by awarding Doroteo damages in the amount of ₱300,000.00,[5] but affirming the rulings of the NLRC and Labor Arbiter.[6]

The facts of this case present a consensus of facts by both parties in respect of the most essential incidents.

Philimare is a local manning agency that hired Doroteo as an engineer on behalf of Fil-Cargo Shipping Corporation.[7] The

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[1] *Rollo* (G.R. No. 184917), p. 5.

[2] *Id*. at 605-616, 697-698; Penned by Justice Magdangal M. De Leon, with Justices Josefina Guevara-Salonga and Normandie B. Pizzaro concurring.

[3] *Id*. at 551-558; Penned by Commissioner Tito F. Genilo, with Presiding Commissioner Lourdes C. Javier and Gregorio O. Bilog, III concurring.

[4] *Id*. at 582-583; Penned by Commissioner Tito F. Genilo, with Presiding Commissioner Lourdes C. Javier and Gregorio O. Bilog, III concurring.

[5] *Id*. at 616.

[6] *Id*. at 264-274; Penned by Labor Arbiter Florentino R. Darlucio.

[7] *Id*. at 265.

contract of employment was executed on 13 February 2004 for a period of 3 months. Doroteo was assigned to the vessel M/V Tungenes on 24 February 2004.[8]

As the vessel passed through the coast of Spain between 25 March 2004 to 30 March 2004, petitioner claimed that he felt the engine room's temperature rising, and he drank cold water to cool himself.[9] On 30 March 2004 in Haiti, Doroteo felt pain in his throat and took antibiotics for five days on his own initiative to ease the pain.[10] Upon arrival at the Caribbean, he allegedly requested for a medical check-up at the hospital but was refused by the ship master.[11]

On 4 April 2004, he forced the ship master to allow him a medical check-up due to worsening pain and experiencing difficulty swallowing and breathing.[12] On 26 April 2004 he claimed to have been brought to a government hospital in Las Palmas in Europe, where he was only given antibiotics and a pain reliever since there were no specialists to attend to his needs.[13]

The vessel arrived in Denmark on 2 May 2004 and he again requested for a medical check-up.[14] A biopsy was conducted due to the presence of lymph nodes in his voice box.[15] On 3 May 2004, his condition deteriorated and a request for medicine with the ship master was denied due to a lack of antibiotics.[16] On 5 May 2004, Doroteo was subject to medical repatriation

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[8] *Id*.

[9] *Id*.

[10] *Id*.

[11] *Id*.

[12] *Id*.

[13] *Id*.

[14] *Id*.

[15] *Id*.

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

on order of Philimare and he arrived in the Philippines on 16 June 2004.[17]

Doroteo was examined by Philimare's physician, Dr. Emmanuel Cruz of Supercare Medical Services, Inc., on 23 June 2004, and was advised to undergo direct laryngoscopy and biopsy with possible tracheotomy due to possible laryngeal cancer, but did not come back to the company physician.[18]

Subsequently, Doroteo filed a Complaint on 3 November 2004 before the NLRC for non-payment of sick leave pay and disability/medical benefits.[19]

In his Position Paper dated 23 May 2005, Doroteo claimed that the company-designated physician refused to accord him the proper medication if he would not pay the amount of ₱200,000.[20] Thus, he shouldered the cost of his major surgery which consisted of a total laryngectomy and pectoralis major myocutaneous flap on 4 October 2004.[21] On 7 October 2004, he underwent tomography at St. Luke's Medical Center which showed that he had "laryngeal mass probably malignant."[22] St. Luke's issued a medical certificate finding him physically unfit for work.[23]

Philimare contested the claim, asserting that Doroteo's illness is not a compensable occupational disease because cancer of the larynx or voice box was primarily cause by excessive and repeated exposure to tobacco, either smoked or chewed, as well as alcohol consumption.[24] Hence, Philimare contended that the illness was not work-related and that the disease was present

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[17] *Id*. at 89.

[18] *Id*., at 159.

[19] *Id*. at 83.

[20] *Id*. at 85.

[21] *Id*. at 89.

[22] *Id*. at 90.

[23] *Id*.

[24] *Id*. at 131.

even before Doroteo's employment.[25] Moreover, Philimare decried Doroteo's failure to disclose his condition as a violation of his contract and equivalent to fraudulent misrepresentation.[26]

Before the resolution of the dispute, Doroteo died of cancer on 29 May 2005, and was substituted by his sister, Lucida Heramis.[27]

The Labor Arbiter decided on 7 September 2005 that Doroteo's cancer was not work-related and was a pre-existing illness.[28] It cited the fact that he was in the employ of Philimare for less than three months before he fell ill.[29] Based on the evidence presented by Philimare, the Labor Arbiter concluded that the cancer was acquired prior to Doroteo's employment.[30] Agreeing completely with Philimare, the Labor Arbiter likewise ruled that Doroteo violated his contract when he knowingly concealed his past medical condition, disability, and history of cancer.[31] In addition, the Labor Arbiter did not believe Doroteo's claim that the vessel he worked in was unseaworthy and that the engine room had no air exhaust, relying completely on the arguments and evidence presented by Philimare.[32] Finally, the Labor Arbiter rejected Doroteo's claims that he was not given immediate medical attention and cited the medical report of the doctor in Denmark and the medical certificate of Dr. Cruz who was the company-designated physician.[33] As a result, the Labor Arbiter dismissed the claim.[34]

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[25] *Id*.

[26] *Id*. at 131-133.

[27] *Id*. at 176.

[28] *Id*. at 268.

[29] *Id*. at 269.

[30] *Id*.

[31] *Id*. at 271.

[32] *Id*. at 272.

[33] *Id*. at 273.

[34] *Id*. at 274.

The NLRC upheld the Labor Arbiter upon appeal and motion for reconsideration, essentially reiterating the decision of the Labor Arbiter on the same grounds.[35]

Doroteo's sister appealed to the CA, which ruled that the NLRC did not commit grave abuse of discretion when it decided that Doroteo's disease was not work-related and therefore non-compensable.[36] The appellate court noted that Doroteo's history as a heavy smoker and drinker was established by the record, and that the medical reports presented alongside the very short time of employment demonstrably proved that the cause of the disease was Doroteo's smoking habit and alcohol intake.[37] The CA however noted that the claims made by Philimare as to bad faith, fraud, and concealment of a disease on the part of Doroteo was inconsistent with the situation, since Doroteo was not a medical practitioner and could not be expected to know what ailed him.[38]

However, the CA found grave abuse of discretion on the part of the NLRC when it dismissed Doroteo's claim for damages based on the allegation that he was not given proper medical attention.[39]

For the court, it was clear that there were several instances when Doroteo was refused medical attention by the ship master, and when finally allowed to be examined, was not given a thorough examination but merely provided pain-relief medication.[40] In fact, Philimare was unable to provide evidence that it immediately addressed Doroteo's health concerns, or any explanation for the delay.[41] To this the court ascribed bad

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[35] *Id*. at 551-558.

[36] *Id*. at 612.

[37] *Id*. at 613.

[38] *Id*.

[39] *Id*. at 614.

[40] *Id*.

[41] *Id*. at 615.

faith on the part of Philimare because of the continued refusal by the ship master to provide all the necessary assistance to a sick person in its employ, in violation of Article 161 of the Labor Code.[42]

Hence, for not providing immediate medical attention to Doroteo, the CA partly granted the petition and found Philimare liable for damages in the amount of ₱300,000.00.[43] It is this Decision and its subsequent affirmation that is being contested by both Doroteo's sister and Philimare before this Court.

In the petition of Doroteo's sister, she argues that the CA erred when it ruled that the cancer of Doroteo was not work-related. Specifically, she argues that the fact that Doroteo was declared fit to work by the company-designated physician contradicted the ruling that the disease was pre-existing.[44] Citing this Court's jurisprudence, she argues that every workman brings with him certain infirmities in health, and that the employer — while not the insurer of the employee's health — assumes the risk of having an employee with a weakened condition aggravate his injury during employment that would not have bothered a perfectly normal, healthy person.[45]

Moreover given the uncertainty as to the cause of cancer even by the standards of medical science, it would be unfair for the courts to require that an employee prove that the disease was caused by or aggravated by the conditions of employment.[46] She also cites United States jurisprudence to the effect that throat cancer is compensable for a fire-fighter who is exposed to heavy smoke, gases, and fumes,[47] and further argues that occupational or industrial diseases could be procured even within a short time.[48]

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[42] *Id*.

[43] *Id*. at 616.

[44] *Id*. at 22.

[45] *Id*.

[46] *Id*. at 23.

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

[48] *Id*. at 25, 36-38.

Finally, Doroteo's sister argues that assuming the cancer was pre-existing, the requirement of the law for compensability is that the disease was aggravated by working conditions such that its presence was work-related.[49] In support of this, she cited the American doctrine of "last injurious exposure," which allegedly assigns liability to the last employer whose conditions last contributed to the totality of the disease.[50] She also disputed the statements of the CA and NLRC that alluded to Doroteo's smoking habit as the cause of his cancer, stating that there are several risk factors involved and that creating that presumption violated the constitutional mandate to protect labor.[51]

In response, Philimare reiterates its arguments before the CA: that throat cancer is not listed in the occupational diseases clause in the Philippine Overseas Employment Administration standard contract,[52] that the additional conditions for diseases not listed to be compensable were not satisfied,[53] and that there was no reasonable proof that the work of Doroteo increased his risk of contracting throat cancer.[54]

In sum, the case will live or die upon one question: did the work of Doroteo for Philimare result in or aggravate the throat cancer of which he died?

It appears that both parties are well aware of this crucial issue, and have presented their own evidence in support of their conclusions:

Doroteo's evidence explicitly states that working in an engine room exposes the worker to harmful conditions, including but not limited to chemical exposure and heat. Apart from this is the allegation that the engine room had poor exhaust which

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[49] *Id*. at 25-29.

[50] *Id*. at 30-32.

[51] *Id*. at 32.

[52] *Id*. at 730.

[53] *Id*. at 731.

[54] *Id*. at 732.

increased the heat therein, and most importantly the constant refusal of Philimare's ship master to allow Doroteo medical attention.

Philimare's evidence is broader and lists the risk factors for throat cancer: genetics, age, tobacco use, and alcohol consumption. It also relies on the diagnosis of the physician in Denmark that the cancer most likely existed for more than 3 months prior to the time of the check-up, such that it was a pre-existing illness. Contending with Doroteo's claims about the engine room, it presented a ship assessment that listed the engine room as compliant with safety standards.

To be sure, this Court has held that a worker brings with him possible infirmities in the course of his employment, and while the employer does not insure the health of the employees, he takes the employee as found and assumes the risk of liability.[55] However, claimants in compensation proceedings must show credible information that there is probably a relation between the illness and the work.[56] They cannot rely on the fact that the employer's designated physician had declared the employee fit pursuant to the pre-employment medical examination (PEME), since the PEME cannot be a conclusive proof that the seafarer was free from any ailment — and specifically for cancer — prior to his deployment.[57]

The PEME is not exploratory in nature. It is not intended to be a totally in-depth and thorough examination of an applicant's medical condition. It merely determines whether one is "fit to work" at sea or "fit for sea service"; it does not state the real state of health of an applicant. Thus, we held in <u>*NYK-FIL Ship Management, Inc. v. NLRC*</u> as follows:

While a PEME may reveal enough for the petitioner (vessel) to decide whether a seafarer is fit for overseas employment, it may not

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[55] *Remigio v. National Labor Relations Commission*, G.R. No. 159887, 521 Phil. 330-353 (2006).

[56] *Magsaysay Maritime Corporation v. National Labor Relations Commission*, G.R. No. 186180, 630 Phil. 352-370 (2010).

[57] *Supra*

be relied upon to inform petitioners of a seafarer's true state of health. The PEME could not have divulged respondent's illness considering that the examinations were not exploratory.[58]

Cancer is an especially difficult illness to predict. Despite increased knowledge on risk factors, its causality is not determinable with any degree of certainty:

> In *Raro v. Employees' Compensation Commission,* we stated that medical science cannot, as yet, positively identify the causes of various types of cancer. It is a disease that strikes people in general. The nature of a person's employment appears to have no relevance. Cancer can strike a lowly paid laborer, or a highly paid executive, or one who works on land, in water, or in the bowels of the earth. It makes no difference whether the victim is employed or unemployed, a white collar employee or a blue collar worker, a housekeeper, an urban dweller or the resident of a rural area.
>
> By way of exception, certain cancers have reasonably been traced to or considered as strongly induced by specific causes. **For example, heavy doses of radiation (as in Chernobyl, USSR), cigarette smoke over a long period for lung cancer, certain chemicals for specific cancers, and asbestos dust, among others, are generally accepted as increasing the risks of contracting specific cancers**. In the absence of such clear and established empirical evidence, the law requires proof of causation or aggravation.[59] (Emphasis supplied)

As the aforementioned case states, there is strong evidence linking specific circumstances with specific cancers. In this case, however, there seems to be a no clarity. To recall, the cancer Doroteo succumbed to was throat or laryngeal cancer and not lung cancer, which is the cancer more commonly associated with heavy cigarette use. In the same vein, there was no definitive proof presented that the engine room of the M/V Tungenes had unreasonable amounts of carcinogenic chemicals, nor the presence of asbestos dust without proper

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[58] *Id*.

[59] *Government Service Insurance System v. Capacite*, G.R. No. 199780, 24 September 2014.

safety equipment apart from the allegations made by Doroteo in the pleadings. In other words, the evidence of both sides lack the substance required to establish their respective claims.

In *Sealanes Marine Services, Inc. v. National Labor Relations Commission*, we noted that under the 1996 POEA standard contract, proof that the working conditions increased the risk of a disease is not required for a seaman to claim the benefits under his employment contract for the illness acquired by seamen during the course of their employment.[60] Subsequently, the 2000 POEA standard contract was created which specifically required work-relation as a condition for compensation:

Under Sec. 20(b), paragraph 6, of the 2000 POEA Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels, viz.:

SEC. 20. Compensation and Benefits. —

x x x x x x x x x

B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

The liabilities of the employer **when the seafarer suffers work-related injury or illness during the term of his contract** are as follows:

x x x x x x x x x

6. In case of permanent total or partial disability of the seafarer caused by either injury or illness the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 32 of this Contract. Computation of his benefits arising from an illness or disease shall be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted.

Evident from the afore-quoted provision is that the permanent total or partial disability suffered by a seafarer during the term of his contract must be caused by work-related illness or injury. In other words, to be entitled to compensation and benefits under said provision, it is not sufficient to establish that the seafarer's illness or injury has rendered him permanently or partially disabled, but **it must also be shown that there is a causal connection between the seafarer's**

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[60] 268 Phil. 355-368 (1990).

illness or injury and the work for which he had been contracted for.[61] (Emphases supplied)

This is consistent with the logic behind the court's interpretation of the 1996 POEA standard contract, hence several decisions denying compensability due to the illness proving to be pre-existing.[62] The prevailing rule under the 1996 POEA-SEC was that the illness leading to the eventual death of seafarer need not be shown to be work-related in order to be compensable, but must be proven to have been contracted during the term of the contract and not pre-existing.[63] The evolution of this rule for the 2000 POEA-SEC is that the illness is further required to be work-related, work-caused, or work-aggravated.[64]

Therefore the evidence presents more questions than answers as to what caused Doroteo's throat cancer. Doroteo claims that the engine room was akin to a "gas chamber"[65] but did not give proof other than a generalized opinion about the risks present in engine rooms.[66] Philimare claims that the ship was given safety and health clearances, but submitted a certificate well past the date of Doroteo's employment.[67] Doroteo claims that he was exposed to noxious chemicals, but fails to substantiate this claim.[68] Philimare claims that Doroteo was a heavy tobacco and alcohol user, but fails to link its evidence to the specific cancer involved.[69]

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[61] *Masangcay v. Trans-Global Maritime Agency, Inc.*, 590 Phil. 611-633 (2008).

[62] *NYK-Fil Ship Management Inc. v. National Labor Relations Commission*, 534 Phil. 725-740 (2006).

[63] *Inter-Orient Maritime, Inc. v. Candava*, G.R. No. 201251, 26 June 2013.

[64] *Quizora v. Denholm Crew Management (Philippines), Inc.*, 676 Phil. 313-329 (2011); *Francisco v. Bahia Shipping Services, Inc.*, 650 Phil. 200-207 (2010).

[65] *Rollo* (G.R. No. 184917), p. 40.

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

[67] *Id.* at 219.

[68] *Id.* at 25-28.

[69] *Id.* at 210.

Doroteo presents opinions that allege the possibility of short-term acquisition of cancer.[70] Philimare presents a physician's diagnosis that the cancer seemed to have already existed more than 3 months prior to the examination.[71]

What these arguments show is that there is no clear nexus between the disease Doroteo acquired and the working conditions he encountered. Therefore, the disputable presumption of work-relation cannot be applied, since based on the evidence presented the Court cannot reasonably conclude that his work as an engineer in the engine room led to Doroteo's throat cancer.

We are not experts in the field of medicine and disease and have stated as much previously in *Jebsen Maritime, Inc. v. Ravena,* as follows:

> As a final word and a cautionary clarification, we do not here rule with absolute precision on the non-causing, non-aggravating, or non-contributing effect that any or all substances/chemicals and a processed-and-red-meat-rich diet may have on ampullary cancer. We are not experts on the matter and we recognize the considerable degree of uncertainty inherent in the field of medicine and its study. Our ruling on this petition should, therefore, be understood strictly in the light of and limited to the surrounding circumstances of this case.
>
> Stated differently, we declare that Ravena's ampullary cancer is not work-related, and therefore not compensable, because he failed to prove, by substantial evidence, its work-relatedness and his compliance with the parameters that the law had precisely set out in disability benefits claim. For, while we adhere to the principle of liberality in favour of the seafarer in construing the POEA-SEC, we cannot allow claims for disability compensation based on surmises. Liberal construction is never a license to disregard the evidence on record and to misapply the law.[72]

In as much as we condole with the family of Doroteo, the CA correctly denied his claims that his throat cancer was work-related or work-aggravated, and thus compensable.

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

[71] *Id*. at 462.

[72] G.R. No. 200566, 17 September 2014.

However, the CA is equally correct in finding gross negligence on the part of Philimare.

Philimare failed to rebut the allegation made by Doroteo that on several instances, he was refused medical attention by the ship master.[73] In contention thereto, Philimare makes a simple assertion that it had allowed him a medical check-up in Denmark, and repatriated him to the Philippines to be checked by its physician, but did not specifically deny the accusation that the ship master had refused him treatment.[74] In fact, Philimare also failed to rebut Doroteo's claim that the physician asked him for ₱200,000.00 prior to rendering treatment.[75] The disregard shown by Philimare to Doroteo was uncontroverted. Understandably upset, he instead went to a different physician in St. Luke's Medical Center and underwent treatment there, which ultimately failed to save him from the ravages of cancer.[76] In sum, Philimare did not extend any help to its dying seaman both in the immediate time of need while he was still under its employ, and in the throes of his final moments. This is a clear case of gross negligence, tantamount to bad faith.

On this basis, the CA awarded moral damages to Doroteo. From the appellate court's appreciation of the established facts, Philimare clearly violated the provisions of the Labor Code, as well as the civil code provisions on the exercise of rights in good faith with proper legal reasoning.[77]

To this we strongly agree. Neglecting employee's immediate medical requirements has a legal consequence.[78] Hence the award of moral damages, as in the following case:

> We affirm the appellate court's finding that petitioners are guilty of negligence in failing to provide immediate medical attention to

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[73] *Rollo* (G.R. No. 184917), pp. 88-89.

[74] *Id*. at 130.

[75] *Id*. at 89.

[76] *Id*. at 119-128.

[77] *Id*. at 615.

[78] *Varorient Shipping Co., Inc. v. Flores*, 646 Phil. 570-587 (2010).

private respondent. It has been sufficiently established that, while the M/V T.A. VOYAGER was docked at the port of New Zealand, private respondent was taken ill, causing him to lose his memory and rendering him incapable of performing his work as radio officer of the vessel. The crew immediately notified the master of the vessel of private respondent's worsening condition. However, instead of disembarking private respondent so that he may receive immediate medical attention at a hospital in New Zealand or at a nearby port, the master of the vessel proceeded with the voyage, in total disregard of the urgency of private respondent's condition. Private respondent was kept on board without any medical attention whatsoever for the entire duration of the trip from New Zealand to the Philippines, a voyage of ten days. To make matters worse, when the vessel finally arrived in Manila, petitioners failed to directly disembark private respondent for immediate hospitalization. Private respondent was made to suffer a wait of several more hours until a vacant slot was available at the pier for the vessel to dock. It was only upon the insistence of private respondent's relatives that petitioners were compelled to disembark private respondent and finally commit him to a hospital. There is no doubt that the failure of petitioners to provide private respondent with the necessary medical care caused the rapid deterioration and inevitable worsening of the latter's condition, which eventually resulted in his sustaining a permanent disability.[79]

Moreover, exemplary damages are also proper.[80] In the same case, we awarded exemplary damages to the employee whose treatment was delayed by the ship captain without a valid ground:

Meanwhile, exemplary damages are imposed by way of example or correction for the public good, pursuant to Article 2229 of the Civil Code. They are imposed not to enrich one party or impoverish another but to serve as a deterrent against or as a negative incentive to curb socially deleterious actions. While exemplary damages cannot be recovered as a matter of right, they need not be proved, although

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[79] *German Marine Agencies, Inc. v. National Labor Relations Commission,* G.R. No. 142049, [January 30, 2001], 403 Phil. 572-597.

[80] ARTICLE 2231. In quasi-delicts, exemplary damages may be granted if the defendant acted with gross negligence (Civil Code of the Philippines, REPUBLIC ACT NO. 386, [June 18, 1949]).

plaintiff must show that he is entitled to moral, temperate, or compensatory damages before the court may consider the question of whether or not exemplary damages should be awarded. In quasi-delicts, exemplary damages may be granted if the defendant acted with gross negligence.[81]

Thus, apart from the CA's grant of moral damages in the amount of ₱300,000.00, we deem it apt to award exemplary damages in the amount of ₱100,000.00. In furtherance thereof, we also grant attorney's fees valued at 10% of the total monetary award in favor of Doroteo's heirs.[82]

WHEREFORE, the petition in G.R. No. 184932 is **DENIED**. The petition in G.R. No. 184917 is **PARTLY GRANTED**. Respondents Philimare, Inc., Bonifacio F. Gomez, and Fil Cargo Shipping Corp. are declared **LIABLE** for **MORAL DAMAGES** in the amount of **THREE HUNDRED THOUSAND PESOS (₱300,000.00)**, **EXEMPLARY DAMAGES** in the amount of **ONE HUNDRED THOUSAND PESOS (₱100,000.00)**, and **10%** of the total monetary award in **ATTORNEY'S FEES**, and **DIRECTED** to pay the heirs of petitioner Jessie M. Doroteo the total amount immediately.

SO ORDERED.

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

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[81] *German Marine Agencies, Inc. v. National Labor Relations Commission*, G.R. No. 142049, [January 30, 2001], 403 Phil. 572-597.

[82] In this particular case, attorney's fees are imposable for instances because exemplary damages are awarded, the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest, it is an action for indemnity under workmen's compensation and employer's liability laws, and because this is a case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered. (Article 2208, Civil Code of the Philippines, REPUBLIC ACT NO. 386, [June 18, 1949].

THIRD DIVISION

[G.R. No. 193987. March 13, 2017]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **PHIL-AGRO INDUSTRIAL CORPORATION,** *respondent.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM LAW (R.A. 6657); JUST COMPENSATION; RATIONALE FOR IMPOSING THE INTEREST; WHERE INTEREST IS ALREADY IMPOSED IN THE NATURE OF DAMAGES FOR DELAY IN THE PAYMENT OF JUST COMPENSATION, THERE IS NO NEED FOR THE PAYMENT OF 1% INTEREST *PER ANNUM* TO COVER THE INCREASE IN THE VALUE OF THE LAND.—** The rationale for imposing the interest is to compensate the respondent for the income it would have made had it been properly compensated for its properties at the time of the taking. The need for prompt payment and the necessity of the payment of interest is to compensate for any delay in the payment of compensation for property already taken. The award of interest is imposed in the nature of damages for delay in payment which makes the obligation on the part of the government one of forbearance to ensure prompt payment of the value of the land and limit the opportunity loss of the owner. Therefore, there is no need for the payment of 1% interest *per annum* to cover for the increase in value of real properties.

2. **ID.; ID.; ID.; DEPOSIT OF AN AMOUNT EQUIVALENT TO 18% OF THE ACTUAL VALUE OF THE SUBJECT LANDHOLDINGS CANNOT BE CONSIDERED SUBSTANTIAL ENOUGH TO SATISFY THE FULL REQUIREMENT OF JUST COMPENSATION; IMPOSITION OF LEGAL INTEREST FROM THE TIME OF TAKING UNTIL THE ACTUAL PAYMENT IS IN ORDER.—** [W]hile the petitioner claimed that it deposited the initial valuation in the amount of ₱2,139,996.57, the said amount is way below the just compensation finally adjudged by the CA at ₱11,640,730.68. Clearly, delay in payment occurred and cannot at all be disputed. The respondent was deprived of its

lands since September 16, 1992, when CLOAs were issued in the name of three farmer beneficiaries associations, and to date, had not yet received full payment of the principal amount due to it. Evidently, from September 16, 1992 until the present, or after almost 25 years, the respondent is deprived of just compensation which therefore warrants the imposition of interest. It is doctrinal that to be considered as just, the compensation must be fair and equitable, and the landowners must have received it without any delay. The requirement of the law is not satisfied by the mere deposit with any accessible bank of the provisional compensation determined by it or by the DAR, and its subsequent release to the landowner after compliance with the legal requirements set forth by R.A. No. 6657. The amount allegedly deposited by the petitioner was only a partial payment that amounted to almost 18% of the actual value of the subject landholdings. It could be the basis for the immediate taking of the subject landholdings but by no stretch of the imagination can said nominal amount be considered substantial enough to satisfy the full requirement of just compensation, taking into account its income potential and the foregone income lost because of the immediate taking. Notwithstanding the fact that the petitioner had immediately deposited the initial valuation of the subject landholdings after its taking, the fact remains that up to this date, the respondent has not yet been fully paid. Thus, the respondent is entitled to legal interest from the time of the taking of the subject landholdings until the actual payment in order to place it in a position as good as, but not better than, the position that it was in before the taking occurred. The imposition of such interest is to compensate the respondent for the income it would have made had it been properly compensated for the properties at the time of the taking.

3. **ID.; ID.; ID.; ID.; ID.; LEGAL INTEREST SHOULD BE RECKONED FROM THE ISSUANCE DATES OF THE CERTIFICATES OF LAND OWNERSHIP AWARD (CLOA). —** As to the proper reckoning point of the legal interest, it is fundamental that just compensation should be determined at the time of the property's taking. Here, the date of the taking of the subject landholdings for purposes of computing just compensation should be reckoned from the issuance dates of the CLOA. A CLOA is a document evidencing ownership of the land granted or awarded to the beneficiary by the DAR, and contains the restrictions and conditions provided for in

R.A. No. 6657 and other applicable laws. Since the CLOA in this case had been issued on September 16, 1992, the just compensation for the subject landholdings should then be reckoned therefrom, being considered the time of taking. This is based on the principle that interest runs as a matter of law and follows from the right of the landowner to be placed in as good position as money can accomplish, as of the date of the taking.

APPEARANCES OF COUNSEL

LBP Legal Services Group, Carp Legal Services Department for petitioner.

The Law Firm of Dumalag & Associates for respondent.

D E C I S I O N

REYES, *J.*:

Before this Court is a Petition for Review on *Certiorari*[1] seeking to annul and set aside the Amended Decision[2] dated September 30, 2010 of the Court of Appeals (CA) in CA-G.R. CV No. 75045-MIN, which ordered the Land Bank of the Philippines (petitioner) to pay Phil-Agro Industrial Corporation (respondent) the total amount of ₱11,640,730.68 plus interests.

The Facts

The subject of this petition is 19 parcels of land situated in Baungon, Bukidnon, with an aggregate area of 267.0043 hectares, registered under the name of the respondent. These landholdings were then placed under the compulsory coverage of the Comprehensive Agrarian Reform Program (CARP) by the Department of Agrarian Reform (DAR). The petitioner offered an initial valuation of ₱2,139,996.57 for the subject landholdings

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[1] *Rollo*, pp. 38-62.

[2] Penned by Associate Justice Rodrigo F. Lim, Jr., with Associate Justices Angelita A. Gacutan and Nina G. Antonio-Valenzuela concurring; *id.* at 7-10.

but this offer was rejected by the respondent. A summary hearing was then conducted before the DAR Adjudication Board for the valuation of the subject landholdings.[3]

On January 4, 1999, the respondent filed an Amended Complaint against the DAR Secretary and the petitioner before the Regional Trial Court (RTC) praying for the fixing and payment of not less than ₱26,700,000.00 as just compensation.[4]

On June 7, 2000, the parties agreed to the creation of a commission to determine the fair market value of the subject landholdings.[5]

The respondent's nominated commissioner submitted the amount of ₱63,045,000.00 based on the findings of the Asian Appraisal Company, Inc., which used the following valuation factors of the CARP: extent, character and utility of the property, sales and holding prices of similar land, and highest and best use of the property.[6]

On the other hand, using as basis the Revised Rules and Regulations Governing the Valuation of Land Voluntarily Offered or Compulsory Acquired Pursuant to Republic Act (R.A.) No. 6657,[7] the petitioner's nominated commissioner submitted a lower amount of ₱11,640,730.68.[8]

The Chairman of the Commission, however, appraised the subject landholdings in the amount of ₱20,589,373.00 on the basis of the following factors: physical attributes of the subject

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[3] *Id*. at 13.

[4] *Id*. at 13-14.

[5] *Id*. at 14.

[6] *Id*.

[7] AN ACT INSTITUTING A COMPREHENSIVE AGRARIAN REFORM PROGRAM TO PROMOTE SOCIAL JUSTICE AND INDUSTRIALIZATION, PROVIDING THE MECHANISM FOR ITS IMPLEMENTATION, AND FOR OTHER PURPOSES. Approved on June 10, 1988.

[8] *Rollo*, p. 14.

landholdings, soil type, terrain, adaptability to various crops, accessibility to roads and properties in the area, and expert opinions of the Municipal Assessor, Municipal Treasurer and Municipal Agriculturist of Baungon, Bukidnon.[9]

On November 21, 2001, the RTC rendered its judgment adopting the Chairman's report assessing the value of the subject landholdings at ₱20,589,373.00.[10]

On appeal, the CA modified the trial court's ruling by reducing the amount to be paid by the petitioner from ₱20,589,373.00 to ₱11,640,730.68, thereby adopting the submitted valuation of the petitioner's nominated commissioner.[11] The dispositive portion of the decision reads:

WHEREFORE, the assailed Decision is MODIFIED to read as follows:

1. Ordering [the petitioner] to pay [the respondent] ₱11,640,730.68 as just compensation for the subject property;

2. Ordering [the petitioner] to pay 6% interest per annum on the amount of just compensation as well as 12% legal interest on the amount of just compensation plus the 6% interest, counted from September 16, 1992, until all the amounts are fully paid;

3. The award for attorney's fees and costs of litigation to [the respondent] is denied.

SO ORDERED.[12]

The CA ruled that the RTC had no liberty to disregard the guidelines set forth in Section 17[13] of R.A. No. 6657 and that

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[9] *Id*. at 15.

[10] *Id*.

[11] CA Decision dated August 27, 2008 penned by Associate Justice Michael P. Elbinias, with Associate Justices Rodrigo F. Lim, Jr. and Ruben C. Ayson concurring; *id*. at 12-22.

[12] *Id*. at 21.

[13] **Section 17.** *Determination of Just Compensation*.— In determining just compensation, the cost of acquisition of the land, the current value of

the valuation report approved by the RTC was computed without considering the valuation formula under DAR Administrative Order (A.O.) No. 5, series of 1998.[14] The CA found that the petitioner's commissioner used the pertinent data from the Department of Agriculture and the Bureau of Agricultural Statistics, and computed the value of the subject landholdings in accordance with the formula under the said DAR A.O. No. 5, series of 1998.[15]

The CA further ruled that there was delay in the payment of just compensation reckoned from the date of compensable taking on September 16, 1992, the date when the Certificates of Land Ownership Award (CLOA) were issued in the name of three farmer beneficiaries associations; hence, the CA awarded interest of 6% *per annum* as damages for the delay, plus 12% legal interest *per annum* on the amount of such compensation.[16]

Thereafter, both the petitioner and the respondent filed a Motion for Partial Reconsideration[17] and a Motion for Reconsideration,[18] respectively.

On September 30, 2010, the CA rendered an Amended Decision,[19] the dispositive portion of which is as follows:

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the like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, and the assessment made by government assessors shall be considered. The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property as well as the non-payment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation.

[14] Revised Rules and Regulations Governing the Valuation of Lands Voluntarily Offered or Compulsorily Acquired Pursuant to Republic Act No. 6657.

[15] *Rollo*, pp. 17-19.

[16] *Id.* at 19-20.

[17] *Id.* at 83-98.

[18] *Id.* at 125-134.

[19] *Id.* at 7-10.

WHEREFORE, premises foregoing, the [respondent's] motion for reconsideration is hereby **DENIED** for lack of merit. On the other hand, [the petitioner's] motion for partial reconsideration is **GRANTED**. Consequently, our August 27, 2008 Decision is **MODIFIED** as follows:

1. Ordering [the petitioner] to pay [the respondent] ₱11,640,730.68 as just compensation for the subject property;
2. Ordering [the petitioner] to pay 1% interest per annum on the amount of just compensation counted from September 16, 1992, until all the amounts are fully paid;
3. Ordering [the petitioner] to pay 12% legal interest per annum on the amount of just compensation plus the 1% interest, from the finality of this Decision until full payment thereof;
4. The award for attorney's fees and costs of litigation to [the respondent] is denied.

SO ORDERED.[20]

In amending its previous decision, the CA explained that:

Indeed, a second look at our Decision reveals that the 6% interest per annum on the amount of just compensation as well as the 12% legal interest on the amount of just compensation plus the 6% interest, counted from the time of taking, was erroneously granted. Records show that after the taking of the subject properties] and before [the respondent's] title thereto was cancelled, [the petitioner] already made a deposit of its original valuation in the amount of ₱2,139,996.57 in favor of [the respondent] in the form of cash and bonds. Hence, no delay can be attributed to it. While the court *a quo* directed [the petitioner] to pay its adjudged amount within thirty (30) days from the time its decision was rendered, and while [the petitioner] did not pay within the period given, such failure to pay did not tantamount to a delay in payment on the ground that the said decision was timely assailed in the instant appeal. x x x Moreover, it was likewise an error to have directed that the 12% legal interest be counted from the time of the taking. The same should commence to run from the

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

date of finality of our decision until its full payment, in accordance with the law and jurisprudence.[21]

Unsatisfied, the petitioner filed the instant petition before this Court.

The Issue

The sole issue raised by the petitioner is the propriety of the award of 1% *per annum* on the amount of just compensation counted from September 16, 1992.

Ruling of the Court

The petition is partly granted.

At the outset, it bears to emphasize that there is no question raised with respect to the amount of ₱11,640,730.68 as just compensation adjudged by the appellate court. The main issue raised by the petitioner centers on the core question of whether the award of 1% *per annum*, allegedly to cover for the increase in value of real properties, is proper. Meanwhile, the respondent had already acquiesced with the said valuation. It, however, lamented on the fact that it has not yet received the full and just compensation for the subject landholdings which have been taken from it since 1992.

In an analogous case of *National Power Corporation v. Elizabeth Manalastas and Bea Castillo*,[22] where the bone of contention is the inclusion of the inflation rate of the Philippine Peso in determining the just compensation due to therein respondents, the Court ruled that valuation of the land for purposes of determining just compensation should not include the inflation rate of the Philippine Peso because the delay in payment of the price of expropriated land is sufficiently recompensed through payment of interest on the market value of the land as of the time of taking from the landowner.[23]

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

[22] G.R. No. 196140, January 27, 2016.

[23] *Id*.

The rationale for imposing the interest is to compensate the respondent for the income it would have made had it been properly compensated for its properties at the time of the taking.[24] The need for prompt payment and the necessity of the payment of interest is to compensate for any delay in the payment of compensation for property already taken.[25]

The award of interest is imposed in the nature of damages for delay in payment which makes the obligation on the part of the government one of forbearance to ensure prompt payment of the value of the land and limit the opportunity loss of the owner.[26] Therefore, there is no need for the payment of 1% interest per annum to cover for the increase in value of real properties.

Nonetheless, the Court observes that the CA erred as to the reckoning point on which the award of legal interest of 12% should accrue.

The Court takes note of the fact that in the petitioner's motion for partial reconsideration, it contended that the 12% legal interest should not be counted from the time of the taking, considering the absence of delay when it promptly deposited the initial valuation for the subject landholdings after the taking of the same and before the respondent's title thereto was cancelled.

Notably, while the petitioner claimed that it deposited the initial valuation in the amount of ₱2,139,996.57, the said amount is way below the just compensation finally adjudged by the CA at ₱11,640,730.68. Clearly, delay in payment occurred and cannot at all be disputed. The respondent was deprived of its lands since September 16, 1992, when CLOAs were issued in the name of three farmer beneficiaries associations, and to date,

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[24] *Secretary of the Department of Public Works and Highways v. Tecson*, G.R. No. 179334, April 21, 2015, 756 SCRA 389, 413.

[25] *Id*. at 414, citing *Apo Fruits Corp., et al. v. Land Bank of the Phils.*, 647 Phil. 251, 273 (2010).

[26] *Land Bank of the Philippines v. Spouses Antonio and Carmen Avanceña*, G.R. No. 190520, May 30, 2016.

had not yet received full payment of the principal amount due to it. Evidently, from September 16, 1992 until the present, or after almost 25 years, the respondent is deprived of just compensation which therefore warrants the imposition of interest.

It is doctrinal that to be considered as just, the compensation must be fair and equitable, and the landowners must have received it without any delay. The requirement of the law is not satisfied by the mere deposit with any accessible bank of the provisional compensation determined by it or by the DAR, and its subsequent release to the landowner after compliance with the legal requirements set forth by R.A. No. 6657.[27]

The amount allegedly deposited by the petitioner was only a partial payment that amounted to almost 18% of the actual value of the subject landholdings. It could be the basis for the immediate taking of the subject landholdings but by no stretch of the imagination can said nominal amount be considered substantial enough to satisfy the full requirement of just compensation, taking into account its income potential and the foregone income lost because of the immediate taking.

Notwithstanding the fact that the petitioner had immediately deposited the initial valuation of the subject landholdings after its taking, the fact remains that up to this date, the respondent has not yet been fully paid. Thus, the respondent is entitled to legal interest from the time of the taking of the subject landholdings until the actual payment in order to place it in a position as good as, but not better than, the position that it was in before the taking occurred. The imposition of such interest is to compensate the respondent for the income it would have made had it been properly compensated for the properties at the time of the taking.[28]

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[27] *Land Bank of the Philippines v. Alfredo Hababag, Sr.*, G.R. No. 172352, June 8, 2016.

[28] *Land Bank of the Philippines v. Spouses Antonio and Carmen Avanceña*, *supra* note 26.

In the recent case of *Land Bank of the Philippines v. Alfredo Hababag, Sr.*,[29] the Court reiterated its ruling in *Apo Fruits Corp., et al. v. Land Bank of the Philippines*,[30] that the substantiality of the payments made by therein petitioner is not the determining factor in the imposition of interest as nothing less than full payment of just compensation is required. The value of the landholdings themselves should be equivalent to the principal sum of the just compensation due, and that interest is due and should be paid to compensate for the unpaid balance of this principal sum after the taking has been completed.[31]

As to the proper reckoning point of the legal interest, it is fundamental that just compensation should be determined at the time of the property's taking. Here, the date of the taking of the subject landholdings for purposes of computing just compensation should be reckoned from the issuance dates of the CLOA. A CLOA is a document evidencing ownership of the land granted or awarded to the beneficiary by the DAR, and contains the restrictions and conditions provided for in R.A. No. 6657 and other applicable laws.[32] Since the CLOA in this case had been issued on September 16, 1992, the just compensation for the subject landholdings should then be reckoned therefrom, being considered the time of taking. This is based on the principle that interest runs as a matter of law and follows from the right of the landowner to be placed in as good position as money can accomplish, as of the date of the taking.[33]

In sum, the respondent has waited too long before the petitioner could fully pay the amount of just compensation due to it. It is clear that the respondent voluntarily offered its subject

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[29] G.R. No. 172352, June 8, 2016.

[30] 647 Phil. 251 (2010).

[31] *Land Bank of the Philippines v. Alfredo Hababag, Sr.*, *supra* note 29.

[32] *Lebrudo, et al. v. Loyola*, 660 Phil. 456, 462 (2011).

[33] *Sy v. Local Government of Quezon City*, 710 Phil. 549, 560 (2013).

landholdings to be included in the CARP. The respondent submitted to expropriation and surrendered its landholdings. Although it initially contested the valuation that the government made, the respondent accepted the amount finally fixed by the appellate court. From the time of taking on September 16, 1992 to the present, it has already been 25 years but the respondent has not yet received the full amount of just compensation that was due. Thus, the long delay entitles them to the payment of interest to compensate for the loss of income due to the taking.

WHEREFORE, the petition is **PARTLY GRANTED**. The Amended Decision dated September 30, 2010 of the Court of Appeals in CA-G.R. CV No. 75045-MIN is hereby **AFFIRMED with MODIFICATION** as follows:

1. Petitioner Land Bank of the Philippines is ordered to pay respondent Phil-Agro Industrial Corporation ₱11,640,730.68 representing the just compensation of the subject landholdings; and

2. Legal interest shall be pegged at the rate of twelve percent (12%) *per annum*, reckoned from the time of taking on September 16, 1992. Thereafter, or beginning July 1, 2013, until fully paid, just compensation shall earn interest at the new legal rate of six percent (6%) *per annum.*

SO ORDERED.

Velasco, Jr. (Chairperson), Bersamin, Jardeleza, and *Tijam, JJ.*, concur.

FIRST DIVISION

[G.R. No. 206037. March 13, 2017]

PHILIPPINE NATIONAL BANK, *petitioner, vs.* **LILIBETH S. CHAN,** *respondent.*

SYLLABUS

1. **CIVIL LAW; OBLIGATIONS; EXTINGUISHMENT OF OBLIGATIONS; CONSIGNATION; INSTANCES WHERE CONSIGNATION ALONE IS SUFFICIENT WITHOUT PRIOR TENDER OF PAYMENT.—** "Consignation is the act of depositing the thing due *with the court or judicial authorities* whenever the creditor cannot accept or refuses to accept payment[. I]t *generally* requires a prior tender of payment." Under Article 1256 of the Civil Code, consignation alone is sufficient even without a prior tender of payment: a) when the creditor is absent or unknown or does not appear at the place of payment; b) when he is incapacitated to receive the payment at the time it is due; c) when, without just cause, he refuses to give a receipt; d) when two or more persons claim the same right to collect; and e) when the title of the obligation has been lost.
2. **ID.; ID.; ID.; ID.; REQUIREMENTS FOR CONSIGNATION TO BE VALID.—** For consignation to be valid, the debtor must comply with the following requirements under the law: 1) there was a debt due; 2) valid prior tender of payment, *unless* the consignation was made because of some legal cause provided in Article 1256; 3) previous notice of the consignation has been given to the persons interested in the performance of the obligation; 4) the amount or thing due was placed at the disposal of the court; and, 5) after the consignation had been made, the persons interested were notified thereof. "Failure in any of these requirements is enough ground to render a consignation *ineffective*."
3. **ID.; ID.; ID.; ID.; DEPOSIT OF THE SUBJECT MONTHLY RENTALS IN A NON-DRAWING SAVINGS ACCOUNT IS NOT THE CONSIGNATION CONTEMPLATED BY LAW.—** Note that **PNB's deposit of the subject monthly rentals in a non-drawing savings account is not the**

consignation contemplated by law, precisely because it does not place the same at the disposal of the court. Consignation is *necessarily judicial*; it is not allowed in venues other than the courts. Consequently, PNB's obligation to pay rent for the period of January 16, 2005 up to March 23, 2006 remained subsisting, as the deposit of the rentals cannot be considered to have the effect of payment.

4. **ID.; ID.; ID.; ID.; BELATED CONSIGNATION OF THE RENTAL PROCEEDS IN COURT IS CONSIDERED DEFAULT IN THE PAYMENT OF MONTHLY RENTALS; LIABILITY TO PAY INTEREST ARISES IN VIEW OF DELAY IN THE PERFORMANCE OF THE OBLIGATION. —** It is important to point out that PNB's obligation to pay the subject monthly rentals had already fallen due and demandable ***before*** PNB consigned the rental proceeds with the MeTC on May 31, 2006. Although it is true that consignment has a retroactive effect, such payment is deemed to have been made only *at the time of the deposit* of the thing in court or when it was placed at the disposal of the judicial authority. Based on these premises, PNB's payment of the monthly rentals can only be considered to have been made not earlier than May 31, 2006.Given its *belated* consignment of the rental proceeds in court, **PNB clearly defaulted in the payment of monthly rentals to the respondent for the period January 16, 2005 up to March 23, 2006, when it finally vacated the leased property**. As such, it is liable to pay interest in accordance with Article 2209 of the Civil Code. Article 2209 provides that if the debtor incurs delay in the performance of an obligation consisting of the payment of a sum of money, he shall be liable to pay the interest agreed upon, and in the absence of stipulation, the legal interest at 6% per annum. There being no stipulated interest in this case, PNB is liable to pay legal interest at 6% per annum, from January 16, 2005 up to May 30, 2006.

APPEARANCES OF COUNSEL

Ismael C. Billena, Jr., & Doanni Lou F. Dequina for petitioner.

DECISION

DEL CASTILLO, *J.*:

We resolve the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, assailing the May 28, 2012 Decision[1] and the February 21, 2013 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 98112.

The Antecedent Facts

Respondent Lilibeth S. Chan owns a three-story commercial building located along A. Linao Street, Paco, Manila, covered by Transfer Certificate of Title (TCT) No. 208782.[3] On May 10, 2000, she leased said commercial building to petitioner Philippine National Bank (PNB) for a period of five years from December 15, 1999 to December 14, 2004, with a monthly rental of ₱76,160.00.[4] When the lease expired, PNB continued to occupy the property on a month-to-month basis with a monthly rental of ₱116,788.44. PNB vacated the premises on March 23, 2006.[5]

Meanwhile, on January 22, 2002, respondent obtained a ₱1,500,000.00 loan from PNB which was secured by a Real Estate Mortgage constituted over the leased property.[6] In addition, respondent executed a Deed of Assignment[7] over the rental payments in favor of PNB.

The amount of the respondent's loan was subsequently increased to ₱7,500,000.00. Consequently, PNB and the

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[1] *Rollo*, pp. 10-23; penned by Associate Justice Mario V. Lopez and concurred in by Associate Justices Fernanda Lampas Peralta and Socorro B. Inting.

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

[3] *Id*. at 10. See also CA *rollo*, pp. 136-140.

[4] *Id*. at 151-156.

[5] *Id*. at 10-11.

[6] *Id*. at 112-117.

[7] *Id*. at 122-125.

respondent executed an "Amendment to the Real Estate Mortgage by Substitution of Collateral" on March 31, 2004, where the mortgage over the leased property was released and substituted by a mortgage over a parcel of land located in Paco, Manila, covered by TCT No. 209631.[8]

On August 26, 2005, respondent filed a Complaint for Unlawful Detainer before the Metropolitan Trial Court (MeTC), Branch 7, Manila against PNB, alleging that the latter failed to pay its monthly rentals from October 2004 until August 2005.[9]

In its defense, PNB claimed that it applied the rental proceeds from October 2004 to January 15, 2005 as payment for respondent's outstanding loan which became due and demandable in October 2004.[10] As for the monthly rentals from January 16, 2005 to February 2006, PNB explained that it received a demand letter[11] from a certain Lamberto Chua (Chua) who claimed to be the new owner of the leased property and requested that the rentals be paid directly to him, reckoned from January 15, 2005 until PNB decides to vacate the premises or a new lease contract with Chua is executed. PNB thus deposited the rentals in a separate non-drawing savings account for the benefit of the rightful party.[12]

The MeTC held a hearing on April 25, 2006 where the parties agreed to apply the rental proceeds from October 2004 to January 15, 2005 to the respondent's outstanding loan.[13] PNB, too, consigned the amount of ₱1,348,643.92, representing the rentals due from January 16, 2005 to February 2006, with the court on May 31, 2006.[14]

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[8] *Id*. at 108-110.

[9] *Id*. at 147-149.

[10] *Id*. at 182-184.

[11] *Id*. at 126.

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

[13] *Id*. at 208.

[14] *Id*. at 37 and 172.

Ruling of the Metropolitan Trial Court

In its August 9, 2006 Decision,[15] the MeTC ordered PNB to pay respondent accrued rentals in the amount of ₱1,348,643.92,[16] with interest at 6% per annum from January 16, 2005 up to March 23, 2006, when PNB finally vacated the leased property.[17] The MeTC likewise directed PNB to pay attorney's fees in the amount of ₱20,000.00 and the cost of suit.

PNB appealed the August 9, 2006 MeTC Decision to the Regional Trial Court (RTC), Branch 14, Manila, insisting that respondent is not entitled to the disputed rental proceeds amounting to ₱1,348,643.92. According to PNB, the money should be applied to offset respondent's outstanding loan pursuant to the Deed of Assignment the latter executed in its favor. PNB also argued that it is not liable to pay any interest on the lease rentals since it did not incur any delay in the payment of rent.[18]

While the appeal was pending before the RTC, PNB initiated foreclosure proceedings on the mortgaged property covered by TCT No. 209631.[19] The property was sold on October 31, 2006 for ₱15,311,000.00 to PNB as the highest bidder. Notably, the Certificate of Sale provides that respondent's indebtedness amounted to ₱11,211,283.53 as of May 15, 2005, "exclusive of penalties, expenses, charges and the ten (10) percent attorney's fees, plus sheriff fees and other lawful expenses of foreclosure and sale."[20]

In light of this development, respondent filed a Memorandum[21] before the RTC, claiming that PNB had no right to retain the ₱1,348,643.92 consigned with the court. She insisted that her

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[15] *Id*. at 206-209; penned by Presiding Judge Roslyn M. Rabara-Tria.

[16] *Id*. at 209.

[17] *Id*.

[18] *Id*. at 210-225.

[19] CA *rollo*, pp. 259-262.

[20] *Rollo,* pp. 140-141.

[21] *Id*. at 227-238.

loan was fully paid when PNB bought the mortgaged property at ₱15,311,000.00.[22]

PNB filed a Rejoinder[23] and argued that respondent's outstanding obligation as of October 31, 2006 was ₱18,016,300.71 while the bid price was only ₱15,311,000.00. Thus, PNB claimed that it is entitled to a deficiency claim amounting to ₱2,705,300.71 to which the rental proceeds of ₱1,348,643.92 can be applied.[24]

Ruling of the Regional Trial Court

The RTC affirmed the MeTC ruling in its December 7, 2006 Decision.[25] It found that respondent's obligation to PNB "has already been paid, notwithstanding the belated claim of [the latter] that there remains a deficiency."[26] The RTC noted that the ₱11,211,283.53 amount of indebtedness stated in the Notice of Extra-Judicial Sale[27] dated August 9, 2006 as of May 15, 2006 plus penalties, expenses, charges, attorney's fees and expenses could have been easily covered by the ₱15,311,000.00 bid price.[28]

In addition, the RTC held that PNB incurred delay "when despite demand, it refused to pay and vacate the premises.[29]" As such, the RTC ruled that the respondent is entitled to legal interest at 6% per annum and attorney's fees for having been compelled to litigate to protect her interests.[30]

The respondent then moved for the issuance of a Writ of Execution which was granted by the RTC in its December 18,

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[22] *Id*. at 234.

[23] CA *rollo*, pp. 263-267.

[24] *Id*. at 264.

[25] *Rollo,* pp. 239-242; penned by Presiding Judge Cesar M. Solis.

[26] *Id*. at 241.

[27] CA *rollo*, pp. 302-303.

[28] *Rollo*, pp. 240-241.

[29] *Id*. at 242.

[30] *Id*. at 241-242.

2006 Order.[31] According to the Sheriff's Report of Execution[32] dated January 2, 2007, the amount of ₱1,348,643.92, representing the monthly rentals from January 16, 2005 up to March 23, 2006, was turned over to the respondent on December 20, 2006.[33]

PNB filed a motion for reconsideration of the December 7, 2006 Decision and for the quashal of the Writ of Execution, but the RTC denied the motion in its Order dated February 6, 2007.[34] Following the denial, PNB filed a Petition for Review under Rule 42 of the Rules of Court before the CA, challenging the RTC's December 7, 2006 Decision and February 6, 2007 Order.

Ruling of the Court of Appeals

The CA pointed out that PNB's entitlement to the rental proceeds in the amount of ₱1,348,643.92 is dependent on whether there is a deficiency in payment after the foreclosure sale.[35] It, however, found no sufficient evidence on record that the amount of respondent's liability as of October 31, 2006 is indeed ₱18,016,300.71, as PNB claims.[36] Consequently, the CA remanded the case to the MeTC for the proper reception of evidence and determination, if any, of the deficiency on the foreclosure sale with the following guidelines:[37]

(1) From October 2004 to January 15, 2005: Principal + Interest + Penalties – Monthly Rentals (from October 2004 to January 15, 2005 by virtue of the Deed of Assignment) = New Principal

(2) From January 16, 2005 to October 31, 2006: New Principal + Interest + Penalties – Interest Earned by PNB from the Savings Account = Outstanding Obligation as of October 31, 2006

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[31] *Id*. at 243-244.

[32] *Id*. at 249. The Writ of Execution was implemented by Conrado L. Bejar, Sheriff IV.

[33] *Id*. at 250.

[34] *Id*. at 251.

[35] *Id*. at 19.

[36] *Id*.

[37] *Id*. at 19-20.

(3) Outstanding Obligation as of October 31, 2006 - ₱15,311,000.00 = Deficiency[38]

As regards the payment of legal interest, the CA noted that PNB merely opened a non-drawing savings account wherein it deposited the monthly rentals from January 16, 2005 to February 2006. Such deposit of the rentals in a savings account, however, is not the consignation contemplated by law. Thus, the CA found PNB liable to pay the 6% legal interest rate prescribed under Article 2209 of the Civil Code for having defaulted in the payment of its monthly rentals to the respondent.[39]

Finally, the CA deleted the award of attorney's fees, pursuant to the general rule that attorney's fees cannot be recovered as part of damages because of the public policy that no premium should be placed on the right to litigate.[40]

PNB filed a partial Motion for Reconsideration, but the CA denied the motion in its Resolution dated February 21, 2013. As a consequence, PNB filed the present Petition for Review on *Certiorari* before the Court, assailing the CA's May 28, 2012 Decision and February 21, 2013 Resolution.

Issues

In the present Petition, PNB raises the following issues for the Court's resolution: *first,* whether PNB properly consigned the disputed rental payments in the amount of ₱1,348,643.92 with the Office of the Clerk of Court of the MeTC of Manila;[41] *second,* whether PNB incurred delay in the payment of rentals to the respondent, making it liable to pay legal interest to the latter;[42] and *third*, whether PNB is entitled to the disputed rental proceeds in order to cover the alleged deficiency in

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[38] *Id.* at 20.

[39] *Id.* at 20-21.

[40] *Id.* at 22.

[41] *Id.* at 41-43.

[42] *Id.* at 44-46.

payment of the respondent's liability after the foreclosure proceedings.[43]

The Court's Ruling

We DENY the Petition for Review on *Certiorari* as we find no reversible error committed by the CA in issuing its assailed Decision and Resolution.

"Consignation is the act of depositing the thing due *with the court or judicial authorities* whenever the creditor cannot accept or refuses to accept payment[. I]t *generally* requires a prior tender of payment."[44]

Under Article 1256 of the Civil Code, consignation alone is sufficient even without a prior tender of payment: a) when the creditor is absent or unknown or does not appear at the place of payment; b) when he is incapacitated to receive the payment at the time it is due; c) when, without just cause, he refuses to give a receipt; d) when two or more persons claim the same right to collect; and e) when the title of the obligation has been lost.

For consignation to be valid, the debtor must comply with the following requirements under the law:

1) there was a debt due;

2) valid prior tender of payment, *unless* the consignation was made because of some legal cause provided in Article 1256;

3) previous notice of the consignation has been given to the persons interested in the performance of the obligation;

4) the amount or thing due was placed at the disposal of the court; and,

5) after the consignation had been made, the persons interested were notified thereof.[45]

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[43] *Id.* at 43 and 46.

[44] *Soco v. Hon. Militante*, 208 Phil. 151, 159 (1983), citing *Limkako v. Teodoro*, 74 Phil. 313 (1943). See also CIVIL CODE, Articles 1256 and 1258.

[45] See *Allandale Sportsline, Inc. v. The Good Development Corporation*, 595 Phil. 265, 277-278 (2008).

"Failure in any of these requirements is enough ground to render a consignation *ineffective*."[46]

In the present case, the records show that: *first,* PNB had the obligation to pay respondent a monthly rental of ₱116,788.44, amounting to ₱1,348,643.92, from January 16, 2005 to March 23, 2006;[47] *second,* PNB had the option to pay the monthly rentals to respondent or to apply the same as payment for respondent's loan with the bank, but PNB did neither;[48] *third,* PNB instead opened a non-drawing savings account at its Paco Branch under Account No. 202-565327-3, where it deposited the subject monthly rentals, due to the claim of Chua of the same right to collect the rent;[49] and *fourth,* PNB consigned the amount of ₱1,348,643.92 with the Office of the Clerk of Court of the MeTC of Manila on May 31, 2006.[50]

Note that **PNB's deposit of the subject monthly rentals in a non-drawing savings account is not the consignation contemplated by law**, precisely because it does not place the same at the disposal of the court.[51] Consignation is *necessarily judicial*; it is not allowed in venues other than the courts.[52] Consequently, PNB's obligation to pay rent for the period of January 16, 2005 up to March 23, 2006 remained subsisting, as the deposit of the rentals cannot be considered to have the effect of payment.

It is important to point out that PNB's obligation to pay the subject monthly rentals had already fallen due and demandable

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[46] *Pabugais v. Sahijwani*, 467 Phil. 1111, 1118 (2004), citing *Soco v. Militante*, *supra* note 44 at 160.

[47] *Rollo,* p. 20.

[48] *Id.* at 20-21.

[49] *Id.* at 42.

[50] *Id*.

[51] See *Spouses Ercillo v. Court of Appeals*, 270 Phil. 250, 254-255 (1990).

[52] *Spouses Cacayorin v. Armed Forces and Police Mutual Benefit Association, Inc.*, 709 Phil. 307, 318 (2013).

before PNB consigned the rental proceeds with the MeTC on May 31, 2006. Although it is true that consignment has a retroactive effect, such payment is deemed to have been made only *at the time of the deposit* of the thing in court or when it was placed at the disposal of the judicial authority.[53] Based on these premises, PNB's payment of the monthly rentals can only be considered to have been made not earlier than May 31, 2006.

Given its *belated* consignment of the rental proceeds in court, **PNB clearly defaulted in the payment of monthly rentals to the respondent for the period January 16, 2005 up to March 23, 2006, when it finally vacated the leased property**. As such, it is liable to pay interest in accordance with Article 2209 of the Civil Code.

Article 2209 provides that if the debtor incurs delay in the performance of an obligation consisting of the payment of a sum of money, he shall be liable to pay the interest agreed upon, and in the absence of stipulation, the legal interest at 6% per annum. There being no stipulated interest in this case, PNB is liable to pay legal interest at 6% per annum, from January 16, 2005 up to May 30, 2006.

As for the issue on PNB's entitlement to the subject rental proceeds to cover the deficiency in payment after the foreclosure sale of the mortgaged property, we agree with the CA's finding that there is no sufficient evidence on record to show that such a deficiency exists.[54] Unfortunately, the Statement of Account[55] submitted by PNB is not enough to prove this claim, considering that it is unsupported by any corroborating evidence. Besides, the copy of the document in our records, both in the CA *rollo* and the Supreme Court *rollo*,[56] consists of illegible pages.

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[53] Tolentino, Arturo M., *Commentaries and Jurisprudence on the Civil Code of the Philippines*, Volume IV, 1991, p. 330.

[54] *Rollo,* p. 19.

[55] *Id*. at 142-146.

[56] *Id*. See also CA *rollo*, pp. 55-59.

We likewise agree with the CA's conclusion that the RTC seriously erred when it categorically stated that the loan was fully paid by virtue of the foreclosure sale *without determining the extent of the respondent's liability as of October 31, 2006*, the date of the foreclosure sale.[57] Specifically, the RTC held that:

> x x x In this regard, the amount of the indebtedness was clearly stated in the Notice of Extra-Judicial Sale dated August 9, 2006 as ₱11,211,283.53, **as of May 15, [2006]**, exclusive of penalties, expenses, charges, attorney's fees and expenses. And since the property was sold to the bank as the winning bidder at ₱15,311,000.00, obviously, **the difference could have easily covered the said penalties, etc**.[58]

This is clearly an error. It is settled that a mortgagee has the right to recover the deficiency resulting from the difference between the amount obtained in the sale at public auction and the outstanding obligation of the mortgagor *at the time of the foreclosure proceedings*.[59] The RTC failed to consider that the amount of indebtedness indicated in the Notice of Extra-Judicial Sale[60] dated August 9, 2006 was computed by PNB as of May 15, 2006. Surely, the respondent's liability would have significantly increased by the time the foreclosure sale was held on October 31, 2006.

It also appears that the RTC merely *assumed* that the bid price would cover the deficiency in payment, without actually making a determination of whether such a deficiency exists and how much it really is.

In these lights, we uphold the CA's ruling remanding the case to the MeTC for the proper reception of evidence and computation of respondent's total indebtedness as of October 31, 2006, in

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[57] *Id.* at 19.

[58] *Id.* at 241. Emphasis supplied.

[59] *Sycamore Ventures Corporation v. Metropolitan Bank and Trust Company*, 721 Phil. 290, 298-299 (2013).

[60] CA *rollo*, pp. 302-303.

order to determine whether there exists a deficiency in payment as PNB insists.

WHEREFORE, we **DENY** the Petition for Review on *Certiorari* and **AFFIRM** the Decision dated May 28, 2012 and the Resolution dated February 21, 2013 of the Court of Appeals in CA-G.R. SP No. 98112.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 214536. March 13, 2017]

MEDEL CORONEL *y* SANTILLAN, RONALDO PERMEJO *y* ABARQUEZ, NESTOR VILLAFUERTE *y* SAPIN and JOANNE OLIVAREZ *y* RAMOS, *petitioners, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT NO. 9165); SECTION 7 (b) THEREOF; KNOWINGLY VISITING A DRUG DEN; BEFORE A PERSON MAY BE CONVICTED THEREOF, IT MUST BE SHOWN THAT HE OR SHE KNEW THAT THE PLACE VISITED WAS A DRUG DEN, AND STILL VISITED THE PLACE DESPITE THIS KNOWLEDGE; ABSENT ANY OTHER CIRCUMSTANTIAL EVIDENCE, THE FACT THAT PERSONS WHO TEST POSITIVE FOR DRUGS USED THEM AT THE PLACE OF ARREST IS NOT SUFFICIENT TO SHOW THAT THEY WERE AWARE OF THE NATURE OF THE

SUSPECTED DRUG DEN BEFORE VISITING IT.— Section 7 (b) of Republic Act No. 9165 penalizes the act of knowingly visiting a drug den x x x. Before a person may be convicted under the foregoing provision, it must be shown that he or she knew that the place visited was a drug den, and still visited the place despite this knowledge. The Court of Appeals relied only on drug test results to conclude that the petitioners were aware of the nature of the subject house as a drug den x x x. True, the drug test results sufficiently proved that petitioners had used drugs some time before their arrest. However, assuming that petitioners were, in fact, at the alleged drug den before their arrest, there was no showing how long petitioners were at the alleged drug den, or how long the drugs had been in their system. In other words, there is no basis to assume that petitioners used drugs at the moment immediately before arrest, and thus, at the location of the arrest. Assuming that persons who test positive for drugs used them at the place of arrest is not sufficient to show that they were aware of the nature of the suspected drug den before visiting it, absent any other circumstantial evidence. There was no attempt to show that petitioners knew the nature of the alleged drug den, or even that they used drugs in the premises. The petitioners were not found to be in possession of any drugs. When petitioners were arrested, nobody was found "in the act of using, selling or buying illegal drugs, nor packaging nor hiding nor transporting the same." There were no acts alleged or evidence found, which would tend to show a familiarity with the nature of the place as a drug den.

2. **ID.; ID.; ID.; ID.; NOT PROVED.—** The crime of knowingly visiting a drug den under Article II, Section 7 of Republic Act No. 9165 carries with it a minimum penalty of imprisonment of 12 years and one (1) day, and a maximum of 20 years. It is not to be taken so lightly that its elements can be presumed to exist without any effort to show them. Given the dearth of evidence in this case, we are constrained to acquit petitioners of this particular charge.

3. **ID.; ID.; SECTION 15, ARTICLE II THEREOF; ILLEGAL USE OF SHABU; CONVICTION OF PETITIONERS FOR VIOLATION THEREOF, SUSTAINED.—** [P]etitioners do not assail the determination that they violated Article II, Section 15 of Republic Act No. 9165, and this conviction must be sustained.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioners.
Office of the Solicitor General for respondent.

R E S O L U T I O N

LEONEN, *J*.:

This resolves the motion for reconsideration of the Resolution dated January 11, 2016 of this Court denying petitioners' Petition for Review on Certiorari.[1] The petition assailed the Court of Appeals Decision,[2] which affirmed the Regional Trial Court Decision[3] finding accused-petitioners Medel Coronel y Santillan (Coronel), Ronaldo Permejo y Abarquez (Permejo), Nestor Villafuerte y Sapin (Villafuerte), and Joanne Olivarez y Ramos (Olivarez) guilty beyond reasonable doubt of violating Article II, Sections 7 and 15 of Republic Act No. 9165 (Comprehensive Dangerous Drugs Act of 2002).

Two (2) Informations were filed before the Regional Trial Court of Pasay City, Branch 231,[4] alleging that on or about May 19, 2010, Coronel, Permejo, Villafuerte, and Olivarez were caught knowingly and illegally visiting a drug den and using methamphetamine hydrochloride (*shabu*).[5]

The prosecution's version of events is as follows:

On May 19, 2010, a Philippine Drug Enforcement Agency (PDEA) team meeting for the implementation of a search

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[1] *Rollo,* pp. 13-44.

[2] *Id*. at 112-127. The Decision was penned by Associate Justice Jane Aurora C. Lantion and concurred in by Associate Justices Vicente S.E. Veloso and Nina G. Antonio-Valenzuela of the Eleventh Division, Court of Appeals, Manila.

[3] *Id*. at 71-86. The Decision was penned by Presiding Judge Divina Gracia Lopez Peliño of Branch 231, Regional Trial Court, Pasay City.

[4] *Id*. at 112.

[5] *Id*. at 71-72.

warrant[6] covering a building at No. 1734 F. Muñoz Street, Tramo Street, Barangay 43, Zone 6, Pasay City was held.[7] The Special Enforcement Group Team Leader of the Metro Manila Regional Office — Philippine Drug Enforcement Agency, IO2 Randy Paragasa (IO2 Paragasa), designated IO2 Daniel Discaya (IO2 Discaya) as the seizing officer, and IO1 Jake Edwin Million (IO1 Million) and IO1 Jayson Albao (IO1 Albao) as the arresting officers.[8] The team prepared the pre-operations report form, coordination form, authority to operate, and inventory of seized property/items form.[9]

The PDEA team coordinated with a team from the Philippine National Police — Southern Police District in implementing the search warrant.[10] They arrived at the subject building at around 2:00 p.m., knocked on the door, and announced that they had a search warrant.[11] A PDEA agent shouted that somebody had jumped out the window and the door was forced open with a battering ram.[12] IO1 Million and IO1 Albao chased down those who jumped out the window.[13]

Three (3) persons, identified as Olivarez, Erlinda Fetalino, and Benjie Guday, were found inside the subject building.[14] IO2 Discaya read to them the contents of the search warrant.[15]

Coronel, Permejo, and Villafuerte were apprehended after trying to escape out of the window.[16] They were brought back

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[6] The search warrant was issued by Judge Fernando T. Sagun on May 15, 2010.

[7] *Rollo,* p. 116.

[8] *Id*.

[9] *Id*.

[10] *Id*.

[11] *Id*.

[12] *Id*.

[13] *Id*.

[14] *Id*.

[15] *Id*.

[16] *Id*.

to the subject building, where the contents of the search warrant was read to them.[17]

Thereafter, Barangay Kagawad Oga Hernandez (Barangay Kagawad Hernandez), Herald Santos (Santos), Assistant City Prosecutor of Pasay City Angel Marcos (Atty. Marcos), and DZAR Sunshine Radio Reporter Jimmy Mendoza (Mendoza) arrived, and the search was conducted in their presence.[18]

During the search, the team recovered, among others, transparent plastic sachets, aluminium foils, containers of white crystalline substance and white powdery residue, disposable lighters, improvised plastic scoops, a total amount of ₱580.00 in assorted bills, and ₱165.00 in coins.[19]

Coronel, Permejo, Villafuerte, and Olivarez were arrested and apprised of their constitutional rights.[20] The confiscated items were also inventoried, photographed, and marked in their presence, as well as in the presence of the Barangay officials and the Department of Justice and media representatives.[21]

The arrested suspects were brought to the PDEA Headquarters for investigation and mandatory drug testing, together with the seized objects, one of which was identified as *shabu*. Coronel, Villafuerte, Permejo, and Olivarez tested positive for *shabu*.[22]

The prosecution submitted the following in its formal offer of evidence:

1) *Search Warrant No. 4680(10)*; 2) Joint Affidavit of the Arresting Officers; 3) Pre-Operation Report dated 19 May 2010; 4) Authority to Operate dated 19 May 2010; 5) Certificate of Coordination; 6) Certification from the Barangay; 7) Inventory of the Seized Property/

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[17] *Id*.

[18] *Id*.

[19] *Id*. at 114-115.

[20] *Id*. at 116.

[21] *Id*.

[22] *Id*.

Items and Receipt of property seized; 8) Pictures of the incident; 9) Request for Laboratory Examination; 10) Request for Drug Test dated 19 May 2010; 11) Chemistry Report N[o]. PDEA-DT010-148 to 153; 12) Booking Sheets and Arrest Reports of [petitioners]; 13) strips of aluminum foils; 14) medicine box with white residue; [15]) heat-sealed transparent plastic sachets containing white crystalline substance; [16]) improvised white plastic scoops; [17]) metal rectangular cash box containing traces of white crystalline substance; [18]) improvised plastic pipes; [19]) plastic sachets; [20]) plastic tray containing traces of white crystalline substance; and [21]) silver card boards.[23]

The defense's version of events is as follows:

Coronel testified that he did not know Permejo, Villafuerte, and Olivarez.[24] On May 19, 2010, at around 2:00 p.m., he was looking for a certain Rommel Yabut (Yabut) in Tramo, Pasay to invite him to the christening of his child.[25] Suddenly, there was a commotion, and someone in a shirt that read "Philippine Drug Enforcement Agency" pointed a gun at him and asked if he was among those being arrested.[26] Coronel responded that he was just looking for someone.[27] Another man who appeared to be the leader of the PDEA team told the man holding the gun that Coronel should be brought with them.[28] Coronel was handcuffed and brought to the drug den.[29] He denied being at the drug den out of his own volition.[30]

Permejo also testified that he did not know Coronel, Villafuerte, and Olivarez.[31] While walking along Tramo, Pasay

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[23] *Id*. at 117.

[24] *Id*.

[25] *Id*.

[26] *Id*.

[27] *Id*.

[28] *Id*. at 117-118.

[29] *Id*. at 118.

[30] *Id*.

[31] *Id*.

from his cousin's place in Zapanta, two (2) armed men approached him, took him to another alley, and handcuffed him.[32] After about an hour, they made him board a van, and took him to the PDEA office.[33]

Villafuerte testified that at the time of the incident, he was walking along Tramo with Olivarez, two (2) men wearing shirts that read "Philippine Drug Enforcement Agency" approached them and forced them into an alley, where he saw other persons handcuffed.[34] After being told to stay put, he and Olivarez were handcuffed and made to board a van that brought them to the PDEA office.[35] At the office, they were made to sign documents, and brought to detention cells.[36]

After trial on the merits, the Regional Trial Court found Coronel, Permejo, Villafuerte, and Olivarez guilty beyond reasonable doubt of violating Article II, Sections 7 and 15 of Republic Act No. 9165. The dispositive reads:

WHEREFORE, judgment is hereby rendered as follows:

a) **ACQUITTING** the accused **BENJIE GUDAY Y MANTILLA, FIDEL BALBOA Y MEMORACION and ERLINDA FETALINO Y BATICA** of the charge of Violation of Section 7, of Republic Act 9165 in Criminal Case No. R-PSY-10-02059-CR for failure of prosecution's evidence to establish the guilt of the accused beyond reasonable doubt;

b) Finding accused **MEDEL CORONEL Y SANTILLAN, RONALDO PERMEJO Y ABARQUEZ, NESTOR VILLAFUERTE Y SAPIN and JOANNE OLIVAREZ Y RAMOS a.k.a. JOANNE OLIVARE,** ***guilty beyond reasonable doubt*** of the charge of Violation of Section 15, Article II, Republic Act [No.] 9165 in Criminal Case No. R-PSY-10-02058-CR and are hereby sentenced to suffer the penalty of six (6) months rehabilitation in a government center; [and]

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[32] *Id.*

[33] *Id.*

[34] *Id.*

[35] *Id.*

[36] *Id.*

[c] Finding accused **MEDEL CORONEL Y SANTILLAN, RONALDO PERMEJO Y ABARQUEZ, NESTOR VILLAFUERTE Y SAPIN and JOANNE OLIVAREZ Y RAMOS a.k.a. JOANNE OLIVARE,** ***guilty beyond reasonable doubt*** of the charge of Violation of Section 7, (Visitors of Den, Dive or Resort) of Republic Act No. 9165 in Criminal Case No. R-PSY-10-02059[-CR] and are hereby sentenced to suffer the penalty of imprisonment of twelve (12) years and one (1) day as minimum to fourteen (14) years as maximum and for each of them to pay a fine of one hundred thousand pesos (Php100,000) with subsidiary imprisonment in case of insolvency.[37] (Emphasis in the original)

Petitioners appealed to the Court of Appeals on the ground that the prosecution failed to prove their guilt beyond reasonable doubt.

In the Decision dated April 29, 2014, the Court of Appeals affirmed the ruling of the Regional Trial Court.[38] The dispositive portion reads:

Finally, considering that the penalties imposed upon accused-appellants are all in accord with the provisions of R.A. No. 9165, more so since they never questioned the same in their *Brief*, this Court affirms the imposition of said penalties by the court *a quo*.

WHEREFORE, premises considered, the instant Appeal is **DISMISSED**. The Joint Decision dated 30 October 2012 of the Regional Trial Court of Pasay City, Branch 231 in Criminal Case Nos. R-PSY-010-02059-CR and R-PSY-010-02058-CR is **AFFIRMED**.

SO ORDERED.[39] (Emphasis in the original)

On November 21, 2014, petitioners filed a Petition for Review on Certiorari with this Court.[40] This Court denied the petition for lack of merit in its Resolution[41] dated January 11, 2016:

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

[38] *Id*. at 112-127.

[39] *Id*. at 126.

[40] *Id*. at 13-44.

[41] *Id*. at 147-158.

WHEREFORE, this court resolves to **DENY** this Petition for lack of merit. Petitioners Medel Coronel y Santillan, Ronaldo Permejo y Abarquez, Nestor Villafuerte y Sapin, and Joanne Olivarez y Ramos a.k.a. Joanne Olivare, are **GUILTY** beyond reasonable doubt of the following:

a) violating Article II, Section 15 of Republic Act No. 9165 in Criminal Case No. R-PSY-10-02058-CR and are hereby sentenced to suffer the penalty of six (6) months of rehabilitation in a government center; and

b) violating Article II, Section 7 of Republic Act No. 9165 in Criminal Case No. R-PSY-10-02059-CR and are hereby sentenced to suffer the penalty of imprisonment of twelve (12) years and one (1) day as minimum to fourteen (14) years as maximum and for each of them to pay a fine of ₱100,000.00 with subsidiary imprisonment in case of insolvency.

SO ORDERED.[42]

Hence, petitioners have filed this Motion for Reconsideration.[43] Petitioners stress that in its Resolution, this Court did not address the prosecution's failure to establish both a continuous and unbroken chain of custody of the subject evidence,[44] that the house, where petitioners were apprehended, was a drug den,[45] or that petitioners were aware that said house was a drug den and that they visited it knowingly.[46] The Office of the Solicitor General has not commented, but instead has manifested that the motion for reconsideration was merely a re-pleading of petitioners' prior arguments.[47]

Contrary to petitioners' claim, the Resolution dated January 11, 2016 sufficiently disposed of the matter of chain of custody.

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[42] *Id*. at 157.

[43] *Id*. at 159-173.

[44] *Id*. at 163.

[45] *Id*. at 168.

[46] *Id*. at 169.

[47] *Id*. at 175-176.

The requirements under Section 21(a) of the implementing rules and regulations of Republic Act No. 9165 were complied with.[48] It was established during trial that "there was physical inventory, marking, and taking of photographs of the seized items."[49] This was done in the presence of petitioners themselves, Barangay Kagawad Hernandez, Santos, Atty. Marcos, and media representative Mendoza.[50] The inventory, which "bore the signature[s] of these witnesses . . . was presented and formally offered as evidence."[51] Although forensic chemist Richard Allan Mangalip (Mangalip), who examined the specimen subject of this case, was not presented, this did not detract from the chain of custody.[52] The defense agreed to stipulate on the competency and qualifications of Mangalip and his testimony on the examination of the specimen subject of the case.[53] It was also stipulated that "the specimen subject of [the] case marked as Exhibit 'D' for the prosecution was the same item subject of a request for laboratory examination dated April 16, 2009 marked as Exhibit 'B,'" which was "the same specimen . . . examined by [Mangalip] as reported in the Physical Science Report No. D-192-09S marked as Exhibit 'C.'"[54]

The Resolution dated January 11, 2016 also pointed out that in *People of the Philippines v. Mali,*[55] this Court said that the non-presentation of a forensic chemist during trial would not cause an acquittal in illegal drug cases.[56]

However, the issue of whether the prosecution has established that petitioners knowingly visited a drug den deserves further review.

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[48] *Id*. at 155.

[49] *Id*.

[50] *Id*.

[51] *Id*.

[52] *Id*. at 156.

[53] *Id*.

[54] *Id*.

[55] 723 Phil. 837 (2013) [Per *J*. Reyes, First Division].

[56] *Id*. at 856-857.

Section 7 (b) of Republic Act No. 9165 penalizes the act of knowingly visiting a drug den:

> **Section 7.** *Employees and Visitors of a Den, Dive or Resort.* – The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall be imposed upon:
>
> (a) Any employee of a den, dive or resort, who is aware of the nature of the place as such; and
>
> (b) Any person who, not being included in the provisions of the next preceding paragraph, is aware of the nature of the place as such and shall knowingly visit the same.

Before a person may be convicted under the foregoing provision, it must be shown that he or she knew that the place visited was a drug den, and still visited the place despite this knowledge.

The Court of Appeals relied only on drug test results to conclude that the petitioners were aware of the nature of the subject house as a drug den:

> Contrary to accused-appellants' claim that they had no knowledge of the nature of the drug den, records reveal otherwise. In the Chemistry Report No. PDEA-DT010-148 to 153, the urine specimens taken from accused-appellants yielded "**positive** results for the presence of Methamphetamine[.]" Obviously, accused-appellants cannot claim that they have no knowledge of the nature of said drug den when they were positively identified by a police officer as present in the premises, and their drug test results indicate that their urine samples contain Methamphetamine, a dangerous drug. Moreover, it is well-established that the defense of denial, in the absence of convincing evidence, is invariably viewed with disfavor by the courts for it can be easily concocted, especially in cases involving the Dangerous Drugs Act.[57] (Emphasis in the original, citations omitted)

Similarly, the Regional Trial Court ratiocinated:

> With regard to the charge for Violation of Section 7 of Republic Act No. 9165, to render a verdict of conviction, it is not enough that

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[57] *Rollo*, p. 123.

the integrity and evidentiary value of the specimen were preserved and that the presumption of regularity of performance of duties was upheld. It is primordial for the prosecution to establish the allegation that the accused knowingly visit[ed] a drug den.

. . . .

As for accused Medel Coronel y Santillan, Ronaldo Permejo y Abarquez, Nestor Villafuerte y Sapin and Joanne Olivarez y Ramos a.k.a. Joanne Olivare, with the integrity and evidentiary value of the evidence preserved, the presumption of regularity in the performance of duties upheld and their respective drug tests yielding positive results to existence of Methamphetamine, a dangerous drug, the court is convinced that evidence for the prosecution has established the allegations of the information beyond reasonable doubt, thus, sustain a verdict of conviction.[58]

Likewise, respondent claims that the prosecution has established that petitioners knew that the place was a drug den, based solely on the positive drug test results:

A drug den is a lair or hideaway where prohibited or regulated drugs are used in any form or are found. Its existence [may be] proved not only by direct evidence but may also be established by proof of facts and circumstances, including evidence of the general reputation of the house, or its general reputation among police officers. The prosecution established that appellants knew that the place is a drug den. All the appellants in the instant case tested positive for methamphetamine hydrochloride. The drug tests were conducted right after the appellants were arrested. Taken together, these facts prove that appellants knowingly visited a drug den on the day the search warrant was implemented.[59]

Respondent apparently maintains that because the petitioners' drug tests were conducted right after their arrest, it was proven that drugs were used at the drug den itself. Moreover, the use of drugs at a drug den automatically implies that the drug users were aware of the nature of the place as a drug den before visiting it.

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[58] *Id*. at 84-85.

[59] *Id*. at 99.

This position is untenable.

True, the drug test results sufficiently proved that petitioners had used drugs some time before their arrest. However, assuming that petitioners were, in fact, at the alleged drug den before their arrest, there was no showing how long petitioners were at the alleged drug den, or how long the drugs had been in their system. In other words, there is no basis to assume that petitioners used drugs at the moment immediately before arrest, and thus, at the location of the arrest.

Assuming that persons who test positive for drugs used them at the place of arrest is not sufficient to show that they were aware of the nature of the suspected drug den before visiting it, absent any other circumstantial evidence.

There was no attempt to show that petitioners knew the nature of the alleged drug den, or even that they used drugs in the premises. The petitioners were not found to be in possession of any drugs. When petitioners were arrested, nobody was found "in the act of using, selling or buying illegal drugs, nor packaging nor hiding nor transporting the same."[60] There were no acts alleged or evidence found, which would tend to show a familiarity with the nature of the place as a drug den.

The crime of knowingly visiting a drug den under Article II, Section 7 of Republic Act No. 9165 carries with it a minimum penalty of imprisonment of 12 years and one (1) day, and a maximum of 20 years. It is not to be taken so lightly that its elements can be presumed to exist without any effort to show them. Given the dearth of evidence in this case, we are constrained to acquit petitioners of this particular charge.

However, petitioners do not assail the determination that they violated Article II, Section 15 of Republic Act No. 9165, and this conviction must be sustained.

WHEREFORE, the motion for reconsideration is hereby **GRANTED**. The January 11, 2016 Resolution of this Court,

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[60] *Id*. at 168.

and the April 29, 2014 Decision and September 17, 2014 Resolution of the Court of Appeals in CA-G.R. CR. No. 35399 are **SET ASIDE**.

The decision of the Regional Trial Court, Pasay City, Branch 231 dated October 30, 2012 is **AFFIRMED** with **MODIFICATION**, and judgment on petitioners Medel Coronel y Santillan, Ronaldo Permejo *y* Abarquez, Nestor Villafuerte y Sapin, and Joanne Olivarez *y* Ramos is rendered as follows:

a) **ACQUITTING** petitioners of violation of Section 7 of Republic Act No. 9165, for failure of the prosecution to prove their guilt beyond reasonable doubt; and

b) Finding accused **GUILTY BEYOND REASONABLE DOUBT** of the charge of violation of Section 15, Article II of Republic Act No. 9165 in Criminal Case No. R-PSY-10-02058-CR, and hereby sentencing them to suffer the penalty of six (6) months of rehabilitation in a government center.

Let a copy of this resolution be furnished to the Director of the Bureau of Corrections, Muntinlupa City for immediate implementation. The Director of the Bureau of Corrections is directed to report to this Court within five (5) days from receipt of this decision on the action he has taken. Copies shall also be furnished to the Director General of Philippine National Police and the Director General of Philippine Drugs Enforcement Agency for their information.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 225608. March 13, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ALBERTO ALEJANDRO** *y* **RIGOR and JOEL ANGELES** *y* **DE JESUS**, *accused-appellants.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; IN CRIMINAL CASES, AN APPEAL THROWS THE ENTIRE CASE WIDE OPEN FOR REVIEW AND THE REVIEWING TRIBUNAL CAN CORRECT ERRORS, THOUGH UNASSIGNED IN THE APPEALED JUDGMENT, OR EVEN REVERSE THE TRIAL COURT'S DECISION BASED ON A GROUND OTHER THAN THOSE THAT THE PARTIES RAISED AS ERRORS.—** In criminal cases, "an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law."
2. **CRIMINAL LAW; REVISED PENAL CODE; HOMICIDE; ELEMENTS, CITED.—** "To successfully prosecute the crime of homicide, the following elements must be proved beyond reasonable doubt: (1) that a person was killed; (2) that the accused killed that person without any justifying circumstance; (3) that the accused had the intention to kill, which is presumed; and (4) that the killing was not attended by any of the qualifying circumstances of murder, or by that of parricide or infanticide. Moreover, the offender is said to have performed all the acts of execution if the wound inflicted on the victim is mortal and could cause the death of the victim without medical intervention or attendance."
3. **ID.; ID.; RAPE; ELEMENTS, CITED.—** "Under Article 335 of the RPC, the elements of Rape are: (*a*) the offender had

carnal knowledge of the victim; and (*b*) said carnal knowledge was accomplished through the use of force or intimidation; or the victim was deprived of reason or otherwise unconscious; or when the victim was under twelve (12) years of age or demented. The provision also states that if the act is committed either with the use of a deadly weapon or by two (2) or more persons, the crime will be Qualified Rape, necessitating the imposition of a higher penalty."

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellants.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is an ordinary appeal[1] filed by accused-appellants Alberto Alejandro *y* Rigor (Alejandro) and Joel Angeles *y* de Jesus (Angeles; collectively, accused-appellants) assailing the Decision[2] dated June 3, 2015 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06495, which affirmed with modification the Joint Decision[3] dated August 20, 2013 of the Regional Trial Court of Baloc, Sto. Domingo, Nueva Ecija, Branch 88 (RTC) in Crim. Case Nos. 72-SD(96), 73-SD(96), and 74-SD(96) convicting accused-appellants of the crimes of Simple Rape and Homicide, defined and penalized under Articles 335[4] and 249 of the Revised Penal Code (RPC), respectively.

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[1] See Notice of Appeal dated June 29, 2015; *rollo*, pp. 20-21.

[2] *Id*. at 2-19. Penned by Associate Justice Florito S. Macalino with Associate Justices Mariflor P. Punzalan Castillo and Zenaida T. Galapate-Laguilles concurring.

[3] *CA Rollo*, pp. 46-66. Penned by Presiding Judge Anarica J. Castillo-Reyes.

[4] The rape was committed prior to the enactment of Republic Act No. 8353, otherwise known as "The Anti-Rape Law of 1997."

The Facts

On March 28, 1996, a total of three (3) separate Informations were filed before the RTC, each charging accused-appellants of one (1) count of Simple Rape and one (1) count of Homicide, *viz.*:[5]

Crim. Case No. 72-SD(96)

That on or about the 5th day of January 1996, at around 2:30 o'clock [sic] in the morning, at Brgy. [Collado], Municipality of [Talavera], Province of Nueva Ecija, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused [Alejandro], with lewd design, by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously had carnal knowledge of one [AAA[6]] against her will and consent, to the damage and prejudice of the said offended party.

Contrary to law.

Crim. Case No. 73-SD(96)

That on or about the 5th day of January 1996, at around 2:30 o'clock [sic] in the morning, at Brgy. [Collado], Municipality of [Talavera], Province of Nueva Ecija, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused [Angeles], with lewd design, by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously had carnal knowledge of one AAA against her will and consent, to the damage and prejudice of the said offended party.

Contrary to law.

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[5] See *rollo*, pp. 3-4. *See* also CA *rollo*, pp. 46-47.

[6] 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. (RA) 7610, entitled "AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, AND FOR OTHER PURPOSES," approved on June 17, 1992; RA 9262, entitled "AN ACT DEFINING VIOLENCE AGAINST WOMEN AND THEIR CHILDREN, PROVIDING FOR PROTECTIVE MEASURES FOR VICTIMS, PRESCRIBING PENALTIES THEREFOR, AND FOR OTHER PURPOSES," approved on March 8, 2004; and Section 40 of A.M. No. 04-10-11-SC, otherwise known as the "Rule on Violence Against Women and Their Children" (November 15, 2004). (See footnote 4 in *People v. Cadano, Jr.*, 729 Phil. 576, 578 [2014], citing *People v. Lomaque*, 710 Phil. 338, 342 [2013].)

Crim Case No. 74-SD(96)

That on or about the 5th day of January 1996, at Brgy. [Collado], Municipality of [Talavera], Province of Nueva Ecija, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused [Alejandro and Angeles], together with two (2) other persons whose identities are still unknown (John Doe and Peter Doe), conspiring, confederating and mutually helping one another, with intent to kill did then and there willfully, unlawfully and feloniously attack, box, beat and stab one [BBB] on the different parts of her body with the use of a pointed instrument, thereby causing her instantaneous death, to the damage and prejudice of the said victim.

Contrary to law.

Upon Alejandro's arrest, he pleaded not guilty to the charges against him as stated in Crim. Case Nos. 72-SD(96) and 74-SD(96).[7]

While Angeles was still at large, the prosecution sought for the amendment of the Informations in Crim. Case Nos. 72-SD(96) and 73-SD(96) to convey a conspiracy between accused-appellants in the rape cases against AAA. The RTC allowed the amendment of the Information in Crim. Case No. 73-SD(96) to include Alejandro therein as a conspirator; however, it disallowed the proposed amendment in Crim. Case No. 72-SD(96) to include Angeles therein as conspirator on the ground that Alejandro had already been arraigned in the latter case.[8] The amended Information in Crim. Case No. 73-SD(96) reads:

That on or about the 5th day of January 1996, at around 2:30 o'clock in the morning, at Brgy. [Collado], Municipality of [Talavera], Province of Nueva Ecija, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused [Angeles], with lewd design, and in conspiracy with one ALBERTO ALEJANDRO *Y* RIGOR @ "JESUS", by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with one [AAA] against her will and consent, to the damage and prejudice of the said offended party.

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[7] *Rollo*, pp. 4-5.

[8] *Id*. at 5.

Contrary to law.[9]

Eventually, Angeles was arrested and arraigned in connection with Crim. Case Nos. 73-SD(96) and 74-SD(96), to which he pleaded not guilty. Alejandro was likewise arraigned in Crim. Case No. 73-SD(96) and pleaded not guilty as well.[10]

The prosecution alleged that on December 12, 1995, AAA joined her co-worker for a vacation in the province of Nueva Ecija as they were both laid off from work, and they stayed at the one-storey house of the latter's 62-year old mother, BBB. Thereat, AAA would sleep at the *papag* while BBB slept on a mattress on the floor. At around 2:30 in the morning of January 5, 1996, AAA awoke to the sound of BBB's pleas for mercy. Aided by the kerosene lamp placed on the floor, AAA saw BBB being mauled and stabbed to death by Alejandro and Angeles. Thereafter, Angeles approached AAA and restrained her arms, while Alejandro pulled AAA's pants and underwear down and started having carnal knowledge of her. After Alejandro was done, he switched places with Angeles and the latter took his turn ravishing AAA. As AAA was able to fight back by scratching Angeles's back, Angeles punched her on the left side of her face while Alejandro hit her left jaw with a piece of wood. AAA then lost consciousness and woke up in a hospital, while BBB succumbed to her injuries.[11]

At the hospital, the police officers interviewed AAA and showed her several mugshots in order for her to identify her assailants. AAA was then able to recognize Alejandro and Angeles from said mugshots and positively identified them as the perpetrators of the crime. Medical records also revealed that AAA was indeed sexually assaulted, while BBB died due to "neurogenic shock" or severe pain secondary to "multiple blunt injury and fracture of the mandibular and facio-maxillary bones."[12]

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[9] *Id*. See also CA *rollo*, p. 47.

[10] *Id.*

[11] See *id*. at 5-6.

[12] See *id*. at 7-8.

In his defense, Angeles denied the charges against him and presented an alibi. He averred that on the night before the incident, he was at home with his wife and slept as early as eight (8) o'clock in the evening. Upon waking up at seven (7) o'clock in the morning of the next day, he was informed by his brother-in-law of BBB's death. He further averred that his relationship with BBB was like that of a mother and son.[13]

Similarly, Alejandro invoked the defenses of denial and alibi. He claimed that at around nine (9) o'clock in the evening prior to the incident, he went home and slept. As testified by Noel Mendoza (Mendoza), Alejandro's relative by affinity, he asked Alejandro to help him irrigate the rice field, but the latter declined. At around midnight, Mendoza went to Alejandro's house to personally fetch Alejandro, but considering that the house was closed, Mendoza peeped through a hole and there he saw Alejandro soundly asleep. Alejandro further claimed that he does not know both AAA and Angeles until the filing of the charges against him.[14]

The RTC Ruling

In a Joint Decision[15] dated August 20, 2013, the RTC found accused-appellants guilty as charged and, accordingly, sentenced them as follows: (*a*) in Crim. Case No. 72-SD(96), Alejandro was sentenced to suffer the penalty of *reclusion perpetua* and ordered to pay AAA the amounts of ₱75,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱30,000.00 as exemplary damages; (*b*) in Crim. Case No. 73-SD(96), accused-appellants were each sentenced to suffer the penalty of *reclusion perpetua* and each ordered to pay AAA the amounts of ₱75,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱30,000.00 as exemplary damages; and (*c*) in Crim. Case No. 74-SD(96), accused-appellants were sentenced to suffer the penalty of imprisonment for an indeterminate period of six

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[13] See *id*. at 8. See also CA *rollo*, pp. 55-56.

[14] See *id*. at 9. See also CA *rollo*, pp. 56-58.

[15] CA *rollo*, pp. 46-66.

(6) years and one (1) day of *prision mayor*, as minimum, to twelve (12) years and one (1) day of *reclusion temporal*, as maximum, and ordered to pay BBB's heirs the amount of ₱50,000.00 as civil indemnity for the latter's death.[16]

In so ruling, the RTC gave credence to AAA's positive identification of accused-appellants as the perpetrators of the crimes charged, expressly noting that AAA had no ill motive to falsely testify against them. In this light, the RTC found untenable accused-appellants' defenses of denial and alibi, considering too that they have failed to show that it was physically impossible for them to be at the crime scene when the crimes against AAA and BBB were committed.[17]

Aggrieved, accused-appellants appealed[18] to the CA.

The CA Ruling

In a Decision[19] dated June 3, 2015, the CA affirmed the RTC ruling with the following modifications: (*a*) in Crim. Case No. 72-SD(96), Alejandro was found guilty beyond reasonable doubt of Simple Rape and, accordingly, was sentenced to suffer the penalty of *reclusion perpetua* and ordered to pay AAA the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱30,000.00 as exemplary damages; (*b*) in Crim. Case No. 73-SD(96), Alejandro was found guilty beyond reasonable doubt of one (1) count of Simple Rape, while Angeles was found guilty beyond reasonable doubt of two (2) counts of the same crime, and accordingly, were separately sentenced to suffer the penalty of *reclusion perpetua* and ordered to pay AAA the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱30,000.00 as exemplary damages for each count of Simple Rape; and (*c*) in Crim. Case No. 74-SD(96), accused-appellants were found guilty beyond reasonable doubt

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[16] *Id*. at 65.

[17] See *id*. at 58-65.

[18] See Brief for the Accused-Appellants dated July 3, 2014; *id*. at 23-44.

[19] *Rollo*, pp. 2-19.

of Homicide and, accordingly, were each sentenced to suffer the penalty of imprisonment for an indeterminate period of six (6) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months, and one (1) day of *reclusion temporal*, as maximum, and ordered to solidarily pay BBB's heirs the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱25,000.00 as temperate damages. In addition, accused-appellants are likewise ordered to pay legal interest of six percent (6%) per annum on all monetary awards from date of finality of judgment until fully paid.[20]

It held that the prosecution had proven beyond reasonable doubt accused-appellants' complicity to the crimes charged, as they were positively identified by AAA who had an unobstructed view of their appearance when said crimes were being committed. It likewise found the existence of conspiracy in the commission of said crimes, considering that accused-appellants: (*a*) cooperated in stabbing and mauling BBB, resulting in her death; and (*b*) took turns in having carnal knowledge of AAA without her consent, while the other restrained her arms to prevent her from resisting.[21]

Hence, the instant appeal.

The Issue Before the Court

The core issue for the Court's resolution is whether or not accused-appellants are guilty beyond reasonable doubt of the aforesaid crimes.

The Court's Ruling

At the outset, the Court notes that during the pendency of the instant appeal, Alejandro filed a Motion to Withdraw Appeal[22] dated January 19, 2017, stating that despite knowing the full consequences of the filing of said motion, he still desires to have his appeal withdrawn. In view thereof, the Court hereby

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[20] *Id*. at 18-19.

[21] See *id*. at 13-16.

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

grants said motion, and accordingly, deems the case closed and terminated as to him. Thus, what is left before the Court is the resolution of Angeles's appeal.

In criminal cases, "an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law."[23]

Proceeding from the foregoing, the Court deems it proper to modify accused-appellants' convictions, as will be explained hereunder.

Article 249 of the RPC states:

> Article 249. *Homicide*. – 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 preceeding article, shall be deemed guilty of homicide and punished by *reclusion temporal*.

"To successfully prosecute the crime of homicide, the following elements must be proved beyond reasonable doubt: (1) that a person was killed; (2) that the accused killed that person without any justifying circumstance; (3) that the accused had the intention to kill, which is presumed; and (4) that the killing was not attended by any of the qualifying circumstances of murder, or by that of parricide or infanticide. Moreover, the offender is said to have performed all the acts of execution if the wound inflicted on the victim is mortal and could cause the death of the victim without medical intervention or attendance."[24]

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[23] See *People v. Comboy*, G.R. No. 218399, March 2, 2016, citing *Manansala v. People*, G.R. No. 215424, December 9, 2015, 777 SCRA 563, 569.

[24] *Abella v. People*, 719 Phil. 53, 66 (2013).

On the other hand, pertinent portions of Article 335 of the RPC (the controlling provision as the rapes were committed prior to the enactment of Republic Act No. [RA] 8353[25] in 1997) read:

Article 335. When and how rape is committed. – Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

1. By using force or intimidation;

2. When the woman is deprived of reason or otherwise unconscious; and

3. When the woman is under twelve years of age or is demented.

The crime of rape shall be punished by *reclusion perpetua*.

Whenever the crime of rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death.

x x x x x x x x x

"Under this provision, the elements of Rape are: (*a*) the offender had carnal knowledge of the victim; and (*b*) said carnal knowledge was accomplished through the use of force or intimidation; or the victim was deprived of reason or otherwise unconscious; or when the victim was under twelve (12) years of age or demented. The provision also states that if the act is committed either with the use of a deadly weapon or by two (2) or more persons, the crime will be Qualified Rape, necessitating the imposition of a higher penalty."[26]

In this case, both the RTC and the CA were one in giving credence to AAA's positive identification that accused-appellants conspired in stabbing and mauling BBB, resulting in the latter's

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[25] Entitled "AN ACT EXPANDING THE DEFINITION OF THE CRIME OF RAPE, RECLASSIFYING THE SAME AS A CRIME AGAINST PERSONS, AMENDING FOR THE PURPOSE ACT NO. 3815, AS AMENDED, OTHERWISE KNOWN AS THE REVISED PENAL CODE, AND FOR OTHER PURPOSES" approved on September 30, 1997.

[26] *People v. Arguta*, G.R. No. 213216, April 20, 2015, 756 SCRA 376, 384-385.

death; and that thereafter, Angeles proceeded to rape her while Alejandro restrained her arms to prevent her from resisting. Absent any cogent reason to the contrary, the Court defer to the findings of fact of both courts and, thereby, upholds Angeles's conviction for Rape in Crim. Case No. 73-SD(96) and Homicide in Crim. Case No. 74-SD(96), given that the elements of said crimes square with the established incidents. In *People v. Antonio*:[27]

> It is a fundamental rule that the trial court's factual findings, especially its assessment of the credibility of witnesses, are accorded great weight and respect and binding upon this Court, particularly when affirmed by the [CA]. This Court has repeatedly recognized that the trial court is in the best position to assess the credibility of witnesses and their testimonies because of its unique position of having observed that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying, which opportunity is denied to the appellate courts. Only the trial judge can observe the furtive glance, blush of conscious shame, hesitation, flippant or sneering tone, calmness, sigh, or the scant or full realization of an oath. These are significant factors in evaluating the sincerity of witnesses, in the process of unearthing the truth. The appellate courts will generally not disturb such findings unless it plainly overlooked certain facts of substance and value that, if considered, might affect the result of the case.[28]

The foregoing notwithstanding, the Court deems it appropriate to modify Angeles's conviction in Crim. Case No. 73-SD(96), as ruled by the CA. As adverted to earlier, the CA convicted Angeles for two (2) counts of Simple Rape in Crim. Case No. 73-SD(96) alone, ratiocinating that "Angeles must be held liable for two (2) counts of simple rape in Crim. Case No. 73-SD(96) for raping AAA and for aiding (or conspiring with) Alejandro in raping her."[29]

The CA erred on this matter.

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[27] G.R. No. 208623, July 23, 2014, 731 SCRA 83.

[28] *Id.* at 94-95, citing *People v. Delen*, 733 Phil. 321, 332 (2014).

[29] *Rollo*, p. 16.

The accusatory portion of the amended Information in Crim. Case No. 73-SD(96) states that "[Angeles], with lewd designs, and in conspiracy with one [Alejandro], by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously had carnal knowledge of one [AAA] against her will and consent, to the damage and prejudice of the said offended party."[30] Plainly, the wording of the amended Information reveals that it charged accused-appellants with only one (1) count of Rape. As such, it was error for the CA to convict Angeles with two (2) counts. Thus, Angeles must be convicted with one (1) count of Rape in relation to Crim. Case No. 73-SD(96).

On a related matter, since the Information in Crim. Case No. 73-SD(96) was allowed to be amended to include Alejandro as a co-accused and that accused-appellants were convicted of such charge, the Court deems it proper to upgrade the conviction in said case from Simple Rape to Qualified Rape. As adverted to earlier, Article 335 of the RPC states that if the rape is committed under certain circumstances, such as when it was committed by two (2) or more persons, the crime will be Qualified Rape, as in this instance. Notably, this will no longer affect Alejandro as he had already withdrawn his appeal prior to the promulgation of this decision.

In sum, Angeles should be convicted of one (1) count of Qualified Rape and one (1) count of Homicide.

Anent the proper penalties to be imposed on Angeles, the CA correctly imposed the penalty of *reclusion perpetua* in connection with Crim. Case No. 73-SD(96), and the penalty of imprisonment for an indeterminate period of six (6) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months, and one (1) day of *reclusion temporal*, as maximum, as regards Crim. Case No. 74-SD(96).

Finally, in line with existing jurisprudence, the Court deems it proper to adjust the award of damages as follows: (*a*) in Crim.

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[30] See *id.* at 5. See also CA *rollo*, p. 47.

Case No. 73-SD(96), Angeles is ordered to pay AAA the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages; and (*b*) in Crim. Case No. 74-SD(96), Angeles is ordered to pay the heirs of BBB the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as temperate damages, all with legal interest at the rate of six percent (6%) per annum from the finality of judgment until fully paid.[31]

WHEREFORE, accused-appellant Alberto Alejandro *y* Rigor's Motion to Withdraw Appeal is **GRANTED**. Accordingly, the instant case is **CLOSED** and **TERMINATED** as to him.

On the other hand, the appeal of accused-appellant Joel Angeles *y* de Jesus (Angeles) is **DENIED**. The Decision dated June 3, 2015 of the Court of Appeals in CA-G.R. CR-HC No. 06495 is hereby **AFFIRMED** with **MODIFICATIONS** as to him, as follows:

(a) In Crim. Case No. 73-SD(96), accused-appellant Angeles is found **GUILTY** beyond reasonable doubt of the crime of Qualified Rape defined and penalized under Article 335 of the Revised Penal Code. Accordingly, he is sentenced to suffer the penalty of *reclusion perpetua* and ordered to pay AAA the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages, with legal interest at the rate of six percent (6%) per annum on all monetary awards from the date of finality of judgment until fully paid; and

(b) In Crim. Case No. 74-SD(96), accused-appellant Angeles is found **GUILTY** beyond reasonable doubt of the crime of Homicide defined and penalized under Article 249 of the Revised Penal Code. Accordingly, he is sentenced to each suffer the penalty of imprisonment for an indeterminate period of six (6) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months, and one (1) day of *reclusion temporal*,

[31] See *People v. Jugueta*, G.R. No. 202124, April 5, 2016.

as maximum, and ordered to pay the heirs of BBB the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as temperate damages, with legal interest at the rate of six percent (6%) per annum on all monetary awards from the date of finality of judgment until fully paid.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 225965. March 13, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **PUYAT MACAPUNDAG *y* LABAO**, *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE AND ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS, DISTINGUISHED.—** Macapundag was charged with illegal sale and illegal possession of dangerous drugs under Sections 5 and 11, Article II of RA 9165. In order to secure the conviction of an accused charged with illegal sale of dangerous drugs, the prosecution must prove the: (*a*) identity of the buyer and the seller, the object, and the consideration; and (*b*) delivery of the thing sold and the payment. On the other hand, the prosecution must establish the following elements to convict an accused charged with illegal possession of dangerous drugs: (*a*) the accused was in possession of an item or object identified as a dangerous drug; (*b*) such possession was not authorized by law; and (*c*) the accused freely and

consciously possessed the said drug. Notably, it is essential that the identity of the prohibited drug be established beyond reasonable doubt. In order to obviate any unnecessary doubts on the identity of the dangerous drugs, the prosecution has to show an unbroken chain of custody over the same. It must be able to account for each link in the chain of custody over the dangerous drug from the moment of seizure up to its presentation in court as evidence of the *corpus delicti*.

2. **ID.; ID.; ID.; CHAIN OF CUSTODY RULE; THE PROCEDURE POLICE OFFICERS MUST FOLLOW IN HANDLING THE SEIZED DRUGS IN SECTION 21 OF REPUBLIC ACT NO. 9165 IS A MATTER OF SUBSTANTIVE LAW, AND CANNOT BE BRUSHED ASIDE AS A SIMPLE PROCEDURAL TECHNICALITY, OR WORSE, IGNORED AS AN IMPEDIMENT TO THE CONVICTION OF ILLEGAL DRUG SUSPECTS; VIOLATION IN CASE AT BAR.—** Section 21, Article II of RA 9165 provides the chain of custody rule, outlining the procedure police officers must follow in handling the seized drugs, in order to preserve their integrity and evidentiary value. Under the said section, the apprehending team shall, **immediately after seizure and confiscation conduct a physical inventory and photograph the seized items in the presence of the accused or the person from whom the items were seized, his representative or counsel, a representative from the media and the Department of Justice, and any elected public official who shall be required to sign the copies of the inventory and be given a copy of the same, and the seized drugs must be turned over to the PNP Crime Laboratory within twenty-four (24) hours from confiscation for examination.** x x x In the present case, the prosecution did not even bother to explain why the inventory and photograph of the seized evidence were not made either in the place of seizure and arrest or at the police station, as required by the IRR in case of warrantless arrests, or why the marking of the seized item was not made at the place of seizure in the presence of Macapundag. It was also silent on the absence of a representative from the DOJ, the media and an elected public official to witness the inventory and receive copies of the same. Similarly unexplained was the lack of inventory and photographs of the seized items. Accordingly, the plurality of the breaches of procedure committed by the police officers, unacknowledged and unexplained by

the State, militate against a finding of guilt beyond reasonable doubt against the accused, as the integrity and evidentiary value of the *corpus delicti* had been compromised. It has been repeated in jurisprudence that the procedure in Section 21 of RA 9165 is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality; or worse, ignored as an impediment to the conviction of illegal drug suspects.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERLAS-BERNABE, *J*.:

Before the Court is an ordinary appeal[1] filed by accused-appellant Puyat Macapundag *y* Labao (Macapundag) assailing the Decision[2] dated April 22, 2015 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06224, which affirmed the Joint Decision[3] dated June 13, 2013 of the Regional Trial Court of Caloocan City, Branch 127 (RTC) in Crim. Case Nos. 81014 and 81015, finding Macapundag guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act No. (RA) 9165,[4] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

The instant case stemmed from two (2) Informations filed before the RTC accusing Macapundag of violating Sections 5 and 11, Article II of RA 9165, *viz*.:

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[1] See Notice of Appeal dated May 14, 2015; *rollo*, pp. 14-15.

[2] *Id*. at 2-13. Penned by Associate Justice Manuel M. Barrios with Associate Justices Ramon M. Bato, Jr. and Maria Elisa Sempio Diy concurring.

[3] CA *rollo*, pp. 26-46. Penned by Judge Victoriano B. Cabanos.

[4] Entitled "AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN

Criminal Case No. 81014

That on or about the 14th day of March, 2009 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully, unlawfully and feloniously sell and deliver to PO[3] GEORGE ARDEDON[5] who posed, as buyer, EPHEDRINE weighing 0.01 gram, a dangerous drug, without the corresponding license or prescription therefore, knowing the same to be such.

Contrary to Law. [6]

Criminal Case No. 81015

That on or about the 14th day of March, 2009 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully, unlawfully and feloniously have in his possession, custody and control three (3) heat-sealed transparent plastic sachets each containing EPHEDRINE weighing 0.02 gram, 0.01 gram & 0.02 gram, when subjected for laboratory examination gave positive result to the tests of Ephedrine [sic], a dangerous drug.

Contrary to Law. [7]

The prosecution alleged that at around 8:00 to 8:30 in the morning of March 14, 2009, an informant tipped the Caloocan City Police that a certain individual known as alias "Popoy" was selling *shabu* in Baltazar Street, 10th Avenue, Caloocan City. Acting on the tip, Police Chief Inspector (PCI) Christopher Prangan (PCI Prangan) ordered the conduct of a buy-bust operation in coordination with the Philippine Drug Enforcement Agency (PDEA), with Police Officer 3 (PO3) George Ardedon (PO3 Ardedon) designated as poseur-buyer, and Senior Police Officer 1 (SPO1) Arnel Victoriano (SPO1 Victoriano) and Police Officer 2 (PO2) Jeffred Pacis (PO2 Pacis), as back-up

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AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES," approved on June 7, 2002.

[5] "PO2" in some parts of the records. See *rollo*, p. 5.

[6] See Information for Criminal Case No. 81014; records, p. 2.

[7] See Information for Criminal Case No. 81015; records, p. 16.

officers.[8] After the team's final briefing, they proceeded to the target area where they saw Macapundag, who was then identified by the informant as "Popoy." Consequently, PO3 Ardedon approached Macapundag and retorted "*Brod, pakuha*," followed by "*Brod, paiskor naman*." Macapundag replied "*Magkano?*," to which PO3 Ardedon responded "*Tatlong piso lang*," and simultaneously handed the three (3) marked ₱100.00 bills. Macapundag then took four (4) plastic sachets containing white crystalline substance, gave one to PO3 Ardedon, and returned the other three (3) back to his pocket. Upon receiving the sachet, PO3 Ardedon gave the pre-arranged signal by holding his nape and then held Macapundag, as the back-up officers rushed to the scene. PO3 Ardedon marked the plastic sachet he purchased from Macapundag, while SPO1 Victoriano marked the other three (3) recovered from his pocket.[9] Thereafter, they brought Macapundag to the police station, where the seized items were turned over to PO2 Randulfo Hipolito (PO2 Hipolito), the investigator on duty.[10] Later, PO2 Hipolito brought the items to the crime laboratory for physical examination.[11] Eventually, Forensic Chemical Officer-PCI Stella Ebuen (PCI Ebuen) examined the specimen, which tested positive for ephedrine, a dangerous drug.[12]

In his defense, Macapundag denied the charges against him. He testified that he was arrested on March 12, 2009, and not on March 14, 2009 as alleged by the prosecution. At around noon of the said date, he claimed that he was just sitting in his house when three (3) armed men suddenly entered and looked

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[8] *Rollo*, pp. 5-6.

[9] *Id*. at 6.

[10] See Evidence Acknowledgement Receipt dated March 14, 2009; records, p. 24. Turned over by SPO1 Victoriano and PO2 Ardedon and received by PO2 Hipolito.

[11] See Request for Laboratory Examination dated March 14, 2009; *id.* at 5. See also Request for Drug Test dated March 14, 2009; *id.* at 7.

[12] See Physical Science Report No. D-85-09 dated March 14, 2009; *id.* at 6. See also Physical Science Report No. DT-78-09 dated March 14, 2009; *id.* at 8.

for a certain "Rei." He told them that "Rei" lived in the other house, but one of the men held and handcuffed him. He was then brought to the Sangandaan Police Station where he was detained in a small cell. Later, he was asked to call some relatives. When he replied that he only has his daughter, SPO1 Victoriano hit him on the chest. After a few days, the police demanded ₱50,000.00 from Macapundag's daughter for his release. When he told them that he did not have that amount, he was hit again. On March 15, 2009, he was brought to the house of the fiscal for inquest.[13]

The RTC Ruling

In a Joint Decision[14] dated June 13, 2013, the RTC found Macapundag guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of RA 9165, for illegal sale and illegal possession of dangerous drugs, respectively, finding that all the necessary elements thereof have been proven. In particular, the prosecution was able to establish that PO3 Ardedon indeed purchased a sachet of ephedrine from Macapundag in the amount of ₱300.00. Likewise, it was shown that three (3) other sachets of ephedrine were recovered from Macapundag upon his arrest.[15] The RTC further observed that the prosecution was able to demonstrate an unbroken chain of custody over the seized items.[16] Meanwhile, the RTC gave no credence to the latter's defenses of denial and alibi in light of his positive identification as the culprit, as well as the presumption of regularity accorded to police officers in the performance of their duties.[17]

Aggrieved, Macapundag elevated his conviction before the CA.[18]

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[13] *Rollo*, pp. 6-7.

[14] CA *rollo*, pp. 26-46.

[15] *Id*. at 42-43.

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

[17] *Id*. at 44-45.

[18] See Notice of Appeal dated June 24, 2013; records, p. 241.

The CA Ruling

In a Decision[19] dated April 22, 2015, the CA affirmed the RTC Decision *in toto*, finding that the prosecution had established beyond reasonable doubt that Macapundag illegally sold and possessed dangerous drugs in violation of Sections 5 and 11, Article II of RA 9165. In the same vein, the CA found that the integrity of the seized drugs was aptly preserved and the chain of custody was not broken, notwithstanding the fact that the procedural requirements in Section 21 of RA 9165 were not faithfully observed.[20]

Hence, the instant appeal.

The Issue Before the Court

The issue for the Court's resolution is whether or not Macapundag's conviction for illegal sale and illegal possession of dangerous drugs, as defined and penalized under Sections 5 and 11, Article II of RA 9165, should be upheld.

The Court's Ruling

At the outset, it must be stressed that an appeal in criminal cases opens the entire case for review, and it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned.[21] The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.[22]

Macapundag was charged with illegal sale and illegal possession of dangerous drugs under Sections 5 and 11, Article II of RA 9165. In order to secure the conviction of an accused charged

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[19] *Rollo*, pp. 2-13.

[20] *Id*. at 8-12.

[21] See *People v. Dahil*, G.R. No. 212196, January 12, 2015, 745 SCRA 221, 233; citation omitted.

[22] See *People v. Comboy*, G.R. No. 218399, March 2, 2016; citation omitted.

with illegal sale of dangerous drugs, the prosecution must prove the: (*a*) identity of the buyer and the seller, the object, and the consideration; and (*b*) delivery of the thing sold and the payment.[23] On the other hand, the prosecution must establish the following elements to convict an accused charged with illegal possession of dangerous drugs: (*a*) the accused was in possession of an item or object identified as a dangerous drug; (*b*) such possession was not authorized by law; and (*c*) the accused freely and consciously possessed the said drug.[24]

Notably, it is essential that the identity of the prohibited drug be established beyond reasonable doubt. In order to obviate any unnecessary doubts on the identity of the dangerous drugs, the prosecution has to show an unbroken chain of custody over the same. It must be able to account for each link in the chain of custody over the dangerous drug from the moment of seizure up to its presentation in court as evidence of the *corpus delicti*.[25]

In the Appellant's Brief,[26] Macapundag prayed for his acquittal in view of the police officers' non-compliance with Section 21 of RA 9165 and its Implementing Rules and Regulations (IRR). Particularly, he claims that they did not make any inventory and failed to take pictures of the confiscated drugs along with him at the scene of his arrest. There was also no justification given as to why they failed to comply with these requirements of law.[27]

The appeal is meritorious.

Section 21, Article II of RA 9165 provides the chain of custody rule, outlining the procedure police officers must follow in

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[23] *People v. Sumili*, G.R. No. 212160, February 4, 2015, 750 SCRA 143, 149; citation omitted.

[24] *People v. Bio*, G.R. No. 195850, February 16, 2015, 750 SCRA 572, 578; citation omitted.

[25] *People v. Viterbo*, G.R. No. 203434, July 23, 2014, 730 SCRA 672, 680; citation omitted.

[26] See Brief for the Accused-Appellant dated October 25, 2013; CA *rollo*, pp. 9-24.

[27] *Id*. at 19.

handling the seized drugs, in order to preserve their integrity and evidentiary value.[28] Under the said section, the apprehending team shall, **immediately after seizure and confiscation conduct a physical inventory and photograph the seized items in the presence of the accused or the person from whom the items were seized, his representative or counsel, a representative from the media and the Department of Justice, and any elected public official who shall be required to sign the copies of the inventory and be given a copy of the same, and the seized drugs must be turned over to the PNP Crime Laboratory within twenty-four (24) hours from confiscation for examination.**[29]

In this case, the prosecution was able to establish that PO3 Ardedon (with respect to the sachet handed over by Macapundag to him) and SPO1 Victoriano (with respect to the three sachets recovered from Macapundag upon his arrest) marked the seized items immediately at the place of arrest. However, the prosecution's witnesses failed to state whether or not the police officers inventoried and photographed the seized sachets in the presence of Macapundag or his representative. Likewise, they were silent as to the presence of the other required witnesses, *i.e.*, a representative from the Department of Justice (DOJ), any elected public official, and a member of the press.[30] In fact, the prosecution did not even offer any inventory of the seized items or photographs thereof as evidence.[31] In this relation, it is observed that the Evidence Acknowledgement Receipt[32] and the Affidavit of Attestation,[33] which form part of the evidence of the prosecution, likewise failed to disclose that the seized

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[28] *People v. Sumili*, *supra* note 23, at 150-151.

[29] See Section 21 (1) and (2), Article II of RA 9165.

[30] TSN dated July 30, 2010, pp. 18-27. See also TSN dated March 11, 2011, pp. 14-24. See also TSN dated September 2, 2011, pp. 7-11.

[31] See Joint Formal Offer of Prosecution's Exhibits dated November 17, 2011; Folder of Exhibits, pp. 1-4.

[32] See Evidence Acknowledgement Receipt; records, p. 24.

[33] See Affidavit of Attestation; *id*. at 23.

items were actually inventoried or photographed in accordance with the parameters provided by Section 21 of RA 9165 and its IRR; thus, their submission cannot constitute compliance with the law.

In *People v. Sanchez*,[34] the Court recognized that under varied field conditions, strict compliance with the requirements of Section 21 of 9165 may not always be possible, and ruled that under the implementing guidelines of the said Section, **"non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items." However, the Court added that the prosecution bears the burden of proving justifiable cause.** [35]

Thus, in *People v. Almorfe*,[36] **the Court stressed that for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and value of the seized evidence had nonetheless been preserved**.[37] Also, in *People v. De Guzman*,[38] it was emphasized that **the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist**.[39]

In the present case, the prosecution did not even bother to explain why the inventory and photograph of the seized evidence were not made either in the place of seizure and arrest or at the police station, as required by the IRR in case of warrantless arrests, or why the marking of the seized item was not made at

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[34] 590 Phil. 214, 232 (2008).

[35] *Id*. at 234.

[36] 631 Phil. 51 (2010).

[37] See *id*. at 60; citation omitted.

[38] 630 Phil. 637 (2010).

[39] *Id*. at 649.

the place of seizure in the presence of Macapundag. It was also silent on the absence of a representative from the DOJ, the media and an elected public official to witness the inventory and receive copies of the same. Similarly unexplained was the lack of inventory and photographs of the seized items.[40] Accordingly, the plurality of the breaches of procedure committed by the police officers, unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the accused, as the integrity and evidentiary value of the *corpus delicti* had been compromised.[41] It has been repeated in jurisprudence that the procedure in Section 21 of RA 9165 is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality; or worse, ignored as an impediment to the conviction of illegal drug suspects.[42]

With the foregoing pronouncement, the Court finds petitioner's acquittal in order. As such, it is unnecessary to delve into the other issues raised in this case.

WHEREFORE, the appeal is **GRANTED**. The Decision dated April 22, 2015 of the Court of Appeals in CA-G.R. CR-HC No. 06224 is hereby **REVERSED** and **SET ASIDE**. Accordingly, petitioner Puyat Macapundag *y* Labao is **ACQUITTED** of the crimes charged. The Director of the Bureau of Corrections is ordered to cause his immediate release, unless he is being lawfully held in custody for any other reason.

SO ORDERED.

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

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[40] See *People v. Martinez*, 652 Phil. 347, 376-381 (2010).

[41] *People v. Sumili*, *supra* note 23 at 154.

[42] See *People v. Umipang*, 686 Phil. 1024, 1038 (2012).

THIRD DIVISION

[G.R. No. 226475. March 13, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **CYRUS VILLANUEVA *y* ISORENA alias "*Tutoy*" and ALVIN SAYSON *y* ESPONCILLA alias "*Alvin Talangka*,"** *accused-appellants.*

SYLLABUS

1. **CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; ABUSE OF SUPERIOR STRENGTH, NOT ESTABLISHED; MERE SUPERIORITY IN NUMBERS DOES NOT *IPSO FACTO* INDICATE AN ABUSE OF SUPERIOR STRENGTH.—** [T]he prosecution failed to establish the qualifying circumstance of abuse of superior strength. Both the lower courts concluded that the accused-appellants and Valencia, having the intent to kill Enrico, employed abuse of superior strength to ensure the execution and success of the crime. The RTC concluded that the facts that Enrico was all alone when he was attacked by the accused-appellants and Valencia, who were armed by a knife and a stone, are clear indicia of the abuse of superior strength employed by the accused-appellants and Valencia against Enrico. The RTC's conclusion was entirely adopted by the CA. The foregoing conclusion is baseless. The fact that the accused-appellants and Valencia, armed with a knife and a stone, ganged up on Enrico does not automatically merit the conclusion that the latter's killing was attended by the qualifying circumstance of abuse of superior strength. x x x In this case, the prosecution failed to present evidence as regards the relative disparity in age, size, strength or force between the accused-appellants and Valencia, on one hand, and Enrico, on the other. Indeed, the lower courts merely inferred the existence of qualifying circumstance of abuse of superior strength on the facts that Enrico was attacked by three assailants, the accused-appellants and Valencia, who were armed with a knife and a stone. However, mere superiority in numbers does not *ipso facto* indicate an abuse of superior strength. Accordingly, the Court is compelled to disregard the finding of the existence of abuse of superior strength by the lower courts.

The accused-appellants' guilt is, thus, limited to the crime of homicide.

2. **REMEDIAL LAW; EVIDENCE; CONSPIRACY; THE PROSECUTION WAS ABLE TO ESTABLISH BEYOND REASONABLE DOUBT THAT THE ACCUSED-APPELLANTS AGREED TO KILL THE VICTIM.—** A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. "Conspiracy can be inferred from and established by the acts of the accused themselves when said acts point to a joint purpose and design, concerted action and community of interests." The evidence presented by the prosecution was able to establish beyond reasonable doubt that the accused-appellants and Valencia, through their acts, indeed agreed to kill Enrico.

3. **CRIMINAL LAW; REVISED PENAL CODE; HOMICIDE; PROPER PENALTY.—** The penalty for homicide under Article 249 of the RPC is *reclusion temporal*. Since there are no mitigating or aggravating circumstances, the penalty should be fixed in its medium period. Applying the Indeterminate Sentence Law, each of the accused-appellants should be sentenced to an indeterminate term, the minimum of which is within the range of the penalty next lower in degree, *i.e.*, *prision mayor*, and the maximum of which is that properly imposable under the RPC, *i.e.*, *reclusion temporal* in its medium period. Accordingly, minimum term of the prison sentence that should be imposed upon each of the accused-appellants must be within the range of six (6) years and one (1) day to twelve (12) years of *prision mayor*. On the other hand, the maximum term of the indeterminate prison sentence must be within the range of fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months of *reclusion temporal* in its medium period.

4. **ID.; ID.; ID.; CIVIL LIABILITY.—** The Court affirms the award of actual damages to the heirs of Enrico in the amount of ₱26,032.02 considering that the said amount was properly supported by receipts. Pursuant to *People of the Philippines v. Ireneo Jugueta*, the award of civil indemnity in the amount of ₱50,000.00 is affirmed. However, the award of moral damages should be decreased from ₱75,000.00 to ₱50,000.00. Also, the award of exemplary damages is deleted in the absence of any aggravating circumstance. All monetary awards shall earn interest

at the rate of six percent (6%) *per annum* from the date of finality of this Decision until fully paid.

APPEARANCES OF COUNSEL

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

D E C I S I O N

REYES, *J.*:

On appeal[1] is the Decision[2] dated April 21, 2016 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 07069. The CA affirmed the conviction of Cyrus Villanueva *y* Isorena (Villanueva) and Alvin Sayson *y* Esponcilla (Sayson) (collectively, the accused-appellants) for Murder as defined and penalized under Article 248 of the Revised Penal Code (RPC) rendered by the Regional Trial Court (RTC) of Muntinlupa City, Branch 276, in its Decision[3] dated September 16, 2014 in Criminal Case No. 12-001.

Facts

The accused-appellants were charged in an Information dated January 2, 2012, the accusatory portion of which reads:

That on or about the 1st day of January, 2012, in the City of Muntinlupa, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a knife, with intent to kill, and with the presence of the qualifying circumstance of abuse of superior strength, conspiring and confederating with one another did then and there willfully, unlawfully and feloniously attack, assault and stab one, **ENRICO ENRIQUEZ y VINLUAN** on the left side of his chest, thus causing fatal injury which directly caused his death.[4]

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[1] Under Section 13(c) of Rule 124 of the Rules of Court, as amended.

[2] Penned by Associate Justice Jose C. Reyes, Jr., with Associate Justices Stephen C. Cruz and Ramon Paul L. Hernando concurring; CA *rollo*, pp. 93-103.

[3] Issued by Presiding Judge Antonietta Pablo-Medina; *id.* at 40-50.

[4] *Id.* at 40.

On January 19, 2012, the prosecution moved to admit an amended information to include Christian Jay Valencia (Valencia) as an accused, which was granted by the RTC in its Order dated February 8, 2012. A warrant of arrest was, thus, issued against Valencia, but he could not be located and still remains at large. Upon arraignment, the accused-appellants entered a plea of not guilty to the charge against them. After pre-trial conference, trial on the merits of the case ensued.[5]

The prosecution alleged the following:

At around past 5:00 a.m. of January 1, 2012, Arnie Bañaga (Bañaga) was selling *tapsilog* to a group of persons playing *cara y cruz* at the corner of an alley in Summitville, Barangay Putatan, Muntinlupa City. Thereupon, Bañaga saw the accused-appellants and Valencia arrive and ask the group if they know Enrico Enriquez (Enrico), to which they answered in the negative. Thereupon, the accused-appellants and Valencia went to the tricycle terminal, which was about 10 to 15 meters away, where they saw Enrico. They then simultaneously attacked Enrico. Villanueva punched Enrico on the face twice while Sayson hit the latter at the back of the head with a stone wrapped in a t-shirt. Valencia then stabbed Enrico on the left side of his armpit twice. Enrico tried to fight back to no avail. The assailants thereafter fled. However, Villanueva was caught by men aboard a pursuing tricycle.[6]

At that time, Barangay Police Djohann Gonzales (Gonzales) was on duty in their office at the Barangay Hall of Putatan, Muntinlupa City. Gonzales then received a call requesting their assistance on a stabbing incident at the tricycle terminal in Summitville. Gonzales then went to the said terminal with Romeo Arciaga. Thereat, Gonzales saw a bloodied man, who was later identified as Villanueva, being held by the tricycle drivers. Gonzales brought Villanueva to the Barangay Hall where the stabbing incident was recorded in the barangay police blotter.

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[5] *Id*. at 94.

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

Thereafter, Villanueva was brought to the Criminal Investigation Division (CID) office of the Muntinlupa City Police Station where Villanueva's sister arrived and informed the authorities that Sayson was still in their house in Purok 1, Bayanan, Muntinlupa City. Antonio Enriquez, Enrico's brother, was also at the police station when Villanueva was brought there.[7]

Enrico was brought to the Muntinlupa Medical Center, but he was declared dead on arrival.[8] Dr. Roberto Rey C. San Diego, medico-legal officer of the National Bureau of Investigation, conducted an autopsy on Enrico's body. He noted two stab wounds on the left side of Enrico's chest, one of which penetrated the left atrium of the heart.[9]

On the other hand, the accused-appellants denied the allegations against them. Villanueva claimed that on January 1, 2012, at around 2:00 a.m., the accused-appellants and Valencia went to the house of their friend in Summitville to eat. Thereafter, Valencia invited them to have a drinking spree with Alvin Abad and Charlotte. At around 4:30 a.m., Valencia left the group and, 30 minutes thereafter, the accused-appellants also went home. On their way home, the accused-appellants saw Valencia arguing with Enrico which led to a fistfight. They tried to pacify Valencia and Enrico, but the latter suddenly fell on the ground. Valencia immediately ran away, leaving the accused-appellants standing near the body of Enrico. Villanueva then ran away as he was scared that the bystanders in the tricycle terminal would gang up on them. On his way home, Villanueva noticed a tricycle boarded by Bañaga and his companions. Bañaga then forced him to board the tricycle and, once inside, he was beaten up by Bañaga and his companions. Villanueva was then brought to the Philippine General Hospital to be treated.[10]

On January 3, 2012, Villanueva was brought to the CID office for investigation and thereafter to the Muntinlupa City Jail where

[7] *Id*. at 68-69.

[8] *Id*. at 69.

[9] *Id*. at 42-43.

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

he was detained. Villanueva alleged that Bañaga pinpointed him as one of the assailants since he was angry at him as he belonged to the same group as Valencia. Sayson corroborated Villanueva's testimony as regards the stabbing incident. He averred that after Enrico fell on the ground, he ran to his house. He was surprised when the two barangay officials arrived at his house later in the morning that same day to invite him for questioning.[11]

Ruling of the RTC

On September 16, 2014, the RTC rendered a Decision,[12] the decretal portion of which reads:

> WHEREFORE, in view of the foregoing, this Court finds [the accused-appellants] GUILTY beyond reasonable doubt of the crime of Murder defined and penalized under Article 248 of the [RPC] and accordingly sentences them to suffer the penalty of *reclusion perpetua*.
>
> [The accused-appellants] are likewise directed to pay, jointly and severally, the heirs of the victim [Enrico] the following:
>
> 1. ₱50,000.00 as civil indemnity;
> 2. ₱26,032.02 as actual damages;
> 3. ₱75,000.00 as moral damages; and
> 4. ₱30,000.00 as exemplary damages.
>
> The Branch Clerk of Court is hereby ordered to prepare the mittimus for the immediate transfer of the [accused-appellants] to the New Bilibid Prison, Muntinlupa City.
>
> Considering that [VALENCIA] remains at large, let an alias Warrant of Arrest be issued against him to be returned only upon his arrest and in the meantime send this case into the archives insofar as [Valencia] is concerned.
>
> SO ORDERED.[13]

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[11] *Id*. at 27.

[12] *Id*. at 40-50.

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

The RTC held that there was conspiracy among the accused-appellants and Valencia.[14] In convicting them of the crime of murder, the RTC appreciated the qualifying circumstance of abuse of superior strength considering that Enrico was all alone when he was attacked by the accused-appellants and Valencia.[15]

Unperturbed, the accused-appellants appealed the RTC decision to the CA,[16] claiming that the RTC erred in ruling that the prosecution was able to prove all the elements of the crime of murder. They maintained that the RTC improperly appreciated the qualifying circumstance of abuse of superior strength.[17] They also assailed the legality of the warrantless arrest effected by the barangay officials upon Villanueva.[18]

Ruling of the CA

On April 21, 2016, the CA rendered the herein assailed Decision[19] affirming the conviction of the accused-appellants for the crime of murder rendered by the RTC in its Decision dated September 16, 2014. Thus:

> **WHEREFORE**, premises considered, the instant appeal is **DISMISSED**. The judgment dated September 16, 2014 of the [RTC] Branch 276 of Muntinlupa City in Criminal Case No. 12-001 is hereby **AFFIRMED**.
>
> **SO ORDERED**.[20]

Hence, this appeal. Both the accused-appellants and the Office of the Solicitor General manifested that they would no longer

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[14] *Id*. at 47-48.

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

[16] *Id*. at 11.

[17] *Id*. at 30; 33.

[18] *Id*. at 29.

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

[20] *Id*. at 103.

file with the Court supplemental briefs, and adopted instead their respective briefs with the CA.[21]

Issue

Essentially, the issue for the Court's resolution is whether the CA erred in affirming the RTC Decision dated September 16, 2014, which found the accused-appellants guilty beyond reasonable doubt of the crime of murder.

Ruling of the Court

The appeal is partly meritorious.

To warrant a conviction for the crime of murder, the following essential elements must be present: (1) that a person was killed; (2) that the accused killed him or her; (3) that the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the RPC; and (4) that the killing is not parricide or infanticide.[22] One of the circumstances mentioned in Article 248, which qualifies the killing of the victim to murder, is abuse of superior strength.

After a thorough perusal of the records of this case, the Court is convinced that the evidence presented by the prosecution amply demonstrate that Enrico was killed and that it was the accused-appellants and Valencia who killed him. Prosecution eyewitness Bañaga was able to identify the accused-appellants and Valencia who killed Enrico. He actually witnessed what exactly happened on that fateful day and was able to narrate the individual participation of each of the accused-appellants and Valencia in killing Enrico. They simultaneously attacked Enrico while he was standing at the tricycle terminal. Villanueva punched Enrico twice on the face while Sayson hit the latter with a rock. Thereafter, Valencia stabbed Enrico in the chest, twice, which ultimately caused his death.

Nevertheless, the prosecution failed to establish the qualifying circumstance of abuse of superior strength. Both the lower courts

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[21] *Rollo*, pp. 28-30; 24-27.

[22] *People v. Lagman*, 685 Phil. 733, 743 (2012).

concluded that the accused-appellants and Valencia, having the intent to kill Enrico, employed abuse of superior strength to ensure the execution and success of the crime. The RTC concluded that the facts that Enrico was all alone when he was attacked by the accused-appellants and Valencia, who were armed by a knife and a stone, are clear indicia of the abuse of superior strength employed by the accused-appellants and Valencia against Enrico.[23] The RTC's conclusion was entirely adopted by the CA.[24]

The foregoing conclusion is baseless. The fact that the accused-appellants and Valencia, armed with a knife and a stone, ganged up on Enrico does not automatically merit the conclusion that the latter's killing was attended by the qualifying circumstance of abuse of superior strength. In *People v. Beduya, et al.*,[25] brothers Ric and Elizer Beduya (Elizer) were charged for the death of Dominador Acope, Sr.; it was shown that Ric slapped the victim while Elizer stabbed the latter. The Court, elucidating on the proper appreciation of the circumstance of abuse of superior strength, ruled that:

> Abuse of superior strength is present whenever there is a notorious inequality of forces between the victim and the aggressor, assuming a situation of superiority of strength notoriously advantageous for the aggressor selected or taken advantage of by him in the commission of the crime. The fact that there were two persons who attacked the victim does not per se establish that the crime was committed with abuse of superior strength, there being no proof of the relative strength of the aggressors and the victim. The evidence must establish that the assailants purposely sought the advantage, or that they had the deliberate intent to use this advantage. To take advantage of superior strength means to purposely use excessive force out of proportion to the means of defense available to the person attacked. The appreciation of this aggravating circumstance depends on the age, size, and strength of the parties.[26] (Citations omitted)

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[23] CA *rollo*, p. 46.

[24] *Id*. at 102.

[25] 641 Phil. 399 (2010).

[26] *Id*. at 410-411.

In *Valenzuela v. People*,[27] brothers Ramie and Hermie Valenzuela (Hermie) were charged with the crime of frustrated murder committed against Gregorio Cruz (Gregorio). It was shown in that case that when Gregorio was walking, Ramie and Hermie suddenly appeared behind him; that Ramie held his shoulder, while Hermie stabbed him twice at the left side of his back. The Court ruled that the qualifying circumstance of abuse of superior strength was not sufficiently established in the said case, *viz.*:

Both the trial and appellate courts concluded that abuse of superior strength was present because the petitioner "held the arms of [Gregorio] to facilitate the stabbing by his brother (Hermie) and to limit the degree of resistance that [Gregorio] may put up." The trial court, in particular, held that "there is no doubt that accused took advantage of their combined strength when one held [Gregorio] by the shoulder and armpit and the other inflicted two stab wounds on the left side of his back." We find this reasoning erroneous.

Abuse of superior strength is present whenever there is a notorious inequality of forces between the victim and the aggressor/s that is plainly and obviously advantageous to the aggressor/s and purposely selected or taken advantage of to facilitate the commission of the crime. Evidence must show that the assailants consciously sought the advantage, or that they had the deliberate intent to use this advantage. To take advantage of superior strength means to purposely use force excessively out of proportion to the means of defense available to the person attacked. The appreciation of this aggravating circumstance depends on the age, size and strength of the parties.

In the present case, the prosecution failed to present evidence to show a relative disparity in age, size, strength, or force, except for the showing that two assailants, one of them armed with a knife, attacked the victim. The presence of two assailants, one of them armed with a knife, is not *per se* indicative of abuse of superior strength. Mere superiority in numbers does not indicate the presence of this circumstance. Nor can the circumstance be inferred solely from the victim's possibly weaker physical constitution. In fact, what the evidence shows in this case is a victim who is taller than

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[27] 612 Phil. 907 (2009).

the assailants and who was even able to deliver retaliatory fist blows against the knife-wielder.[28] (Citations omitted)

In this case, the prosecution failed to present evidence as regards the relative disparity in age, size, strength or force between the accused-appellants and Valencia, on one hand, and Enrico, on the other. Indeed, the lower courts merely inferred the existence of qualifying circumstance of abuse of superior strength on the facts that Enrico was attacked by three assailants, the accused-appellants and Valencia, who were armed with a knife and a stone. However, mere superiority in numbers does not *ipso facto* indicate an abuse of superior strength.[29]

Accordingly, the Court is compelled to disregard the finding of the existence of abuse of superior strength by the lower courts. The accused-appellants' guilt is, thus, limited to the crime of homicide.

The accused-appellants' claim that there was no proof of the conspiracy among them and Valencia is untenable. A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[30] "Conspiracy can be inferred from and established by the acts of the accused themselves when said acts point to a joint purpose and design, concerted action and community of interests."[31] The evidence presented by the prosecution was able to establish beyond reasonable doubt that the accused-appellants and Valencia, through their acts, indeed agreed to kill Enrico. On this score, the RTC's disquisition is *apropos*:

From the testimony of the principal eyewitness, it is clear that the three (3) accused were united by a single purpose, that is, to bring about the death of the victim. They acted with a common objective to harm and inflict fatal blows on the victim. The three (3) accused

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[28] *Id.* at 916-918.

[29] See *People v. Escoto*, 313 Phil. 785, 800 (1995).

[30] REVISED PENAL CODE, Article 6.

[31] *Quidet v. People*, 632 Phil. 1, 12 (2010).

were together looking for the victim Enrico. When they saw Enrico, they simultaneously attacked him. While [the accused-appellants] respectively boxed and hit with a stone the victim Enrico, [Valencia] delivered the fatal stabs. The individual acts of the three accused, taken together, undoubtedly points to a single objective which is to harm or inflict serious injuries to the victim, or x x x put an end to his life. This is the very essence of conspiracy. It is settled that to be held guilty as a co-principal by reason of conspiracy, the accused must be shown to have performed an overt act in pursuance or furtherance of the complicity.[32]

Likewise, without merit is the accused-appellants' contention as regards the validity of their warrantless arrest. The accused-appellants never raised the supposed illegality of their arrest prior to their arraignment. In fact, nowhere in any part of the proceedings before the RTC did the accused-appellants assail the validity of their arrest. The accused-appellants only brought up the supposed irregularity in their arrest for the first time in their appeal to the CA. It has been ruled time and again that an accused is estopped from assailing any irregularity with regard to his arrest if he fails to raise this issue or to move for the quashal of the information against him on this ground **before his arraignment**. Any objection involving the procedure by which the court acquired jurisdiction over the person of the accused must be made before he enters his plea; otherwise, the objection is deemed waived.[33]

The penalty for homicide under Article 249 of the RPC is *reclusion temporal*. Since there are no mitigating or aggravating circumstances, the penalty should be fixed in its medium period. Applying the Indeterminate Sentence Law,[34] each of the accused-appellants should be sentenced to an indeterminate term, the minimum of which is within the range of the penalty next lower in degree, *i.e.*, *prision mayor*, and the maximum of which is that properly imposable under the RPC, *i.e.*, *reclusion temporal* in its medium period.

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[32] CA *rollo*, p. 48.

[33] *People v. Tan*, 649 Phil. 262, 277 (2010).

[34] *Republic Act No. 4103*, as amended.

Accordingly, minimum term of the prison sentence that should be imposed upon each of the accused-appellants must be within the range of six (6) years and one (1) day to twelve (12) years of *prision mayor*. On the other hand, the maximum term of the indeterminate prison sentence must be within the range of fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months of *reclusion temporal* in its medium period.

The Court affirms the award of actual damages to the heirs of Enrico in the amount of ₱26,032.02 considering that the said amount was properly supported by receipts.[35] Pursuant to *People of the Philippines v. Ireneo Jugueta*,[36] the award of civil indemnity in the amount of ₱50,000.00 is affirmed. However, the award of moral damages should be decreased from ₱75,000.00 to ₱50,000.00. Also, the award of exemplary damages is deleted in the absence of any aggravating circumstance. All monetary awards shall earn interest at the rate of six percent (6%) *per annum* from the date of finality of this Decision until fully paid.

WHEREFORE, in consideration of the foregoing disquisitions, the appeal is **DISMISSED**. The Decision dated April 21, 2016 of the Court of Appeals in CA-G.R. CR-HC No. 07069 is hereby **AFFIRMED WITH MODIFICATION**. Accused-appellants Cyrus Villanueva *y* Isorena and Alvin Sayson *y* Esponcilla are hereby found **GUILTY** beyond reasonable doubt of the crime of Homicide under Article 249 of the Revised Penal Code and shall accordingly each suffer an indeterminate prison term of eight (8) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal*, as maximum. They are directed to pay the heirs of victim Enrico Enriquez ₱26,032.02 as actual damages, ₱50,000.00 as civil indemnity, and ₱50,000.00 as moral damages. They are likewise ordered to pay interest on all monetary awards for damages at the rate of six percent (6%) *per annum* from the date of finality of this Decision until fully satisfied.

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[35] CA *rollo*, p. 49.

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

SO ORDERED.

Velasco, Jr. (Chairperson), Bersamin, Jardeleza, and *Tijam, JJ.,* concur.

EN BANC

[A.C. No. 11385. March 14, 2017]

ORTIGAS PLAZA DEVELOPMENT CORPORATION, represented by JANICE MONTERO, *complainant, vs.* **ATTY. EUGENIO S. TUMULAK,** *respondent.*

SYLLABUS

1. **LEGAL ETHICS; ATTORNEYS; PERSONAL PARTICIPATION IN THE UNLAWFUL AND FORCIBLE INTRUSION INTO THE PROPERTY AMOUNTS TO VIOLATION OF LAWYER'S OATH AND CANON 1, RULES 1.01 AND 1.02 OF THE CODE OF PROFESSIONAL RESPONSIBILITY. —** Atty. Tumulak cannot deny his personal participation in the unlawful and forcible intrusion into the property just because the complainant did not establish his physical presence thereat at the time. In fact, such physical participation was not even necessary in order to properly implicate him in personal responsibility for the intrusion after he admitted having furnished to the complainant the deed of assignment and other documents as the source of his authority. Specifically, his duties under the deed of assignment included "*shoulder[ing] all the expenses in the performance of [securing the property x x x and initiating steps for recovery of the same parcel] x x x such as x x x or payment for the real taxes, titling, researching, liaising with government agencies, paying lawyers involved in the litigation, and other incidental expenses relevant in the consummation of the said transaction*;" and "*possessing, fencing, [and] guarding*" the property. It is notable in this connection that Atty. Tumulak had been discharging his role

as the assignee since the time of the execution of the deed of assignment on March 22, 2010. Considering that he had been in charge of doing all the actions necessary to enforce the interest of his principal since March 22, 2010, and that the forcible intrusion complained about occurred on November 29, 2012, or more than two years from the execution of the deed of assignment, he is reasonably and ineluctably presumed to have coordinated all the actions leading to the intrusion. Finally, even assuming that the amended decision was valid and enforceable, Atty. Tumulak could not legitimately resort to forcible intrusion to advance the interest of the assignor. The more appropriate action for him would be to cause the annulment of the complainant's title instead of forcibly entering the property with the aid of armed security personnel. All told, Atty. Tumulak was guilty of misconduct for circumventing existing laws and disregarding settled rulings in order to commit injustice against the complainant. His conduct betrayed his Lawyer's Oath "*to support [the] Constitution and obey the laws as well as the legal orders of the duly constituted authorities therein*." He breached Canon 1, Rules 1.01 and 1.02 of the *Code of Professional Responsibility*[.] x x x To the best of his ability, every lawyer is expected to respect and abide by the law, and to avoid any act or omission that is contrary thereto. The lawyer's personal deference to the law not only speaks of his or her commendable character but also inspires in the public a becoming respect and obedience to the law. The sworn obligation of every lawyer under the Lawyer's Oath and the *Code of Professional Responsibility* to respect the law and the legal processes is a continuing condition for retaining membership in the Legal Profession. The lawyer must act and comport himself or herself in such a manner that would promote public confidence in the integrity of the Legal Profession.

2. **ID.; ID.; ID.; PENALTY; SUSPENSION FROM THE PRACTICE OF LAW FOR TWO (2) YEARS IS APPROPRIATE AND CONDIGN TO THE MISCONDUCT COMMITTED.—** The suspension from the practice of law or disbarment of a lawyer is justified if he or she proves unworthy of the trust and confidence imposed by the Lawyer's Oath, or is otherwise found to be wanting in that honesty and integrity that must characterize the members of the Bar in the performance of their professional duties. Although the Court imposed a six-month suspension from the practice of law on erring lawyers

found violating Canon 1, Rules 1.01 and 1.02, we adopt the recommendation of the IBP to suspend Atty. Tumulak from the practice of law for a period of two years. Such penalty was appropriate and condign in relation to the misconduct he committed as well as to the prejudice he caused the complainant.

D E C I S I O N

***PER CURIAM*:**

Under the Lawyer's Oath and the *Code of Professional Responsibility*, a lawyer is sworn to respect the law and legal processes, and any violation thereof merits condign disciplinary action against the lawyer.

The present complaint asks for the disbarment of Atty. Eugenio S. Tumulak for his participation in the forcible intrusion into the complainant's property.

Antecedents

Complainant Ortigas Plaza Development Corporation owned the parcel of land located in Ortigas Avenue Extension, Pasig City and covered by Transfer Certificate of Title No. PT-126797 of the Registry of Deeds of Rizal (property).

The complainant alleges that at around 11:00 a.m. of November 29, 2012, Atty. Tumulak, accompanied by uniformed guards of the Nationwide Security Agency, Inc., unlawfully entered and took control of the entrance and exit of the property. It appears that prior to the incident, Atty. Tumulak had furnished several documents to the complainant, including the deed of assignment executed by one Henry F. Rodriguez as the administrator of the Estate of the late Don Hermogenes R. Rodriguez designating Atty. Tumulak as an assignee.[1] The documents furnished by Atty. Tumulak were all related to the intestate proceedings of the Estate of the late Don Hermogenes Rodriguez docketed as S.P. No. IR-1110 of the Regional Trial Court, Branch 34, in Iriga City (RTC), which involved the claim

[1] *Rollo*, pp. 15-16.

of the heirs of the late Don Hermogenes Rodriguez to several parcels of land situated all over the country, including the Provinces of Rizal, Quezon, and Bulacan, and Quezon City, Caloocan City, Pasay City, Antipolo City, Muntinlupa City, Parañaque City, Marikina City, Baguio City, Angeles City, San Fernando City and Tagaytay City.[2]

The complainant charges Atty. Tumulak with deceit, dishonesty and fraud for claiming to have coordinated with the proper government agencies prior to the illegal and forcible intrusion.[3] The complainant manifests that as a lawyer, Atty. Tumulak ought to know that the claim of his principal in the property was barred by *res judicata* due to the valid issuance of a Torrens title under its name. Accordingly, his conduct constituted conduct unbecoming of a lawyer deserving of sanction.[4]

In his answer to the complaint,[5] Atty. Tumulak denies having been present when the security guards of Nationwide Security Agency entered the complainant's property. He insists that the allegations against him were pure hearsay because Ms. Montero, the representative of the complainant, had no personal knowledge of the incident; that the documents he had furnished to the complainant included records of the intestate proceedings in the RTC involving the Estate of the late Don Hermogenes Rodriguez and Antonio Rodriguez; that he had no hand in procuring the documents; that he did not himself enter the property; and that the entry into the property was effected by the sheriff pursuant to a writ of execution.

Report and Recommendation of the Integrated Bar of the Philippines (IBP)

After due hearing, IBP Commissioner of Bar Discipline Ricardo M. Espina submitted his Report and Recommendation,[6]

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

[3] *Id*. at 4.

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

[5] *Id*. at 131-137.

[6] *Id*. at 215-219.

wherein he found Atty. Tumulak to have violated Rules 1.01 and 1.02, Canon 1 of the *Code of Professional Responsibility*. Commissioner Espina recommended the suspension of Atty. Tumulak from the practice of law for two years.

On October 28, 2015, the IBP Board of Governors issued Resolution No. XXII-2015-57 adopting the findings and recommendation of Commissioner Espina,[7] *viz.*:

RESOLUTION NO. XXII-2015-57
CIBD Case No. 13-3707
Ortigas Plaza Dev't Corp. vs.
Atty. Eugenio S. Tumulak

RESOLVED to ADOPT the findings of facts and recommended penalty of 2 years suspension of Atty. Eugenio S. Tumulak by the Investigating Commissioner.

Issue

Did Atty. Tumulak violate Rules 1.01 and 1.02, Canon 1 of the *Code of Professional Responsibility* when he facilitated the implementation of the writ of execution and the entry into the complainant's property?

Ruling of the Court

Atty. Tumulak deserves to be severely sanctioned for violating the Lawyer's Oath and the *Code of Professional Responsibility*.

Pertinent portions of Commissioner Espina's Report and Recommendation, which adequately illustrated Atty. Tumulak's transgressions, are worth quoting verbatim, *viz.*:

We enumerate respondent lawyer's violation of the following rules/ principles when he led the forcible intrusion into OPDC office in Pasig City:

a) **Atty. Tumulak knew, or ought to know, that property claims based on Spanish title can no longer be cited as legitimate basis for ownership as of 16 February 1976 by virtue of Presidential Decree No. 892**;

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[7] *Id*. at 213-214.

b) Respondent lawyer, as a long-time practitioner (admitted to the Bar in 1971), is **presumed to know that the Supreme Court has promulgated a case specifically addressing the fake titles arising from spurious "Deed of Assignment" of the supposed Estate of Don Hermogenes Rodriguez. This is the 2005 case of *Evangelista, et al. vs. Santiago* [G.R. No. 157447; April 29, 2005] where the same *modus* as the one adopted by respondent lawyer, was used by an "assignee" in claiming properties located in Paranque, Las Pinas, Muntinlupa, Cavite, Batangas, Pasay, Taguig, Makati, Pasig, Mandaluyong, Quezon City, Caloocan, Bulacan, and Rizal, allegedly as part of the Estate of Don Hermogenes Rodriguez**;

c) x x x x;

d) While respondent lawyer claims that the "deed of assignment" in his favor has a consideration, unfortunately we did not see any agreed consideration in the document. If there is no monetary consideration, it will be treated as a donation with the corresponding payable taxes. Respondent lawyer's documents don't show that taxes have been paid for the document to be legally binding;

e) Torrens title cannot be attacked collaterally but can only be questioned in a principal action x x x. If respondent lawyer thinks that OPDC's title on the Pasig property is questionable, he could have filed an action to annul OPDC's title and not bring in the cavalry, so to speak, in the form of uniformed security guards, to take over the property; and

f) We find respondent's actions highly questionable and contrary to legal protocol; (i) the court documents were issued by the RTC-Iriga City, Br. 94; (ii) it "affects" a property located in Pasig City; (iii) respondent lawyer became the "assignee" of a Pasig City property; (iv) no taxes were paid for the "assignment"; (v) assistance of the Sheriff of Pasig was not enlisted by respondent, instead, he enlists the help of the Sheriff of Manila; (vi) all that the Sheriff of Manila did was to deliver the RTC-Iriga, Br. 34 court documents to complainant but with a twist; the Sheriff and respondent lawyer were escorted by a phalanx of security guards; (vii) the uniformed guards,

> obviously upon instruction, took over and/or controlled the gates of OPDC offices with attendant force and intimidation. Respondent lawyer's claimed innocence cannot prevail over these illegalities of which he, or his agents, had a hand.

With the above highly questionable acts totally irreconcilable with a seasoned practitioner like respondent lawyer, we find Atty. Eugenio S. Tumulak liable for violation of Canon 1, Code of Professional Responsibility, specifically Rule 1.01 and 1.02 thereof. (Bold underscoring supplied for emphasis)

Commissioner Espina correctly observed that the Court in the 2005 ruling in *Evangelista v. Santiago*[8] had already enjoined the successors and heirs of the late Don Hermogenes Rodriguez from presenting the Spanish title as proof of their ownership in land registration proceedings, as follow:

In their Complaint, petitioners claimed title to the Subject Property by virtue of their actual and continuous possession of the same since time immemorial, by themselves and through their predecessors-in-interest. Yet, the Deeds of Assignment executed by Ismael Favila in their favor, attached to and an integral part of their Complaint, revealed that petitioners predecessors-in-interest based their right to the Subject Property on the Spanish title awarded to Don Hermogenes Rodriguez.

There existed a contradiction when petitioners based their claim of title to the Subject Property on their possession thereof since time immemorial, and at the same time, on the Spanish title granted to Don Hermogenes Rodriguez. Possession since time immemorial carried the presumption that the land had ***never been part of the public domain or that it had been private property even before the Spanish conquest***. If the Subject Property was already private property before the Spanish conquest, then it would have been beyond the power of the Queen of Spain to award or grant to anyone.

The title to and possession of the Subject Property by petitioners predecessors-in-interest could be traced only as far back as the Spanish title of Don Hermogenes Rodriguez. Petitioners, having acquired portions of the Subject Property by assignment, could acquire no

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[8] G.R. No. 157447, April 29, 2005, 457 SCRA 744.

better title to the said portions than their predecessors-in-interest, and hence, their title can only be based on the same Spanish title.

Respondent maintained that P.D. No. 892 prevents petitioners from invoking the Spanish title as basis of their ownership of the Subject Property. P.D. No. 892 strengthens the Torrens system by discontinuing the system of registration under the Spanish Mortgage Law, and by categorically declaring all lands recorded under the latter system, not yet covered by Torrens title, unregistered lands. It further provides that within six months from its effectivity, all holders of Spanish titles or grants should apply for registration of their land under what is now P.D. No. 1529, otherwise known as the Land Registration Decree. Thereafter, Spanish titles can no longer be used as evidence of land ownership in any registration proceedings under the Torrens system. Indubitably, P.D. No. 892 divests the Spanish titles of any legal force and effect in establishing ownership over real property.

P.D. No. 892 became effective on 16 February 1976. The successors of Don Hermogenes Rodriguez had only until 14 August 1976 to apply for a Torrens title in their name covering the Subject Property. In the absence of an allegation in petitioners' Complaint that petitioners predecessors-in-interest complied with P.D. No. 892, then it could be assumed that they failed to do so. Since they failed to comply with P.D. No. 892, then the successors of Don Hermogenes Rodriguez were already enjoined from presenting the Spanish title as proof of their ownership of the Subject Property in registration proceedings.

Registration proceedings under the Torrens system do not create or vest title, but only confirm and record title already created and vested. By virtue of P.D. No. 892, the courts, in registration proceedings under the Torrens system, are precluded from accepting, confirming and recording a Spanish title. Reason therefore dictates that courts, likewise, are prevented from accepting and indirectly confirming such Spanish title in some other form of action brought before them (*i.e.*, removal of cloud on or quieting of title), only short of ordering its recording or registration. To rule otherwise would open the doors to the circumvention of P.D. No. 892, and give rise to the existence of land titles, recognized and affirmed by the courts, but would never be recorded under the Torrens system of registration. This would definitely undermine the Torrens system and cause confusion and instability in property ownership that P.D. No. 892 intended to eliminate.[9]

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[9] *Supra*, at 766-767.

Moreover, in *Santiago v. Subic Bay Metropolitan Authority*,[10] the Court denied the petition of the successors of the late Don Hermogenes Rodriguez by applying the principle of *stare decisis*, ruling therein that the applicable laws, the issues, and the testimonial and documentary evidence were identical to those in the situation in *Evangelista v. Santiago*, thusly:

> The present petition is substantially infirm as this Court had already expressed in the case of *Nemencio C. Evangelista, et al. v. Carmelino M. Santiago*, that the Spanish title of Don Hermogenes Rodriguez, the *Titulo de Propriedad de Torrenos* of 1891, has been divested of any evidentiary value to establish ownership over real property.
>
> Victoria M. Rodriguez, Armando G. Mateo and petitioner Pedro R. Santiago anchor their right to recover possession of the subject real property on claim of ownership by Victoria M. Rodriguez being the sole heir of the named grantee, Hermogenes Rodriguez, in the Spanish title *Titulo de Propriedad de Torrenos*.
>
> x x x x x x x x x
>
> Prescinding from the foregoing, the instant petition must be denied by virtue of the principle of *stare decisis*. Not only are the legal rights and relations of herein parties substantially the same as those passed upon in the aforementioned 2005 *Evangelista* Case, but the facts, the applicable laws, the issues, and the testimonial and documentary evidence are identical such that a ruling in one case, under the principle of *stare decisis*, is a bar to any attempt to relitigate the same issue.[11]

Finally, the 2011 ruling in *Pascual v. Robles*[12] affirmed the decision of the Court of Appeals (CA) setting aside the amended decision rendered in S.P. No. IR-1110 by the RTC. This ruling should have alerted Atty. Tumulak from taking the actions giving rise to the complaint against him inasmuch as he has admitted to have derived his rights from the deed of assignment executed in his favor by Henry Rodriguez as the administrator of the

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[10] G.R. No. 156888, November 20, 2006, 507 SCRA 283.

[11] *Supra* 292-295.

[12] G.R. No. 182645, June 22, 2011, 652 SCRA 573.

Estate of the late Don Hermogenes Rodriguez pursuant to said amended decision. Moreover, Atty. Tumulak is presumed as a lawyer to know the developments in S.P. No. IR-1110 not only by virtue of his becoming an assignee of the estate but also because of his being a lawyer with the constant responsibility of keeping abreast of legal developments.[13]

Atty. Tumulak cannot shield himself from personal responsibility behind the deed of assignment. The deed was doubtful on its face, as borne out by the text, to wit:

DEED OF ASSIGNMENT

KNOW ALL MEN BY THESE PRESENTS

This Deed of Assignment is made and executed by and between

The **INTESTATE ESTATE OF THE LATE HERMOGENES R. RODRIGUEZ AND ANTONIO R. RODRIGUEZ**, represented by **HENRY F. RODRIGUEZ**, of legal age, widower, Filipino, x xx Judicial Heir and Court-Appointed Administrator by virtue of **AMENDED DECISION** dated August 13, 19999 of Fifth Judicial Region, RTC Branch 34, Iriga City in SPECS. PROCS. No. IR-1110 which settled the issue of Heirship, Administratorship and Settled [sic] of the Estate of Hermogenes and Antonio Rodriguez y Reyes Estate, hereinafter referred to as the ASSIGNOR;

-and-

EUGENIO S. TUMULAK, of legal age, widower x x x hereinafter referred to as the ASSIGNEE:

WITNESSETH:

WHEREAS, the **ASSIGNOR** is the Court-Appointed Administrator and one of the Judicial heirs of the Intestate Estate of the late HERMOGENES and **ANTONIO RODRIGUEZ y REYES** Estate by virtue **of AMENDED DECISION** dated Augsut 13, 1999 of Fifth Judicial Region, RTC Branch 34, Iriga City in SPECS. PROCS. No. IR-1110 which settled the issue of Heirship, Administratorship and Settlement of the Estate of Hermogenes and Antonio Rodriguez y Reyes Estate, thereafter, petitions for certiorari filed with the

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[13] Canon 5, *Code of Professional Responsibility*.

SUPREME COURT assailing the aforesaid Amended Decision were **DENIED** and declared **FINAL & EXECUTORY** in G.R. Nos. 140271, 140915, 168648, 142477 and 182645, affirming the same Amended Decision;

Whereas, the ASSIGNEE has secured the property and actual occupant/s over the same property they are presently occupying and initiating steps for recovery of the same parcel and has shown exemplary loyalty and faithfulness to the ASSIGNOR and also consistently protected the rights and interest of the Estate against intruder, impostor, usurpers and false claimant with spurious title/s over the same property;

NOW THEREFORE, for and in consideration of the foregoing, the ASSIGNOR has agreed to execute this DEED OF ASSIGNMENT and the ASSIGNEE, has accepted and both parties have mutually agreed to the following terms and conditions herein stipulated;

A parcel of land situated in Ortigas Avenue corner Raymundo Avenue, Barangay Rosario, Pasig City, Metro Manila, Island of Luzon, with containing an area of THIRTY-FIVE THOUSAND EIGTH [sic] HUNDRED AND NINE[TY] ONE SQUARE METERS (35,891) more or less technical description described below, to

x x x x x x x x x

1. That the ASSIGNEE shall shoulder all the expenses in the performance of the task as indicated x x x above such as payment for the real taxes, titling, researching, liaising with government agencies, paying lawyers involved in the litigation, and other incidental expenses relevant in the consummation of the said transaction;

2. That the ASSIGNEE shall secure and facilities [sic] all documents from Land Registration Authority, DENR-LMB, DENR-LMS, Register of Deeds and such other government agencies concerned for the completion of titling process subject to the existing laws, rules and regulation in accordance to Land Registration Act;

3. That the ASSIGNEE shall perform the task of relocation and verification[,] land survey, possessing, fencing, guarding, surveying and or reviving plans, paying taxes, titling, selling, leasing, developing, segregating and mortgaging;

4. That the ASSIGNEE shall be the AD-LITEM representative of the ASSIGNOR, before of [sic] any Court[,] Administrative and Quasi-

Judicial body and to bring suit, defend, in connection with the actions brought for or against the ASSIGNOR of whatever nature and kind; and

5. That the ASSIGNEE shall report regularly to the ASSIGNOR per the above tasks and accomplishment.

IN WITNESS WHEREOF, the parties have hereunto set their respective signatures on the date 22 March 2010 and place QUEZON CITY above written.[14] (Bold underscoring supplied for emphasis)

Atty. Tumulak cannot deny his personal participation in the unlawful and forcible intrusion into the property just because the complainant did not establish his physical presence thereat at the time. In fact, such physical participation was not even necessary in order to properly implicate him in personal responsibility for the intrusion after he admitted having furnished to the complainant the deed of assignment and other documents as the source of his authority. Specifically, his duties under the deed of assignment included "*shoulder[ing] all the expenses in the performance of [securing the property x x x and initiating steps for recovery of the same parcel] x x x such as x x x or payment for the real taxes, titling, researching, liaising with government agencies, paying lawyers involved in the litigation, and other incidental expenses relevant in the consummation of the said transaction*;" and "*possessing, fencing, [and] guarding*" the property.

It is notable in this connection that Atty. Tumulak had been discharging his role as the assignee since the time of the execution of the deed of assignment on March 22, 2010. Considering that he had been in charge of doing all the actions necessary to enforce the interest of his principal since March 22, 2010, and that the forcible intrusion complained about occurred on November 29, 2012, or more than two years from the execution of the deed of assignment, he is reasonably and ineluctably presumed to have coordinated all the actions leading to the intrusion.

Finally, even assuming that the amended decision was valid and enforceable, Atty. Tumulak could not legitimately resort

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[14] *Rollo,* pp. 15-16.

to forcible intrusion to advance the interest of the assignor. The more appropriate action for him would be to cause the annulment of the complainant's title instead of forcibly entering the property with the aid of armed security personnel.

All told, Atty. Tumulak was guilty of misconduct for circumventing existing laws and disregarding settled rulings in order to commit injustice against the complainant. His conduct betrayed his Lawyer's Oath "*to support [the] Constitution and obey the laws as well as the legal orders of the duly constituted authorities therein*." He breached Canon 1, Rules 1.01 and 1.02 of the *Code of Professional Responsibility*, to wit:

CANON 1 - A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR LAW AND FOR LEGAL PROCESSES.

Rule 1.01 – 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.

To the best of his ability, every lawyer is expected to respect and abide by the law, and to avoid any act or omission that is contrary thereto. The lawyer's personal deference to the law not only speaks of his or her commendable character but also inspires in the public a becoming respect and obedience to the law.[15]

The sworn obligation of every lawyer under the Lawyer's Oath and the *Code of Professional Responsibility* to respect the law and the legal processes is a continuing condition for retaining membership in the Legal Profession. The lawyer must act and comport himself or herself in such a manner that would promote public confidence in the integrity of the Legal Profession.[16] Members of the Bar are reminded, therefore, that

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[15] See *Jimenez v. Francisco,* A.C. No. 10548, December 10, 2014, 744 SCRA 215, 229.

[16] *Chu v. Guico, Jr.,* A.C. No. 10573, January 13, 2015, 745 SCRA 257, 265.

their first duty is to comply with the rules of procedure, rather than to seek exceptions as loopholes.[17] A lawyer who assists a client in a dishonest scheme or who connives in violating the law commits an act that warrants disciplinary action against him or her.[18]

The suspension from the practice of law or disbarment of a lawyer is justified if he or she proves unworthy of the trust and confidence imposed by the Lawyer's Oath, or is otherwise found to be wanting in that honesty and integrity that must characterize the members of the Bar in the performance of their professional duties.[19] Although the Court imposed a six-month suspension from the practice of law on erring lawyers found violating Canon 1, Rules 1.01 and 1.02,[20] we adopt the recommendation of the IBP to suspend Atty. Tumulak from the practice of law for a period of two years. Such penalty was appropriate and condign in relation to the misconduct he committed as well as to the prejudice he caused the complainant.

ACCORDINGLY, the Court **FINDS** and **DECLARES** respondent **ATTY. EUGENIO S. TUMULAK** guilty of violating the Lawyer's Oath and Canon 1, and Rules 1.01 and 1.02 of the *Code of Professional Responsibility*; and **SUSPENDS** him from the practice of law for a period of **TWO (2) YEARS EFFECTIVE IMMEDIATELY**, with the **STERN WARNING** that any similar infraction in the future will be dealt with more severely.

This decision is **IMMEDIATELY EXECUTORY**.

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[17] *Suico Industrial Corp. v. Lagura-Yap,* G.R. No 177711, September 5, 2012, 680 SCRA 145, 162 citing *Lapid v. Laurea,* G.R. No. 139607, October 28, 2002, 391 SCRA 277, 285.

[18] *Guarin v. Limpin*, A.C. No. 10576, January 14, 2015, 745 SCRA 459, 464.

[19] *Ramiscal v. Orro*, A.C. No. 10945, February 23, 2016, 784 SCRA 421, 428.

[20] See *Guarin v. Limpin,* A.C. No. 10576, January 14, 2015, 745 SCRA 459 and *Tejada v. Palaña,* A.C. No. 7434, August 23, 2007, 530 SCRA 771.

Let copies of this decision be furnished to the Office of the Bar Confidant to be appended to the respondent's personal record as an attorney; to the Integrated Bar of the Philippines; and to all courts in the Philippines for their information and guidance.

SO ORDERED.

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

EN BANC

[A.M. No. 16-10-05-SB. March 14, 2017]

RE: MEDICAL CONDITION OF ASSOCIATE JUSTICE MARIA CRISTINA J. CORNEJO, SANDIGANBAYAN

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; CIVIL SERVICE; DISABILITY RETIREMENT; CONCEPT.—** Disability retirement is conditioned on the incapacity of the employee to continue his or her employment for involuntary causes such as illness or accident. The social justice principle behind retirement benefits also applies to those who are forced to cease from service for disabilities beyond their control.

2. **ID.; ID.; ID.; ID.; REQUEST FOR OPTIONAL RETIREMENT TREATED AS DISABILITY RETIREMENT; THE COURT GRANTS A 10-YEAR LUMP SUM OF 10 YEARS' GRATUITY.—** Justice Cornejo will be 66 years, two (2) months, and 16 days old on March 1, 2017. She has been in government service for more than 39 years, the last 30 years of which she had continuously rendered in the judiciary. Section 1 of Republic Act No. 910, as amended by Republic Act No. 9946, grants

full retirement benefits to the following: x x x (b) Justices and judges who have rendered at least fifteen (15) years service in the Judiciary or in any other branch of the Government, or in both, and resigns by reason of his/her incapacity as certified by the Supreme Court; and x x x We acknowledge Justice Cornejo's request for optional retirement. However, in light of Justice Cornejo's actual medical condition, this Court will treat her letter request as one for retirement due to disability. Section 3 of Republic Act No. 910, as amended, grants a 10-year lump sum of 10 years' gratuity— computed on the basis of the highest monthly salary plus the highest monthly aggregate of transportation, representation, and other allowances such as personal economic relief allowance (PERA) and additional compensation allowance to a retired Sandiganbayan Justice — if the reason for the retirement is any permanent disability contracted during his or her incumbency in office and before the date of retirement[.] x x x Justice Cornejo's long and dedicated service warrants no less than all the benefits that the law allows for her condition. Like many others, the hazards and difficulties of sitting in the bench take their toll on the best among us. We resolve that the benefits due to her be processed with the dispatch it deserves.

R E S O L U T I ON

LEONEN, *J*.:

Disability retirement is conditioned on the incapacity of the employee to continue his or her employment for involuntary causes such as illness or accident. The social justice principle behind retirement benefits also applies to those who are forced to cease from service for disabilities beyond their control.[1]

On October 20, 2016, this Court received a letter[2] from Sandiganbayan Presiding Justice Amparo M. Cabotaje-Tang

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[1] *Re: Application for Survivorship Pension Benefits Under Republic Act No. 9946 of Mrs. Pacita A. Gruba, Surviving Spouse of the Late Manuel K. Gruba, Former CTA Associate Justice*, 721 Phil. 330, 341 (2013) [Per *J.* Leonen, *En Banc*].

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

stating that Sandiganbayan Associate Justice Maria Cristina J. Cornejo (Justice Cornejo) has been on sick leave since June 13, 2016. According to the attached clinical abstract[3] from Dr. Santos/Tubig, Attending Physician/Resident-in-Charge of the Department of Internal Medicine, Cardinal Santos Medical Center, Justice Cornejo was diagnosed with acute cerebrovascular disease in bilateral cerebral and cerebellar hemispheres; controlled hypertension; systemic lupus erythematous; pancytopenia; colon cancer stage III s/p left hemicolectomy; and acute kidney injury secondary to poor oral intake.

On November 8, 2016, this Court noted the letter from Presiding Justice Cabotaje-Tang and directed the Head of the Supreme Court Medical Services to certify Justice Cornejo's capability to function as a Sandiganbayan Justice.[4]

On December 13, 2016, based on the reports[5] submitted by the Supreme Court medical officers and his own physical evaluation of Justice Cornejo, Dr. Prudencio P. Banzon, Jr., Supreme Court Senior Chief Staff Officer, Medical and Dental Services, opined that as of November 25, 2016, Justice Cornejo was "physically and medically incapacitated to perform her duties, and responsibilities as Sandiganbayan Justice."[6]

On January 10, 2017, this Court required Justice Cornejo to comment on Dr. Banzon's December 13, 2016 Memorandum.[7]

On January 13, 2017, Justice Cornejo wrote Chief Justice Maria Lourdes P. A. Sereno to request the approval of her optional retirement, effective March 1, 2017, due to serious health concerns. She stated that she had been in government service since August 1977 and has been in the judiciary from January

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[3] *Id*. at 4.

[4] *Id*. at 9.

[5] *Id*. at 16-18.

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

[7] *Id*. at 19-20.

1987 to the present. Justice Cornejo's letter request bore her thumbprint instead of a signature.[8]

On February 6, 2017, Presiding Justice Amparo M. Cabotaje-Tang recommended the approval of Justice Cornejo's request.[9]

We rule to grant the request for retirement, but with modification.

Justice Cornejo will be 66 years, two (2) months, and 16 days old on March 1, 2017. She has been in government service for more than 39 years, the last 30 years of which she had continuously rendered in the judiciary.[10]

Section 1 of Republic Act No. 910, as amended by Republic Act No. 9946, grants full retirement benefits to the following:

a) Justices and judges who have rendered at least fifteen (15) years service in the Judiciary or in any other branch of the Government, or in both, and retires for having attained the age of seventy (70);

b) Justices and judges who have rendered at least fifteen (15) years service in the Judiciary or in any other branch of the Government, or in both, and resigns by reason of his/her incapacity as certified by the Supreme Court; and

c) Justices and judges who have attained the age of sixty (60) years and rendered at least fifteen (15) years service in the Government, the last three (3) of which have been continuously rendered in the Judiciary.

We acknowledge Justice Cornejo's request for optional retirement. However, in light of Justice Cornejo's actual medical condition, this Court will treat her letter request as one for retirement due to disability.

Section 3 of Republic Act No. 910, as amended, grants a 10-year lump sum of 10 years' gratuity—computed on the basis

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[8] *Id*. at 22.

[9] *Id*. at 21.

[10] Justice Cornejo's Service Record from the Sandiganbayan.

of the highest monthly salary plus the highest monthly aggregate of transportation, representation, and other allowances such as personal economic relief allowance (PERA) and additional compensation allowance to a retired Sandiganbayan Justice— if the reason for the retirement is any permanent disability contracted during his or her incumbency in office and before the date of retirement:

SEC. 3. Upon retirement, a Justice of the Supreme Court or of the Court of Appeals, the Sandiganbayan or of the Court of Tax Appeals, or a Judge of the regional trial court, metropolitan trial court, municipal trial court in cities, municipal trial court, municipal circuit trial court, shari'a district court, shari'a circuit court, or any other court hereafter established shall be automatically entitled to a lump sum of five (5) years' gratuity computed on the basis of the highest monthly salary plus the highest monthly aggregate of transportation, representation and other allowances such as personal economic relief allowance (PERA) and additional compensation allowance he/she was receiving on the date of his/her retirement and thereafter upon survival after the expiration of five (5) years, to further annuity payable monthly during the residue of his/her natural life pursuant to Section 1 hereof: *Provided, however*, **That if the reason for the retirement be any permanent disability contracted during his/her incumbency in office and prior to the date of retirement, he/she shall receive a gratuity equivalent to ten (10) years' salary and the allowances aforementioned**: *Provided, further*, That should the retirement under Section 1(a) hereof be with the attendance of any partial permanent disability contracted during his/her incumbency and prior to the date of retirement, he/she shall receive an additional gratuity equivalent to two (2) years lump sum that he/she is entitled to under this Act; *Provided, furthermore*, That if he/she survives after ten (10) years or seven (7) years, as the case may be, he/she shall continue to receive a monthly annuity as computed under this Act during the residue of his/her natural life pursuant to Section 1 hereof: *Provided, finally,* That those who have retired with the attendance of any partial permanent disability five (5) years prior to the effectivity of this Act shall be entitled to the same benefits provided herein[.] (Emphasis supplied)

Justice Cornejo's long and dedicated service warrants no less than all the benefits that the law allows for her condition. Like many others, the hazards and difficulties of sitting in the bench take their toll on the best among us.

We resolve that the benefits due to her be processed with the dispatch it deserves.

WHEREFORE, this Court resolves to **DECLARE** Associate Justice Ma. Cristina J. Cornejo to have suffered permanent total disability effective March 1, 2017 as requested; and **GRANT** her the lump sum permanent disability benefits provided for in Section 3 of Republic Act No. 910, as amended. The Fiscal Management and Budget Office is **DIRECTED** to compute the benefits due to Justice Cornejo under Republic Act No. 910, to be made available to her or her duly constituted guardian.

SO ORDERED.

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

EN BANC

[A.M. No. MTJ-12-1813. March 14, 2017]
(Formerly A.M. No. 12-5-42-MeTC)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **JUDGE ELIZA B. YU, METROPOLITAN TRIAL COURT, BRANCH 47, PASAY CITY,** *respondent.*

[A.M. No. 12-1-09-MeTC. March 14, 2017]

RE: LETTER DATED 21 JULY 2011 OF EXECUTIVE JUDGE BIBIANO G. COLASITO AND THREE (3) OTHER JUDGES OF THE METROPOLITAN TRIAL COURT, PASAY CITY, FOR THE SUSPENSION OR DETAIL TO ANOTHER STATION OF JUDGE ELIZA B. YU, BRANCH 47, SAME COURT.

[A.M. No. MTJ-13-1836. March 14, 2017]
(Formerly A.M. No. 11-11-115-MeTC)

RE: LETTER DATED MAY 2, 2011 OF HON. ELIZA B. YU, PRESIDING JUDGE, METROPOLITAN TRIAL COURT, BRANCH 47, PASAY CITY.

[A.M. No. MTJ-12-1815. March 14, 2017]
(Formerly OCA IPI No. 11-2401-MTJ)

LEILANI A. TEJERO-LOPEZ, *complainant, vs.* **JUDGE ELIZA B. YU, BRANCH 47, METROPOLITAN TRIAL COURT, PASAY CITY,** *respondent.*

[OCA IPI No. 11-2398-MTJ. March 14, 2017]

JOSEFINA G. LABID, *complainant, vs.* **JUDGE ELIZA B. YU, METROPOLITAN TRIAL COURT, BRANCH 47, PASAY CITY,** *respondent.*

[OCA IPI No. 11-2399-MTJ. March 14, 2017]

AMOR V. ABAD, FROILAN ROBERT L. TOMAS, ROMER H. AVILES, EMELINA J. SAN MIGUEL, NORMAN D.S. GARCIA, MAXIMA SAYO and DENNIS ECHEGOYEN, *complainants, vs.* **HON. ELIZA B. YU, PRESIDING JUDGE, METROPOLITAN TRIAL COURT, BRANCH 47, PASAY CITY,** *respondent.*

[OCA IPI No. 11-2378-MTJ. March 14, 2017]

EXECUTIVE JUDGE BIBIANO G. COLASITO, VICE EXECUTIVE JUDGE BONIFACIO S. PASCUA, JUDGE RESTITUTO V. MANGALINDAN, JR., JUDGE CATHERINE P. MANODON, MIGUEL C. INFANTE (CLERK OF COURT IV, OCC-METC), RACQUEL C. DIANO (CLERK OF COURT III, METC, BRANCH 45), EMMA ANNIE D. ARAFILES (ASSISTANT CLERK OF COURT, OCC-METC),

PEDRO C. DOCTOLERO, JR. (CLERK OF COURT III, METC, BRANCH 44), LYDIA T. CASAS (CLERK OF COURT III, METC, BRANCH 46), ELEANOR N. BAYOG (LEGAL RESEARCHER, METC, BRANCH 45), LEILANIE A. TEJERO (LEGAL RESEARCHER, METC, BRANCH 46), ANA MARIA V. FRANCISCO (CASHIER I, OCC-METC), SOLEDAD J. BASSIG (CLERK III, OCC-METC), MARISSA MASHHOOR RASTGOOY (RECORDS OFFICER, OCC-METC), MARIE LUZ M. OBIDA (ADMINISTRATIVE OFFICER, OCC-METC), VIRGINIA D. GALANG (RECORDS OFFICER I, OCC-METC), AUXENCIO JOSEPH CLEMENTE (CLERK OF COURT III, METC, BRANCH 48), EVELYN P. DEPALOBOS (LEGAL RESEARCHER, METC, BRANCH 44), MA. CECILIA GERTRUDES R. SALVADOR (LEGAL RESEARCHER, METC, BRANCH 48), JOSEPH B. PAMATMAT (CLERK III, OCC-METC), ZENAIDA N. GERONIMO (COURT STENOGRAPHER, OCC-METC), BENJIE V. ORE (PROCESS SERVER, OCC-METC), FORTUNATO E. DIEZMO (PROCESS SERVER, OCC-METC), NOMER B. VILLANUEVA (UTILITY WORKER, OCC-METC), ELSA D. GARNET (CLERK III, OCC-METC), FATIMA V. ROJAS (CLERK III, OCC-METC), EDUARDO E. EBREO (SHERIFF III, METC, BRANCH 45), RONALYN T. ALMARVEZ (COURT STENOGRAPHER II, METC, BRANCH 45), MA. VICTORIA C. OCAMPO (COURT STENOGRAPHER II, METC, BRANCH 45), ELIZABETH LIPURA (CLERK III, METC, BRANCH 45), MARY ANN J. CAYANAN (CLERK III, METC, BRANCH 45), MANOLO MANUEL E. GARCIA (PROCESS SERVER, METC, BRANCH 45), EDWINA A. JUROK (UTILITY WORKER, OCC-METC), ARMINA B. ALMONTE (CLERK III, OCC-METC), ELIZABETH G. VILLANUEVA (RECORDS OFFICER, METC, BRANCH 44), ERWIN RUSS B. RAGASA (SHERIFF III, METC, BRANCH 44), BIEN T. CAMBA (COURT STENOGRAPHER II, METC, BRANCH 44),

MARLON M. SULIGAN (COURT STENOGRAPHER II, METC, BRANCH 44), CHANDA B. TOLENTINO (COURT STENOGRAPHER II, METC, BRANCH 44), FERDINAND R. MOLINA (COURT INTERPRETER, METC, BRANCH 44), PETRONILO C. PRIMACIO, JR. (PROCESS SERVER, METC, BRANCH 45), EDWARD ERIC SANTOS (UTILITY WORKER, METC, BRANCH 45), EMILIO P. DOMINE (UTILITY WORKER, METC, BRANCH 45), ARNOLD P. OBIAL (UTILITY WORKER, METC, BRANCH 44), RICARDO E. LAMPITOC (SHERIFF III, METC, BRANCH 46), JEROME H. AVILES (COURT STENOGRAPHER II, METC, BRANCH 46), ANA LEA M. ESTACIO (COURT STENOGRAPHER II, METC, BRANCH 46), LANIE F. AGUINALDO (CLERK III, METC, BRANCH 44), JASMINE L. LINDAIN (CLERK III, METC, BRANCH 44), RONALDO S. QUIJANO (PROCESS SERVER, METC, BRANCH 44), DOMINGO H. HOCOSOL (UTILITY WORKER, METC, BRANCH 48), EDWIN P. UBANA (SHERIFF III, METC, BRANCH 48), MARVIN O. BALICUATRO (COURT STENOGRAPHER II, METC, BRANCH 48), MA. LUZ D. DIONISIO (COURT STENOGRAPHER II, METC, BRANCH 48), MARIBEL A. MOLINA (COURT STENOGRAPHER II, METC, BRANCH 48), CRISTINA E. LAMPITOC (COURT STENOGRAPHER II, METC, BRANCH 46), MELANIE DC. BEGASA (CLERK III, METC, BRANCH 46), EVANGELINE M. CHING (CLERK III, METC, BRANCH 46), LAWRENCE D. PEREZ (PROCESS SERVER, METC, BRANCH 46), EDMUNDO VERGARA (UTILITY WORKER, METC, BRANCH 46), AMOR V. ABAD (COURT INTERPRETER, METC, BRANCH 47), ROMER H. AVILES (COURT STENOGRAPHER II, METC, BRANCH 47), FROILAN ROBERT L. TOMAS (COURT STENOGRAPHER II, METC, BRANCH 47), MAXIMA C. SAYO (PROCESS SERVER, BRANCH 47), SEVILLA B. DEL CASTILLO (COURT INTERPRETER, METC, BRANCH 48), AIDA JOSEFINA IGNACIO

(CLERK III, METC, BRANCH 48), BENIGNO A. MARZAN (CLERK III, METC, BRANCH 48), KARLA MAE R. PACUNAYEN (CLERK III, METC, BRANCH 48), IGNACIO M. GONZALES (PROCESS SERVER, METC, BRANCH 48), EMELINA J. SAN MIGUEL (RECORDS OFFICER, OCC, DETAILED AT BRANCH 47), DENNIS M. ECHEGOYEN (SHERIFF III, OCC-METC), NORMAN GARCIA (SHERIFF III, METC, BRANCH 47), NOEL G. LABID (UTILITY WORKER I, BRANCH 47), *complainants, vs.* **HON. ELIZA B. YU, PRESIDING JUDGE, METROPOLITAN TRIAL COURT, BRANCH 47, PASAY CITY,** *respondent.*

[OCA IPI No. 12-2456-MTJ. March 14, 2017]

JUDGE BIBIANO G. COLASITO, JUDGE BONIFACIO S. PASCUA, JUDGE RESTITUTO V. MANGALINDAN, JR. and CLERK OF COURT MIGUEL C. INFANTE, *complainants, vs.* **HON. ELIZA B. YU, PRESIDING JUDGE, METROPOLITAN TRIAL COURT, BRANCH 47, PASAY CITY,** *respondent.*

[A.M. No. MTJ-13-1821. March 14, 2017]

JUDGE EMILY L. SAN GASPAR-GITO, METROPOLITAN TRIAL COURT, BRANCH 20, MANILA, *complainant, vs.* **JUDGE ELIZA B. YU, METROPOLITAN TRIAL COURT, BRANCH 47, PASAY CITY,** *respondent.*

SYLLABUS

1. **LEGAL ETHICS; JUDGES; ADMINISTRATIVE PROCEEDINGS; VOLUMINOUS RECORDS OF THESE CASES CONSTITUTED PROOF OF ADMINISTRATIVE WRONGDOINGS AND SUFFICED TO WARRANT THE SUPREME ACTION OF RESPONDENT'S REMOVAL FROM THE JUDICIARY.—** The records involved in these cases were voluminous, because they consisted of the affidavits and other evidence submitted by the several complainants as

well as her own pleadings and motions, most of which constituted proof of her administrative wrongdoings. As the *per curiam* decision of November 22, 2016 indicated, her explanations vis-a-vis the complaints often backfired against her, and all the more incriminated her by systematically exposing her personal and professional ineptitude and stilted logic. In short, the evidence against her was too compelling to ignore, and sufficed to warrant the supreme action of her removal from the Judiciary. She was more than aware that the quantum of evidence required in administrative proceedings like these was substantial evidence, or that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion.

2. **ID.; ID.; ID.; RIGHT AGAINST SELF-INCRIMINATION CANNOT BE INVOKED IN CASES AT BAR; THE PRIVILEGE DOES NOT PROHIBIT LEGITIMATE INQUIRY IN NON-CRIMINAL MATTERS AND DOES NOT APPLY TO CASES WHERE THE EVIDENCE BEING SOUGHT IS AN OBJECT EVIDENCE.—** The respondent's argument that she was deprived of the guarantee against self-incrimination has no basis. As a judge, she was quite aware that the constitutional guarantee only set the privilege of an individual to refuse to answer incriminating questions that may directly or indirectly render her criminally liable. The constitutional guarantee simply secures to a witness – whether a party or not – the right to refuse to answer any particular incriminatory question. The privilege did not prohibit legitimate inquiry in non-criminal matters. At any rate, the rule only finds application in case of oral testimony and does not apply to object evidence. x x x The respondent's correspondences were outside the scope of the constitutional proscription against self-incrimination. She had not been subjected to testimonial compulsion in which she could validly raise her right against self-incrimination.

3. **ID.; ID.; ID.; RESPONDENT VOLUNTARILY WAIVED HER RIGHT TO BE PRESENT AND TO CONFRONT THE COMPLAINANTS AND THEIR WITNESSES AND EVIDENCE DURING THE ADMINISTRATIVE INVESTIGATION.—** Worthy to recall is that she had herself voluntarily waived her right to be present and to confront the complainant and her witnesses and evidence during the administrative investigation conducted by CA Associate Justice

Hakim Abdulwahid. She was emphatically granted the opportunity to confront the complainant and her witnesses but the voluntary and knowing waiver of her presence divested her of the right to insist on the right to confrontation, if any. The respondent contends that she was not given the opportunity to raise her objection to the certification issued by the SC-MISO. This contention is dismissed also because of the same voluntary waiver of her presence from the proceedings held before Justice Abdulwahid.

4. **ID.; ID.; ID.; CIRCUMSTANCE ANALOGOUS TO PHYSICAL ILLNESS AND ALLEGATION OF GOOD FAITH CANNOT BE CONSIDERED AS MITIGATING; RESPONDENT'S PLEADING FOR COMPASSION AND MERCY DESERVE NO SYMPATHY.—** The respondent's pleading is unworthy of sympathy. Firstly, the respondent does not thereby present any compelling argument on how her having medications for allergies was analogous to physical illness under Section 48(a) of the *Revised Rules of Administrative Cases in Civil Service*. Although the list of circumstances in Section 48 is not exclusive because the provision expressly recognizes *other analogous circumstances*, she cannot simply state any situation without pointing out why it would be analogous to the listed circumstances. The Court is unable to appreciate how her consumption of medications for allergies could generate arrogance, insubordination, gross ignorance of laws, and offensive conduct that manifested themselves in the periods material to the administrative complaints. Secondly, the respondent's overall conduct negated her allegation of good faith. Good faith implies the lack of any intention to commit a wrongdoing. Based on the totality of her acts and actuations, her claims of good faith and lack of intent to commit a wrong cannot be probable.

5. **ID.; ID.; ID.; WHERE LACK OF EXPERIENCE AS A NEOPHYTE JUDGE AND BEING A RECIPIENT OF AWARDS FOR OUTSTANDING PERFORMANCES AGGRAVATE AND HIGHLIGHT EVEN MORE RESPONDENT'S UNWORTHINESS TO REMAIN IN THE JUDICIARY.—** We also reject the respondent's appeal for relief based on her supposed lack of experience as a neophyte judge, and her previously received awards and outstanding court performance. Lack of experience had no relevance in determining

her administrative liabilities for acts and actuations fundamentally irregular or contrary to judicial ethical standards. We even believe that her being a novice in the Judiciary, instead of mitigating her liability, could have aggravated her offense, for her being a neophyte judge should have impelled her instead to practice greater prudence and caution in her daily actuations and performance. But instead of pausing and hesitating, she acted rashly and imprudently by condescendingly asserting herself over her peers, by flagrantly disobeying her superiors, including this Court, and by ignoring obvious boundaries that should have kept her in check or reined her in. On the other hand, the awards for outstanding performances as a professional and as a judge, far from accenting her good qualities as a person, rather highlighted her unworthiness to remain on the Bench by showing that her misconduct and general bad attitude as a member thereof has put the awards and recognitions in serious question.

6. **ID.; ID.; ID.; IMMEDIATE DISBARMENT FOLLOWS AS A CONSEQUENCE AFTER HAVING BEEN REMOVED FROM THE BENCH IN VIEW OF THE NATURE AND GRAVITY OF THE INFRACTIONS COMMITTED.—** The respondent's accountability did not end with her removal from the Judiciary. In the decision of November 22, 2016, we declared that her misdemeanor as a member of the Bench could also cause her expulsion from the Legal Profession through disbarment. Consequently, we directed her to show good and sufficient cause why her actions and actuations should not also be considered grounds for her disbarment, x x x[.] In her comment, the respondent reiterates her submissions in the *Motion for Reconsideration with Explanation for the Show Cause Order*. Considering that we have dismissed her pleadings altogether for the reasons given earlier, her disbarment is now inevitable. x x x Accordingly, gross misconduct, violation of the Lawyer's Oath, and willful disobedience of any lawful order by the Court constitute grounds to disbar an attorney. In the respondent's case, she was herein found to have committed all of these grounds for disbarment, warranting her immediate disbarment as a consequence.

RESOLUTION

***PER CURIAM*:**

We hereby consider and resolve respondent Eliza B. Yu's *Motion for Reconsideration with Explanation for the Show Cause Order* filed vis-à-vis the decision promulgated on November 22, 2016 disposing against her as follows:

> **WHEREFORE**, the Court **FINDS** and **PRONOUNCES** respondent **JUDGE ELIZA B. YU GUILTY of GROSS INSUBORDINATION; GROSS IGNORANCE OF THE LAW; GROSS MISCONDUCT; GRAVE ABUSE OF AUTHORITY; OPPRESSION;** and **CONDUCT UNBECOMING OF A JUDICIAL OFFICIAL;** and, **ACCORDINGLY, DISMISSES** her from the service **EFFECTIVE IMMEDIATELY,** with **FORFEITURE OF ALL HER BENEFITS,** except accrued leave credits, and further **DISQUALIFIES** her from reinstatement or appointment to any public office or employment, including to one in any government-owned or government-controlled corporations.
>
> Respondent **JUDGE ELIZA B. YU** is directed to show cause in writing within ten (10) days from notice why she should not be disbarred for violation of the Lawyer's Oath, the Code of Professional Responsibility, and the Canons of Professional Ethics as outlined herein.
>
> Let a copy of this decision be furnished to the Office of the Court Administrator for its information and guidance.
>
> **SO ORDERED.**[1]

In her motion, the respondent repeatedly denies committing all the administrative offenses for which she was held guilty, and insists on the absence of proof to support the findings against her. She pleads that the Court reconsiders based on the following:

1. Noncompliance with A.O. No. 19-2011

The complaint against her was premature because of the pendency of her protest against night court duty. A.O. No. 19-2011 did not carry a penal provision, and was only

[1] *Rollo* (A.M. No. MTJ-12-1813), pp. 888-889.

directory because of the use of the permissive word *may*. In addition to A.O. No. 19-2011 being non-compliant with the requirements of a valid administrative order, the requirement of night court duty violated Section 5, Rule XVII of the *Omnibus Rules Implementing Book V of the Administrative Code*,[2] which limited the working hours for government officials and employees. It was also not illegal to write to the Secretary of the Department of Tourism (DOT) considering that he was the requesting authority regarding the rendering of the night court duty. She did not publicly broadcast her disobedience to A.O. No. 19-2011 when she wrote the letter to the Secretary. There was no law prohibiting her from writing the protest letters. At any rate, she had the right to do so under the Freedom of Speech Clause. She did not refuse to obey A.O. No. 19-2011 because she actually allowed her staff to report for night duty. She did not willfully and intentionally disobey because her protest had legal basis. She would also violate Section 3(a)[3] of Republic Act No. 3019 (*Anti-Graft and Corrupt Practices Act*) if she would comply with the patently illegal A.O. No. 19-2011.[4]

2. Refusal to honor the appointments of Ms. Mariejoy P. Lagman and Ms. Leilani Tejero-Lopez

The respondent claims that she did not refuse to honor the appointment because rejection was different from protesting

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[2] Section 5. Officers and employees of all departments and agencies except those covered by special laws shall render not less than eight hours of work a day for five days a week or a total of forty hours a week, exclusive of time for lunch. As a general rule, such hours shall be from eight o'clock in the morning to twelve o'clock noon and from one o'clock to five o'clock in the afternoon on all days except Saturdays, Sundays and Holidays.

[3] Section 3. *Corrupt practices of public officers.* In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

(a) Persuading, inducing or influencing another public officer to perform an act constituting a violation of rules and regulations duly promulgated by competent authority or an offense in connection with the official duties of the latter, or allowing himself to be persuaded, induced, or influenced to commit such violation or offense.

[4] *Rollo* (A.M. No. MTJ-12-1813), pp. 935-962.

the appointment. She merely exercised her statutory right as a judge to question the appointment of the branch clerk of court assigned to her sala. Under Canon 2, Section 3 of the *New Code of Judicial Conduct for the Philippine Judiciary*,[5] she was mandated to bring to the proper authorities the irregularities surrounding the appointments. Moreover, the contents of the complaint letter and the protest could not be used against her pursuant to the constitutional right against self-incrimination. She did not also commit any act of cruelty against Ms. Tejero-Lopez; on the contrary, it was Ms. Tejero-Lopez who "went beyond the norms of decency by her persistent and annoying application in my court that it actually became a harassment." Her opposition against the appointment of Ms. Lagman was meritorious. She only employed the wrong choice of words with her choice of the term *privileged communication* that was viewed negatively. There was no proof of the alleged verbal threats, abuse, misconduct or oppression committed against Ms. Tejero-Lopez. It was not proper to penalize a judge based on a "letter with few words that other people find objectionable."[6]

3. Show-cause order respondent issued against fellow judges

The respondent posits that the show-cause order she issued to her fellow judges had legal basis because "anything that is legal cannot be an assumption of the role of a tyrant wielding power with unbridled breath."[7] It was premature to rule that she thereby abused and committed misconduct because she did not issue any ruling on the explanation by the other judges.[8] She did not violate Section 5, Canon 3 and Section 8, Canon 4 of the *Code of Judicial Conduct*. What the other judges

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[5] Sec. 3. Judges should take or initiate appropriate disciplinary measures against lawyers or court personnel for unprofessional conduct of which the judge may become aware.

[6] *Rollo* (A.M. No. MTJ-12-1813), pp. 964-981.

[7] *Id*. at 982.

[8] *Id*. at 986.

should have done was to avail themselves of the appropriate remedy.[9]

4. Refusal to sign the leave of absence of Mr. Noel Labid

The refusal to sign the application for leave of absence had factual and legal bases.[10] Moreover, she should be presumed to have acted in good faith if she misconstrued the rules on approval of application of leave.[11]

5. Allowing on-the-job trainees

The respondent claims that she did not order the trainees to perform judicial tasks. She asserts that she could not remember their affidavit. She had no personal knowledge that the trainees were made to serve as assistant court stenographers. Based on what she heard, the trainees were only in the premises of her court for a few hours. She reminds that she allowed the trainees to merely observe proceedings. OCA Circular No. 111-2005 was impliedly amended when paralegals and law students were allowed to be trained under the Hustisyeah Project.[12]

6. Designation of an officer-in-charge and ordering reception of evidence by a non-lawyer

The respondent denies having violated CSC Memorandum Circular No. 06-05 when she designated an officer-in-charge. There was no proof showing that she willfully and deliberately intended to cause public damage. In fact, the OCA recognized Mr. Ferdinand Santos as the OIC of her branch in several letters. There was no proof that she violated Section 9, Rule 30 of the *Rules of Court*. The *ex parte* reception of evidence by a non-lawyer clerk of court was allowed under the *Rules of Court*, as well as by Section 21(e), Administrative Circular No. 35-2004, and Administrative Circular No. 37-93.[13]

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[9] *Id*. at 985-986.

[10] *Id*. at 988.

[11] *Id*. at 989.

[12] *Id*. at 995-996.

[13] *Id*. at 997.

7. Allowing criminal proceedings to continue despite the absence of counsel

The respondent merely followed the *Rules of Criminal Procedure* in allowing criminal proceedings despite absence of counsel. In so doing, she relied in good faith on the rulings in *People v. Arcilla*,[14] *Bravo v. Court of Appeals*,[15] and *People v. Malinao*.[16] Under Section 1(c), Rule 115 of the *Rules of Criminal Procedure*, the accused may be allowed to defend himself in person without the assistance of counsel.[17]

8. Sending of inappropriate email messages

The respondent maintains that the e-mail messages were hearsay because the certification by the SC-MISO was not presented to her, depriving her of the opportunity to object. Her granting access by the MISO to her private e-mails was conditional to prove tampering. Her *Lycos* e-mail account was hacked. She did not completely waive her right to privacy. Considering that she did not authenticate said e-mail messages, the same were inadmissible for being hearsay. The e-mail messages with her full name written in capital letters as the sender did not emanate from her because her *Yahoo*! and MSN accounts carried her name with only the first letters being capitalized. The e-mails reproduced in the decision were not the same messages that she had requested Judge San Gaspar-Gito to delete. There were words that she did not write on the e-mail messages pertaining to her demand for reimbursement of $10.00. Her writing style was different from what appeared in the e-mail messages. She denies having opened the "Rudela San Gaspar" account. It was wrong to penalize her based on assumptions and speculations. She did not commit electronic libel. Her funny and innocent comments were not actionable documents. The certification by the SC MISO was not an authentication as to the truthfulness of the contents of the e-mail messages and as

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[14] G.R. No. 116237, May 15, 1996, 256 SCRA 757.

[15] G.R. No. L-48772, May 8, 1992, 208 SCRA 531.

[16] G.R. No. 63735, April 5, 1990, 184 SCRA 148.

[17] *Rollo* (A.M. No. MTJ-12-1813), pp. 997-1009.

to the identification of the sender or author of the messages. It was wrong and unjust to impute wrongdoing to her when there was no proof that she had sent the inappropriate messages. The disclaimer in the e-mails were not printed in the decision; hence, the messages were inadmissible. The presentation of the messages without her consent as the sender was covered by the exclusionary rule. Letters and communications in writing were guaranteed and protected by Sections 2,[18] 3(1),[19] Article III of the 1987 Constitution, and Article 723 of the *Civil Code*,[20] Articles 226[21] and 228[22]

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

[19] Section 3. (1) The privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety or order requires otherwise, as prescribed by law.

[20] Article 723. Letters and other private communications in writing are owned by the person to whom they are addressed and delivered, but they cannot be published or disseminated without the consent of the writer or his heirs. However, the court may authorize their publication or dissemination if the public good or the interest of justice so requires.

[21] Article 226. *Removal, concealment or destruction of documents.* - Any public officer who shall remove, destroy or conceal documents or papers officially entrusted to him, shall suffer:

1. The penalty of *prision mayor* and a fine not exceeding 1,000 pesos, whenever serious damage shall have been caused thereby to a third party or to the public interest.

2. The penalty of *prision correccional* in its minimum and medium period and a fine not exceeding 1,000 pesos, whenever the damage to a third party or to the public interest shall not have been serious.

In either case, the additional penalty of temporary special disqualification in its maximum period to perpetual disqualification shall be imposed.

[22] Article 228. *Opening of closed documents.* – Any public officer not included in the provisions of the next preceding article who, without proper authority, shall open or shall permit to be opened any closed papers, documents or objects entrusted to his custody, shall suffer the penalties of *arresto mayor*, temporary special disqualification and a fine of not exceeding 2,000 pesos.

of the *Revised Penal Code*, Section 2756 of the *Revised Administrative Code*,[23] Sections 32[24] and 33[25] of the R.A. No. 8792. There was no proof that she had apologized through

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[23] The respondent is referring to the *Administrative Code of 1917* (Act No. 2711) whose Section 2756 states:

Section 2756. Unlawful opening or detention of mail matter. – Any person other than an officer or employee of the Bureau of Posts who shall unlawfully detain or open any mail matter which has been in any post office, or in or on any authorized depository for mail matter, or in charge of any person employed in the Bureau of Posts; or who shall secrete or destroy any such mail matter, or shall unlawfully take any mail matter out of any post office, or from any person employed in the Bureau of Posts, before it is given into the actual possession of the person to whom it is addressed, or his duly authorized agent, shall be punished by a fine of not more than one thousand pesos or by imprisonment for not more than one year, or both.

[24] Section 32. *Obligation of Confidentiality.*– Except for the purposes authorized under this Act, any person who obtained access to any electronic key, electronic data message or electronic document, book, register, correspondence, information, or other material pursuant to any powers conferred under this Act, shall not convey to or share the same with any other person.

[25] Section 33. *Penalties.* – The following acts shall be penalized by fine and/or imprisonment, as follows:

(a) Hacking or cracking which refers to unauthorized access into or interference in a computer system/server or information and communication system; or any access in order to corrupt, alter, steal, or destroy using a computer or other similar information and communication devices, without the knowledge and consent of the owner of the computer or information and communications system, including the introduction of computer viruses and the like, resulting in the corruption, destruction, alteration, theft or loss of electronic data messages or electronic documents shall be punished by a minimum fine of One Hundred Thousand pesos (₱100,000.00) and a maximum commensurate to the damage incurred and a mandatory imprisonment of six (6) months to three (3) years;

(b) Piracy or the unauthorized copying, reproduction, dissemination, or distribution, importation, use, removal, alteration, substitution, modification, storage, uploading, downloading, communication, making available to the public, or broadcasting of protected material, electronic signature or copyrighted works including legally protected sound recordings or phonograms or information material on protected works, through the use of telecommunication networks, such as,

e-mail, and had sent messages with sexual undertones and lewd graphics. Judge Gito had a dirty mind because nothing was wrong with the 69 image by Felicien Rops. She (respondent) did not commit internet stalking. She had difficulty in remembering the private communications, which were taken out of context. It was Judge Gito who must have a problem because she had kept the trash messages. She (respondent) did not transgress any law. The allegations against her were hearsay. She submitted a letter proposal for a "win-win" solution so that she would not pursue any criminal action against Judge Gito. She did not violate Section 8, Canon 4 of the *New Code of Judicial Conduct* because it was one of her staff who had typed the letter addressed to Atty. San Gaspar. To find her to have abused her power and committed impropriety was unwarranted. Her absence from the investigation conducted by Justice Abdulwahid could not be taken against her and could not be construed as her admission of wrong doing or as an evasion of truth. There was no proof that she had used the phrase *our court* to advance her personal interest.[26]

Ruling of the Court

We deny the respondent's *Motion for Reconsideration with Explanation for the Show Cause Order* for the following reasons.

1.
The respondent's *Motion for Reconsideration* is denied for lack of merit

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but not limited to, the internet, in a manner that infringes intellectual property rights shall be punished by a minimum fine of one hundred thousand pesos (₱100,000.00) and a maximum commensurate to the damage incurred and a mandatory imprisonment of six (6) months to three (3) years;

(c) Violations of the Consumer Act or Republic Act No. 7394 and other relevant to pertinent laws through transaction covered by or using electronic data messages or electronic documents, shall be penalized with the same penalties as provided in those laws;

(d) Other violations of the provisions of this Act, shall be penalized with a maximum penalty of one million pesos (₱1,000,000.00) or six (6) years imprisonment.

[26] *Rollo* (A.M. No. MTJ-12-1813), pp. 1010-1033.

The submissions tendered in the respondent's *Motion for Reconsideration with Explanation for the Show Cause Order* were matters that the Court had already exhaustively considered and fully resolved in the decision of November 22, 2016. We deem it unnecessary to dwell at length on such submissions. We still hold and declare that the respondent flagrantly and blatantly violated the Lawyer's Oath, and several canons and rules of the *Code of Professional Responsibility*, the *Canon of Judicial Ethics* and the *New Judicial Code of Conduct*.

Nonetheless, we propose to expound on some points for greater enlightenment on the issues and grounds taken into consideration in removing the respondent from the Judiciary, and for purposes of providing the requisite predicate to the ruling on the directive for her to show sufficient cause in writing why she should not also be disbarred from the Roll of Attorneys.

The respondent insists that there was no proof to support the adverse findings of the Court. She is absolutely mistaken. The records involved in these cases were voluminous, because they consisted of the affidavits and other evidence submitted by the several complainants as well as her own pleadings and motions, most of which constituted proof of her administrative wrongdoings. As the *per curiam* decision of November 22, 2016 indicated, her explanations vis-à-vis the complaints often backfired against her, and all the more incriminated her by systematically exposing her personal and professional ineptitude and stilted logic. In short, the evidence against her was too compelling to ignore, and sufficed to warrant the supreme action of her removal from the Judiciary. She was more than aware that the quantum of evidence required in administrative proceedings like these was substantial evidence, or that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion.[27]

The respondent's argument that she was deprived of the guarantee against self-incrimination has no basis. As a judge,

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[27] *Monticalbo v. Maraya, Jr.,* A.M. No. RTJ-09-2197, April 13, 2011, 648 SCRA 573, 579.

she was quite aware that the constitutional guarantee only set the privilege of an individual to refuse to answer incriminating questions that may directly or indirectly render her criminally liable. The constitutional guarantee simply secures to a witness – whether a party or not – the right to refuse to answer any particular incriminatory question.[28] The privilege did not prohibit legitimate inquiry in non-criminal matters. At any rate, the rule only finds application in case of oral testimony and does not apply to object evidence. As the Court has pointed out in *People v. Malimit*:[29]

> **[The right against self-incrimination]**, as put by Mr. Justice Holmes in *Holt vs. United States*, "x x x **is a prohibition of the use of physical or moral compulsion, to extort communications from him x x x" It is simply a prohibition against legal process to extract from the [accused]'s own lips, against his will, admission of his guilt. It does not apply to the instant case where the evidence sought to be excluded is not an incriminating statement but an object evidence.** Wigmore, discussing the question now before us in his treatise on evidence, thus, said:
>
> > If, in other words (the rule) created inviolability not only for his [physical control of his] own vocal utterances, but also for his physical control in whatever form exercise, then, it would be possible for a guilty person to shut himself up in his house, with all the tools and indicia of his crime, and defy the authority of the law to employ in evidence anything that might be obtained by forcibly overthrowing his possession and compelling the surrender of the evidential articles — a clear *reduction ad absurdum*. In other words, **it is not merely compulsion that is the kernel of the privilege, x x x but *testimonial compulsion***.[30]

The respondent's correspondences were outside the scope of the constitutional proscription against self-incrimination. She

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[28] *People v. Ayson*, G.R. No. 85215, July 7, 1989, 175 SCRA 216, 227; citing *Suarez v. Tengco*, G.R. No. L-17113, May 31, 1961, 2 SCRA 71, 73.

[29] G.R. No. 109775, November 14, 1996, 264 SCRA 167.

[30] *Id*. at 176.

had not been subjected to testimonial compulsion in which she could validly raise her right against self-incrimination. Worthy to recall is that she had herself voluntarily waived her right to be present and to confront the complainant and her witnesses and evidence during the administrative investigation conducted by CA Associate Justice Hakim Abdulwahid. She was emphatically granted the opportunity to confront the complainant and her witnesses but the voluntary and knowing waiver of her presence divested her of the right to insist on the right to confrontation, if any.

The respondent contends that she was not given the opportunity to raise her objection to the certification issued by the SC-MISO. This contention is dismissed also because of the same voluntary waiver of her presence from the proceedings held before Justice Abdulwahid.

At any rate, the respondent alternatively pleads for compassion and mercy, and vows not to repeat the same transgressions. In this connection, she would have the Court consider in her favor the following mitigating circumstances pursuant to Section 48, Rule 10 of the *Revised Rules of Administrative Cases in Civil Service*,[31] which provides thus:

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[31] Section 48. Mitigating and Aggravating Circumstances.— In the determination of the penalties to be imposed, mitigating and/or aggravating circumstances attendant to the commission of the offense shall be considered.

The following circumstances shall be appreciated:

a. Physical illness;
b. Good faith;
c. Malice;
d. Time and place of offense;
e. Taking undue advantage of official position;
f. Taking undue advantage of subordinate;
g. Undue disclosure of confidential information;
h. Use of government property in the commission of the offense;
i. Habituality;
j. Offense is committed during office hours and within the premises of the office or building;
k. Employment of fraudulent means to commit or conceal the offense;
l. First offense;

1. Medications on allergies as analogous circumstance to an unsubstantiated charge;
2. Good faith on each the unsubstantiated charge x x x;
3. First time offense of the unsubstantiated charge;
4. Lack of education or lack of experience on administrative matters as analogous circumstance to the unsubstantiated charge;
5. Newness or short number in the judicial service as analogous circumstance to the unsubstantiated charge;
6. Very different work culture from previous employment as unsubstantiated charge;
7. Lack of prejudice to the public as analogous circumstance to the unsubstantiated charge;
8. Remorse for not listening to the unsolicited advices of Court Administrator Jose Midas Marquez and Assistant Court Administrator Thelma Bahia as analogous circumstance to the unsubstantiated charge;
9. Lack of intent to commit any wrong as analogous circumstance to the unsubstantiated charge;
10. Previously received awards in the performance of his duties to the unsubstantiated charge; and
11. Outstanding court performance as to cases disposal for year to the unsubstantiated charge.[32]

The respondent's pleading is unworthy of sympathy.

Firstly, the respondent does not thereby present any compelling argument on how her having medications for allergies was analogous to physical illness under Section 48(a) of the *Revised Rules of Administrative Cases in Civil Service*. Although the list of circumstances in Section 48 is not exclusive because the

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m. Education;
n. Length of service; or
o. Other analogous circumstances.

[32] *Rollo* (A.M. No. MTJ-12-1813), pp. 1037-1038.

provision expressly recognizes *other analogous circumstances*, she cannot simply state any situation without pointing out why it would be analogous to the listed circumstances. The Court is unable to appreciate how her consumption of medications for allergies could generate arrogance, insubordination, gross ignorance of laws, and offensive conduct that manifested themselves in the periods material to the administrative complaints.

Secondly, the respondent's overall conduct negated her allegation of good faith. Good faith implies the lack of any intention to commit a wrongdoing. Based on the totality of her acts and actuations, her claims of good faith and lack of intent to commit a wrong cannot be probable. According to *Civil Service Commission v. Maala*,[33] good faith as a defense in administrative investigations has been discussed in this wise:

> In common usage, the term "good faith" is ordinarily used to describe that state of mind denoting "honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry; an honest intention to abstain from taking any unconscientious advantage of another, even through technicalities of law, together with absence of all information, notice, or benefit or belief of facts which render transaction unconscientious."
>
> In short, good faith is actually a question of intention. Although this is something internal, **we can ascertain a person's intention by relying not on his own protestations of good faith, which is self-serving, but on evidence of his conduct and outward acts.** (bold emphasis supplied)

The respondent is reminded that her removal from the Judiciary by reason of her gross insubordination and gross misconduct did not proceed only from her non-compliance with A.O. No. 19-2011. Other acts and actuations were also efficient causes, namely: (1) her refusal to abide by the directive of MeTC Executive Judge Bibiano Colasito that resulted in the disruption of orderliness in the other Pasay City MeTCs to the prejudice of the public service and public interest; (2) her direct

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[33] G.R. No. 165253, August 18, 2005, 467 SCRA 390, 399.

communications to the DOT Secretary and other agencies that seriously breached established protocols, thereby opening an irregular avenue to publicly broadcast her defiance to the directive of the Court itself; and (3) her willful disregard of the direct advice by the Court Administrator despite the latter being the official expressly authorized by law to assist the Court in exercising administrative supervision over all lower courts and personnel.[34]

Furthermore, we emphatically observed and pointed out in the decision of November 22, 2016 the following:

> In all, Judge Yu **exhibited an unbecoming arrogance** in committing insubordination and gross misconduct. By her refusal to adhere to and abide by A.O. No. 19-2011, **she deliberately disregarded her duty to serve as the embodiment of the law at all times. She thus held herself above the law by refusing to be bound by the issuance of the Court as the duly constituted authority on court procedures and the supervision of the lower courts.** To tolerate her insubordination and gross misconduct is to abet lawlessness on her part. She deserved to be removed from the service because she thereby revealed her unworthiness of being part of the Judiciary. (Bold emphasis supplied)

We have stated in the decision of November 22, 2016 that the respondent's recalcitrant streak did not end with her unbecoming repudiation of and defiance to A.O. No. 19-2011. To recall, she also exhibited extreme arrogance in rejecting the valid appointments of Ms. Lagman and Ms. Tejero-Lopez despite being fully aware that the appointing powers pertained to and were being thereby exercised by the Court, and that she was bereft of any discretion to control or reject the appointments. Under no circumstance could she be justified in draping herself with the mantle of good faith in regard to her insubordination and arrogance.

We also reject the respondent's appeal for relief based on her supposed lack of experience as a neophyte judge, and her

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[34] See Presidential Decree No. 828, as amended by Presidential Decree No. 842.

previously received awards and outstanding court performance. Lack of experience had no relevance in determining her administrative liabilities for acts and actuations fundamentally irregular or contrary to judicial ethical standards. We even believe that her being a novice in the Judiciary, instead of mitigating her liability, could have aggravated her offense, for her being a neophyte judge should have impelled her instead to practice greater prudence and caution in her daily actuations and performance. But instead of pausing and hesitating, she acted rashly and imprudently by condescendingly asserting herself over her peers, by flagrantly disobeying her superiors, including this Court, and by ignoring obvious boundaries that should have kept her in check or reined her in. On the other hand, the awards for outstanding performances as a professional and as a judge, far from accenting her good qualities as a person, rather highlighted her unworthiness to remain on the Bench by showing that her misconduct and general bad attitude as a member thereof has put the awards and recognitions in serious question.

2.
Disbarment is also to be imposed on the respondent

The respondent's accountability did not end with her removal from the Judiciary. In the decision of November 22, 2016, we declared that her misdemeanor as a member of the Bench could also cause her expulsion from the Legal Profession through disbarment. Consequently, we directed her to show good and sufficient cause why her actions and actuations should not also be considered grounds for her disbarment, justifying our directive in the following manner, *viz.*:

The foregoing findings may already warrant Judge Yu's disbarment.

A.M. No. 02-9-02-SC, dated September 17, 2002 and entitled *Re: Automatic Conversion of Some Administrative Cases Against Justices of the Court of Appeals and the Sandiganbayan; Judges of Regular and Special Courts; and Court Officials Who are Lawyers as Disciplinary Proceedings Against Them Both as Such Officials and as Members of the Philippine Bar*, relevantly states:

> Some administrative cases against Justices of the Court of Appeals and the Sandiganbayan; judges of regular and special courts; and court officials who are lawyers are based on grounds which are likewise grounds for the disciplinary action of members of the Bar for violation of the Lawyer's Oath, the Code of Professional Responsibility, and the Canons of Professional Ethics, or for such other forms of breaches of conduct that have been traditionally recognized as grounds for the discipline of lawyers.
>
> In any of the foregoing instances, the administrative case shall also be considered a disciplinary action against the respondent Justice, judge or court official concerned as a member of the Bar. The respondent may forthwith be required to comment on the complaint and show cause why he should not also be suspended, disbarred or otherwise disciplinarily sanctioned as a member of the Bar. Judgment in both respects may be incorporated in one decision or resolution.

Under Section 27, Rule 138 of the *Rules of Court*, an attorney may be disbarred on the ground of gross misconduct and willful disobedience of any lawful order of a superior court. Given her wanton defiance of the Court's own directives, her open disrespect towards her fellow judges, her blatant abuse of the powers appurtenant to her judicial office, and her penchant for threatening the defenseless with legal actions to make them submit to her will, we should also be imposing the penalty of disbarment. The object of disbarment is not so much to punish the attorney herself as it is to safeguard the administration of justice, the courts and the public from the misconduct of officers of the court. Also, disbarment seeks to remove from the Law Profession attorneys who have disregarded their Lawyer's Oath and thereby proved themselves unfit to continue discharging the trust and respect given to them as members of the Bar.

The administrative charges against respondent Judge Yu based on grounds that were also grounds for disciplinary actions against members of the Bar could easily be treated as justifiable disciplinary initiatives against her as a member of the Bar. This treatment is explained by the fact that her membership in the Bar was an integral aspect of her qualification for judgeship. Also, her moral and actual unfitness to remain as a Judge, as found in these cases, reflected her indelible unfitness to remain as a member of the Bar. At the very least, a Judge like her who disobeyed the basic rules of judicial conduct should not remain as a member of the Bar because she had thereby also violated her Lawyer's Oath.

Indeed, respondent Judge Yu's violation of the fundamental tenets of judicial conduct embodied in the *New Code of Judicial Conduct for the Philippine Judiciary* would constitute a breach of the following canons of the Code of Professional Responsibility, to wit:

> CANON 1 — A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR LAW AND FOR LEGAL PROCESSES.
>
> Rule 1.02 — A lawyer shall not counsel or abet activities aimed at defiance of the law or at lessening confidence in the legal system.
>
> CANON 6 — THESE CANONS SHALL APPLY TO LAWYERS IN GOVERNMENT SERVICE IN THE DISCHARGE OF THEIR OFFICIAL TASKS.
>
> Rule 6.02 — A lawyer in the government service shall not use his public position to promote or advance his private interests, nor allow the latter to interfere with his public duties.
>
> CANON 11 — A LAWYER SHALL OBSERVE AND MAINTAIN THE RESPECT DUE TO THE COURTS AND TO JUDICIAL OFFICERS AND SHOULD INSIST ON SIMILAR CONDUCT BY OTHERS.

Rule 11.03 — A lawyer shall abstain from scandalous, offensive or menacing language or behavior before the Courts.

The Court does not take lightly the ramifications of Judge Yu's misbehavior and misconduct as a judicial officer. By penalizing her with the supreme penalty of dismissal from the service, she should not anymore be allowed to remain a member of the Law Profession.

However, this rule of fusing the dismissal of a Judge with disbarment does not in any way dispense with or set aside the respondent's right to due process. As such, her disbarment as an offshoot of A.M. No. 02-9-02-SC without requiring her to comment on the disbarment would be violative of her right to due process. To accord due process to her, therefore, she should first be afforded the opportunity to defend her professional standing as a lawyer before the Court would determine whether or not to disbar her.

In her comment, the respondent reiterates her submissions in the *Motion for Reconsideration with Explanation for the Show*

Cause Order. Considering that we have dismissed her pleadings altogether for the reasons given earlier, her disbarment is now inevitable.

Section 27, Rule 138 of the *Rules of Court* reads:

> Sec. 27. *Attorneys removed or suspended by Supreme Court on what grounds*. — A member of the bar may be removed or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or **other gross misconduct in such office**, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for **any violation of the oath which he is required to take before the admission to practice, or for a willful disobedience of any lawful order of a superior court**, or for corruptly or willfully appearing as an attorney for a party to a case without authority so to do. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice.

Accordingly, gross misconduct, violation of the Lawyer's Oath, and willful disobedience of any lawful order by the Court constitute grounds to disbar an attorney. In the respondent's case, she was herein found to have committed all of these grounds for disbarment, warranting her immediate disbarment as a consequence.

We deem it worthwhile to remind that the penalty of disbarment being hereby imposed does not equate to stripping the respondent of the source of her livelihood. Disbarment is intended to protect the administration of justice by ensuring that those taking part in it as attorneys should be competent, honorable and reliable to enable the courts and the clients they serve to rightly repose their confidence in them.[35]

Once again, we express our disdain for judges and attorneys who undeservedly think too highly of themselves, their personal and professional qualifications and qualities at the expense of

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[35] *Office of the Court Administrator v. Tormis*, A.C. No. 9920, August 30, 2016; *Avancena v. Liwanag*, A.M. No. MTJ-01-1383, July 17, 2003, 406 SCRA 300, 305.

the nobility of the Law Profession. It is well to remind the respondent that membership in the Law Profession is not like that in any ordinary trade. The Law is a noble calling, and only the individuals who are competent and fit according to the canons and standards set by this Court, the law and the *Rules of Court* may be bestowed the privilege to practice it.[36]

Lastly, every lawyer must pursue only the highest standards in the practice of his calling. The practice of law is a privilege, and only those adjudged qualified are permitted to do so.[37] The respondent has fallen short of this standard thus meriting her expulsion from the profession.

WHEREFORE, the Court **DENIES** the *Motion for Reconsideration with Explanation for the Show Cause Order* with **FINALITY**; **DISBARS EFFECTIVE IMMEDIATELY** respondent **ELIZA B. YU** pursuant to A.M. No. 02-9-02-SC for violation of the Lawyer's Oath, the *Code of Professional Responsibility*, and the *Canons of Professional Ethics*; and **ORDERS** the striking off of respondent **ELIZA B. YU**'s name from the Roll of Attorneys.

Let copies of this resolution be furnished to: (a) the Office of the Court Administrator for dissemination to all courts throughout the country for their information and guidance; (b) the Integrated Bar of the Philippines; and (c) the Office of the Bar Confidant to be appended to the respondent's personal record as a member of the Bar.

SO ORDERED.

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

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[36] *Sanchez v. Somoso*, A.C. No. 6061, October 3, 2003, 412 SCRA 569, 572.

[37] *Avancena v. Liwanag*, *supra* at 304.

EN BANC

[G.R. No. 226622. March 14, 2017]

COMMISSION ON ELECTIONS, *petitioner, vs.* **BAI HAIDY D. MAMALINTA**, *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS; GROSS MISCONDUCT AND SIMPLE MISCONDUCT; IN ORDER TO DIFFERENTIATE GROSS MISCONDUCT FROM SIMPLE MISCONDUCT, THE ELEMENTS OF CORRUPTION, CLEAR INTENT TO VIOLATE THE LAW, OR FLAGRANT DISREGARD OF ESTABLISHED RULE, MUST MANIFEST IN THE FORMER.—** Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer. To warrant dismissal from the service, the misconduct must be grave, serious, important, weighty, momentous, and not trifling. The misconduct must imply wrongful intention and not a mere error of judgment and must also have a direct relation to and be connected with the performance of the public officer's official duties amounting either to maladministration or willful, intentional neglect, or failure to discharge the duties of the office. In order to differentiate gross misconduct from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule, must be manifest in the former.
2. **ID.; ID.; ID.; SIMPLE NEGLECT OF DUTY AND GROSS NEGLECT OF DUTY, DISTINGUISHED.—** On the other hand, and as compared to Simple Neglect of Duty which is defined as the failure of an employee to give proper attention to a required task or to discharge a duty due to carelessness or indifference, Gross Neglect of Duty is characterized by want of even the slightest care, or by conscious indifference to the consequences, or by flagrant and palpable breach of duty.
3. **ID.; ID.; ID.; CERTAIN ACTS MAY BE CONSIDERED AS CONDUCT PREJUDICIAL TO THE BEST INTEREST OF SERVICE AS LONG AS THEY TARNISH THE IMAGE**

AND INTEGRITY OF THE PUBLIC OFFICE AND MAY OR MAY NOT BE CHARACTERIZED BY CORRUPTION OR A WILLFUL INTENT TO VIOLATE THE LAW OR TO DISREGARD ESTABLISHED RULES.— [C]ertain acts may be considered as Conduct Prejudicial to the Best Interest of Service as long as they tarnish the image and integrity of the public office and may or may not be characterized by corruption or a willful intent to violate the law or to disregard established rules. In *Encinas v. Agustin, Jr.*, the Court outlined the following acts that constitute this offense, such as: misappropriation of public funds, abandonment of office, failure to report back to work without prior notice, failure to keep in safety public records and property, making false entries in public documents, and falsification of court orders.

4. **ID.; ID.; ID.; THE QUANTUM OF PROOF REQUIRED TO SUSTAIN A FINDING OF ADMINISTRATIVE CULPABILITY IS SUBSTANTIAL EVIDENCE.—** In order to sustain a finding of administrative culpability under the foregoing offenses, only the quantum of proof of substantial evidence is required, or that amount or relevant evidence which a reasonable mind might accept as adequate to support a conclusion. x x x As a rule, technical rules of procedure and evidence are not strictly applied in administrative proceedings. Hence, in proper cases such as this, the procedural rules may be relaxed for the furtherance of just objectives.

5. **ID.; ELECTIONS; THE COURT RULED THAT A COMPLETE CANVASS OF VOTES IS NECESSARY IN ORDER TO REFLECT THE TRUE DESIRE OF THE ELECTORATE, AND A PROCLAMATION OF WINNING CANDIDATES ON THE BASIS OF INCOMPLETE CANVASS IS ILLEGAL AND OF NO EFFECT; CASE AT BAR.—** In *Nasser Immam v. COMELEC*, the Court ruled that a complete canvass of votes is necessary in order to reflect the true desire of the electorate, and that a proclamation of winning candidates on the basis of incomplete canvass is illegal and of no effect, x x x In the case at bar, the COMELEC *En Banc* correctly pointed out that the uncanvassed election returns can still drastically affect the outcome of the elections, since "at the time of Sinsuat's proclamation, he garnered only [1,230] votes, with the exclusion of the [12] election returns and [4] election returns that have yet to be canvassed. These [4] election

returns amount to [3,049] votes, or equivalent to 42.91% of the total registered voters of South Upi, Maguindanao." Notably, Mamalinta's defense of duress - which was upheld in her other two (2) acts of double proclamation and unauthorized transfer of the place for canvassing - is untenable in this instance as there was no showing that the MBOC was intimidated or coerced into proclaiming Sinsuat as the winning candidate for the position of Mayor of South Upi, Maguindanao. The allegations of Mamalinta that force and threats were exerted on her to make said premature proclamation are self-serving and not supported by any other evidence, hence, cannot be relied upon. Therefore, Mamalinta's afore-described act of premature proclamation may still be considered as Grave Misconduct, Gross Neglect of Duty, and/or Conduct Prejudicial to the Best Interest of Service, and thus, she should be held administratively liable therefor. In sum, while Mamalinta may be absolved from administrative liability for her acts of double proclamation and unauthorized transfer of the place for canvassing as such acts were done under duress, she is nevertheless administratively liable for her premature proclamation of Sinsuat as the winning candidate on the basis of an incomplete canvass of votes.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Rigoroso Galindez & Rabino Law Offices for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated March 11, 2016 and the Resolution[3] dated August 26, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 134368, which reversed and set aside the Decision

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[1] *Rollo*, pp. 12-40.

[2] *Id*. at 51-73. Penned by Associate Justice Sesinando E. Villon with Associate Justices Rodil V. Zalameda and Jhosep Y. Lopez concurring.

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

No. 13-0969[4] dated September 24, 2013 and the Resolution No. 14-00135[5] dated January 28, 2014 of the Civil Service Commission (CSC), and accordingly, reinstated respondent Bai Haidy D. Mamalinta (Mamalinta) to her former position prior to her dismissal, without loss of seniority rights, and with payment of the corresponding back salaries and all benefits which she would have been entitled to if not for her illegal dismissal.

The Facts

During the May 10, 2004 Synchronized National and Local Elections, petitioner Commission on Elections (COMELEC) appointed Mamalinta as Chairman of the Municipal Board of Canvassers (MBOC) for South Upi, Maguindanao, together with Abdullah K. Mato (Mato) and Pablito C. Peñafiel (Peñafiel), Sr. as Vice-Chairman and Member, respectively. While performing their functions as such, the MBOC allegedly committed the following acts: (*a*) on May 16, 2004, the MBOC proclaimed Datu Israel Sinsuat (Sinsuat) as Mayor, Datu Jabarael Sinsuat[6] as Vice-Mayor, and eight (8) members of the *Sangguniang Bayan* as winning candidates, on the basis of nineteen (19) out of the thirty-five (35) total election returns; (*b*) on even date, the MBOC caused the transfer of the place for canvassing of votes from Tinaman Elementary School, South Upi, Maguindanao to Cotabato City without prior authority from the COMELEC; and (*c*) two days later or on May 18, 2004, they proclaimed a new set of winning candidates, headlined by Antonio Gunsi, Jr. (Gunsi) as Mayor and four (4) new members of the *Sangguniang Bayan* on the basis of thirty (30) out of thirty-five (35) election returns. Thus, on May 20, 2004, Atty. Clarita Callar, Regional Election Director of the COMELEC Regional Office No. XII, reported the incidents to the COMELEC *En Banc*, which in turn, directed the COMELEC Law Department

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[4] *Id*. at 90-101. Signed by Chairman Francisco T. Duque III and Commissioners Nieves L. Osorio and Robert S. Martinez.

[5] *Id*. at 110-114.

[6] "Jaberael" (See CA *rollo*, p. 46) and "Jabarel" (See CA *rollo*, p. 9) in some parts of the records.

to conduct a fact-finding investigation on the matter. Thereafter, the COMELEC Law Department recommended the filing of administrative and criminal cases against the members of the MBOC, and subsequently, Mamalinta was formally charged with Grave Misconduct, Gross Neglect of Duty, Gross Inefficiency and Incompetence, and Conduct Prejudicial to the Best Interest of the Service.[7]

In her defense,[8] Mamalinta denied the charges against her, essentially claiming that the MBOC's acts of double proclamation and transferring the place for canvassing were attended by duress in view of the imminent danger to their lives due to the violence and intimidation initiated by Gunsi's supporters.[9]

The COMELEC *En Banc* Ruling

In a Resolution[10] dated May 24, 2012, the COMELEC *En Banc* found Mamalinta guilty of Grave Misconduct, Gross Neglect of Duty, and Conduct Prejudicial to the Best Interest of the Service, and accordingly, dismissed her from public service, with imposition of all accessory penalties relative thereto.[11]

Adopting the findings of its Law Department, the COMELEC *En Banc* ruled that the MBOC's acts of proclaiming two (2) sets of winning candidates; issuing such proclamations based on an incomplete canvass of votes; and transferring the place for the canvassing of votes are blatant violations of various laws and COMELEC resolutions on the conduct of elections, and thus, sufficient to hold Mamalinta liable for the aforesaid administrative offenses, thereby justifying her dismissal from service. In this relation, the COMELEC *En Banc* did not lend

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[7] *Rollo*, pp. 52-53. See also pp. 80-82.

[8] See Mamalinta's Answer dated April 25, 2007; CA *rollo*, pp. 67-74.

[9] *Rollo*, p. 82. See also CA *rollo*, pp. 70-71.

[10] *Id*. at 79-89. Signed by Chairman Sixto S. Brillantes, Jr. and Commissioners Rene V. Sarmiento, Lucenito N. Tagle, Armando C. Velasco, Elias R. Yusoph, and Christian Robert S. Lim.

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

credence to Mamalinta's claim of duress and/or threats, opining her failure to substantiate the same.[12]

Mamalinta moved for reconsideration,[13] which was denied in a Resolution[14] dated November 27, 2012. Aggrieved, she appealed to the CSC.[15]

The CSC Ruling

In Decision No. 13-0969[16] dated September 24, 2013, the CSC affirmed the COMELEC *En Banc* ruling. It held that as MBOC Chairman, Mamalinta clearly committed the acts complained of which violated various election laws and rules and tarnished the image and integrity of her public office, as well as the elections in South Upi, Maguindanao, in general. The CSC likewise did not lend credence to Mamalinta's claims of violence, opining that they were self-serving, absent any evidence supporting the same.[17]

Dissatisfied, Mamalinta filed a motion for reconsideration,[18] attaching thereto the Minutes[19] of the MBOC dated May 14 and 15, 2004 and the Report[20] dated May 16, 2004, both prepared by Peñafiel narrating the incidents that transpired during the canvassing in South Upi, Maguindanao.[21] Such motion was,

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[12] *Id*. at 83-87.

[13] Dated June 28, 2012; CA *rollo*, pp. 90-100.

[14] *Rollo*, pp. 104-107. Penned by Commissioner Armando C. Velasco with Chairman Sixto S. Brillantes, Jr. and Commissioners Rene V. Sarmiento, Lucenito N. Tagle, Elias R. Yusoph, Christian Robert S. Lim, and Ma. Gracia Cielo M. Padaca concurring.

[15] See Notice of Appeal (with Appeal Memorandum) dated January 30, 2013; CA *rollo*, pp. 110-147.

[16] *Rollo*, pp. 90-101.

[17] *Id*. at 97-100.

[18] Dated October 31, 2013; CA *rollo*, pp. 178-186.

[19] CA *rollo*, pp. 187-197.

[20] *Id*. at 198.

[21] See *rollo*, p. 60.

however, denied by the CSC through Resolution No. 14-00135[22] dated January 28, 2014. Undaunted, she elevated the matter to the CA *via* a petition[23] for review under Rule 43 of the Rules of Court.

The CA Ruling

In a Decision[24] dated March 11, 2016, the CA reversed and set aside the CSC ruling, and accordingly, reinstated Mamalinta to her former position prior to her dismissal, without loss of seniority rights, and with payment of the corresponding back salaries and all benefits which she would have been entitled to if not for her illegal dismissal.

Contrary to the findings of the COMELEC *En Banc* and the CSC, the CA found that Mamalinta sufficiently substantiated her claims of duress by presenting various documentary evidence, namely, the Joint-Affidavit[25] dated May 18, 2004 she executed with her Vice-Chairman, Mato, and the Minutes[26] of the MBOC dated May 14 and 15, 2004 and the Report[27] dated May 16, 2004 both prepared by Peñafiel, all of which recounted the acts of duress and intimidation pressed on them. Further noting that Mamalinta immediately flew to Manila after escaping the hostile incidents they experienced in order to report the same to then-COMELEC Chairman Benjamin Abalos, the CA concluded that Mamalinta and the rest of the MBOC were indeed forced, intimidated, and coerced into performing the acts constituting the charges against them, and thus, they could not be held administratively liable therefor.[28]

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[22] *Id.* at 110-114.

[23] Dated March 7, 2014; CA *rollo*, pp. 3-21.

[24] *Rollo*, pp. 51-73.

[25] CA *rollo*, pp. 57-58.

[26] *Id.* at 187-197.

[27] *Id.* at 198.

[28] *Rollo*, pp. 63-72.

The COMELEC moved for reconsideration,[29] which was, however, denied in a Resolution[30] dated August 26, 2016; hence, this petition.

The Issue Before the Court

The sole issue for the Court's resolution is whether or not the CA correctly reversed and set aside the CSC ruling, and consequently, absolved Mamalinta from the administrative charges of Grave Misconduct, Gross Neglect of Duty, and Conduct Prejudicial to the Best Interest of the Service.

The Court's Ruling

The petition is meritorious.

Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer. To warrant dismissal from the service, the misconduct must be grave, serious, important, weighty, momentous, and not trifling. The misconduct must imply wrongful intention and not a mere error of judgment and must also have a direct relation to and be connected with the performance of the public officer's official duties amounting either to maladministration or willful, intentional neglect, or failure to discharge the duties of the office. In order to differentiate gross misconduct from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule, must be manifest in the former.[31]

On the other hand, and as compared to Simple Neglect of Duty which is defined as the failure of an employee to give proper attention to a required task or to discharge a duty due to carelessness or indifference, Gross Neglect of Duty is characterized by want of even the slightest care, or by conscious

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[29] Dated April 4, 2016; CA *rollo*, pp. 300-314.

[30] *Rollo*, pp. 75-76.

[31] *Office of the Court Administrator v. Viesca*, A.M. No. P-12-3092, April 14, 2015, 755 SCRA 385, 396, citing *Office of the Court Administrator v. Amor*, 745 Phil. 1, 8 (2014).

indifference to the consequences, or by flagrant and palpable breach of duty.[32]

Meanwhile, certain acts may be considered as Conduct Prejudicial to the Best Interest of Service as long as they tarnish the image and integrity of the public office and may or may not be characterized by corruption or a willful intent to violate the law or to disregard established rules.[33] In *Encinas v. Agustin, Jr.*,[34] the Court outlined the following acts that constitute this offense, such as: misappropriation of public funds, abandonment of office, failure to report back to work without prior notice, failure to keep in safety public records and property, making false entries in public documents, and falsification of court orders.[35]

In order to sustain a finding of administrative culpability under the foregoing offenses, only the quantum of proof of substantial evidence is required, or that amount or relevant evidence which a reasonable mind might accept as adequate to support a conclusion.[36]

In the case at bar, a judicious review of the records reveals that Mamalinta is being charged of committing the following acts, namely: (*a*) the double proclamation of Sinsuat and Gunsi as mayor of South Upi; (*b*) the transfer of the place for canvassing of votes from Tinaman Elementary School, South Upi, Maguindanao to Cotabato City without prior authority from the COMELEC; and (*c*) the premature proclamation of Sinsuat as the winning candidate on the basis of an incomplete canvass of election returns.

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[32] *Id*. at 395, citing *CA v. Manabat, Jr.*, 676 Phil. 157, 164 (2011).

[33] See *Office of the Ombudsman v. Castro*, G.R. No. 172637, April 22, 2015, 757 SCRA 73, 86-88, citations omitted.

[34] 709 Phil. 236 (2013).

[35] *Id*. at 263-264, citing *Philippine Retirement Authority v. Rupa*, 415 Phil. 713, 720-721 (2001).

[36] See *Office of the Court Administrator v. Lopez*, 654 Phil. 602, 607 (2011), citing *Velasco v. Angeles*, 557 Phil. 1, 20 (2007).

Anent the first two (2) acts complained of, *i.e.*, the double proclamation and the unauthorized transfer of the place for canvassing, the Court agrees with the CA that Mamalinta should not be held administratively liable for the same to warrant her dismissal from the service, as such acts were committed while under duress and intimidation. In *People v. Nuñez*,[37] the Court defined duress as follows:

> Duress, force, fear or intimidation to be available as a defense, must be **present, imminent and impending, and of such a nature as to induce a well-grounded apprehension of death or serious bodily harm if the act is not done**. A threat of future injury is not enough.
>
> To be available as a defense, **the fear must be well-founded, an immediate and actual danger of death or great bodily harm must be present and the compulsion must be of such a character as to leave no opportunity to accused for escape or self-defense in equal combat**. It would be a most dangerous rule if a defendant could shield himself from prosecution for crime by merely setting up a fear from or because of a threat of a third person.[38] (Emphases and underscoring supplied)

Thus, "[d]uress, as a valid defense, should be based on *real, imminent* or reasonable fear for one's own life. It should not be inspired by speculative, fanciful or remote fear. A threat of future injury is not enough. It must be clearly shown that the compulsion must be of such character as to leave no opportunity for the accused to escape."[39]

In the instant case, records reveal that Mamalinta and the rest of the MBOC of South Upi, Maguindanao, were under heavy duress from supporters of mayoralty candidate Gunsi. As stated in Mamalinta's Joint Affidavit[40] with Mato, the Vice-Chairman of the MBOC, they were forcibly taken and held hostage by

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[37] 341 Phil. 817 (1997).

[38] *Id.* at 828, citing *People v. Villanueva*, 104 Phil. 450, 464 (1958).

[39] *People v. Palencia*, 162 Phil. 695, 711 (1976), citations omitted.

[40] CA *rollo*, pp. 57-58.

Gunsi's supporters, and while detained, were forced, intimidated, and coerced into declaring Gunsi as the winning candidate, despite their earlier proclamation that Sinsuat was the true winner of the mayoralty elections. Mamalinta and Mato's statements in their Joint Affidavit were then corroborated by the Minutes[41] of the MBOC dated May 14 and 15, 2004 and the Report[42] dated May 16, 2004 both prepared by Peñafiel, another member of the MBOC, stating *inter alia*, that while the MBOC was canvassing the votes, Gunsi's supporters kicked open the doors of the room, rushed towards the members of the MBOC, and even attempted to throw chairs to them. Irrefragably, the foregoing incidents show that duress and intimidation were clearly exercised against Mamalinta and the rest of the MBOC, and thus, the latter succumbed to the same by performing the aforesaid acts, *i.e.*, the double proclamation and the unauthorized transfer of the place for canvassing, albeit against their will.

Furthermore, the CA aptly pointed out that as soon as Mamalinta and the MBOC escaped from their dire situation, she immediately flew to Manila to report the incidents to the COMELEC, and such fact was not seriously disputed by the latter.[43] Thus, there is more reason to believe that Mamalinta and the MBOC did not willingly commit the aforementioned acts.

To clarify, the CA did not err in considering Mamalinta and Mato's Joint Affidavit – as well as the Minutes of the MBOC dated May 14 and 15, 2004 and the Report dated May 16, 2004 both prepared by Peñafiel – although they were not formally offered as evidence during the investigation before the COMELEC. As a rule, technical rules of procedure and evidence are not strictly applied in administrative proceedings. Hence, in proper cases such as this, the procedural rules may be relaxed

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[41] *Id*. at 187-197.

[42] *Id*. at 198.

[43] See *rollo*, pp. 69-71.

for the furtherance of just objectives.[44] Thus, the CA did not err in taking these documents in consideration.

The foregoing notwithstanding, the Court notes that the CA failed to determine Mamalinta's administrative liability on the third act she was accused of committing, *i.e.*, the premature proclamation of Sinsuat as the winning candidate on the basis of an incomplete canvass of election returns. In *Nasser Immam v. COMELEC*,[45] the Court ruled that a complete canvass of votes is necessary in order to reflect the true desire of the electorate, and that a proclamation of winning candidates on the basis of incomplete canvass is illegal and of no effect, *viz.*:

> Jurisprudence provides that **all votes cast in an election must be considered, otherwise voters shall be disenfranchised**. A canvass cannot be reflective of the true vote of the electorate unless and until all returns are considered and none is omitted. In this case, fourteen (14) precincts were omitted in the canvassing.
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> **An incomplete canvass of votes is illegal and cannot be the basis of a subsequent proclamation. A canvass cannot be reflective of the true vote of the electorate unless all returns are considered and none is omitted. This is true when the election returns missing or not counted will affect the results of the election.**
>
> We note that the votes of petitioner totaled one thousand nine hundred and sixty-one (1,961) while private respondent garnered a total of one thousand nine hundred thirty (1,930) votes. The difference was only thirty-one (31) votes. There were fourteen (14) precincts unaccounted for whose total number of registered voters are two thousand three hundred and forty-eight (2,348). Surely, these votes will affect the result of the election. Consequently, the non-inclusion of the 14 precincts in the counting disenfranchised the voters.[46] (Emphases and underscoring supplied)

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[44] *Gaoiran v. Alcala*, 486 Phil. 657, 669 (2004), citing *Montemayor v. Bundalian*, 453 Phil. 158, 166 (2003).

[45] 379 Phil. 953 (2000).

[46] *Id.* at 962-964, citations omitted.

In the case at bar, the COMELEC *En Banc* correctly pointed out that the uncanvassed election returns can still drastically affect the outcome of the elections, since "at the time of Sinsuat's proclamation, he garnered only [1,230] votes, with the exclusion of the [12] election returns and [4] election returns that have yet to be canvassed. These [4] election returns amount to [3,049] votes, or equivalent to 42.91% of the total registered voters of South Upi, Maguindanao."[47] Notably, Mamalinta's defense of duress – which was upheld in her other two (2) acts of double proclamation and unauthorized transfer of the place for canvassing – is untenable in this instance as there was no showing that the MBOC was intimidated or coerced into proclaiming Sinsuat as the winning candidate for the position of Mayor of South Upi, Maguindanao. The allegations of Mamalinta that force and threats were exerted on her to make said premature proclamation are self-serving and not supported by any other evidence, hence, cannot be relied upon.[48] Therefore, Mamalinta's afore-described act of premature proclamation may still be considered as Grave Misconduct, Gross Neglect of Duty, and/ or Conduct Prejudicial to the Best Interest of Service, and thus, she should be held administratively liable therefor.

In sum, while Mamalinta may be absolved from administrative liability for her acts of double proclamation and unauthorized transfer of the place for canvassing as such acts were done under duress, she is nevertheless administratively liable for her premature proclamation of Sinsuat as the winning candidate on the basis of an incomplete canvass of votes.

WHEREFORE, the petition is **GRANTED**. The Decision dated March 11, 2016 and the Resolution dated August 26, 2016 of the Court of Appeals in CA-G.R. SP No. 134368 are **REVERSED** and **SET ASIDE**. Respondent Bai Haidy D. Mamalinta is hereby found **GUILTY** of Grave Misconduct, Gross Neglect of Duty, and Conduct Prejudicial to the Best

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[47] *Rollo*, p. 85.

[48] See *Reyes v. Nieva*, A.C. No. 8560, September 6, 2016, citing *People v. Mangune*, 698 Phil. 759, 771 (2012).

Interest of the Service. Accordingly, her civil service eligibility is **CANCELLED**, and her retirement and other benefits, except accrued leave credits, are hereby **FORFEITED**. Further, she is **PERPETUALLY DISQUALIFIED** from re-employment in any government agency or instrumentality, including any government-owned and controlled corporation or government financial institution.

SO ORDERED.

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

Jardeleza, J., no part, prior OSG action.

THIRD DIVISION

[G.R. No. 164749. March 15, 2017]

ROMULO ABROGAR and ERLINDA ABROGAR, *petitioners, vs.* **COSMOS BOTTLING COMPANY and INTERGAMES, INC.,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; RULE 45 PETITION; THE COURT REVIEWS THE FACTUAL FINDINGS OF THE COURT OF APPEALS AS AN EXCEPTION TO THE GENERAL RULE THAT ONLY QUESTIONS OF LAW MAY BE RAISED IN A PETITION FOR REVIEW ON *CERTIORARI*; EXCEPTIONS, ENUMERATED.—** The Court can proceed to review the factual findings of the CA as an exception to the general rule that it should not review issues of fact on appeal on *certiorari*. We have recognized exceptions to the rule that the findings of fact of the CA are conclusive

and binding in the following instances: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. Considering that the CA arrived at factual findings contrary to those of the trial court, our review of the records in this appeal should have to be made.

2. **CIVIL LAW; DAMAGES; NEGLIGENCE; CONCEPT.—** Negligence is the failure to observe for the protection of the interests of another person that degree of care, precaution, and vigilance which the circumstances justly demand, whereby such other person suffers injury. Under Article 1173 of the *Civil Code*, it consists of the "omission of that diligence which is required by the nature of the obligation and corresponds with the circumstances of the person, of the time and of the place."

3. **ID.; ID.; ID.; RESPONDENT INTERGAMES AS THE ORGANIZER OF A JUNIOR MARATHON WAS GUILTY OF NEGLIGENCE.—** We consider the "safeguards" employed and adopted by Intergames not adequate to meet the requirement of due diligence. For one, the police authorities specifically prohibited Intergames from blocking Don Mariano Marcos Highway in order not to impair road accessibility to the residential villages located beyond the IBP Lane. However, contrary to the findings of the CA, Intergames had a choice on where to stage the marathon, considering its admission of the sole responsibility for the conduct of the event, including the choice of location. x x x The chosen route (IBP Lane, on to Don Mariano Marcos Highway, and then to Quezon City Hall) was not the

only route appropriate for the marathon. In fact, Intergames came under no obligation to use such route especially considering that the participants, who were young and inexperienced runners, would be running alongside moving vehicles. x x x Based on the foregoing testimony of Castro, Jr., Intergames had full awareness of the higher risks involved in staging the race alongside running vehicles, and had the option to hold the race in a route where such risks could be minimized, if not eliminated. But it did not heed the danger already foreseen, if not expected, and went ahead with staging the race along the plotted route on Don Mariano Marcos Highway on the basis of its supposedly familiarity with the route. Such familiarity of the organizer with the route and the fact that previous races had been conducted therein without any untoward incident were not in themselves sufficient safeguards. The standards for avoidance of injury through negligence further required Intergames to establish that it did take adequate measures to avert the foreseen danger, but it failed to do so. Another failing on the part of Intergames was the patent inadequacy of the personnel to man the route. x x x Although the party relying on negligence as his cause of action had the burden of proving the existence of the same, Intergames' coordination and supervision of the personnel sourced from the cooperating agencies did not satisfy the diligence required by the relevant circumstances. In this regard, it can be pointed out that the number of deployed personnel, albeit sufficient to stage the marathon, did not *per se* ensure the safe conduct of the race without proof that such deployed volunteers had been properly coordinated and instructed on their tasks. x x x It is relevant to note that the participants of the 1st Pop Cola Junior Marathon were mostly minors aged 14 to 18 years joining a race of that kind for the first time. The combined factors of their youth, eagerness and inexperience ought to have put a reasonably prudent organizer on higher guard as to their safety and security needs during the race, especially considering Intergames' awareness of the risks already foreseen and of other risks already known to it as of similar events in the past organizer. x x x The circumstances of the persons, time and place required far more than what Intergames undertook in staging the race. Due diligence would have made a reasonably prudent organizer of the race participated in by young, inexperienced or beginner runners to conduct the race in a route suitably blocked off from vehicular traffic for the

safety and security not only of the participants but the motoring public as well. Since the marathon would be run alongside moving vehicular traffic, at the very least, Intergames ought to have seen to the constant and closer coordination among the personnel manning the route to prevent the foreseen risks from befalling the participants. But this it sadly failed to do.

4. **ID.; ID.; ID.; NEGLIGENCE, DEFINED; NEGLIGENCE AS THE PROXIMATE CAUSE OF THE DEATH OR INJURY, EXPLAINED.—** *Proximate cause* is "that which, in natural and continuous sequence, unbroken by any new cause, produces an event, and without which the event would not have occurred." x x x To be considered the proximate cause of the injury, the negligence need not be the event closest in time to the injury; a cause is still proximate, although farther in time in relation to the injury, if the happening of it set other foreseeable events into motion resulting ultimately in the damage. According to an authority on civil law: *"A prior and remote cause cannot be made the basis of an action, if such remote cause did nothing more than furnish the condition or give rise to the occasion by which the injury was made possible, if there intervened between such prior or remote cause and the injury a distinct, successive, unrelated and efficient cause, even though such injury would not have happened but for such condition or occasion. If no damage exists in the condition except because of the independent cause, such condition was not the proximate cause. And if an independent negligent act or defective condition sets into operation the circumstances which result in injury because of the prior defective condition, such act or condition is the proximate cause."*

5. **ID.; ID.; ID.; NEGLIGENCE OF RESPONDENT INTERGAMES WAS THE PROXIMATE CAUSE OF THE DEATH OF PETITIONERS' SON; NEGLIGENCE OF THE JEEPNEY DRIVER WAS NOT AN EFFICIENT INTERVENING CAUSE.—** An examination of the records in accordance with the foregoing concepts supports the conclusions that the negligence of Intergames was the proximate cause of the death of Rommel; and that the negligence of the jeepney driver was not an efficient intervening cause. First of all, Intergames' negligence in not conducting the race in a road blocked off from vehicular traffic, and in not properly coordinating the volunteer personnel manning the marathon route effectively

set the stage for the injury complained of. The submission that Intergames had previously conducted numerous safe races did not persuasively demonstrate that it had exercised due diligence because, as the trial court pointedly observed, "[t]hey were only lucky that no accident occurred during the previous marathon races but still the danger was there." Secondly, injury to the participants arising from an unfortunate vehicular accident on the route was an event known to and foreseeable by Intergames, which could then have been avoided if only Intergames had acted with due diligence by undertaking the race on a blocked-off road, and if only Intergames had enforced and adopted more efficient supervision of the race through its volunteers. And, thirdly, the negligence of the jeepney driver, albeit an intervening cause, was not efficient enough to break the chain of connection between the negligence of Intergames and the injurious consequence suffered by Rommel. An intervening cause, to be considered efficient, must be "*one not produced by a wrongful act or omission, but independent of it, and adequate to bring the injurious results. Any cause intervening between the first wrongful cause and the final injury which might reasonably have been foreseen or anticipated by the original wrongdoer is not such an efficient intervening cause as will relieve the original wrong of its character as the proximate cause of the final injury*." In fine, it was the duty of Intergames to guard Rommel against the foreseen risk, but it failed to do so.

6. **ID.; ID.; ID.; DOCTRINE OF ASSUMPTION OF RISK, EXPLAINED; ELEMENTS TO BE A VALID DEFENSE IN NEGLIGENCE CASES.—** The doctrine of assumption of risk means that one who voluntarily exposes himself to an obvious, known and appreciated danger assumes the risk of injury that may result therefrom. It rests on the fact that the person injured has *consented* to relieve the defendant of an obligation of conduct toward him and to take his chance of injury from a known risk, and whether the former has exercised proper caution or not is immaterial. In other words, it is based on voluntary consent, express or implied, to accept danger of a known and appreciated risk; it may sometimes include acceptance of risk arising from the defendant's negligence, but one does not ordinarily assume risk of any negligence which he does not know and appreciate. As a defense in negligence cases, therefore, the doctrine requires the concurrence of three elements, namely: (1) the plaintiff must know that the risk is

present; (2) he must further understand its nature; and (3) his choice to incur it must be free and voluntary. According to Prosser: "Knowledge of the risk is the watchword of assumption of risk."

7. **ID.; ID.; ID.; DOCTRINE OF ASSUMPTION OF RISK DOES NOT APPLY IN CASE AT BAR.—** Contrary to the notion of the CA, the concurrence of the three elements was not shown to exist. Rommel could not have assumed the risk of death when he participated in the race because death was neither a known nor normal risk incident to running a race. Although he had surveyed the route prior to the race and should be presumed to know that he would be running the race alongside moving vehicular traffic, such knowledge of the general danger was not enough, for some authorities have required that the knowledge must be of the specific risk that caused the harm to him. In theory, the standard to be applied is a subjective one, and should be geared to the particular plaintiff and his situation, rather than that of the reasonable person of ordinary prudence who appears in contributory negligence. He could not have appreciated the risk of being fatally struck by any moving vehicle while running the race. Instead, he had every reason to believe that the organizer had taken adequate measures to guard all participants against any danger from the fact that he was participating in an organized marathon. Stated differently, nobody in his right mind, including minors like him, would have joined the marathon if he had known of or appreciated the risk of harm or even death from vehicular accident while running in the organized running event. Without question, a marathon route safe and free from foreseeable risks was the reasonable expectation of every runner participating in an organized running event. Neither was the waiver by Rommel, then a minor, an effective form of express or implied consent in the context of the doctrine of assumption of risk. There is ample authority, cited in Prosser, to the effect that a person does not comprehend the risk involved in a known situation because of his youth, or lack of information or experience, and thus will not be taken to consent to assume the risk. Clearly, the doctrine of assumption of risk does not apply to bar recovery by the petitioners.

8. **ID.; ID.; ID.; RESPONDENT COSMOS' MERE SPONSORSHIP OF THE MARATHON WAS TOO REMOTE TO BE THE EFFICIENT AND PROXIMATE CAUSE OF THE**

INJURIOUS CONSEQUENCES.— The sponsorship of the marathon by Cosmos was limited to financing the race. Cosmos did nothing beyond that, and did not involve itself at all in the preparations for the actual conduct of the race. x x x We uphold the finding by the CA that the role of Cosmos was to pursue its corporate commitment to sports development of the youth as well as to serve the need for advertising its business. In the absence of evidence showing that Cosmos had a hand in the organization of the race, and took part in the determination of the route for the race and the adoption of the action plan, including the safety and security measures for the benefit of the runners, we cannot but conclude that the requirement for the direct or immediate causal connection between the financial sponsorship of Cosmos and the death of Rommel simply did not exist. Indeed, Cosmos' mere sponsorship of the race was, legally speaking, too remote to be the efficient and proximate cause of the injurious consequences.

9. **ID.; ID.; ID.; LOSS OF EARNING CAPACITY AWARDED TO PETITIONERS FOR THE DEATH OF THEIR NON-WORKING SON; BASIS OF THE COMPUTATION IS THE MINIMUM WAGE AT THE TIME OF HIS DEATH.—** The RTC did not recognize the right of the petitioners to recover the loss of earning capacity of Rommel. It should have, for doing so would have conformed to jurisprudence whereby the Court has unhesitatingly allowed such recovery in respect of children, students and other non-working or still unemployed victims. The legal basis for doing so is Article 2206 (1) of the *Civil Code*, which stipulates that the defendant "*shall be liable for the loss of the earning capacity of the deceased, and the indemnity shall be paid to the heirs of the latter; such indemnity shall in every case be assessed and awarded by the court, unless the deceased on account of permanent physical disability not caused by the defendant, had no earning capacity at the time of his death.*" Indeed, damages for loss of earning capacity may be awarded to the heirs of a deceased non-working victim simply because earning capacity, not necessarily actual earning, may be lost. x x x The petitioners sufficiently showed that Rommel was, at the time of his untimely but much lamented death, able-bodied, in good physical and mental state, and a student in good standing. It should be reasonable to assume that Rommel would have finished his schooling and would turn out to be a useful and productive person had he not died. Under

the foregoing jurisprudence, the petitioners should be compensated for losing Rommel's power or ability to earn. The basis for the computation of earning capacity is not what he would have become or what he would have wanted to be if not for his untimely death, but the minimum wage in effect at the time of his death. The formula for this purpose is: Net Earning Capacity = Life Expectancy x [Gross Annual Income less Necessary Living Expenses] Life expectancy is equivalent to 2/3 multiplied by the difference of 80 and the age of the deceased. Since Rommel was 18 years of age at the time of his death, his life expectancy was 41 years. His projected gross annual income, computed based on the minimum wage for workers in the non-agricultural sector in effect at the time of his death, then fixed at ₱14.00/day, is ₱5,535.83. Allowing for necessary living expenses of 50% of his projected gross annual income, his total net earning capacity is ₱113,484.52.

10. **ID.; ID.; ID.; INTEREST AS PART OF DAMAGES AND ATTORNEY'S FEES, AWARDED.—** Article 2211 of the *Civil Code* expressly provides that interest, as a part of damages, may be awarded in crimes and quasi-delicts at the discretion of the court. The rate of interest provided under Article 2209 of the *Civil Code* is 6% *per annum* in the absence of stipulation to the contrary. The legal interest rate of 6% *per annum* is to be imposed upon the total amounts herein awarded from the time of the judgment of the RTC on May 10, 1991 until finality of judgment. Moreover, pursuant to Article 2212 of the *Civil Code*, the legal interest rate of 6% *per annum* is to be further imposed on the interest earned up to the time this judgment of the Court becomes final and executory until its full satisfaction. Article 2208 of the *Civil Code* expressly allows the recovery of attorney's fees and expenses of litigation when exemplary damages have been awarded. Thus, we uphold the RTC's allocation of attorney's fees in favor of the petitioners equivalent to 10% of the total amount to be recovered, inclusive of the damages for loss of earning capacity and interests, which we consider to be reasonable under the circumstances.

APPEARANCES OF COUNSEL

Angara Abello Concepcion Regala & Cruz for petitioners.

Sycip Salazar Hernandez & Gatmaitan for respondent Intergames, Inc.

Quiazon Makalintal Barot Torres & Ibarra for respondent Cosmos Bottling Company.

D E C I S I O N

BERSAMIN, *J.*:

This case involves a claim for damages arising from the negligence causing the death of a participant in an organized marathon bumped by a passenger jeepney on the route of the race. The issues revolve on whether the organizer and the sponsor of the marathon were guilty of negligence, and, if so, was their negligence the proximate cause of the death of the participant; on whether the negligence of the driver of the passenger jeepney was an efficient intervening cause; on whether the doctrine of assumption of risk was applicable to the fatality; and on whether the heirs of the fatality can recover damages for loss of earning capacity of the latter who, being then a minor, had no gainful employment.

The Case

By this appeal, the parents of the late Rommel Abrogar (Rommel), a marathon runner, seek the review and reversal of the decision promulgated on March 10, 2004,[1] whereby the Court of Appeals (CA) reversed and set aside the judgment rendered in their favor on May 10, 1991 by the Regional Trial Court (RTC), Branch 83, in Quezon City[2] finding and declaring respondents Cosmos Bottling Company (Cosmos), a domestic soft-drinks company whose products included Pop Cola, and Intergames, Inc. (Intergames), also a domestic corporation organizing and supervising the "1st Pop Cola Junior Marathon" held on June 15, 1980 in Quezon City, solidarily liable for damages arising from the untimely death of Rommel, then a

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[1] *Rollo*, pp. 49-78; penned by Associate Justice Renato C. Dacudao (retired), with the concurrence of Presiding Justice Cancio C. Garcia (later a Member of the Court) and Associate Justice Danilo B. Pine (retired).

[2] *Id*. at 169-179; penned by Presiding Judge Estrella T. Estrada.

minor 18 years of age,[3] after being bumped by a recklessly driven passenger jeepney along the route of the marathon.

Antecedents

The CA narrated the antecedents in the assailed judgment,[4] *viz.*:

> [T]o promote the sales of "Pop Cola", defendant Cosmos, jointly with Intergames, organized an endurance running contest billed as the "1st Pop Cola Junior Marathon" scheduled to be held on June 15, 1980. The organizers plotted a 10-kilometer course starting from the premises of the Interim Batasang Pambansa (IBP for brevity), through public roads and streets, to end at the Quezon Memorial Circle. Plaintiffs' son Rommel applied with the defendants to be allowed to participate in the contest and after complying with defendants' requirements, his application was accepted and he was given an official number. Consequently, on June 15, 1980 at the designated time of the marathon, Rommel joined the other participants and ran the course plotted by the defendants. As it turned out, the plaintiffs' (sic) further alleged, the defendants failed to provide adequate safety and precautionary measures and to exercise the diligence required of them by the nature of their undertaking, in that they failed to insulate and protect the participants of the marathon from the vehicular and other dangers along the marathon route. Rommel was bumped by a jeepney that was then running along the route of the marathon on Don Mariano Marcos Avenue (DMMA for brevity), and in spite of medical treatment given to him at the Ospital ng Bagong Lipunan, he died later that same day due to severe head injuries.

On October 28, 1980, the petitioners sued the respondents in the then Court of First Instance of Rizal (Quezon City) to recover various damages for the untimely death of Rommel (*i.e.*, actual and compensatory damages, loss of earning capacity,

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[3] Note that the incident subject of this case occurred prior to the enactment of Republic Act No. 6809 (*An Act Lowering the Age of Majority from Twenty One to Eighteen Years, Amending for the Purpose Executive Order Numbered Two Hundred Nine, and for Other Purposes*). Effective on December 13, 1989.

[4] *Rollo*, p. 50.

moral damages, exemplary damages, attorney's fees and expenses of litigation).[5]

Cosmos denied liability, insisting that it had not been the organizer of the marathon, but only its sponsor; that its participation had been limited to providing financial assistance to Intergames;[6] that the financial assistance it had extended to Intergames, the sole organizer of the marathon, had been in answer to the Government's call to the private sector to help promote sports development and physical fitness;[7] that the petitioners had no cause of action against it because there was no privity of contract between the participants in the marathon and Cosmos; and that it had nothing to do with the organization, operation and running of the event.[8]

As counterclaim, Cosmos sought attorney's fees and expenses of litigation from the petitioners for their being unwarrantedly included as a defendant in the case. It averred a cross-claim against Intergames, stating that the latter had guaranteed to hold Cosmos "completely free and harmless from any claim or action for liability for any injuries or bodily harm which may be sustained by any of the entries in the '1st Pop Cola Junior Marathon' or for any damage to the property or properties of third parties, which may likewise arise in the course of the race."[9] Thus, Cosmos sought to hold Intergames solely liable should the claim of the petitioners prosper.[10]

On its part, Intergames asserted that Rommel's death had been an accident exclusively caused by the negligence of the jeepney driver; that it was not responsible for the accident; that as the marathon organizer, it did not assume the

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[5] Records, Vol. I, pp. 1-6.

[6] *Id*. at 17-18.

[7] *Id*. at 18.

[8] *Id*.

[9] *Id*. at 19-20.

[10] *Id*.

responsibilities of an insurer of the safety of the participants; that it nevertheless caused the participants to be covered with accident insurance, but the petitioners refused to accept the proceeds thereof;[11] that there could be no cause of action against it because the acceptance and approval of Rommel's application to join the marathon had been conditioned on his waiver of all rights and causes of action arising from his participation in the marathon;[12] that it exercised due diligence in the conduct of the race that the circumstances called for and was appropriate, it having availed of all its know-how and expertise, including the adoption and implementation of all known and possible safety and precautionary measures in order to protect the participants from injuries arising from vehicular and other forms of accidents;[13] and, accordingly, the complaint should be dismissed.

In their reply and answer to counterclaim, the petitioners averred that contrary to its claims, Intergames did not provide adequate measures for the safety and protection of the race participants, considering that motor vehicles were traversing the race route and the participants were made to run along the flow of traffic, instead of against it; that Intergames did not provide adequate traffic marshals to secure the safety and protection of the participants;[14] that Intergames could not limit its liability on the basis of the accident insurance policies it had secured to cover the race participants; that the waiver signed by Rommel could not be a basis for denying liability because the same was null and void for being contrary to law, morals, customs and public policy;[15] that their complaint sufficiently stated a cause of action because in no way could they be held liable for attorney's fees, litigation expenses or any other relief

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[11] *Id.* at 33-34.

[12] *Id.*

[13] *Id.*

[14] *Id.* at 42-43.

[15] *Id.*

due to their having abided by the law and having acted honestly, fairly, in good faith by according to Intergames its due, as demanded by the facts and circumstances.[16]

At the pre-trial held on April 12, 1981, the parties agreed that the principal issue was whether or not Cosmos and Intergames were liable for the death of Rommel because of negligence in conducting the marathon.[17]

Judgment of the RTC

In its decision dated May 10, 1991,[18] the RTC ruled as follows:

> WHEREFORE, judgment is hereby rendered in favor of plaintiffs-spouses Romulo Abrogar and Erlinda Abrogar and against defendants Cosmos Bottling Company, Inc. and Intergames, Inc., ordering both defendants, jointly and severally, to pay and deliver to the plaintiffs the amounts of Twenty Eight Thousand Sixty One Pesos and Sixty Three Centavos (₱28,061.63) as actual damages; One Hundred Thousand Pesos (₱100,000.00) as moral damages; Fifty Thousand Pesos (₱50,000.00) as exemplary damages and Ten Percent (10%) of the total amount of One Hundred Seventy Eight Thousand Sixty One Pesos and Sixty Three Centavos (₱178,061,63) or Seventeen Thousand Eight Hundred Six Pesos and Sixteen Centavos (₱17,806.16) as attorney's fees.
>
> On the cross-claim of defendant Cosmos Bottling Company, Inc., defendant Intergames, Inc, is hereby ordered to reimburse to the former any and all amounts which may be recovered by the plaintiffs from it by virtue of this Decision.
>
> SO ORDERED.

The RTC observed that the safeguards allegedly instituted by Intergames in conducting the marathon had fallen short of the yardstick to satisfy the requirements of due diligence as called for by and appropriate under the circumstances; that the accident had happened because of inadequate preparation and

[16] *Id*. at 44.

[17] Records, Vol. I, p. 58.

[18] *Supra* note 2, at 178-179.

Intergames' failure to exercise due diligence;[19] that the respondents could not be excused from liability by hiding behind the waiver executed by Rommel and the permission given to him by his parents because the waiver could only be effective for risks inherent in the marathon, such as stumbling, heat stroke, heart attack during the race, severe exhaustion and similar occurrences;[20] that the liability of the respondents towards the participants and third persons was solidary, because Cosmos, the sponsor of the event, had been the principal mover of the event, and, as such, had derived benefits from the marathon that in turn had carried responsibilities towards the participants and the public; that the respondents' agreement to free Cosmos from any liability had been an agreement binding only between them, and did not bind third persons; and that Cosmos had a cause of action against Intergames for whatever could be recovered by the petitioners from Cosmos.[21]

Decision of the CA

All the parties appealed to the CA.

The petitioners contended that the RTC erred in not awarding damages for loss of earning capacity on the part of Rommel for the reason that such damages were not recoverable due to Rommel not yet having finished his schooling; and that it would be premature to award such damages upon the assumption that he would finish college and be gainfully employed.[22]

On their part, Cosmos and Intergames separately raised essentially similar errors on the part of the RTC, to wit: (1) in holding them liable for the death of Rommel; (2) in finding them negligent in conducting the marathon; (3) in holding that Rommel and his parents did not assume the risks of the marathon; (4) in not holding that the sole and proximate cause of the death

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[19] *Id*. at 175-177.

[20] *Id*. at 177.

[21] *Id*.

[22] CA *rollo*, p. 30.

of Rommel was the negligence of the jeepney driver; and (5) in making them liable, jointly and solidarily, for damages, attorney's fees and expenses of litigation.[23]

The CA reduced the issues to four, namely:

1. Whether or not appellant Intergames was negligent in its conduct of the "1st Pop Cola Junior Marathon" held on June 15, 1980 and if so, whether its negligence was the proximate cause of the death of Rommel Abrogar.

2. Whether or not appellant Cosmos can be held jointly and solidarily liable with appellant Intergames for the death of Rommel Abrogar, assuming that appellant Intergames is found to have been negligent in the conduct of the Pop Cola marathon and such negligence was the proximate cause of the death of Rommel Abrogar.

3. Whether or not the appellants Abrogar are entitled to be compensated for the "loss of earning capacity" of their son Rommel.

4. Whether or not the appellants Abrogar are entitled to the actual, moral, and exemplary damages granted to them by the Trial Court.[24]

In its assailed judgment promulgated on March 10, 2004,[25] the CA ruled as follows:

As to the first issue, this Court finds that appellant Intergames was not negligent in organizing the said marathon.

Negligence is the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct to human affairs, would do, or doing something which a prudent and reasonable man would not do.

The whole theory of negligence presuppose some uniform standard of behavior which must be an external and objective one, rather than the individual judgment good or bad, of the particular actor; it must be, as far as possible, the same for all persons; and at the same time make proper allowance for the risk apparent to the actor for his capacity to meet it, and for the circumstances under which he must act.

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

[24] *Rollo,* pp. 70-71.

[25] *Supra* note 1.

The question as to what would constitute the conduct of a prudent man in a given situation must of course be always determined in the light of human experience and of the acts involved in the particular case.

In the case at bar, the trial court erred in finding that the appellant Intergames failed to satisfy the requirements of due diligence in the conduct of the race.

The trial court in its decision said that the accident in question could have been avoided if the route of the marathon was blocked off from the regular traffic, instead of allowing the runners to run together with the flow of traffic. Thus, the said court considered the appellant Intergames at fault for proceeding with the marathon despite the fact that the Northern Police District, MPF, Quezon City did not allow the road to be blocked off from traffic.

This Court finds that the standard of conduct used by the trial court is not the ordinary conduct of a prudent man in such a given situation. According to the said court, the only way to conduct a safe road race is to block off the traffic for the duration of the event and direct the cars and public utilities to take alternative routes in the meantime that the marathon event is being held. Such standard is too high and is even inapplicable in the case at bar because, there is no alternative route from IBP to Don Mariano Marcos to Quezon City Hall.

The Civil Code provides that if the law or contract does not state the diligence which is to be observed in the performance of an obligation that which is expected of a good father of the family shall only be required. Accordingly, appellant Intergames is only bound to exercise the degree of care that would be exercised by an ordinarily careful and prudent man in the same position and circumstances and not that of the cautious man of more than average prudence. Hence, appellant Intergames is only expected to observe ordinary diligence and not extraordinary diligence.

In this case, the marathon was allowed by the Northern Police District, MPF, Quezon City on the condition that the road should not be blocked off from traffic. Appellant Intergames had no choice. It had to comply with it or else the said marathon would not be allowed at all.

The trial court erred in contending that appellant Intergames should have looked for alternative places in Metro Manila given the condition

set by the Northern Police District, MPF, Quezon City; precisely because as Mr. Jose Castro has testified the said route was found to be the best route after a careful study and consideration of all the factors involved. Having conducted several marathon events in said route, appellant Intergames as well as the volunteer groups and the other agencies involved were in fact familiar with the said route. And assuming that there was an alternative place suitable for the said race, the question is would they be allowed to block off the said road from traffic?

Also, the trial court erred in stating that there was no adequate number of marshals, police officers and personnel to man the race so as to prevent injury to the participants.

The general rule is that the party who relies on negligence for his cause of action has the burden of proving the existence of the same, otherwise his action fails.

Here, the appellants-spouses failed to prove that there was inadequate number of marshals, police officers, and personnel because they failed to prove what number is considered adequate.

This court considers that seven (7) traffic operatives, five (5) motorcycle policemen, fifteen (15) patrolmen deployed along the route, fifteen (15) boyscouts, twelve (12) CATs, twenty (20) barangay tanods, three (3) ambulances and three (3) medical teams were sufficient to stage a safe marathon.

Moreover, the failure of Mr. Jose R. Castro, Jr. to produce records of the lists of those constituting the volunteer help during the marathon is not fatal to the case considering that one of the volunteers, Victor Landingin of the Citizens Traffic Action (CTA) testified in court that CTA fielded five units on June 15, 1980, assigned as follows: (1) at the sphere head; (2) at the finish line; (3) tail ender;(4) & (5) roving.

The trial court again erred in concluding that the admission of P/Lt. Jesus Lipana, head of the traffic policemen assigned at the marathon, that he showed up only at the finish line means that he did not bother to check on his men and did not give them appropriate instructions. P/Lt. Lipana in his testimony explained that he did not need to be in the start of the race because he had predesignated another capable police officer to start the race.

In addition, this Court finds that the precautionary measures and preparations adopted by appellant Intergames were sufficient considering the circumstances surrounding the case.

Appellant Intergames, using its previous experiences in conducting safe and successful road races, took all the necessary precautions and made all the preparations for the race. The initial preparations included: determination of the route to be taken; and an ocular inspection of the same to see if it was well-paved, whether it had less corners for easy communication and coordination, and whether it was wide enough to accommodate runners and transportation. Appellant Intergames choose the Don Mariano Marcos Avenue primarily because it was well-paved; had wide lanes to accommodate runners and vehicular traffic; had less corners thus facilitating easy communication and coordination among the organizers and cooperating agencies; and was familiar to the race organizers and operating agencies. The race covered a ten-kilometer course from the IBP lane to the Quezon City Hall Compound passing through the Don Mariano Marcos Avenue, which constituted the main stretch of the route. Appellant Intergames scheduled the marathon on a Sunday morning, when traffic along the route was at its lightest. Permission was sought from the then Quezon City Mayor Adelina Rodriguez for the use of the Quezon City Hall Grandstand and the street fronting it as the finish line. Police assistance was also obtained to control and supervise the traffic. The Quezon City Traffic Detachment took charge of traffic control by assigning policemen to the traffic route. The particular unit assigned during the race underwent extensive training and had been involved in past marathons, including marathons in highly crowded areas. The Philippine Boy Scouts tasked to assist the police and monitor the progress of the race; and Citizens Traffic Action Group tasked with the monitoring of the race, which assigned five units consisting of ten operatives, to provide communication and assistance were likewise obtained. Finally, medical equipments and personnel were also requested from Camp Aguinaldo, the Philippine Red Cross and the Hospital ng Bagong Lipunan.

Neither does this Court find the appellant Intergames' conduct of the marathon the proximate cause of the death of Rommel Abrogar. Proximate cause has been defined as that which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces injury, and without which the result would not have occurred.

It appears that Rommel Abrogar, while running on Don Mariano Marcos Avenue and after passing the Philippine Atomic Energy Commission Building, was bumped by a jeepney which apparently was racing against a minibus and the two vehicles were trying to

crowd each other. In fact, a criminal case was filed against the jeepney driver by reason of his having killed Rommel Abrogar.

This proves that the death of Rommel Abrogar was caused by the negligence of the jeepney driver. Rommel Abrogar cannot be faulted because he was performing a legal act; the marathon was conducted with the permission and approval of all the city officials involved. He had the right to be there. Neither can the appellant Intergames be faulted, as the organizer of the said marathon, because it was not negligent in conducting the marathon.

Given the facts of this case, We believe that no amount of precaution can prevent such an accident. Even if there were fences or barriers to separate the lanes for the runners and for the vehicles, it would not prevent such an accident in the event that a negligent driver loses control of his vehicle. And even if the road was blocked off from traffic, it would still not prevent such an accident, if a jeepney driver on the other side of the road races with another vehicle loses control of his wheel and as a result hits a person on the other side of the road. Another way of saying this is: A defendant's tort cannot be considered a legal cause of plaintiff's damage if that damage would have occurred just the same even though the defendant's tort had not been committed.

This Court also finds the doctrine of assumption of risk applicable in the case at bar. As explained by a well-known authority on torts:

> "The general principle underlying the defense of assumption of risk is that a plaintiff who voluntarily assumes a risk of harm arising from the negligent or reckless conduct of the defendant cannot recover for such harm. The defense may arise where a plaintiff, by contract or otherwise, expressly agrees to accept a risk or harm arising from the defendant's conduct, or where a plaintiff who fully understands a risk or harm caused by the defendant's conduct, or by a condition created by the defendant, voluntarily chooses to enter or remain, or to permit his property to enter or remain, within the area of such risk, under circumstances manifesting his willingness to accept the risk.
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> "Assumption of the risk in its primary sense arises by assuming through contract, which may be implied, the risk of a known danger. Its essence is venturousness. It implies intentional exposure to a known danger; It embraces a mental state of

> willingness; It pertains to the preliminary conduct of getting into a dangerous employment or relationship, it means voluntary incurring the risk of an accident, which may or may not occur, and which the person assuming the risk may be careful to avoid; and it defeats recovery because it is a previous abandonment of the right to complain if an accident occurs.
>
> "Of course, if the defense is predicated upon an express agreement the agreement must be valid, and in the light of this qualification the rule has been stated that a plaintiff who, by contract or otherwise, expressly agreed to accept a risk of harm arising from the defendant's negligent or reckless conduct, cannot recover for such harm unless the agreement is invalid as contrary to public policy.
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> x x x x x x x x x
>
> "The defense of assumption of risk presupposes: (1) that the plaintiff had actual knowledge of the danger; (2) that he understood and appreciated the risk from the danger; and (3) that he voluntarily exposed himself to such risk. x x x
>
> "The term 'risk' as used in this connection applies to known dangers, and not to things from which danger may possibly flow. The risk referred to is the particular risk, or one of the risks, which the plaintiff accepted within the context of the situation in which he placed himself and the question is whether the specific conduct or condition which caused the injury was such a risk."

In this case, appellant Romulo Abrogar himself admitted that his son, Rommel Abrogar, surveyed the route of the marathon and even attended a briefing before the race. Consequently, he was aware that the marathon would pass through a national road and that the said road would not be blocked off from traffic. And considering that he was already eighteen years of age, had voluntarily participated in the marathon, with his parents' consent, and was well aware of the traffic hazards along the route, he thereby assumed all the risks of the race. This is precisely why permission from the participant's parents, submission of a medical certificate and a waiver of all rights and causes of action arising from the participation in the marathon which the participant or his heirs may have against appellant Intergames were required as conditions in joining the marathon.

In the decision of the trial court, it stated that the risk mentioned in the waiver signed by Rommel Abrogar only involved risks such as stumbling, suffering heatstroke, heart attack and other similar risks. It did not consider vehicular accident as one of the risks included in the said waiver.

This Court does not agree. With respect to voluntary participation in a sport, the doctrine of assumption of risk applies to any facet of the activity inherent in it and to any open and obvious condition of the place where it is carried on. We believe that the waiver included vehicular accidents for the simple reason that it was a road race run on public roads used by vehicles. Thus, it cannot be denied that vehicular accidents are involved. It was not a track race which is held on an oval and insulated from vehicular traffic. In a road race, there is always the risk of runners being hit by motor vehicles while they train or compete. That risk is inherent in the sport and known to runners. It is a risk they assume every time they voluntarily engage in their sport.

Furthermore, where a person voluntarily participates in a lawful game or contest, he assumes the ordinary risks of such game or contest so as to preclude recovery from the promoter or operator of the game or contest for injury or death resulting therefrom. Proprietors of amusements or of places where sports and games are played are not insurers of safety of the public nor of their patrons.

In Mc Leod Store *v*. Vinson 213 Ky 667, 281 SW 799 (1926), it was held that a boy, seventeen years of age, of ordinary intelligence and physique, who entered a race conducted by a department store, the purpose of which was to secure guinea fowl which could be turned in for cash prizes, had assumed the ordinary risks incident thereto and was barred from recovering against the department store for injuries suffered when, within catching distance, he stopped to catch a guinea, and was tripped or stumbled and fell to the pavement, six or eight others falling upon him. The court further said: "In this (the race) he was a voluntary participant. xxx The anticipated danger was as obvious to him as it was to appellant (the department store). While not an adult, he was practically 17 years of age, of ordinary intelligence, and perfectly able to determine the risks ordinarily incident to such games. An ordinary boy of that age is practically as well advised as to the hazards of baseball, basketball, football, foot races and other games of skill and endurance as is an adult x x x."

In the case at bar, the "1st Pop Cola Junior Marathon" held on June 15, 1980 was a race the winner of which was to represent the

country in the annual Spirit of Pheidippides Marathon Classic in Greece, if he equals or breaks the 29-minute mark for the 10-km. race. Thus, Rommel Abrogar having voluntarily participated in the race, with his parents' consent, assumed all the risks of the race.

Anent the second issue, this Court finds that appellant Cosmos must also be absolved from any liability in the instant case.

This Court finds that the trial court erred in holding appellant Cosmos liable for being the principal mover and resultant beneficiary of the event.

In its decision it said that in view of the fact that appellant Cosmos will be deriving certain benefits from the marathon event, it has the responsibility to ensure the safety of all the participants and the public. It further said that the stipulations in the contract entered into by the two appellants, Cosmos and Intergames, relieving the former from any liability does not bind third persons.

This Court does not agree with the reasoning of the trial court. The sponsorship contract entered between appellant Cosmos and appellant Intergames specifically states that:

> 1. COSMOS BOTTLING CORPORATION shall pay INTERGAMES the amount of FIFTY FIVE THOUSAND PESOS (₱55,000.00) representing full sponsorship fee and in consideration thereof, INTERGAMES shall organize and stage a marathon race to be called '1st POP COLA JUNIOR MARATHON.
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> x x x x x x x x x
>
> 3. INTERGAMES shall draw up all the rules of the marathon race, eligibility requirements of participants as well as provide all the staff required in the organization and actual staging of the race. It is understood that all said staff shall be considered under the direct employ of INTERGAMES which shall have full control over them.
>
> x x x x x x x x x
>
> 5. INTERGAMES shall secure all the necessary permits, clearances, traffic and police assistance in all the areas covered by the entire route of the '1st POP COLA JUNIOR MARATHON.
>
> 12. INTERGAMES shall hold COSMOS BOTTLING CORPORATION, completely free and harmless from any claim

> or action for liability for any injuries or bodily harm which may be sustained by any of the entries in the '1st POP COLA JUNIOR MARATHON', or for any damages to the property or properties of third parties, which may likewise arise in the course of the race.

From the foregoing, it is crystal clear that the role of the appellant Cosmos was limited to providing financial assistance in the form of sponsorship. Appellant Cosmos' sponsorship was merely in pursuance to the company's commitment for sports development of the youth as well as for advertising purposes. The use of the name Cosmos was done for advertising purposes only; it did not mean that it was an organizer of the said marathon. As pointed out by Intergames' President, Jose Castro Jr., appellant Cosmos did not even have the right to suggest the location and the number of runners.

To hold a defendant liable for torts, it must be clearly shown that he is the proximate cause of the harm done to the plaintiff. The nexus or connection of the cause and effect, between a negligent act and the damage done, must be established by competent evidence.

In this case, appellant Cosmos was not negligent in entering into a contract with the appellant Intergames considering that the record of the latter was clean and that it has conducted at least thirty (30) road races.

Also there is no direct or immediate causal connection between the financial sponsorship and the death of Rommel Abrogar. The singular act of providing financial assistance without participating in any manner in the conduct of the marathon cannot be palmed off as such proximate cause. In fact, the appellant spouses never relied on any representation that Cosmos organized the race. It was not even a factor considered by the appellants-spouses in allowing their son to join said marathon.

In view of the fact that both defendants are not liable for the death of Rommel Abrogar, appellants-spouses are not entitled to actual, moral, exemplary damages as well as for the "loss of earning capacity" of their son. The third and fourth issues are thus moot and academic.

UPON THE VIEW WE TAKE OF THIS CASE, THUS, the judgment appealed from must be, as it hereby is, **REVERSED and**

SET ASIDE, and another entered **DISMISSING** the complaint a quo. The appellants shall bear their respective costs.

SO ORDERED.[26]

Issues

In this appeal, the petitioners submit that the CA gravely erred:

A.

x x x in reversing the RTC Decision, (and) in holding that respondent Intergames was not negligent considering that:

1. Respondent Intergames failed to exercise the diligence of a good father of the family in the conduct of the marathon in that it did not block off from traffic the marathon route; and

2. Respondent Intergames' preparations for the race, including the number of marshal during the marathon, were glaringly inadequate to prevent the happening of the injury to its participants.

B.

x x x in reversing the RTC Decision, (and) in holding that the doctrine of assumption of risk finds application to the case at bar even though getting hit or run over by a vehicle is not an inherent risk in a marathon race. Even assuming *arguendo* that deceased Abrogar made such waiver as claimed, still there can be no valid waiver of one's right to life and limb for being against public policy.

C.

x x x in reversing the RTC Decision, (and) in absolving respondent Cosmos from liability to petitioners on the sole ground that respondent Cosmos' contract with respondent Intergames contained a stipulation exempting the former from liability.

D.

x x x in reversing the RTC Decision and consequently holding respondents free from liability, (and) in not awarding petitioners with actual, moral and exemplary damages for the death of their child, Rommel Abrogar.[27]

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[26] *Rollo,* pp. 71-77.

[27] *Id.* at 27.

Ruling of the Court

The appeal is partly meritorious.

I

Review of factual issues is allowed because of the conflict between the findings of fact by the RTC and the CA on the issue of negligence

The petitioners contend that Intergames was negligent; that Cosmos as the sponsor and Intergames as the organizer of the marathon both had the obligation to provide a reasonably safe place for the conduct of the race by blocking the route of the race from vehicular traffic and by providing adequate manpower and personnel to ensure the safety of the participants; and that Intergames had foreseen the harm posed by the situation but had not exercised the diligence of a good father of a family to avoid the risk;[28] hence, for such omission, Intergames was negligent.[29]

Refuting, Cosmos and Intergames submit that the latter as the organizer was not negligent because it had undertaken all the precautionary measures to ensure the safety of the race; and that there was no duty on the part of the latter as the organizer to keep a racecourse "free and clear from reasonably avoidable elements that would [occasion] or have the probable tendency, to occasion injury."[30]

The issue of whether one or both defendants were negligent is a mixed issue of fact and law. Does this not restrict the Court against reviewing the records in this appeal on *certiorari* in order to settle the issue?

The Court can proceed to review the factual findings of the CA as an exception to the general rule that it should not review issues of fact on appeal on *certiorari*. We have recognized

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[28] *Id*. at 32.

[29] *Id*. at 31, 33.

[30] *Id*. at 513.

exceptions to the rule that the findings of fact of the CA are conclusive and binding in the following instances: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[31] Considering that the CA arrived at factual findings contrary to those of the trial court, our review of the records in this appeal should have to be made.

Negligence is the failure to observe for the protection of the interests of another person that degree of care, precaution, and vigilance which the circumstances justly demand, whereby such other person suffers injury.[32] Under Article 1173 of the *Civil Code*, it consists of the "omission of that diligence which is required by the nature of the obligation and corresponds with

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[31] *Pilipinas Shell Petroleum Corporation v. Gobonseng*, *Jr.*, G.R. No. 163562, July 21, 2006, 496 SCRA 305, 316; *Sta. Maria v. Court of Appeals*, G. R. No. 127549, January 28, 1998, 285 SCRA 351, 357-358; *Fuentes v. Court of Appeals*, G. R. No. 109849, February 26, 1997, 268 SCRA 703, 708-709; *Reyes v. Court of Appeals*, G. R. No. 110207, July 11, 1996, 258 SCRA 651, 659; *Floro v. Llenado*, G.R. No. 75723, June 2, 1995, 244 SCRA 713, 720; *Remalante v. Tibe*, No. 59514, February 25, 1988, 158 SCRA 138, 145-146.

[32] *Philippine National Railways v. Vizcara,* G.R. No. 190022, February 15, 2012, 666 SCRA 363, 374; citing *Layugan v. Intermediate Appellate Court*, No. 73998, November 14, 1988, 167 SCRA 363, 372-373.

the circumstances of the person, of the time and of the place."[33] The *Civil Code* makes liability for negligence clear under Article 2176,[34] and Article 20.[35]

To determine the existence of negligence, the following time-honored test has been set in *Picart v. Smith*:[36]

The test by which to determine the existence of negligence in a particular case may be stated as follows: **Did the defendant in doing the alleged negligent act use that reasonable care and caution which an ordinarily prudent person would have used in the same situation? If not, then he is guilty of negligence.** The law here in effect adopts the standard supposed to be supplied by the imaginary conduct of the discreet *paterfamilias* of the Roman law. The existence of negligence in a given case is not determined by reference to the personal judgment of the actor in the situation before him. The law considers what would be reckless, blameworthy, or negligent in the man of ordinary intelligence and prudence and determines liability by that.

The question as to what would constitute the conduct of a prudent man in a given situation must of course be always determined in the light of human experience and in view of the facts involved in the particular case. Abstract speculation cannot here be of much value but this much can be profitably said: Reasonable men govern their conduct by the circumstances which are before them or known to them. They are not, and are not supposed to be, omniscient of the future. Hence they can be expected to take care only when there is something before them to suggest or warn of danger. **Could a prudent**

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[33] Art. 1173. The fault or negligence of the obligor consists in the omission of that diligence which is required by the nature of the obligation and corresponds with the circumstances of the person, of the time and of the place. When negligence shows bad faith, the provision of Articles 1171 and 2201, paragraph 2, shall apply.

[34] Art. 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called quasi-delict and is governed by the provisions of this Chapter.

[35] Art. 20. Every person who, contrary to law, wilfully or negligently causes damage to another, shall indemnify the latter for the same.

[36] 37 Phil. 809 (1918).

man, in the case under consideration, foresee harm as a result of the course actually pursued? If so, it was the duty of the actor to take precautions to guard against that harm. Reasonable foresight of harm, followed by the ignoring of the suggestion born of this prevision, is always necessary before negligence can be held to exist. Stated in these terms, the proper criterion for determining the existence of negligence in a given case is this: Conduct is said to be negligent when a prudent man in the position of the tortfeasor would have foreseen that an effect harmful to another was sufficiently probable to warrant his foregoing the conduct or guarding against its consequences.[37] (bold underscoring supplied for emphasis)

A careful review of the evidence presented, particularly the testimonies of the relevant witnesses, in accordance with the foregoing guidelines reasonably leads to the conclusion that the safety and precautionary measures undertaken by Intergames were short of the diligence demanded by the circumstances of persons, time and place under consideration. Hence, Intergames as the organizer was guilty of negligence.

The race organized by Intergames was a junior marathon participated in by young persons aged 14 to 18 years. It was plotted to cover a distance of 10 kilometers, starting from the IBP Lane,[38] then going towards the Batasang Pambansa, and on to the circular route towards the Don Mariano Marcos Highway,[39] and then all the way back to the Quezon City Hall compound where the finish line had been set.[40] In staging the event, Intergames had no employees of its own to man the race,[41] and relied only on the "cooperating agencies" and volunteers who had worked with it in previous races.[42] The cooperating

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[37] *Id*. at 813.

[38] Now called Batasan Road.

[39] Now called Commonwealth Avenue.

[40] TSN, September 4, 1984, p. 5.

[41] According to Castro, Jr., Intergames had only two employees: himself as President (TSN, September 4, 1984, pp. 13-14); and his wife as the Project Coordinator (TSN, April 12, 1985, p. 4).

[42] *Id*.

agencies included the Quezon City police, barangay *tanods*, volunteers from the Boy Scouts of the Philippines, the Philippine National Red Cross, the Citizens Traffic Action Group, and the medical teams of doctors and nurses coming from the Office of the Surgeon General and the Ospital ng Bagong Lipunan.[43] According to Jose R. Castro, Jr., the President of Intergames, the preparations for the event included conducting an ocular inspection of the route of the race,[44] sending out letters to the various cooperating agencies,[45] securing permits from proper authorities,[46] putting up directional signs,[47] and setting up the water stations.[48]

We consider the "safeguards" employed and adopted by Intergames not adequate to meet the requirement of due diligence.

For one, the police authorities specifically prohibited Intergames from blocking Don Mariano Marcos Highway in order not to impair road accessibility to the residential villages located beyond the IBP Lane.[49] However, contrary to the findings of the CA,[50] Intergames had a choice on where to stage the marathon, considering its admission of the sole responsibility for the conduct of the event, including the choice of location.

Moreover, the CA had no basis for holding that "the said route was found to be the best route after a careful study and consideration of all the factors involved."[51] Castro, Jr. himself attested that the route had been the best one only *within the vicinity* of the Batasang Pambansa, to wit:

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[43] TSN, March 15, 1985, pp. 5-16.

[44] TSN, April 12, 1985, p. 12.

[45] TSN, September 4, 1984, pp. 9-11.

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

[47] TSN, September 10, 1985, p. 6.

[48] TSN, March 15, 1985, p. 7.

[49] TSN, January 30, 1986, pp. 15-16.

[50] *Supra* note 1, at 72.

[51] TSN, January 30, 1986, p. 58.

COURT

q Was there any specific reason from... Was there any specific reason why you used this route from Batasan to City Hall? Was there any special reason?

a We have, your Honor, conducted for example the Milo Marathon in that area in the Batasan Pambansa and **we found it to be relatively safer than any other areas within the vicinity.** As a matter of fact, we had more runners in the Milo Marathon at that time and nothing happened, your Honor.[52]

The chosen route (IBP Lane, on to Don Mariano Marcos Highway, and then to Quezon City Hall) was not the only route appropriate for the marathon. In fact, Intergames came under no obligation to use such route especially considering that the participants, who were young and inexperienced runners, would be running alongside moving vehicles.

Intergames further conceded that the marathon could have been staged on a blocked-off route like Roxas Boulevard in Manila where runners could run against the flow of vehicular traffic.[53] Castro, Jr. stated in that regard:

COURT TO WITNESS

q What law are you talking about when you say I cannot violate the law?

a The police authority, your Honor, would not grant us permit because that is one of the conditions that if we are to conduct a race we should run the race in accordance with the flow of traffic.

q Did you not inform the police this is in accordance with the standard safety measures for a marathon race?

a I believed we argued along that line but but (sic) again, if we insist the police again would not grant us any permit like...**except in the case of Roxas Boulevard when it is**

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[52] *Id*. at 59.

[53] TSN, September 10, 1985, p. 11.

normally closed from 8 a.m. when you can run against the flow of traffic.

q You were aware for a runner to run on the same route of the traffic would be risky because he would not know what is coming behind him?

a I believed we talked of the risk, your Honor when the risk has been minimized to a certain level. Yes, there is greater risk when you run with the traffic than when you run against the traffic to a certain level, it is correct but most of the races in Manila or elsewhere are being run in accordance with the flow of the traffic.

x x x x x x x x x

ATTY. VINLUAN

q Following the observation of the Court, considering the local condition, you will agree with me the risks here are greater than in the United States where drivers on the whole follow traffic rules?

a That is correct.

q And because of that fact, it is with all the more reason that you should take all necessary precautions to insure the safety of the runners?

a That is correct.[54]

x x x x x x x x x

COURT:

x x x x x x x x x

Q In your case in all the marathons that you had managed, how many cases have you encountered where the routes are blocked off for vehicular traffic?

A These are the International Marathon, Philippines Third World Marathon and the Milo Marathon. We are blocking them to a certain length of time.

Q What was the purpose of blocking the routes? Is it for the safety of the runners or just a matter of convenience?

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[54] *Id*. at 11, 13-14.

A In blocking off the route, Your Honor, it is light easier for the runners to run without impediments to be rendered by the people or by vehicles and at the same time it would be also advantageous if the road will be blocked off for vehicle traffic permitted to us by the traffic authorities.

Q So, in this case, you actually requested for the traffic authorities to block off the route?

A As far as I remember we asked Sgt. Pascual to block off the route but considering that it is the main artery to Fairview Village, it would not be possible to block off the route since it will cause a lot of inconvenience for the other people in those areas and jeepney drivers.

Q In other words, if you have your way you would have opted to block off the route.

A Yes, Your Honor.

Q But the fact is that the people did not agree.

A Yes, Your Honor, and it is stated in the permit given to us.[55]

Based on the foregoing testimony of Castro, Jr., Intergames had full awareness of the higher risks involved in staging the race alongside running vehicles, and had the option to hold the race in a route where such risks could be minimized, if not eliminated. But it did not heed the danger already foreseen, if not expected, and went ahead with staging the race along the plotted route on Don Mariano Marcos Highway on the basis of its supposedly familiarity with the route. Such familiarity of the organizer with the route and the fact that previous races had been conducted therein without any untoward incident[56] were not in themselves sufficient safeguards. The standards for avoidance of injury through negligence further required Intergames to establish that it did take adequate measures to avert the foreseen danger, but it failed to do so.

Another failing on the part of Intergames was the patent inadequacy of the personnel to man the route. As borne by the

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[55] TSN, April 15, 1986, p. 7.

[56] *Id*. at 10.

records, Intergames had no personnel of its own for that purpose, and relied exclusively on the assistance of volunteers, that is, "seven (7) traffic operatives, five (5) motorcycle policemen, fifteen (15) patrolmen deployed along the route, fifteen (15) boy scouts, twelve (12) CATs, twenty (20) barangay *tanods*, three (3) ambulances and three (3) medical teams"[57] to ensure the safety of the young runners who would be running alongside moving vehicular traffic, to make the event safe and well coordinated.

Although the party relying on negligence as his cause of action had the burden of proving the existence of the same, Intergames' coordination and supervision of the personnel sourced from the cooperating agencies did not satisfy the diligence required by the relevant circumstances. In this regard, it can be pointed out that the number of deployed personnel, albeit sufficient to stage the marathon, did not *per se* ensure the safe conduct of the race without proof that such deployed volunteers had been properly coordinated and instructed on their tasks.

That the proper coordination and instruction were crucial elements for the safe conduct of the race was well known to Intergames. Castro, Jr. stated as much, to wit:

ATTY. LOMBOS:

x x x x x x x x x

Q You also said that if you block off one side of the road, it is possible that it would be more convenient to hold the race in that matter. Will you tell the Honorable Court if it is possible also to hold a race safely if the road is not blocked off?

A Yes, sir.

Q How is it done.

A **You can still run a race safely even if it is partially blocked off as long as you have the necessary cooperation with the police authorities, and the police assigned along the**

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[57] *Supra* note 1.

route of the race and the police assigned would be there, this will contribute the safety of the participants, and also the vehicular division, as long as there are substantial publicities in the newspapers, normally they will take the precautions in the use of the particular route of the race.

Q Let me clarify this. Did you say that it is possible to hold a marathon safely if you have this traffic assistance or coordination even if the route is blocked or not blocked?

A It is preferable to have the route blocked but in some cases, it would be impossible for the portions of the road to be blocked totally. **The route of the race could still be safe for runners if a proper coordination or the agencies are notified especially police detailees to man the particular stage.**[58]

Sadly, Intergames' own evidence did not establish the conduct of proper coordination and instruction. Castro, Jr. described the action plan adopted by Intergames in the preparation for the race, as follows:

COURT

a Did you have any rehearsal let us say the race was conducted on June 15, nowbefore June 15 you call a meeting of all these runners so you can have more or less a map-up and you would indicate or who will be stationed in their places etc. Did you have such a rehearsal?

WITNESS

a It is not being done, your honor, but you have to specify them. You meet with the group and you tell them that you wanted them to be placed in their particular areas which we pointed out to them for example in the case of the Barangay Tanod, I specifically assigned them in the areas and we sat down and we met.

COURT

q Did you have any action, plan or brochure which would indicate the assignment of each of the participating group?

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[58] TSN, April 15, 1986, pp. 8-9.

WITNESS

a Normally, sir, many of the races don't have that except when they called them to meeting either as a whole group or the entire cooperating agency or meet them per group.

COURT

q Did you have a check list of the activities that would have to be entered before the actual marathon some kind of system where you will indicate this particular activity has to be checked etc. You did not have that?

WITNESS

q Are you asking, your honor, as a race director of I will check this because if I do that, I won't have a race because that is not being done by any race director anywhere in the world?

COURT

I am interested in your planning activities.

q In other words, what planning activities did you perform before the actual marathon?

a The planning activities we had, your honor, was to coordinate with the different agencies involved informing them where they would be more or less placed.

COURT

q Let us go to...Who was supposed to be coordinating with you as to the citizens action group who was your...you were referring to a person who was supposed to be manning these people and who was the person whom you coordinate with the Traffic Action Group?

WITNESS

a I can only remember his name...his family name is Esguerra.

q How about with the Tanods?

a With the Tanods his name is Pedring Serrano.

q And with the Boys Scouts? (sic)

a And with the Boys Scouts of the Phils. (sic) it is Mr. Greg Panelo.

COURT

q When did you last meet rather how many times did you meet with Esguerra before the marathon on June 15?

WITNESS

a The Citizens Traffic Action Group, your honor, had been with me in previous races.

COURT

q I am asking you a specific question. I am not interested in the Citizen Traffic Action Group. The marathon was on June 15, did you meet with him on June 14, June 13 or June 12?

a We met once, your honor, I cannot remember the date.

q You don't recall how many days before?

a I cannot recall at the moment.

q How about with Mr. Serrano, how many times did you meet with him before the race?

a If my mind does not fail me, your honor, I met him twice because he lives just within our area and we always see each other.

q How about with Panelo, how many times did you meet him?

a With Mr. Panelo, I did not meet with them, your honor.

q Was there an occasion where before the race you met with these three people together since you did not meet with Panelo anytime? Was there anytime where you met with Serrano and Esguerra together?

WITNESS

a No, your honor.

COURT

q When you met once with Esguerra, where did you meet? What place?

a I cannot recall at the moment, your honor, since it was already been almost six years ago.

q How about Serrano, where did you meet him?

a We met in my place.

q From your house? He went in your house?

a Yes, your honor.

q So you did not have let us say a...you don't have records of your meetings with these people?

WITNESS

a With the Citizens Traffic Action, your honor?

COURT

a Yes.

WITNESS

a I don't have, your honor.

COURT

q Because you are familiar, I was just thinking this is an activity which requires planning etc., what I was thinking when you

said this was never done in any part of the world but all activities it has to be planned. There must be some planning, now are you saying that in this particular case you had no written plan or check list of activities what activities have to be implemented on a certain point and time, who are the persons whom you must meet in a certain point and time.

WITNESS
a Normally, we did not have that, your honor, except the check list of all the things that should be ready at a particular time prior to the race and the people to be involved and we have a check list to see to it that everything would be in order before the start of the race.

COURT
Proceed.

ATTY. VINLUAN
q Following the question of the Court Mr. Castro, did you meet with Lt. Depano of the Police Department who were supposed to supervise the police officers assigned to help during the race?
a I did not meet with him, sir.
q You did not meet with him?
a I did not meet with him.
q In fact, ever before or during the race you had no occasion to talk to Lt. Depano. Is that correct?
a That is correct, sir.

ATTY. VINLUAN
Based on the question of the Court and your answer to the question of the Court, are you trying to say that this planning before any race of all these groups who have committed to help in the race, this is not done in any part of the world?

WITNESS
a In the latter years when your race became bigger and bigger, this is being done now slowly.

ATTY. VINLUAN
q But for this particular race you will admit that you failed to do it when you have to coordinate and even have a dry run of the race you failed to do all of that in this particular race, yes or no?
a Because there was...

COURT

It was already answered by him when I asked him. The Court has . . . Everybody has a copy how of this time planner. Any activity or even meeting a girlfriend or most people plan.

ATTY. F.M. LOMBOS

If your honor please, before we proceed...

WITNESS

In the latter years, your honor, when your race became bigger and bigger, this is being done now slowly.

q For this particular race you will admit that you failed to do it?

a Because there was no need, sir.[59]

Probably sensing that he might have thereby contradicted himself, Castro, Jr. clarified on re-direct examination:

ATTY. LOMBOS

Q Now, you also responded to a question during the same hearing and this appears on page 26 of the transcript that you did not hold any rehearsal or dry run for this particular marathon. Could you tell the Court why you did not hold any such rehearsal or dry run?

A Because I believe there was no need for us to do that since we have been doing this for many years and we have been the same people, same organization with us for so many years conducting several races including some races in that area consisting of longer distances and consisting of more runners, a lot more runners in that areay (sic) so these people, they know exactly what to do and there was no need for us to have a rehearsal. I believe this rehearsal would only be applicable if I am new and these people are new then, we have to rehearse.

ATTY. LOMBOS

q You also stated Mr. Castro that you did not have any action plan or brochure which you would indicate, an assignment of each of the participating group as to what to do during the race. Will you please explain what you meant when you said you have no action plan or brochure?

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[59] TSN, January 30, 1986, pp. 26-31.

WITNESS

a What I mean of action plan, I did not have any written action plan but I was fully aware of what to do. I mean, those people did not just go there out of nowhere. Obviously, there was an action on my part because I have to communicate with them previously and to tell them exactly what the race is all about; where to start; where it would end, and that is the reason why we have the ambulances, we have the Boy Scouts, we have the CTA, we have the police, so it was very obvious that there was a plan of action but not written because I know pretty well exactly what to do. I was dealing with people who have been doing this for a long period of time.[60]

While the level of trust Intergames had on its volunteers was admirable, the coordination among the cooperating agencies was predicated on circumstances unilaterally assumed by Intergames. It was obvious that Intergames' inaction had been impelled by its belief that it did not need any action plan because it had been dealing with people who had been manning similar races for a long period of time.

The evidence presented undoubtedly established that Intergames' notion of coordination only involved informing the cooperating agencies of the date of the race, the starting and ending points of the route, and the places along the route to man. Intergames did not conduct any general assembly with all of them, being content with holding a few sporadic meetings with the leaders of the coordinating agencies. It held no briefings of any kind on the actual duties to be performed by each group of volunteers prior to the race. It did not instruct the volunteers on how to minimize, if not avert, the risks of danger in manning the race, despite such being precisely why their assistance had been obtained in the first place.

Intergames had no right to assume that the volunteers had already been aware of what exactly they would be doing during the race. It had the responsibility and duty to give to them the proper instructions despite their experience from the past races

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[60] TSN, June 23, 1986, pp. 12-13.

it had organized considering that the particular race related to runners of a different level of experience, and involved different weather and environmental conditions, and traffic situations. It should have remembered that the personnel manning the race were not its own employees paid to perform their tasks, but volunteers whose nature of work was remotely associated with the safe conduct of road races. Verily, that the volunteers showed up and assumed their proper places or that they were sufficient in number was not really enough. It is worthy to stress that proper coordination in the context of the event did not consist in the mere presence of the volunteers, but included making sure that they had been properly instructed on their duties and tasks in order to ensure the safety of the young runners.

It is relevant to note that the participants of the 1st Pop Cola Junior Marathon were mostly minors aged 14 to 18 years joining a race of that kind for the first time. The combined factors of their youth, eagerness and inexperience ought to have put a reasonably prudent organizer on higher guard as to their safety and security needs during the race, especially considering Intergames' awareness of the risks already foreseen and of other risks already known to it as of similar events in the past organizer. There was no question at all that a higher degree of diligence was required given that practically all of the participants were children or minors like Rommel; and that the law imposes a duty of care towards children and minors even if ordinarily there was no such duty under the same circumstances had the persons involved been adults of sufficient discretion.[61] In that respect, Intergames did not observe the degree of care necessary as the organizer, rendering it liable for negligence. As the Court has emphasized in *Corliss v. The Manila Railroad Company*,[62] where the danger is great, a high degree of care is necessary, and the failure to observe it is a want of ordinary care under the circumstances.[63]

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[61] Aquino, *Torts and Damages*, 2013, p. 64.

[62] No. L-21291, March 28, 1969, 27 SCRA 674.

[63] *Id*. at 681.

The circumstances of the persons, time and place required far more than what Intergames undertook in staging the race. Due diligence would have made a reasonably prudent organizer of the race participated in by young, inexperienced or beginner runners to conduct the race in a route suitably blocked off from vehicular traffic for the safety and security not only of the participants but the motoring public as well. Since the marathon would be run alongside moving vehicular traffic, at the very least, Intergames ought to have seen to the constant and closer coordination among the personnel manning the route to prevent the foreseen risks from befalling the participants. But this it sadly failed to do.

II

The negligence of Intergames as the organizer was the proximate cause of the death of Rommel

As earlier mentioned, the CA found that Rommel, while running the marathon on Don Mariano Marcos Avenue and after passing the Philippine Atomic Energy Commission Building, was bumped by a passenger jeepney that was racing with a minibus and two other vehicles as if trying to crowd each other out. As such, the death of Rommel was caused by the negligence of the jeepney driver.

Intergames staunchly insists that it was not liable, maintaining that even assuming *arguendo* that it was negligent, the negligence of the jeepney driver was the proximate cause of the death of Rommel; hence, it should not be held liable.

Did the negligence of Intergames give rise to its liability for the death of Rommel notwithstanding the negligence of the jeepney driver?

In order for liability from negligence to arise, there must be not only proof of damage and negligence, but also proof that the damage was the consequence of the negligence. The Court has said in *Vda. de Gregorio v. Go Chong Bing*:[64]

[64] 102 Phil. 556 (1957).

x x x Negligence as a source of obligation both under the civil law and in American cases was carefully considered and it was held:

> We agree with counsel for appellant that under the Civil Code, as under the generally accepted doctrine in the United States, the plaintiff in an action such as that under consideration, in order to establish his right to a recovery, must establish by competent evidence:
>
> (1) Damages to the plaintiff.
>
> (2) Negligence by act or omission of which defendant personally or some person for whose acts it must respond, was guilty.
>
> (3) **The connection of cause and effect between the negligence and the damage**." (Taylor *vs.* Manila Electric Railroad and Light Co., *supra,* p. 15.)
>
> In accordance with the decision of the Supreme Court of Spain, in order that a person may be held guilty for damage through negligence, it is necessary that there be an act or omission on the part of the person who is to be charged with the liability and that damage is produced by the said act or omission.[65] (Emphasis supplied)

We hold that the negligence of Intergames was the proximate cause despite the intervening negligence of the jeepney driver.

Proximate cause is "that which, in natural and continuous sequence, unbroken by any new cause, produces an event, and without which the event would not have occurred."[66] In *Vda. de Bataclan, et al. v. Medina*,[67] the Court, borrowing from American Jurisprudence, has more extensively defined *proximate cause* thusly:

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[65] *Id*. at 560.

[66] II Bouvier's Law Dictionary and Concise Encyclopedia, Third Edition (1914), citing *Butcher v. R. Co*., 37 W.Va. 180, 16 S.E. 457, 18 L.R.A. 519; *Lutz v. R. Co*., 6 N.M. 496, 30 Pac. 912, 16 L.R.A. 819.

[67] 102 Phil. 181 (1957).

"* * * 'that cause, which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury and without which the result would not have occurred.' And more comprehensively, 'the proximate legal cause is that acting first and producing the injury, either immediately or by setting other events in motion, all constituting a natural and continuous chain of events, each having a close causal connection with its immediate predecessor, the final event in the chain immediately effecting the injury as a natural and probable result of the cause which first acted, under such circumstances that the person responsible for the first event should, as an ordinarily prudent and intelligent person, have reasonable ground to expect at the moment of his act or default that an injury to some person might probably result therefrom."[68]

To be considered the proximate cause of the injury, the negligence need not be the event closest in time to the injury; a cause is still proximate, although farther in time in relation to the injury, if the happening of it set other foreseeable events into motion resulting ultimately in the damage.[69] According to an authority on civil law:[70] "*A prior and remote cause cannot be made the basis of an action, if such remote cause did nothing more than furnish the condition or give rise to the occasion by which the injury was made possible, if there intervened between such prior or remote cause and the injury a distinct, successive, unrelated and efficient cause, even though such injury would not have happened but for such condition or occasion. If no damage exists in the condition except because of the independent cause, such condition was not the proximate cause. And if an independent negligent act or defective condition sets into operation the circumstances which result in injury because of the prior defective condition, such act or condition is the proximate cause*."

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[68] *Id*. at 186.

[69] See *Pullman Palace Car Co. v. Laack*, 143 Ill. 242, 32 N.E. 285, 18 L.R.A. 215.

[70] VI Caguioa, E. P., *Comments and Cases on Civil Law*, 1970 First Edition, Central Book Supply, Inc., Quezon City, pp. 402-403.

Bouvier adds:

In many cases important questions arise as to which, in the chain of acts tending to the production of a given state of things, is to be considered the responsible cause. It is not merely distance of place or of causation that renders a cause remote. The cause nearest in the order of causation, without any efficient concurring cause to produce the result, may be considered the direct cause. **In the course of decisions of cases in which it is necessary to determine which of several causes is so far responsible for the happening of the act or injury complained of, what is known as the doctrine of proximate cause is constantly resorted to in order to ascertain whether the act, omission, or negligence of the person whom it is sought to hold liable was in law and in fact responsible for the result which is the foundation of the action**.[71]

x x x x x x x x x

The question of proximate cause is said to be determined, not by the existence or non-existence of intervening events, but by their character and the natural connection between the original act or omission and the injurious consequences. When the intervening cause is set in operation by the original negligence, such negligence is still the proximate cause; x x x If the party guilty of the first act of negligence might have anticipated the intervening cause, the connection is not broken; x x x. Any number of causes and effects may intervene, and if they are such as might with reasonable diligence have been foreseen, the last result is to be considered as the proximate result. But whenever a new cause intervenes, which is not a consequence of the first wrongful cause, which is not under control of the wrongdoer, which could not have been foreseen by the exercise of reasonable diligence, and except for which the final injurious consequence could not have happened, then such injurious consequence must be deemed too remote; **x x x**.[72] (bold underscoring supplied for emphasis)

An examination of the records in accordance with the foregoing concepts supports the conclusions that the negligence of

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[71] I Bouvier's Law Dictionary and Concise Encyclopedia, Third Edition (1914), p. 432.

[72] *Id*. at 433.

Intergames was the proximate cause of the death of Rommel; and that the negligence of the jeepney driver was not an efficient intervening cause.

First of all, Intergames' negligence in not conducting the race in a road blocked off from vehicular traffic, and in not properly coordinating the volunteer personnel manning the marathon route effectively set the stage for the injury complained of. The submission that Intergames had previously conducted numerous safe races did not persuasively demonstrate that it had exercised due diligence because, as the trial court pointedly observed, "[t]hey were only lucky that no accident occurred during the previous marathon races but still the danger was there."[73]

Secondly, injury to the participants arising from an unfortunate vehicular accident on the route was an event known to and foreseeable by Intergames, which could then have been avoided if only Intergames had acted with due diligence by undertaking the race on a blocked-off road, and if only Intergames had enforced and adopted more efficient supervision of the race through its volunteers.

And, thirdly, the negligence of the jeepney driver, albeit an intervening cause, was not efficient enough to break the chain of connection between the negligence of Intergames and the injurious consequence suffered by Rommel. An intervening cause, to be considered efficient, must be "*one not produced by a wrongful act or omission, but independent of it, and adequate to bring the injurious results. Any cause intervening between the first wrongful cause and the final injury which might reasonably have been foreseen or anticipated by the original wrongdoer is not such an efficient intervening cause as will relieve the original wrong of its character as the proximate cause of the final injury*."[74]

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[73] *Rollo*, p. 176.

[74] 14 Words and Phrases, *Efficient Intervening Cause*, p. 172; citing *State v. Des Champs*, 120 S.E. 491, 493; 126 S.C. 416.

In fine, it was the duty of Intergames to guard Rommel against the foreseen risk, but it failed to do so.

III

The doctrine of assumption of risk had no application to Rommel

Unlike the RTC, the CA ruled that the doctrine of assumption of risk applied herein; hence, it declared Intergames and Cosmos not liable. The CA rendered the following rationalization to buttress its ruling, to wit:

> In this case, appellant Romulo Abrogar himself admitted that his son, Rommel Abrogar, surveyed the route of the marathon and even attended a briefing before the race. Consequently, he was aware that the marathon would pass through a national road and that the said road would not be blocked off from traffic. And considering that he was already eighteen years of age, had voluntarily participated in the marathon, with his parents' consent, and was well aware of the traffic hazards along the route, he thereby assumed all the risks of the race. This is precisely why permission from the participant's parents, submission of a medical certificate and a waiver of all rights and causes of action arising from the participation in the marathon which the participant or his heirs may have against appellant Intergames were required as conditions in joining the marathon.
>
> In the decision of the trial court, it stated that the risk mentioned in the waiver signed by Rommel Abrogar only involved risks such as stumbling, suffering heatstroke, heart attack and other similar risks. It did not consider vehicular accident as one of the risks included in the said waiver.
>
> This Court does not agree. With respect to voluntary participation in a sport, the doctrine of assumption of risk applies to any facet of the activity inherent in it and to any open and obvious condition of the place where it is carried on. We believe that the waiver included vehicular accidents for the simple reason that it was a road race run on public roads used by vehicles. Thus, it cannot be denied that vehicular accidents are involved. It was not a track race which is held on an oval and insulated from vehicular traffic. In a road race, there is always the risk of runners being hit by motor vehicles while they train or compete. That risk is inherent in the sport and known to runners. It is a risk they assume every time they voluntarily engage in their sport.

Furthermore, where a person voluntarily participates in a lawful game or contest, he assumes the ordinary risks of such game or contest so as to preclude recovery from the promoter or operator of the game or contest for injury or death resulting therefrom. Proprietors of amusements or of places where sports and games are played are not insurers of safety of the public nor of their patrons.

In Mc Leod Store v. Vinson 213 Ky 667, 281 SW 799 (1926), it was held that a boy, seventeen years of age, of ordinary intelligence and physique, who entered a race conducted by a department store, the purpose of which was to secure guinea fowl which could be turned in for cash prizes, had assumed the ordinary risks incident thereto and was barred from recovering against the department store for injuries suffered when, within catching distance, he stopped to catch a guinea, and was tripped or stumbled and fell to the pavement, six or eight others falling upon him. The court further said: "In this (the race) he was a voluntary participant. x x x The anticipated danger was as obvious to him as it was to appellant (the department store). While not an adult, he was practically 17 years of age, of ordinary intelligence, and perfectly able to determine the risks ordinarily incident to such games. An ordinary boy of that age is practically as well advised as to the hazards of baseball, basketball, football, foot races and other games of skill and endurance as is an adult x x x."

In the case at bar, the "1st Pop Cola Junior Marathon" held on June 15, 1980 was a race the winner of which was to represent the country in the annual Spirit of Pheidippides Marathon Classic in Greece, if he equals or breaks the 29-minute mark for the 19-km. race. Thus, Rommel Abrogar having voluntarily participated in the race, with his parents' consent, assumed all the risks of the race.[75]

The doctrine of assumption of risk means that one who voluntarily exposes himself to an obvious, known and appreciated danger assumes the risk of injury that may result therefrom.[76] It rests on the fact that the person injured has *consented* to relieve the defendant of an obligation of conduct toward him and to take his chance of injury from a known risk, and whether the former has exercised proper caution or not is immaterial.[77]

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[75] *Supra* note 1, at 75-76.

[76] *McGeary v. Reed*, 151 N.E. 2d 789, 794, 105 Ohio App. 111.

[77] *Bull S.S. Line v. Fisher*, 77 A. 2d 142, 145, 196 Md. 519.

In other words, it is based on voluntary consent, express or implied, to accept danger of a known and appreciated risk; it may sometimes include acceptance of risk arising from the defendant's negligence, but one does not ordinarily assume risk of any negligence which he does not know and appreciate.[78] As a defense in negligence cases, therefore, the doctrine requires the concurrence of three elements, namely: (1) the plaintiff must know that the risk is present; (2) he must further understand its nature; and (3) his choice to incur it must be free and voluntary.[79] According to Prosser:[80] "Knowledge of the risk is the watchword of assumption of risk."

Contrary to the notion of the CA, the concurrence of the three elements was not shown to exist. Rommel could not have assumed the risk of death when he participated in the race because death was neither a known nor normal risk incident to running a race. Although he had surveyed the route prior to the race and should be presumed to know that he would be running the race alongside moving vehicular traffic, such knowledge of the general danger was not enough, for some authorities have required that the knowledge must be of the specific risk that caused the harm to him.[81] In theory, the standard to be applied is a subjective one, and should be geared to the particular plaintiff and his situation, rather than that of the reasonable person of ordinary prudence who appears in contributory negligence.[82] He could not have appreciated the risk of being fatally struck by any moving vehicle while running the race. Instead, he had every reason to believe that the organizer had taken adequate

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[78] *Turpin v. Shoemaker*, *Mo*., 427 S.W. 2d 485, 489.

[79] Prosser and Keeton, *The Law of Torts*, Fifth Edition, Hornbook Series (Student Edition), West Group, p. 487.

[80] *Id*., citing *Cincinnati, New Orleans & Texas Pacific Railway Co. v. Thompson*, 8th Cir., 1916, 236 F. 1, 9.

[81] *Id*., citing *Garcia v. City of South Tucson*, App. 1981, 131 Ariz. 315, 640 P.2d 1117, 1121; *Maxey v. Freightliner*, 5th Cir., 1982, 665 F.2d 1367; *Heil Co. v. Grant*, Tex. Civ. App. 1976, 534 S.W.2d 916; *Klein v. R.D. Werner Co*., 1982, 98 Wn.2d 316, 654 P.2d 94.

[82] *Id*.

measures to guard all participants against any danger from the fact that he was participating in an organized marathon. Stated differently, nobody in his right mind, including minors like him, would have joined the marathon if he had known of or appreciated the risk of harm or even death from vehicular accident while running in the organized running event. Without question, a marathon route safe and free from foreseeable risks was the reasonable expectation of every runner participating in an organized running event.

Neither was the waiver by Rommel, then a minor, an effective form of express or implied consent in the context of the doctrine of assumption of risk. There is ample authority, cited in Prosser,[83] to the effect that a person does not comprehend the risk involved in a known situation because of his youth,[84] or lack of information or experience,[85] and thus will not be taken to consent to assume the risk.

Clearly, the doctrine of assumption of risk does not apply to bar recovery by the petitioners.

IV
Cosmos is not liable for the negligence of Intergames as the organizer

Nonetheless, the CA did not err in absolving Cosmos from liability.

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[83] *Id*., citing *Rutter v. Northeastern Beaver Country School District*, 1981, 496 Pa. 590, 437 A.2d 1198; *Campbell v. Nordco Products*, 7th Cir. 1980, 629 F.2d 1258; *Zrust v. Spencer Foods, Inc*., 8th Cir. 1982, 667 F.2d 760; *Scoggins v. Jude*, D.C. App. 1980, 419 A.2d 999; *Shahrokhfar v. State Farm Mutual Automobile Insurance Co*., 1981, 634 P.2d 653; *Antcliff v. Datzman*, 1982, 436 N.E.2d 114.

[84] *Id*., citing *Aldes v. St. Paul Baseball Club*, 1958, 251 Minn. 440, 88 N.W.2d 94; *Freedman v. Hurwitz*, 1933, 116 Conn. 283, 164 A. 647; *Everton Silica Sand Co. v. Hicks*, 1939, 197 Ark. 980, 125 S.W.2d 793; *Rutter v. Northeastern Beaver Country School District*, 1981, 496 Pa. 590, 437 A.2d 1198 (involving a 16-year old high school football player).

[85] *Id*., citing *Dee v. Parish*, 1959, 160 Tex. 171, 327 S.W.2d 449, on remand, 1960, 332 S.W.2d 764; *Hanley v. California Bridge & Construction Co*., 1899, 127 Cal. 232, 59 P. 577.

The sponsorship of the marathon by Cosmos was limited to financing the race. Cosmos did nothing beyond that, and did not involve itself at all in the preparations for the actual conduct of the race. This verity was expressly confirmed by Intergames, through Castro, Jr., who declared as follows:

COURT

q Do you discuss all your preparation with Cosmos Bottling Company?

a **As far as the Cosmos Bottling Company (sic) was a sponsor as to the actual conduct of the race, it is my responsibility. The conduct of the race is my responsibility. The sponsor has nothing to do as well as its code of the race because they are not the ones running. I was the one running. The responsibility of Cosmos was just to provide the sponsor's money.**

COURT

q **They have no right to who (sic) suggest the location, the number of runners, you decide these yourself without consulting them?**

a **Yes, your honor**.[86]

We uphold the finding by the CA that the role of Cosmos was to pursue its corporate commitment to sports development of the youth as well as to serve the need for advertising its business. In the absence of evidence showing that Cosmos had a hand in the organization of the race, and took part in the determination of the route for the race and the adoption of the action plan, including the safety and security measures for the benefit of the runners, we cannot but conclude that the requirement for the direct or immediate causal connection between the financial sponsorship of Cosmos and the death of Rommel simply did not exist. Indeed, Cosmos' mere sponsorship of the race was, legally speaking, too remote to be the efficient and proximate cause of the injurious consequences.

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[86] TSN, January 30, 1986, p. 20.

V
Damages

Article 2202 of the *Civil Code* lists the damages that the plaintiffs in a suit upon crimes and quasi-delicts can recover from the defendant, *viz.*:

Art. 2202. In crimes and quasi-delicts, the defendant shall be liable for all damages which are the natural and probable consequences of the act or omission complained of. It is not necessary that such damages have been foreseen or could have reasonably been foreseen by the defendant.

Accordingly, Intergames was liable for all damages that were the natural and probable consequences of its negligence. In its judgment, the RTC explained the award of damages in favor of the petitioners, as follows:

As borne by the evidence on record, the plaintiffs incurred medical, hospitalization and burial expenses for their son in this aggregate amount of ₱28,061.65 (Exhibits "D", "D-1" and "D-2"). In instituting this case, they have paid their lawyer ₱5,000 as initial deposit, their arrangement being that they would pay attorney's fees to the extent of 10% of whatever amount would be awarded to them in this case.

For the loss of a son, it is unquestionable that plaintiffs suffered untold grief which should entitle them to recover moral damages, and this Court believes that if only to assuage somehow their untold grief but not necessarily to compensate them to the fullest, the nominal amount of ₱100,00.00 should be paid by the defendants.

For failure to adopt elementary and basic precautionary measure to insure the safety of the participants so that sponsors and organizers of sports events should exercise utmost diligence in preventing injury to the participants and the public as well, exemplary damages should also be paid by the defendants and this Court considers the amount of ₱50,000.00 as reasonable.[87]

Although we will not disturb the foregoing findings and determinations, we need to add to the justification for the grant

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[87] *Rollo,* pp. 177-178.

of exemplary damages. Article 2231 of the *Civil Code* stipulates that exemplary damages are to be awarded in cases of quasi-delict if the defendant acted with gross negligence. The foregoing characterization by the RTC indicated that Intergames' negligence was gross. We agree with the characterization. Gross negligence, according to *Mendoza v. Spouses Gomez*,[88] is the absence of care or diligence as to amount to a reckless disregard of the safety of persons or property; it evinces a thoughtless disregard of consequences without exerting any effort to avoid them. Indeed, the failure of Intergames to adopt the basic precautionary measures for the safety of the minor participants like Rommel was in reckless disregard of their safety. Conduct is reckless when it is an extreme departure from ordinary care, in a situation in which a high degree of danger is apparent; it must be more than any mere mistake resulting from inexperience, excitement, or confusion, and more than mere thoughtlessness or inadvertence, or simple inattention.[89]

The RTC did not recognize the right of the petitioners to recover the loss of earning capacity of Rommel. It should have, for doing so would have conformed to jurisprudence whereby the Court has unhesitatingly allowed such recovery in respect of children, students and other non-working or still unemployed victims. The legal basis for doing so is Article 2206 (1) of the *Civil Code*, which stipulates that the defendant "*shall be liable for the loss of the earning capacity of the deceased, and the indemnity shall be paid to the heirs of the latter; such indemnity shall in every case be assessed and awarded by the court, unless the deceased on account of permanent physical disability not caused by the defendant, had no earning capacity at the time of his death*."

Indeed, damages for loss of earning capacity may be awarded to the heirs of a deceased non-working victim simply because earning capacity, not necessarily actual earning, may be lost.

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[88] G.R. No. 160110, June 18, 2014, 726 SCRA 505, 526.

[89] 36A Works and Phrases, 322; citing *Schick v. Ferolito*, 767 A. 2d 962, 167 N.J.7.

In *Metro Manila Transit Corporation v. Court of Appeals*,[90] damages for loss of earning capacity were granted to the heirs of a third-year high school student of the University of the Philippines Integrated School who had been killed when she was hit and run over by the petitioner's passenger bus as she crossed Katipunan Avenue in Quezon City. The Court justified the grant in this wise:

Compensation of this nature is awarded not for loss of earnings but for loss of capacity to earn money. Evidence must be presented that the victim, if not yet employed at the time of death, was reasonably certain to complete training for a specific profession. In *People v. Teehankee,* no award of compensation for loss of earning capacity was granted to the heirs of a college freshman because there was no sufficient evidence on record to show that the victim would eventually become a professional pilot. **But compensation should be allowed for loss of earning capacity resulting from the death of a minor who has not yet commenced employment or training for a specific profession if sufficient evidence is presented to establish the amount thereof**.[91] (bold underscoring supplied for emphasis)

In *People v. Sanchez*,[92] damages for loss of earning capacity was also allowed to the heirs of the victims of rape with homicide despite the lack of sufficient evidence to establish what they would have earned had they not been killed. The Court rationalized its judgment with the following observations:

Both Sarmenta and Gomez were senior agriculture students at UPLB, the country's leading educational institution in agriculture. As reasonably assumed by the trial court, both victims would have graduated in due course. **Undeniably, their untimely death deprived them of their future time and earning capacity. For these deprivation, their heirs are entitled to compensation**. x x x. **However, considering that Sarmenta and Gomez would have graduated in due time from a reputable university, it would not**

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[90] G.R. No. 116617, November 16, 1998, 298 SCRA 495.

[91] *Id*. at 510-511.

[92] G.R. Nos. 121039-121045, October 18, 2001, 367 SCRA 520.

be unreasonable to assume that in 1993 they would have earned more than the minimum wage. All factors considered, the Court believes that it is fair and reasonable to fix the monthly income that the two would have earned in 1993 at ₱8,000.000 per month (or ₱96,000.00/year) and their deductible living and other incidental expenses at ₱3,000.00 per month (or ₱36,000.00/year).[93] (bold underscoring supplied for emphasis)

In *Pereña v. Zarate*,[94] the Court fixed damages for loss of earning capacity to be paid to the heirs of the 15-year-old high school student of Don Bosco Technical Institute killed when a moving train hit the school van ferrying him to school while it was traversing the railroad tracks. The RTC and the CA had awarded damages for loss of earning capacity computed on the basis of the minimum wage in effect at the time of his death. Upholding said findings, the Court opined:

x x x, the fact that Aaron was then without a history of earnings should not be taken against his parents and in favor of the defendants whose negligence not only cost Aaron his life and his right to work and earn money, but also deprived his parents of their right to his presence and his services as well. x x x. **Accordingly, we emphatically hold in favor of the indemnification for Aaron's loss of earning capacity despite him having been unemployed, because compensation of this nature is awarded not for loss of time or earnings but for loss of the deceased's power or ability to earn money**.

The petitioners sufficiently showed that Rommel was, at the time of his untimely but much lamented death, able-bodied, in good physical and mental state, and a student in good standing.[95] It should be reasonable to assume that Rommel would have finished his schooling and would turn out to be a useful and productive person had he not died. Under the foregoing jurisprudence, the petitioners should be compensated for losing Rommel's power or ability to earn. The basis for the computation

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[93] *Id*. at 531.

[94] G.R. No. 157917, August 29, 2012, 679 SCRA 208, 234.

[95] TSN, June 22, 1981, pp. 3-6.

of earning capacity is not what he would have become or what he would have wanted to be if not for his untimely death, but the minimum wage in effect at the time of his death. The formula for this purpose is:

> Net Earning Capacity = Life Expectancy x [Gross Annual Income less Necessary Living Expenses][96]

Life expectancy is equivalent to 2/3 multiplied by the difference of 80 and the age of the deceased. Since Rommel was 18 years of age at the time of his death, his life expectancy was 41 years. His projected gross annual income, computed based on the minimum wage for workers in the non-agricultural sector in effect at the time of his death,[97] then fixed at ₱14.00/ day, is ₱5,535.83. Allowing for necessary living expenses of 50% of his projected gross annual income, his total net earning capacity is ₱113,484.52.

Article 2211 of the *Civil Code* expressly provides that interest, as a part of damages, may be awarded in crimes and quasi-delicts at the discretion of the court. The rate of interest provided under Article 2209 of the *Civil Code* is 6% *per annum* in the absence of stipulation to the contrary. The legal interest rate of 6% *per annum* is to be imposed upon the total amounts herein awarded from the time of the judgment of the RTC on May 10, 1991 until finality of judgment.[98] Moreover, pursuant to Article 2212[99] of the *Civil Code*, the legal interest rate of 6% *per annum* is to be further imposed on the interest earned up to the time this judgment of the Court becomes final and executory until its full satisfaction.[100]

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[96] *Villa Rey Transit, Inc. v. Court of Appeals*, No. L-25499, February 18, 1970, 31 SCRA 511, 515-518.

[97] Presidential Decree No. 1713 dated August 18, 1980.

[98] *Rollo*, p. 179.

[99] Article 2212. Interest due shall earn legal interest from the time it is judicially demanded, although the obligation may be silent upon this point. (1109a)

[100] *Nacar v. Gallery Frames and/or Bordey, Jr.*, G.R. No. 189871, August 13, 2013, 703 SCRA 439, modifying the ruling in *Eastern Shipping Lines,*

Article 2208 of the *Civil Code* expressly allows the recovery of attorney's fees and expenses of litigation when exemplary damages have been awarded. Thus, we uphold the RTC's allocation of attorney's fees in favor of the petitioners equivalent to 10% of the total amount to be recovered, inclusive of the damages for loss of earning capacity and interests, which we consider to be reasonable under the circumstances.

WHEREFORE, the Court **PARTLY AFFIRMS** the decision promulgated on March 10, 2004 to the extent that it absolved **COSMOS BOTTLING COMPANY, INC.** from liability; **REVERSES** and **SETS ASIDE** the decision as to **INTERGAMES, INC.,** and **REINSTATES** as to it the judgment rendered on May 10, 1991 by the Regional Trial Court, Branch 83, in Quezon City subject to the **MODIFICATIONS** that **INTERGAMES, INC.** is **ORDERED TO PAY** to the petitioners, in addition to the awards thereby allowed: (a) the sum of ₱113,484.52 as damages for the loss of Rommel Abrogar's earning capacity; (b) interest of 6% *per annum* on the actual damages, moral damages, exemplary damages and loss of earning capacity reckoned from May 10, 1991 until full payment; (c) compounded interest of 6% *per annum* from the finality of this decision until full payment; and (d) costs of suit.

SO ORDERED.

Velasco, Jr. (Chairperson), Reyes, Jardeleza, and *Tijam, JJ.,* concur.

Inc. v. Court of Appeals (G.R. No. 97412, July 12, 1994, 234 SCRA 78) embodying BSP-MB Circular No. 799.

THIRD DIVISION

[G.R. No. 185627. March 15, 2017]

SPOUSES BERNARDITO AND ARSENIA GAELA, (DECEASED), SUBSTITUTED BY HER HEIRS NAMELY: BERNARDITO GAELA AND JOSELINE E. PAGUIRIGAN, *petitioners, vs.* **SPOUSES TAN TIAN HEANG AND SALLY TAN**, *respondents.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER; THE SOLE ISSUE FOR RESOLUTION IN AN UNLAWFUL DETAINER CASE IS PHYSICAL OR MATERIAL POSSESSION OF THE PROPERTY INVOLVED, INDEPENDENT OF ANY CLAIM OF OWNERSHIP BY ANY OF THE PARTIES.—** Unlawful detainer is an action to recover possession of real property from one who unlawfully withholds possession after the expiration or termination of his right to hold possession under any contract, express or implied. The possession of the defendant in an unlawful detainer case is originally legal but becomes illegal due to the expiration or termination of the right to possess. The sole issue for resolution in an unlawful detainer case is physical or material possession of the property involved, independent of any claim of ownership by any of the parties.

2. **ID.; ID.; ID.; ALLEGATIONS WHICH MUST BE STATED IN THE COMPLAINT FOR AN ACTION TO COME UNDER THE EXCLUSIVE ORIGINAL JURISDICTION OF THE METROPOLITAN TRIAL COURT, CITED.—** For the action to come under the exclusive original jurisdiction of the MeTC, the complaint must allege that: (a) the defendant originally had lawful possession of the property, either by virtue of a contract or by tolerance of the plaintiff; (b) the defendant's possession of the property eventually became illegal or unlawful upon notice by the plaintiff to the defendant of the expiration or the termination of the defendant's right of possession; (c) the defendant thereafter remained in possession of the property and thereby deprived the plaintiff the enjoyment thereof;

and (d) the plaintiff instituted the action within one year from the unlawful deprivation or withholding of possession.

3. **ID.; ID.; ID.; THE COURT HAS REPEATEDLY RULED THAT PRIOR PHYSICAL POSSESSION BY THE PLAINTIFF IS NOT AN INDISPENSABLE REQUIREMENT IN AN UNLAWFUL DETAINER CASE BROUGHT BY A VENDEE OR OTHER PERSON AGAINST WHOM POSSESSION OF ANY LAND IS UNLAWFULLY WITHHELD AFTER THE EXPIRATION OR TERMINATION OF A RIGHT TO HOLD POSSESSION; CASE AT BAR.—** Contrary to the petitioners' argument, nowhere does it appear in Section 1 of Rule 70 of the Rules of Court that, in an action for unlawful detainer, the plaintiff must be in prior physical possession of the property. The Court has repeatedly ruled that prior physical possession by the plaintiff is not an indispensable requirement in an unlawful detainer case brought by a vendee or other person against whom the possession of any land is unlawfully withheld after the expiration or termination of a right to hold possession. There is no dispute with the fact that the petitioners were the previous owners of the subject properties. However, the respondents were able to prove by preponderance of evidence that they are now the new owners and the rightful possessors of the subject properties being its registered owners under TCT Nos. PT-126446 and PT-126450. The TCTs of the respondents are, therefore, evidence of indefeasible title over the subject properties and, as its holders, they are entitled to its possession as a matter of right. Conversely, aside from their bare allegation of bad faith on the part of the respondents, the petitioners presented nothing to support their claim. They failed to submit any piece of evidence showing their right to possess the subject properties. Thus, their unsubstantiated arguments are not, by themselves, enough to offset the respondents' right as the registered owners.

4. **CIVIL LAW; PROPERTY; LAND REGISTRATION; WHEN THE PROPERTY IS REGISTERED UNDER THE TORRENS SYSTEM, THE REGISTERED OWNER'S TITLE TO THE PROPERTY IS PRESUMED LEGAL AND CANNOT BE COLLATERALLY ATTACKED.—** Time and again, the Court had emphasized that when the property is registered under the Torrens system, the registered owner's title to the property is presumed legal and cannot be collaterally

attacked, especially in a mere action for unlawful detainer, and it does not even matter if the party's title to the property is questionable. At any rate, it is fundamental that a certificate of title serves as evidence of an indefeasible and incontrovertible title to the property in favor of the person whose name appears therein. The title holder is entitled to all the attributes of ownership of the property, including possession. Thus, the Court must uphold the age-old rule that the person who has a Torrens title over a land is entitled to its possession.

D E C I S I O N

REYES, *J*.:

Assailed in this Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court are the Decision[2] dated April 28, 2008 and Resolution[3] dated September 4, 2008 of the Court of Appeals (CA) in CA-G.R. SP No. 101375, which affirmed the Decision[4] dated October 2, 2007 of the Regional Trial Court (RTC) of Pasig City, Branch 157, in S.C.A. Case No. 3083. The RTC decision reversed and set aside the Decision[5] dated February 12, 2007 of the Metropolitan Trial Court (MeTC) of Pasig City, Branch 68, in Civil Case No. 11369 for Ejectment.

The Facts

This petition stemmed from a complaint for ejectment over two parcels of land both situated in Barrio Rosario, Municipality of Pasig, covered by Transfer Certificates of Title (TCT) Nos. PT-126446[6] and PT-126450[7] filed by Spouses Tan Tian Heang

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[1] *Rollo*, pp. 8-33.

[2] Penned by Associate Justice Jose L. Sabio, Jr., with Associate Justices Jose C. Reyes, Jr., and Ramon M. Bato, Jr. concurring; *id.* at 36-51.

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

[4] Rendered by Judge Esperanza Fabon-Victorino; *id.* at 55-63.

[5] Rendered by Presiding Judge Divina Gracia Lopez Peliño; *id.* at 112-114.

[6] *Id.* at 87.

[7] *Id.* at 88.

and Sally Tan (respondents) against Spouses Bernardito and Arsenia Gaela (petitioners).[8]

The petitioners claimed that they are the lawful owners of the subject properties. They said that sometime in 2002, their daughter Bernardita Gaela (Bernardita) took the certificates of title registered in their names and forged their signatures in the Real Estate Mortgage[9] that Bernardita executed in favor of Alexander Tam Wong (Wong). Thus, their certificates of title were cancelled and new ones were issued to Wong, who then sold the subject properties to the respondents on December 20, 2004. Afterwards, they sought the annulment of sale of the subject properties and cancellation of TCT Nos. PT-126446 and PT-126450 in the name of the respondents in Civil Case No. 70250 before the RTC of Pasig City, Branch 71. They averred that before the transfer of title from Wong to the respondents, they were able to cause the annotation of a notice of *lis pendens* on the respondents' titles.[10]

For their part, the respondents countered that they are the lawful and legal owners of the subject properties which they acquired in good faith from its former owner Wong. They narrated that the subject properties were mortgaged by the petitioners to Wong for ₱2,000,000.00, and said mortgage was annotated at the back of the petitioners' titles. However, the petitioners ceased to pay the real property tax due on the subject properties. Thereafter, new titles were issued in favor of Wong. On December 18, 2004, they bought the subject properties and paid the taxes due thereon as early as January 13, 2005. Nonetheless, while they were waiting for the transfer and release of new titles in their names, the petitioners filed Civil Case No. 70250 against Wong and caused its annotation on the latter's titles. This annotation was then carried over and appeared in their titles. Subsequently, they made demands to the petitioners to vacate the subject properties but the latter refused to do so.[11]

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[8] *Id*. at 55.

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

[10] *Id*. at 56.

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

On February 12, 2007, the MeTC rendered its Decision[12] in favor of the petitioners, dismissing the complaint on the ground of lack of cause of action. The MeTC ruled, among others, that:

> In the instant case, [the respondents] have indeed made a formal demand upon the [petitioners] to vacate the premises. However, such demand cannot be used as the point to determine the unlawfulness of [the petitioners'] possession for the reason that even before [the respondents] could make a formal demand upon the [petitioners], let alone, have the premises titled in their names, [the petitioners] have already filed an action to assert their ownership over the premises which is even annotated to the title of [Wong] and is likewise annotated on [the respondents'] title. Thus, the Court unreservedly finds it difficult to determine from the evidentiary records the point where [the petitioners'] possession became unlawful as [the respondents] were never in possession of the premises.[13]

Aggrieved, the respondents filed an appeal before the RTC.[14]

In a Decision[15] dated October 2, 2007, the RTC granted the appeal and set aside the MeTC's ruling. The dispositive portion of the decision reads:

> WHEREFORE, the instant appeal is hereby GRANTED. The assailed Decision dated February 12, 2007, rendered by the [MeTC] of Pasig City, is set aside and judgment is rendered as follows:
>
> 1. Declaring [the petitioners'] possession of the subject parcels of land unlawful, and ordering them to vacate the subject parcels of land;
> 2. Ordering [the petitioners] to pay reasonable monthly rentals of ₱10,000[.00] starting from March 16, 2005, until they fully vacate and turn over to [the respondents] the subject properties; and
> 3. Pay the cost of suit.
>
> SO ORDERED.[16]

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[12] *Id*. at 112-114.

[13] *Id*. at 113.

[14] *Id*. at 115-129.

[15] *Id*. at 55-63.

[16] *Id*. at 62-63.

In overturning the MeTC's ruling, the RTC held that the respondents have the better right to possess the subject properties since they are the registered owners of the same. The respondents' lack of prior physical possession over the subject properties is of no moment since it is enough that they have a better right of possession over the petitioners. The RTC further said that the case for annulment of title and the annotation of a notice of *lis pendens* on the respondents' TCTs did not in any way legitimize the petitioners' continued possession of the subject properties.[17]

On appeal,[18] the CA, in its Decision[19] dated April 28, 2008, denied the petition and affirmed the RTC's judgment *in toto*. The CA held that the allegation in the respondents' complaint make out a case for unlawful detainer and it was filed well within the one-year reglementary period.[20]

Upset by the foregoing disquisition, the petitioners moved for reconsideration[21] but it was denied by the CA in its Resolution[22] dated September 4, 2008. Hence, the present petition for review on *certiorari*.

The Issue

WHO BETWEEN THE PARTIES HAS A BETTER RIGHT TO POSSESS THE SUBJECT PROPERTIES.

Ruling of the Court

The petition is bereft of merit.

At the outset, the Court noted that the issue of ownership between the parties herein is already the subject of a pending

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

[18] *Id*. at 144-167.

[19] *Id*. at 36-51.

[20] *Id*. at 47.

[21] *Id*. at 168-174.

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

litigation before the RTC of Pasig City, Branch 71. Hence, the only matter to be resolved in this case is the issue of possession over the subject properties.

To begin with, it is perceptible from the arguments of the petitioners that they are calling for the Court to reassess the evidence presented by the parties. The petitioners are, therefore, raising questions of facts beyond the ambit of the Court's review. In a petition for review under Rule 45 of the Rules of Court, the jurisdiction of this Court in cases brought before it from the CA is limited to the review and revision of errors of law allegedly committed by the appellate court.[23] However, the conflicting findings of facts and rulings of the MeTC on one hand, and the RTC and the CA on the other, compel this Court to revisit the records of this case. But even if the Court were to re-evaluate the evidence presented, considering the divergent positions of the courts below, the petition would still fail.

In the instant case, the petitioners mainly dispute the respondents' ownership of the subject properties by contending that they are the true owners of the same. They aver that the allegations of the respondents do not sufficiently show a cause of action for unlawful detainer. They claim that the respondents failed to prove that they had prior physical possession of the subject properties before they were unlawfully deprived of it. The respondents, however, only sought to recover the physical possession of the subject properties. The respondent rebuts the petitioners' claims by contending that they acquired the subject properties in good faith and have registered the same under their names and have been issued certificates of title. The respondents assert their ownership over the subject properties to lay the basis for their right to possess the same that was unlawfully withheld from them by the petitioners.

After reviewing the records of this case, the Court sustains the findings of the RTC and the CA that the nature of action taken by the respondents is one for unlawful detainer.

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[23] *Juan v. Yap, Sr.,* 662 Phil. 321, 327 (2011).

Unlawful detainer is an action to recover possession of real property from one who unlawfully withholds possession after the expiration or termination of his right to hold possession under any contract, express or implied. The possession of the defendant in an unlawful detainer case is originally legal but becomes illegal due to the expiration or termination of the right to possess. The sole issue for resolution in an unlawful detainer case is physical or material possession of the property involved, independent of any claim of ownership by any of the parties.[24]

For the action to come under the exclusive original jurisdiction of the MeTC, the complaint must allege that: (a) the defendant originally had lawful possession of the property, either by virtue of a contract or by tolerance of the plaintiff; (b) the defendant's possession of the property eventually became illegal or unlawful upon notice by the plaintiff to the defendant of the expiration or the termination of the defendant's right of possession; (c) the defendant thereafter remained in possession of the property and thereby deprived the plaintiff the enjoyment thereof; and (d) the plaintiff instituted the action within one year from the unlawful deprivation or withholding of possession.[25]

Guided by the foregoing norms, the allegations of the respondents' complaint made out a case of unlawful detainer, vesting the MeTC with exclusive original jurisdiction over the complaint. The record showed that the respondents' TCTs were issued on February 21, 2005.[26] Thereafter, the demand to vacate was made against the petitioners on March 16, 2005, which is the reckoning point of the petitioners' unlawful possession. Thus, the filing of the ejectment complaint on April 21, 2005 is within the one-year reglementary period.[27]

Indeed, the cause of action of the respondents was to recover possession of the subject properties from the petitioners upon

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[24] *Go v. Looyuko, et al.,* 713 Phil. 125, 131 (2013).

[25] *Penta Pacific Realty Corporation v. Ley Construction and Development Corporation*, G.R. No. 161589, November 24, 2014, 741 SCRA 426, 443.

[26] *Rollo*, p. 14.

[27] *Id.* at 61.

the latter's failure to comply with the former's demand to vacate the subject properties after the latter's right to remain thereon terminated. The respondents initiated the ejectment suit in the MeTC well within the one-year period from the date of the last demand. Thus, the possession of the petitioners, although lawful at its commencement, became unlawful upon its non-compliance with the respondents' demand to vacate.

Also, the petitioners erroneously argued that the respondents' prior physical possession is necessary for an action for unlawful detainer to prosper. Contrary to the petitioners' argument, nowhere does it appear in Section 1[28] of Rule 70 of the Rules of Court that, in an action for unlawful detainer, the plaintiff must be in prior physical possession of the property. The Court has repeatedly ruled that prior physical possession by the plaintiff is not an indispensable requirement in an unlawful detainer case brought by a vendee or other person against whom the possession of any land is unlawfully withheld after the expiration or termination of a right to hold possession.[29]

There is no dispute with the fact that the petitioners were the previous owners of the subject properties. However, the respondents were able to prove by preponderance of evidence that they are now the new owners and the rightful possessors of the subject properties being its registered owners under TCT Nos. PT-126446 and PT-126450. The TCTs of the respondents are, therefore, evidence of indefeasible title over the subject

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[28] **Section 1.** *Who may institute proceedings, and when.*—Subject to the provisions of the next succeeding section, a person deprived of the possession of any land or building by force, intimidation, threat, strategy, or stealth, or a lessor, vendor, vendee, or other person against whom the possession of any land or building is unlawfully withheld after the expiration or termination of the right to hold possession, by virtue of any contract, express or implied, or the legal representatives or assigns of any such lessor, vendor, vendee, or other person, may, at any time within one (1) year after such unlawful deprivation or withholding of possession, bring an action in the proper Municipal Trial Court against the person or persons unlawfully withholding or depriving of possession, or any person or persons claiming under them, for the restitution of such possession, together with damages and costs.

[29] *Go v. Looyuko, et al., supra* note 24, at 133.

properties and, as its holders, they are entitled to its possession as a matter of right.

Conversely, aside from their bare allegation of bad faith on the part of the respondents, the petitioners presented nothing to support their claim. They failed to submit any piece of evidence showing their right to possess the subject properties. Thus, their unsubstantiated arguments are not, by themselves, enough to offset the respondents' right as the registered owners.

In this case, the evidence showed that as between the parties, it is the respondents who have a Torrens title to the subject properties. The RTC and the CA relied on the Torrens title in the name of the respondents to support their finding that the respondents are the owners of the subject properties.

The Court also noted that in assailing the respondents' right over the subject properties, the petitioners contended that the respondents obtained their certificates of title through forgery. Obviously, this argument is equivalent to a collateral attack against the Torrens title of the respondents — an attack that the Court cannot allow in the instant unlawful detainer case.

Time and again, the Court had emphasized that when the property is registered under the Torrens system, the registered owner's title to the property is presumed legal and cannot be collaterally attacked, especially in a mere action for unlawful detainer, and it does not even matter if the party's title to the property is questionable.[30]

At any rate, it is fundamental that a certificate of title serves as evidence of an indefeasible and incontrovertible title to the property in favor of the person whose name appears therein. The title holder is entitled to all the attributes of ownership of the property, including possession. Thus, the Court must uphold the age-old rule that the person who has a Torrens title over a land is entitled to its possession.[31]

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[30] *Spouses Dela Cruz v. Spouses Capco,* 729 Phil. 624, 638 (2014).

[31] *Manila Electric Company v. Heirs of Spouses Deloy*, 710 Phil. 427, 443 (2013).

Lastly, it must be underscored that this award of possession *de facto* over the subject properties in favor of the respondents will not constitute *res judicata* or will not bar or prejudice the action between the parties involving their claim of ownership over the subject properties which are already the subject of a pending litigation.

In fine, this Court finds no cogent reason to annul the findings and conclusions of the CA. The respondents, as the title holders of the subject properties, are the recognized owners of the same and consequently have the better right to its possession.

WHEREFORE, the appeal is **DENIED**. The Decision dated April 28, 2008 and Resolution dated September 4, 2008 of the Court of Appeals in CA-G.R. SP No. 101375 are **AFFIRMED**.

SO ORDERED.

Velasco, Jr. (Chairperson), Bersamin, Jardeleza, and *Tijam, JJ.,* concur.

FIRST DIVISION

[G.R. No. 192353. March 15, 2017]

MERCEDITA C. COOMBS, *petitioner, vs.* **VICTORIA C. CASTAÑEDA, VIRGILIO VELOSO SANTOS, SPS. PANCHO & EDITH LEVISTE, BPI FAMILY SAVINGS BANK and the REGISTER OF DEEDS OF MUNTINLUPA CITY,** *respondents.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; ANNULMENT OF JUDGMENT; LACK OF JURISDICTION AS A GROUND; WHERE THE CERTIFICATE OF TITLE SOUGHT TO

BE RECONSTITUTED WAS NEVER LOST OR DESTROYED, THE REGIONAL TRIAL COURT ACQUIRED NO JURISDICTION OVER THE SUBJECT MATTER AND ITS DECISION WOULD BE VOID; WHEN PETITIONER'S ALLEGATIONS GIVE RISE TO A *PRIMA FACIE* CASE OF ANNULMENT OF JUDGMENT, THE COURT OF APPEALS SHOULD NOT HAVE DISMISSED THE PETITION BASED ON TECHNICAL RULES.— It is doctrinal that jurisdiction over the nature of the action or subject matter is conferred by law. Section 10 of Republic Act No. 26 vests the RTC with jurisdiction over the judicial reconstitution of a lost or destroyed owner's duplicate of the certificate of title. However, the Court of Appeals erred when it ruled that the subject matter of LRC Case No. 04-035 was within the RTC's jurisdiction, being a court of general jurisdiction. In a long line of cases, the Court has held that the RTC has no jurisdiction when the certificate sought to be reconstituted was never lost or destroyed but is in fact in the possession of another person. In other words, the fact of loss of the duplicate certificate is jurisdictional. Thus, petitioner Coombs' mere allegation that the owner's duplicate copy of TCT No. 7615 was never lost and has in fact always been with her gave rise to a *prima facie* case of the RTC's lack of jurisdiction over the proceedings in LRC Case No. 04-035. This is exactly the situation a petition for annulment of judgment aims to remedy. Moreover, the Court of Appeals' dismissal based on technical grounds (*i.e.*, failure to allege that she did not avail of a motion for new trial, appeal, petition for relief, or other appropriate remedies and failure to append the affidavits of witnesses or documents supporting the cause of action of her petition) was also erroneous. ***First***, when a petition for annulment of judgment is grounded on lack of jurisdiction, the petitioner need not allege that the ordinary remedy of new trial or reconsideration of the judgment sought to be annulled are no longer available through no fault of her own. This is because a judgment rendered without jurisdiction is fundamentally void. Thus, it may be questioned any time unless laches has already set in. ***Second***, petitioner Coombs in fact was able to attach to her petition documents supporting her cause of action. Verily, our ruling in *Veneracion* required the petitioners to: (a) allege with particularity in their petition the facts and the law relied upon for annulment as well as those supporting their cause of action, and (b) attach to the original

copy of their petition the affidavits of their witnesses and documents supporting their cause of action. In the present case, petitioner Coombs' Petition for Annulment of Judgment was grounded on lack of jurisdiction. Based on our review of the records, she annexed to her petition the owner's duplicate copy of TCT No. 6715 and the RTC Decision – which sufficiently support the petition's cause of action. A copy of the TCT alleged (in LRC Case No. 04-035) to have been missing supports the claim that the same was never lost. In the same vein, a copy of the RTC Decision, in conjunction with supporting jurisprudence, supports petitioner Coombs' averment that said decision was rendered without jurisdiction. Her allegations coupled with the appropriate supporting documents give rise to a *prima facie* case that the RTC did not have jurisdiction over the subject matter in LRC Case No. 04-035. As we ruled in *Tan Po Chu v. Court of Appeals*, **if allegations of this nature turned out to be true, the RTC Decision would be void and the Court of Appeals would have been duty-bound to strike it down.** Thus, the appellate court erred when it brushed aside this duty and dismissed the case outright based on a strict interpretation of technical rules.

APPEARANCES OF COUNSEL

Padlan Sutton Mendoza and Associates for petitioner.
Benedicto Versoza and Burkley for respondent BPI Family Savings Bank.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court, as amended, seeking to reverse and set aside the Resolutions dated April 30, 2009[1] and May 25, 2010[2] of the Court of Appeals in CA-G.R. SP No. 107949.

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[1] *Rollo*, pp. 34-36; penned by Associate Justice Jose C. Reyes, Jr. with Associate Justices Martin S. Villarama, Jr. and Normandie B. Pizarro concurring.

[2] *Id*. at 38-40.

This case stemmed from a petition for annulment of judgment to declare the Decision[3] dated August 26, 2004 of the Regional Trial Court (RTC), Branch 206, Muntinlupa City in LRC Case No. 04-035 as null and void, filed by herein petitioner Mercedita C. Coombs (Coombs) before the Court of Appeals. The dispositive portion of the RTC Decision reads:

> WHEREFORE, judgment is hereby rendered declaring the lost owner's duplicate copy of Transfer Certificate of Title [No.] 6715 of the Registry of Deeds of Muntinlupa City as null and void. Accordingly, the Register of Deeds of Muntinlupa City is ordered to issue a new owner's duplicate copy of the said TCT No. 6715 under the same terms and conditions as the original thereof and to include thereon all annotations which have not been lawfully ordered cancelled by the Court upon payment of all fees prescribed by law.[4]

Petitioner Coombs narrated in the said petition that she is the owner of the real property covered by Transfer Certificate of Title (TCT) No. 6715 situated on Apitong Street, Ayala Alabang, Muntinlupa City; that sometime in March 2005, when she tried to pay the real property tax due relative to the real property covered by TCT No. 6715, she was told that said real property was no longer listed under her name; that upon further verification, she came to know that TCT No. 6715 had already been cancelled and had been replaced by TCT No. 14115 issued in the name of herein respondent Virgilio Veloso Santos (Santos); that TCT No. 6715 was ordered cancelled by the RTC in a Decision dated August 26, 2004 in LRC Case No. 04-035, entitled "*In Re: Petition for the Issuance of Second Owner's Duplicate Copy of Transfer Certificate of Title No. 6715, [by] Mercedita C. Coombs, represented by her Atty.-in-Fact Victoria C. Castañeda*"; that she neither authorized Victoria C. Castañeda (Castañeda) to file petition for issuance of a second owner's duplicate copy of TCT No. 6715 sometime in 2004, nor asked her to sell the subject property to herein respondent Santos; that Santos, in turn, sold the same to herein respondents Pancho

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[3] *Id*. at 72-75; penned by Judge Patria A. Manalastas-De Leon.

[4] *Id*. at 75.

and Edith Leviste (spouses Leviste); that the spouses Leviste executed a real estate mortgage over the subject property in favor of herein respondent Bank of the Philippine Islands Family Savings Bank (BPI Family).[5]

Petitioner Coombs anchored her prayer for the annulment of the RTC Decision on the ground that, since the owner's duplicate copy of TCT No. 6715 had never been lost as it had always been in her custody,[6] the RTC did not acquire jurisdiction over the subject matter of LRC Case No. 04-035.

The Assailed Court of Appeals Resolutions

In its Resolution dated April 30, 2009, relying on Section 1, Rule 47 of the Revised Rules of Court, the Court of Appeals dismissed the petition for annulment of judgment. According to the appellate court —

> A careful reading of the petition reveals that there is no allegation in the petition that the petitioner has failed to avail of any of the aforementioned remedies in Section 1 through no fault of his before instituting the herein petition. This is an important condition for the availment of this remedy. The petition is also not sufficient in substance. Under Section 2[,] Rule 47 of the Rules of Civil Procedure, the grounds for Annulment of Judgment are: (a) lack of jurisdiction of the lower court; and (b) extrinsic fraud. Obviously, the ground relied upon in the present action is extrinsic fraud. However, the petitioner failed to state the facts constituting extrinsic fraud as a ground. Since the petitioner failed to avail [of] any of aforementioned remedies in Section 1 without justification and that the ground relied upon was not substantiated, this petition has no prima facie merit.[7]

Petitioner Coombs moved for the reconsideration of the above-quoted Resolution. She insisted that her petition was grounded on lack of jurisdiction, not extrinsic fraud. In fact, she explicitly spelled out in her petition that the RTC did not have jurisdiction over the subject matter in LRC Case No. 04-035 because the owner's duplicate copy of TCT No. 6715 was never lost.

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[5] *Id*. at 42-47.

[6] *Id*. at 43.

[7] *Id*. at 35.

In its assailed Resolution dated May 25, 2010, the Court of Appeals denied the said motion and explained that the RTC has jurisdiction over all proceedings involving title to real property and land registration cases. Thus, it had jurisdiction over the subject matter of LRC Case No. 04-035. It further held that petitioner Coombs failed to append affidavits of witnesses or documents supporting her cause of action as required by Section 4, Rule 47 of the Rules of Court. It cited *Veneracion v. Mancilla*,[8] where it was held that failure to append the necessary documents may prompt the appellate court to dismiss the petition outright or deny the same due course. The dispositive portion of the Resolution reads:

> WHEREFORE, premises considered, the instant motion is DENIED. Accordingly, the instant petition is DISMISSED WITH FINALITY.[9]

Hence, the present petition raising the following arguments:

First, petitioner Coombs asserts that she was never notified about the proceedings in LRC Case No. 04-035. Being a stranger to the case, she could not have availed of any of the remedies mentioned in Section 1, Rule 47 of the Rules of Court to question the RTC Decision. She claims that she only found out about the RTC's decision sometime in March 2005 in the course of paying for real estate taxes due on the subject property. By that time, the RTC decision had already become final and executory. Thus, the failure to allege these circumstances is not fatal to her petition.[10]

Second, citing the Court's rulings in *Strait Times, Inc. v. Court of Appeals*,[11] *Serra Serra v. Court of Appeals*,[12] *Alabang Development Corporation v. Valenzuela*,[13] and *Demetriou v.*

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[8] 528 Phil. 309, 323 (2006).

[9] *Rollo*, p. 40.

[10] *Id.* at 20-21.

[11] 356 Phil. 217 (1998).

[12] 272-A Phil. 467 (1991).

[13] 201 Phil. 727 (1982).

Court of Appeals,[14] petitioner Coombs maintains that the RTC did not have jurisdiction over the subject matter in LRC Case No. 04-035 because the owner's duplicate copy of the TCT sought to be annulled was never lost and had always been in her possession.[15]

Third, petitioner Coombs insists that she appended all the relevant documents to support her Petition for Annulment of Judgment. But she did not append any witnesses' affidavits because she does not have any witness other than herself. Besides, all the facts that may be set out in a separate affidavit are already averred in the present petition. Thus, lack thereof should not result in the petition's outright dismissal.[16]

Ultimately, Coombs prays for the following reliefs:

> 1. [T]hat this petition be given due course and that the assailed Resolutions of the Court of Appeals be reversed and set aside;
>
> 2. [T]hat the Honorable Court of Appeals be directed to give due course to the petitioner's petition for annulment of judgment, declaration of nullity of sales and titles, and damages, and to conduct further proceedings thereon.[17]

On the other hand, the spouses Leviste maintains (a) that petitioner Coombs' petition was grounded on extrinsic fraud and she failed to properly allege the facts constituting this ground; (b) that the petition is infirm because petitioner Coombs did not comply with the requirements of alleging her failure to resort to ordinary remedies, as enumerated in Section 1, Rule 47 of the Rules of Court and appending the appropriate documents in support of her cause of action; and (c) that petitioner Coombs admitted that a new owner's duplicate copy of TCT No. 6715 was issued by virtue of the RTC Decision. And, for their last point, they argue that the Petition for Annulment of Judgment

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[14] G.R. No. 115595, November 14, 1994, 238 SCRA 158.

[15] *Rollo*, pp. 23-25.

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

[17] *Id*. at 29.

is actually a collateral attack on their title that is not permitted pursuant to Section 48 of Presidential Decree No. 1529, which states that a certificate of title cannot be altered, modified, or cancelled, except in a direct proceeding in accordance with the law.[18]

For their part, respondent BPI Family contends that it should not have been impleaded in the present petition. It maintains that it is simply a mortgagee in good faith and for value in relation to the subject lot covered by TCT No. 6715. And the present petition seeks to nullify the RTC Decision to which the respondent bank was never a party of. Thus, BPI Family claims that the Court has no jurisdiction over it.[19]

The Issue

We are now left to resolve the lone issue of whether or not the Court of Appeals erred when it dismissed outright petitioner Coombs' petition for annulment of judgment.

The Ruling of the Court

The petition is meritorious.

The Court of Appeals erred when it dismissed outright the petition for annulment of judgment.

The grounds for annulment of judgment are set forth in Section 2, Rule 47 of the Rules of Court, *viz.*:

> Section 2. Grounds for annulment. — The annulment may be based only on the grounds of extrinsic fraud and lack of jurisdiction.
>
> Extrinsic fraud shall not be a valid ground if it was availed of, or could have been availed of, in a motion for new trial or petition for relief.

Contrary to the findings of the Court of Appeals, the Petition for Annulment of Judgment filed by petitioner Coombs was

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[18] *Id*. at 122-126.

[19] *Id*. at 151-152.

clearly grounded on lack of jurisdiction of the RTC over the subject matter of the case, and not extrinsic fraud.

In her petition, petitioner Coombs averred as follows:

> 13. Since the owner's duplicate copy of TCT No. 6715 is not lost or destroyed, but is in fact in the possession of the petitioner, there is no necessity for the petition filed in the trial court. The Regional Trial Court Branch 206 in Muntinlupa City never acquired jurisdiction to entertain the petition and order the issuance of a new owner's duplicate certificate. Hence, the newly issued duplicate of TCT No. 6715 is null and void.[20]

Simply stated, petitioner Coombs sought to annul the RTC Decision for being rendered without jurisdiction. According to her, the RTC did not acquire jurisdiction over the subject matter of LRC Case No. 04-035 — one for the reconstitution of a lost certificate of title — because the owner's duplicate copy of TCT No. 6715 was never lost in the first place, which argument has been upheld by the Court in a catena of cases that she cited to support her assertion.

To Our mind, the above-stated allegations made out a *prima facie* case of annulment of judgment to warrant the Court of Appeals' favorable consideration.

In *Manila v. Manzo*,[21] the Court held that in a petition for annulment of judgment grounded on lack of jurisdiction, it is not enough that there is an abuse of jurisdictional discretion. It must be shown that the court should not have taken cognizance of the case because the law does not confer it with jurisdiction over the subject matter.

It is doctrinal that jurisdiction over the nature of the action or subject matter is conferred by law. Section 10 of Republic Act No. 26[22] vests the RTC with jurisdiction over the judicial

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[20] *Rollo*, p. 49.

[21] 672 Phil. 461, 473 (2011).

[22] Section 10. Nothing hereinbefore provided shall prevent any registered owner or person in interest from filing the petition mentioned in section five

reconstitution of a lost or destroyed owner's duplicate of the certificate of title. However, the Court of Appeals erred when it ruled that the subject matter of LRC Case No. 04-035 was within the RTC's jurisdiction, being a court of general jurisdiction.

In a long line of cases,[23] the Court has held that the RTC has no jurisdiction when the certificate sought to be reconstituted was never lost or destroyed but is in fact in the possession of another person. In other words, the fact of loss of the duplicate certificate is jurisdictional.

Thus, petitioner Coombs' mere allegation that the owner's duplicate copy of TCT No. 7615 was never lost and has in fact always been with her gave rise to a *prima facie* case of the RTC's lack of jurisdiction over the proceedings in LRC Case No. 04-035. This is exactly the situation a petition for annulment of judgment aims to remedy.

Moreover, the Court of Appeals' dismissal based on technical grounds (*i.e.*, failure to allege that she did not avail of a motion for new trial, appeal, petition for relief, or other appropriate remedies and failure to append the affidavits of witnesses or

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of this Act directly with the proper Court of First Instance, based on sources enumerated in Sections 2(a), 2(b), 3(a), 3(b), and/or 4(a) of this Act: Provided, however, That the court shall cause a notice of the petition, before hearing and granting the same, to be published in the manner stated in section nine hereof: And provided, further, That certificates of title reconstituted pursuant to this section shall not be subject to the encumbrance referred to in section seven of this Act.

[23] *See Alabang Development Corporation v. Valenzuela*, *supra* note 13; *Serra Serra v. Court of Appeals*, *supra* note 12 at 482; *Demetriou v. Court of Appeals*, *supra* note 14 at 162; *Strait Times, Inc. v. Court of Appeals*, *supra* note 11 at 227-228, as cited by the petitioner. Also see *New Durawood Co., Inc. v. Court of Appeals*, 324 Phil. 109, 119-120 (1996); *Reyes, Jr. v. Court of Appeals*, 385 Phil. 623, 630 (2000); *Rexlon Realty Group, Inc. v. Court of Appeals*, 429 Phil. 31, 44 (2002); *Heirs of Panganiban v. Dayrit*, 502 Phil. 612, 621 (2005); *Macabalo-Bravo v. Macabalo*, 508 Phil. 61, 74 (2005); *Feliciano v. Zaldivar*, 534 Phil. 280, 293-294 (2006); *Camitan v. Fidelity Investment, Corp.*, 574 Phil. 672, 685 (2008); *Alcazar v. Arante*, 700 Phil. 614, 628 (2012); *Billote v. Solis*, G.R. No. 181057, June 17, 2015, 759 SCRA 47, 55.

documents supporting the cause of action of her petition) was also erroneous.

First, when a petition for annulment of judgment is grounded on lack of jurisdiction, the petitioner need not allege that the ordinary remedy of new trial or reconsideration of the judgment sought to be annulled are no longer available through no fault of her own. This is because a judgment rendered without jurisdiction is fundamentally void. Thus, it may be questioned any time unless laches has already set in.[24]

Second, petitioner Coombs in fact was able to attach to her petition documents supporting her cause of action.

Verily, our ruling in *Veneracion*[25] required the petitioners to: (a) allege with particularity in their petition the facts and the law relied upon for annulment as well as those supporting their cause of action, and (b) attach to the original copy of their petition the affidavits of their witnesses and documents supporting their cause of action.

In the present case, petitioner Coombs' Petition for Annulment of Judgment was grounded on lack of jurisdiction. Based on our review of the records, she annexed to her petition the owner's duplicate copy of TCT No. 6715 and the RTC Decision — which sufficiently support the petition's cause of action. A copy of the TCT alleged (in LRC Case No. 04-035) to have been missing supports the claim that the same was never lost. In the same vein, a copy of the RTC Decision, in conjunction with supporting jurisprudence, supports petitioner Coombs' averment that said decision was rendered without jurisdiction. Her allegations coupled with the appropriate supporting documents give rise to a *prima facie* case that the RTC did not have jurisdiction over the subject matter in LRC Case No. 04-035.

As we ruled in *Tan Po Chu v. Court of Appeals*,[26] **if allegations of this nature turned out to be true, the RTC Decision would**

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[24] *See Ancheta v. Ancheta*, 468 Phil. 900 (2004).

[25] *Veneracion v. Mancilla*, *supra* note 8.

[26] G.R. No. 184348, April 4, 2016.

be void and the Court of Appeals would have been duty-bound to strike it down. Thus, the appellate court erred when it brushed aside this duty and dismissed the case outright based on a strict interpretation of technical rules.

WHEREFORE, the petition is hereby **GRANTED**. The Resolutions dated April 30, 2009 and May 25, 2010 of the Court of Appeals in CA-G.R. SP No. 107949 are **SET ASIDE**. The Court of Appeals is directed to **REINSTATE** the Petition for Annulment of Judgment in CA-G.R. SP No. 107949 and to proceed hearing the same with dispatch.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 192536. March 15, 2017]

DEMETRIO R. ALCANTARA, *petitioner, vs.* **REPUBLIC OF THE PHILIPPINES, THRU ITS AGENCY, BUREAU OF INTERNAL REVENUE, REVENUE REGION NO. 11-B, DAVAO CITY; AMERIGO D. VILLEGAS, REVENUE ENFORCEMENT OFFICER, REVENUE REGION NO. 11-B; TEODORICA R. ARCEGA, ASSISTANT REGIONAL DIRECTOR, BIR REVENUE REGION NO. 11-B; JOSE C. BATAUSA, REGIONAL DIRECTOR, BIR REVENUE REGION NO. 11-B; THEMISTOCLES R. MONTALBAN, ASSISTANT COMMISSIONER, COLLECTION SERVICE OF BIR; REGISTER OF DEEDS OF DAVAO CITY; and MAXIMO LAGAHIT,** *respondents.*

SYLLABUS

1. **TAXATION; TAX REMEDIES; DISPUTE ASSESSMENT; PRIOR RESORT TO ADMINISTRATIVE REMEDIES WAS NECESSARY BEFORE SEEKING JUDICIAL RECOURSE; FAILURE TO COMPLY RENDERED THE ASSESSMENT FINAL.—** The remedies available to a taxpayer like Alcantara were laid down by law. Section 229 of Presidential Decree (P.D.) No. 1158, the law in effect at the time of the disputed assessment, stated that prior resort to the administrative remedies was necessary; otherwise, the assessment would attain finality[.] x x x Section 230 of P.D. No. 1158 allowed Alcantara to file his claim for refund for the erroneously or illegally paid taxes. In this regard, such claim for refund was also a prerequisite before any resort to the courts could be made to recover the erroneously or illegally paid taxes[.] x x x Yet, Alcantara immediately invoked the authority of the courts to protect his rights instead of first going to the Commissioner of Internal Revenue for redress of his concerns about the assessment and collection of taxes. His judicial recourse thus suffered from fatal prematurity because his doing so rendered the assessment final. Alcantara argues that the resort to administrative remedies was futile for him because he could not have sought reconsideration or filed a claim for refund during the period required of him by the Tax Code due to his being then out of the country. Such argument did not excuse Alcantara from complying with the specific provisions of law on his remedies. Even assuming to be true that he had not received the assessment, there was greater reason for him to have first resorted to the Commissioner of Internal Revenue for the reconsideration of the assessment before it attained finality. Section 229 of P.D. No. 1158 declared the finality of the assessment upon the lapse of 30 days from receipt of it.

2. **ID.; ID.; ID.; PRIOR TO REPUBLIC ACT NO. 9282, AN ACT AMENDING REPUBLIC ACT NO. 1125, THE COURT OF TAX APPEALS HAD EXCLUSIVE APPELLATE JURISDICTION OVER THE APPEALS OF THE DECISIONS OF THE COMMISSIONER OF INTERNAL REVENUE; ERRONEOUS APPEAL TO THE COURT OF APPEALS DESERVES DISMISSAL OF THE APPEAL.—**

The complaint was brought to assail the assessment and collection made by the Commissioner of Internal Revenue. Based on Republic Act No.1125, prior to its amendment by Republic Act No. 9282, the CTA had exclusive appellate jurisdiction over the appeal of the decisions of the Commissioner of Internal Revenue, to wit: **Section 7. *Jurisdiction.*** – The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided. (1) **Decisions of the Collector of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto**, **or other matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue**; x x x x Accordingly, the CA correctly dismissed Alcantara's appeal on the ground of lack of jurisdiction to entertain the same. The erroneous appeal deserved no fate but dismissal. Section 2, Rule 50 of the *Rules of Court* expressly states: "*An appeal erroneously taken to the Court of Appeals shall not be transferred to the appropriate court but shall be dismissed outright*." In *Balaba v. People*, the Court affirmed the CA's dismissal of the appeal because the appeal had been erroneously taken to the CA instead of to the Sandiganbayan.

APPEARANCES OF COUNSEL

Alabastro & Olaguer for petitioner.
Office of the Solicitor General for respondents.

D E C I S I O N

BERSAMIN, *J.*:

An action directly brought in the Regional Trial Court (RTC) ostensibly to demand reconveyance of property sold upon forfeiture for non-payment of a tax assessment is to be dismissed for failure of the plaintiff to claim for refund or credit with the Commissioner of Internal Revenue. The failure to resort to administrative remedies rendered the assessment final.

The Case

Under review are the decision promulgated on November 4, 2009[1] and resolution promulgated on May 13, 2010,[2] whereby the Court of Appeals (CA) in CA-G.R. CV No. 79261 respectively dismissed the appeal of the petitioner and denied his motion for reconsideration.

As a consequence, the decision rendered on February 28, 2003 by the RTC in Davao City in Civil Case No. 25,401-97 entitled *Demetrio Alcantara v. Republic of the Philippines, et al.*[3] dismissing the petitioner's complaint for declaration of nullity of notice of seizure of real property, declaration of forfeiture of real property, deed of sale and for specific performance for reconveyance of real property stands.

Antecedents

The CA summarized the facts as follows:

Plaintiff-appellant Demetrio R. Alcantara (hereinafter, appellant) was the owner of a parcel of land, 301 square meters in area, situated at Panorama Homes, Buhangin, Davao City, and covered by Transfer Certificate of Title (TCT) No. T-113015.

Defendants-appellees (hereinafter, appellees) are: The Republic of the Philippines thru its agency, Bureau of Internal Revenue (BIR), Revenue Region No. 11-B, Davao City and the following officers of the said Revenue Region: Region Enforcement Officer Amerigo D. Villegas, Assistant Regional Director Teodorica R. Arcega, and Regional Director Jose C. Batausa; Themistocles R. Montalban, Assistant Commissioner for Collection Service of the BIR; the Register of Deeds of Davao City; and Maximo Lagahit.

On April 15, 1983 and April 16, 1984, appellant filed his income tax returns for, respectively, the years 1982 and 1983.

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[1] *Rollo*, pp. 33-51; penned by Associate Justice Romulo V. Borja and concurred in by Associate Justice Elihu A. Ybañez and Associate Justice Danton Q. Bueser.

[2] *Id*. at 63-65.

[3] Records, pp. 499-506.

On December 14, 1987, Crispin Vallejo, Jr., Assistant Regional Director of the Revenue Region No. 11-B of the BIR, Davao City, wrote appellant informing him that ₱32,076.52 was still due from him representing deficiency income tax and fixed tax, surcharge, interest and compromise penalty for late payment, and inviting him to call at "the Chief, Assessment Branch Room 107 Milagros Building Ilustre Street, this City for an informal conference to enable" appellant "to go over our findings and present objections thereto, if any".

The letter was addressed thus:

> Mr. Demetrio R. Alcantara
> Ecoland Subdivision, Matina
> Davao City

There was no response from appellant.

On February 15, 1988, the BIR issued two (2) demand letters – with respective accompanying income tax assessment notices – to appellant at the same address. The demand letters were signed by Vallejo for Commissioner of Internal Revenue (CIR) Bienvenido A. Tan Jr.

The first letter reads:

> This is to inform you that in the investigation conducted by an examiner of this Office on your 1982 & 1983 income and other internal revenue tax liabilities, it was ascertained that there is still due from you the total amount of THIRTY THOUSAND SEVEN HUNDRED NINETY SEVEN & 36/100 (₱30,797.36) representing deficiency income taxes and interests for late payment.
>
> The amount due is computed as follows:

1982 Deficiency Income Tax Due	₱ 7,530.81
Add: Interest from 04-16-83 to 02-15-88	4,518.49
T O T A L	₱ 12,049.30
1983 Deficiency Income Tax Due	₱ 11,717.54
Add: Interest from 04-16-84 to 02-15-88	7,030.52
T O T A L	₱ 8,748.06
TOTAL AMOUNT DUE & COLLECTIBLE	₱ 30,797.36

In view of the foregoing, demand is hereby made upon you to pay the total amount of ₱30,797.36 to the Collection Agent thereat on or before March 15, 1983, so that this case may be considered closed and terminated.

The second letter was for the amount of ₱1,294.70, representing deficiency fixed tax, surcharge, interest and compromise penalty for late payment.

Still there was no response.

On August 12, 1991, the CIR, through appellee Montalban, issued a Warrant of Distraint and/or Levy against the properties of appellant. The address of the appellant in the said Warrant was the same as in the above-cited communications to him. In the lower portion of the warrant, appellee Villegas certified that —

X X X ON THE 17th DAY OF OCTOBER 1991, A COPY OF THE WARRANT OF DISTRAINT AND/OR LEVY WAS:

A SERVED TO THE TAX PAYER OR HIS REPRESENTATIVE AS ACKNOWLEDGED HEREUNDER:

____

TAXPAYER OR HIS REPRESENTATIVE

B SERVED CONSTRUCTIVELY BECAUSE THE TAXPAYER OR HIS REPRESENTATIVE REFUSED TO ACKNOWLEDGE THE SERVICE OF THE WARRANT, OR WAS NOT IN THE PREMISES.

There were no entries in either of the two boxes above. Neither the taxpayer's name nor that of his representative printed above the line provided therefor. Nor was there any signature above the said line.

Subsequently, Villegas issued to appellant at the same address a Notice of Seizure of Real Property notifying him that his property, covered by TCT No. T-113015, had been levied upon to satisfy the sum of ₱32,076.52 as internal revenue tax, surcharge and interest and would be sold "for cash, to the highest bidder at the Lobby, main building, City [*sic*] of Davao City, Municipality of Davao City [*sic*] on the 30th day of April 1992, beginning at 10:00 o'clock a.m. of the said day". At the bottom of the Notice, Villegas certified that —

x x x I have on this date served a copy of this notice to Mr. Baldovino S. Lagbao, Mgr. Of Panorama Home on this 6th day of March, 1992 at 1o:45 A.M.

On May 4, 1992, Villegas issued a Declaration of Forfeiture of Real Property declaring that since "no bidder appeared or the highest bid is insufficient to pay taxes", the levied property was "forfeited to the Government of the Republic of the Philippines in satisfaction of the tax/taxes" due.

On May 13, 1993, appellee Arcega wrote the Register of Deeds of Davao City requesting that, in view of the lapse of the one-year redemption period for appellant to redeem the property, a new title issue over the subject property in the name of the Republic of the Philippines. Thus, on May 18, 1993, appellee Register of Deeds of Davao City cancelled TCT No. T-113015 and issued a new TCT No. T-195677 in the name of Republic of the Philippines.

Subsequently, the BIR, through apppellee Batausa, issued a Notice of Sale informing the public of a resale, pursuant to Section 217 of the National Internal Revenue Code, of the above property through public auction to be held on June 9, 1995. In the said resale, appellee Maximo Lagahit was proclaimed the winning/highest bidder. On June 29, 1995, a deed of sale was executed by and between the CIR through Director Batausa and appellant Lagahit for the sale of the said property. On the same day, a new title – TCT No. T-244532 – was issued in the name of appellee Lagahit.

On June 6, 1997, appellant instituted the action below before the RTC of Davao City where it was docketed as Civil Case No. 25,401-97 and raffled to Branch 11. In his complaint, appellant alleged that when he wanted to pay the realty tax on his Buhangin property for the year 1997, "his payment was not accepted by the Assessor's Office in Davao City for the reason that the owner of said property is no longer the plaintiff but a certain MAXIMO LAGAHIT – which fact brought shock waves to the plaintiff; that upon verification from the Register of Deeds of Davao City, appellant was surprised to find that his certificate of title was cancelled on May 18, 1993 and that TCTs were subsequently issued in the name of the Republic of the Philippines and then to Maximo Lagahit; that appellant found that he was deprived of his property when the BIR "made it appear falsely" in the Income Tax Assessment Notices that he "was residing at Ecoland Subdivision, Matina, Davao City", when, in fact, he and his family had left Davao City for the United States in August 1985; that as a result of assessment notices which were not validly served on appellant, appellees Montalban and Villegas pursued their illegal acts of levying and seizing appellant's property by issuing a "farcical" Warrant of Distraint and/or Levy, Notice of Seizure of Real Property, Declaration

of Forfeiture of Real Property, all without notice or service of the same whatsoever to appellant; that appellant "felt extremely aggrieved" due to appellees' "unlawful acts and irregularities" committed, which deprived the former of his property without due process of law. Thus, appellant prayed for the declaration as null and void *ab initio* of the above-mentioned notices of assessment, the notice of seizure of real property, the declaration of forfeiture of real property, and the deed of sale. He also prayed that defendants be ordered to reconvey to him the subject property or that the BIR and its officers involved be compelled to reacquire the said property from Lagahit at their own expense. Finally, appellant prayed for ₱300,000.00 as moral damages, ₱100,000.00 as exemplary damages, ₱50,000.00 as attorney's fees plus ₱1,000.00 per appearance fee, ₱5,000.00 initially as expenses, and costs of the suit.

In their answer, appellees alleged that —

> 16. That defendant Bureau of Internal Revenue knows that TCT No. T-113015 was cancelled with due process and that the defendants have not committed unlawful acts and irregularities, but on the contrary, the forfeiture of plaintiff's real property was done legally and regularly after complying with the requisite due process.
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> 16-1. That the defendants maintain that the assessment for his 1982 and 1983 deficiency income tax of ₱32,076.52 (Exhibit "C") was legally assessed including interest of ₱32,076.52, not ₱30,797.36 x x x at the time of auction sale last June 9, 1995 (Exhibit "E", "E-1", "E-2" and "E-3"), as published in a newspaper of general circulation;
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> 16-2. That on the basis of the legal assessment made by defendants within the period provided by law, with notice to his last known address at Ecoland, City Hall of Davao City, defendants Bureau of Internal Revenue, Themistocles R. Montalban and Amerigo D. Villegas, pursued their legal acts of levying and seizing plaintiff's real property above-described by issuing x x x:
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> > (a) A legal warrant of distraint and levy (Exhibit "F") wherein they truly stated that plaintiff "failed and refused and still fails and refuses to pay" the deficiency income taxes of ₱32,076.52 notwithstanding the demands made by them and defendant Amerigo D. Villegas also truly certified thereunder that "a copy of warrant of distraint and/or levy was served to the taxpayer or his representative" as acknowledged hereunder served

constructively on the 6th day of March 1992 and warrant of distraint and/or levy on the 17th day of October 1991 witnessed by Severina Reyes and Narciso Apolinario.

(b) A genuine Notice of Seizure of real property dated March 6, 1992 indicating his last known address at Ecoland, Matina, Davao City … Although defendant Amerigo D. Villegas knew that the taxpayer migrated to the United States, he was informed by Ms. Aleta Zerrudo that she cannot give the address of Mr. Demetrio R. Alcantara in the United States. He made a certification therein that he served a copy thereof to Mr. Valdovino S. Lagbao of Panorama Homes, Buhangin, Davao City, on the 6th day of March 1992 at 10:00 o'clock A.M. pursuant to Section 224, wherein the suspension of the running of statute of limitation shall be suspended when the taxpayer cannot be located in the address given by him in the return filed upon which a tax is being assessed or collected; xxx xxx xxx; when the warrant of distraint or levy is duly served upon the taxpayer, his authorized representative, or a member of his household with sufficient discretion, xxx; and when the taxpayer is out of the Philippines.

(c) A declaration of forfeiture of real property on May 6, 1992 with due notice, filed a notice of tax lien on August 12, 1991 (Exhibits "J", "J-1", "J-3" and "J-4");

16-3. That on May 13, 1993, defendant Teodorica R. Arcega wrote a letter to the Register of Deeds of Davao City requesting the latter to issue a new title of the subject property in the name of the Republic of the Philippines and TCT No. T-195677 was issued. Such act was a legal and lawful performance of her duties. The procedures undertaken were in compliance with due process of law ...

16-4. That after acquiring a new title to the property in the name of the Republic of the Philippines and pursuant to the requirements and conditions provided by law, defendant Jose C. Batausa conducted a resale at public auction and legally and lawfully sold plaintiff's above-described real property in favor of the highest bidder, Maximo Lagahit, pursuant to Sec. 217 of the Tax Code at a conscionable and sufficient consideration of ₱73,500.00 and the Commissioner of Internal Revenue, represented by Regional Director Jose C. Batausa, had the absolute right to conduct a resale of real property under Section 315, now 216, 217 and Consulta 832 of the Land Registration Commission.

16-5. The aforesaid Deed of Sale is legally sufficient in form and defendants maintain that due process and due notice had been complied with by defendants [*BIR*] and its' officers in levying and seizing plaintiff's above-described property. Defendant Register of Deeds of Davao City, was lawfully performing their duties in giving due course and issuing Transfer Certificate of Title No. T-244532 in the name of defendant Maximo Lagahit, the highest bidder in the auction, and who is a buyer in good faith for value.

x x x x x x x x x

20. That defendants acted with justice and had observed honesty and good faith in doing their duties of levying plaintiff's real property and deny specifically that they have prejudiced the herein plaintiff. As a consequence, no unlawful acts and irregularities had been committed and therefore, they are not liable for exemplary damages as government officers doing their duties of levying the real property of the plaintiff;

On March 10, 1999, the RTC, Branch 11, upon being apprised of the fact that the present controversy involved tax matters under the Internal Revenue Code, ordered the transfer of the case to the "designated special courts to take cognizance of tax matters and all matters relating to Internal Revenue Code". The case was reassigned to Branch 16, one of the two branches of the RTC of Davao City so designated.[4]

Judgment of the RTC

After trial, the RTC dismissed the complaint, holding that the respondents could not be faulted for Alcantara's failure to receive the assessment because the BIR and its officials had only relied on the address indicated in his tax returns; and that he had never informed the respondents of any change of his address.[5]

Decision of the CA

The same fate awaited Alcantara's appeal. The CA dismissed the appeal on the ground that the RTC had no jurisdiction over the complaint because he was thereby seeking to challenge the

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[4] *Rollo*, pp. 34-42.

[5] *Supra* note 3.

validity of the assessment made by the BIR. According to the CA, the Tax Code mandated that the taxpayer should administratively protest the assessment with the Commissioner of Internal Revenue before going to court, but he did not do so; hence, he did not exhaust his administrative remedies, rendering his action dismissible. The CA observed that even assuming that the RTC had jurisdiction over the complaint, the CA did not have jurisdiction over the appeal because it was the Court of Tax Appeals (CTA) that had the authority to entertain the same as provided for by Republic Act 1125, as amended.[6]

Issues

Alcantara now insists on the competence of the RTC to take cognizance of his complaint. He insists that his complaint is one for the declaration of the nullity of TCT No. T-195677 and TCT No. T-244532 and for the reconveyance of property that fell within the exclusive and original jurisdiction of the RTC as provided for in Batas Pambansa Blg. 129, as amended, due to such causes of action being incapable of pecuniary estimation and involving title to, or possession of, real property, or any interest therein; that the CA erred in requiring him to exhaust administrative remedies before going to the RTC; and that because the CTA had no jurisdiction, and, as such, had no power to declare certificate of titles as null and void, the CA was the proper appellate forum for him.

Countering, the respondents, through the Office of the Solicitor General, aver that the action of Alcantara was a suit against the State; hence, conformably with the doctrine of state immunity from suit, the same should be dismissed because the State did not consent to the action; the CA's ruling that neither the RTC nor the CA had jurisdiction, original and appellate, respectively, to act on the complaint was not erroneous; and that they (individual respondents) could not be liable for damages due to having acted in good faith in levying on and auctioning Alcantara's property.[7]

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[6] *An Act Creating the Court of Tax Appeals.*

[7] *Rollo*, pp. 72- 96.

The decisive issues are, therefore: (a) whether or not the CA erred in ruling that the RTC had no jurisdiction to try and decide Alcantara's complaint; and (b) whether or not the CA erred in ruling that the proper appellate authority to question the decision of the RTC was the CTA.[8]

Ruling of the Court

The appeal lacks merit.

The allegations in the complaint and the character of the relief sought determine the nature of an action as well as which court has jurisdiction over the action. The nature of a pleading is determined by allegations therein made in good faith, the stage of the proceeding at which it is filed, and the primary objective of the party filing the same.[9] Accordingly, a review of the allegations is proper in order to determine the real nature of the cause of action pleaded in the complaint.

The complaint pertinently alleges as follows:

> 11. That the above-described real property was purchased by the plaintiff with his hard-earned money on instalment basis from its former owner with the plan to put up his own residential house thereon where he could spend the rest of his life upon his return from the United States of America after retirement; Thus before he left Davao City for the United States of America in August 1985 he had it titled in his name in order that he could "*rest secure, without the necessity of waiting in the portals of the court, or sitting in the* ***mirador de su casa*** *to avoid the possibility of losing his land."* [Registration of Land Titles and Deeds, by Narciso Peña, p. 24]
>
> 12. That the plaintiff's ownership of the above-described real property is evidenced by a Transfer Certificate of Title No. T-113015 issued in his name by the Register of Deeds of Davao City, a machine copy of which is attached hereto as ANNEX "A" to form part hereof;
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> 13. That being the absolute owner of the above-described property, the plaintiff [thru his authorized representative] has religiously paid

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[8] *Id*. at 19.

[9] *Villanueva v. Philippine Daily Inquirer, Inc.*, G.R. No. 164437, May 15, 2009, 588 SCRA 1, 10-11.

the corresponding realty taxes therefor and this fact is evidenced by the following **Official Receipts of the Republic of the Philippines** issued to the plaintiff during the last five years [from 1992 to 1996], to wit:

> 13.1 Official Receipts Nos. 4629172 Q and 4628422 Q all **dated 1-17-96** machine copies of which are attached hereto as ANNEXES "B" and "B-1";
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> 13.2 Official Receipts Nos. 8671852 P and 8669352 P all **dated 3-27-95** machine copies of which are attached hereto as ANNEXES "C" and "C-1";
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> 13.3 Official Receipts Nos. 7533667 P and 7532042 P all **dated 3-29-94** machine copies of which are attached hereto as ANNEXES "D" and "D-1";
>
> 13.4 Official Receipt No. 3863896 P **dated 3-18-93** a machine copy of which is attached hereto as ANNEX "E"; and
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> 13.5 Official Receipt No. 7519929 O **dated 3-17-92** a machine copy of which is attached hereto as ANNEX "F" to form part hereof;

14. That however, when the plaintiff [thru his authorized representative] wanted to pay the realty tax for this year [1997] for the above-described property, his payment was not accepted by the office of the Davao City Assessor for the reason that the owner of the said property is no longer the plaintiff but a certain MAXIMO LAGAHIT – which fact brought shock waves to the plaintiff;

15. That upon hearing the shocking information that his above-described property is already owned by a certain MAXIMO LAGAHIT, the plaintiff caused the verification of the existence of his aforesaid TCT No. T-113015 with the Office of the Register of Deeds of Davao City and he was surprised to find out that it was **cancelled on 5-18-93** by the Register of Deeds of Davao City without giving him due process of law and a new TCT No. T-195677 was issued in the name of the Republic of the Philippines; A CERTIFIED TRUE COPY of the cancelled TCT No. T-113015 is attached hereto as ANNEX "G";

16. That after knowing that his said TCT No. T-113015 was cancelled without giving him due process of law, plaintiff further caused the verification of the same and he found out that the defendants committed the following unlawful acts and irregularities as their basis

for depriving the plaintiff of his property without due process of law, namely:

16.1 *Beyond the period of limitation prescribed by law* [See *Sec. 203, NIRC*] and long after the plaintiff had left Davao City for the United States of America, the BIR made it appear that it assessed plaintiff's income tax returns for 1982 and 1983 with alleged deficiency income taxes and interests amounting to ₱30,797.36; Worse, the BIR falsely made it appear in its alleged INCOME TAX ASSESSMENT NOTICES that the plaintiff was residing at Ecoland Subdivision, Matina, Davao City, altho the truth was that he and his family left Davao City in August 1985 for the United States of America; Neither were the alleged INCOME TAX ASSESSMENT NOTICES published in a newspaper of general circulation; Machine copies of the alleged INCOME TAX ASSESSMENT NOTICES are attached hereto as ANNEXES "H" and "H-1";

16.2 On the basis of the aforesaid illegal assessment made beyond the period of limitation prescribed by law and altho NO NOTICE thereof whatsoever was validly served on the plaintiff, defendants BIR, Themistocles R. Montalban, and Amerigo D. Villegas pursued in their illegal acts of levying and seizing plaintiff's above-described property by issuing

(a) A farcical WARRANT OF DISTRAINT AND/OR LEVY wherein they FALSELY stated that the plaintiff "*failed and refused and still fails and refuses to pay the deficiency income taxes of ₱32,076.52 notwithstanding the demands made by them*" and defendant AMERIGO D. VILLEGAS also FALSELY certified thereunder that "*a copy of the warrant of distraint and/or levy was [A] served to the taxpayer or his representative as acknowledged hereunder [B] served constructively because the taxpayer or his representative refused to acknowledge the service of the warrant, or was not in the premises.*" A machine (sic) of the WARRANT OF DISTRAINT AND/OR LEVY is attached hereto as ANNEX "I";

(b) A farcical NOTICE OF SEIZURE OF REAL PROPERTY **dated March 6, 1992** indicating FALSELY plaintiff's address as being at Ecoland, Matina, Davao City, a machine copy of which is attached as ANNEX "J"; Altho defendant AMERIGO D. VILLEGAS knew very well that the plaintiff had emigrated to the United States of America per his letter **dated February 27, 1989**, a machine copy of which is attached hereto as ANNEX "K", he FALSELY made it appear in the said NOTICE OF SEIZURE OF REAL PROPERTY that the plaintiff's address was at Ecoland, Matina, Davao City; Worse, he made an empty certification therein that he served a copy thereof to a certain Mr. Baldovino S. Lagbao who had absolutely NO CONTACT with the plaintiff and which kind of service was not authorized by law [*See Sec. 213. NIRC*].

(c) A DECLARATION OF FORFEITURE OF REAL PROPERTY on May 6, 1992 without any notice whatsoever to the plaintiff, a machine copy of which is attached hereto as ANNEX "L";

16.3 On May 13, 1993 defendant TEODORICA R. ARCEGA wrote a letter to the Register of Deeds of Davao City requesting the latter to issue a new title of the subject property in the name of the Republic of the Philippines altho, as clearly shown in the foregoing facts, the proceedings undertaken by the public defendants are *null* and *void* ***ab initio*** for lack of the requisite due process of law; A machine copy of the letter is attached hereto as ANNEX "M";

16.4 Without complying with the requirements and conditions provided under the law, defendant JOSE C. BATAUSA illegally sold plaintiff's above-described property in favor of defendant MAXIMO LAGAHIT at an *unconscionable* and *measly* consideration of only **₱73,500.00** altho, under the law [*See Sec. 217, NIRC*], defendant JOSE C. BATAUSA did not have the authority to sell the same; This fact is evidenced by a Deed of Sale a machine copy of which is attached hereto as ANNEX "N";

16.5 Altho the aforesaid Deed of Sale [Annex N] is manifestly insufficient in form and despite the nullity of the proceedings undertaken by the BIR and its officers in levying or seizing plaintiff's above-described property, defendant Register of Deeds of Davao City gave due course thereto and issued Transfer Certificate of Title No. T-244532 in the name of defendant MAXIMO LAGAHIT, who was obviously not a buyer in good faith for value;

17. That having felt extremely aggrieved of the unlawful acts and irregularities committed by the defendants in depriving him of his property without due process of law, plaintiff had to fly to Davao City from the United States of America to institute appropriate action to compel the defendants to reconvey his above-described property to him; And when he arrived in Davao City he discovered that a BIG **For Sale** sign has been erected at the site of his above-described property, which prompted him to file a NOTICE OF ADVERSE CLAIM with the defendant Register of Deeds of Davao City; A machine copy of the NOTICE OF ADVERSE CLAIM is attached hereto as ANNEX "O";

But for reasons not in accordance with law [*See Sec. 70, P.D. 1529*] the defendant Register of Deeds refused to register plaintiff's aforesaid NOTICE OF ADVERSE CLAIM [Annex O] as per letter dated May 29, 1997, a machine copy of which is attached hereto as ANNEX "P";

18. That before the plaintiff resorted to this action, he went to the defendant BIR for possible amicable settlement regarding the reconveyance of his above-described property to him and he was able to personally talk with Atty. Mercelinda O. Yap who in turn suggested to him to see defendant MAXIMO LAGAHIT on the matter; In this light, a representation was made to Mr. & Mrs. Maximo Lagahit at their business stall at the Agdao Public Market, Davao City, who immediately admitted plaintiff's ownership of the property; As put it by both spouses, they were even surprised why the Republic of the Philippines owned a residential lot situated at the Panorama Homes Subdivision, Buhangin, Davao City; And when Mr. & Mrs. Maximo Lagahit were asked about plaintiff's willingness [for purposes of buying peace] to get back the property from them at the consideration they acquired plus cost of money and the attendant expenses, their reaction was that they were selling it at **₱3,000.00**

per square meter [or a total price of **₱903,000.00]**, which shocked the plaintiff; [10]

x x x x x x x x x

It is clear from the foregoing allegations that despite assailing the supposedly illegal confiscation of his property in order to satisfy his tax liabilities, Alcantara was really challenging the assessment and collection of taxes made against him for being in violation of his right to due process. As such, the complaint concerned the validity of the assessment and eventual collection of the taxes by the BIR. The declaration of nullity of the sale and reconveyance was founded on the validity of the assessment and eventual collection by the BIR. That the main relief sought by his complaint was "*to declare the assessments conducted by the BIR on the Income Tax Returns of [Alcantara] for 1982 and 1983 as null and void ab initio*" as well as to declare all notices and deeds in relation to collection of the assessed taxed liabilities as null and void[11] bolsters this conclusion.

Accordingly, the CA correctly determined that the RTC had no jurisdiction to resolve the issues raised in Alcantara's complaint.

The remedies available to a taxpayer like Alcantara were laid down by law. Section 229 of Presidential Decree (P.D.) No. 1158,[12] the law in effect at the time of the disputed assessment, stated that prior resort to the administrative remedies was necessary; otherwise, the assessment would attain finality, *viz*.:

Sec. 229. Protesting of assessment. — When the Commissioner of Internal Revenue or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings. Within a period to be prescribed by implementing regulations, the taxpayer shall be required to respond to said notice.

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[10] Records, pp. 4-8.

[11] *Id*. at 9.

[12] *A Decree to Consolidate and Codify All Internal Revenue Laws of the Philippines.*

If the taxpayer fails to respond, the Commissioner shall issue an assessment based on his findings.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation in such form and manner as may be prescribed by implementing regulation within thirty (30) days from receipt of the assessment; otherwise, the assessment shall become final and unappealable.

If the protest is denied in whole or in part, the individual, association or corporation adversely affected by the decision on the protest may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision; otherwise, the decision shall become final, executory and demandable. [Emphasis Supplied]

Section 230 of P.D. No. 1158 allowed Alcantara to file his claim for refund for the erroneously or illegally paid taxes. In this regard, such claim for refund was also a prerequisite before any resort to the courts could be made to recover the erroneously or illegally paid taxes, to wit:

Sec. 230. Recovery of tax erroneously or illegally collected. — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, **until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress**.

In any case, no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

Forfeiture of refund. — A refund check or warrant issued in accordance with the pertinent provisions of this Code which shall remain unclaimed or uncashed within five (5) years from the date the said warrant or check was mailed or delivered shall be forfeited

in favor of the government and the amount thereof shall revert to the General Fund. [Bold emphasis supplied]

Yet, Alcantara immediately invoked the authority of the courts to protect his rights instead of first going to the Commissioner of Internal Revenue for redress of his concerns about the assessment and collection of taxes. His judicial recourse thus suffered from fatal prematurity because his doing so rendered the assessment final.

Alcantara argues that the resort to administrative remedies was futile for him because he could not have sought reconsideration or filed a claim for refund during the period required of him by the Tax Code due to his being then out of the country.

Such argument did not excuse Alcantara from complying with the specific provisions of law on his remedies. Even assuming to be true that he had not received the assessment, there was greater reason for him to have first resorted to the Commissioner of Internal Revenue for the reconsideration of the assessment before it attained finality. Section 229 of P.D. No. 1158 declared the finality of the assessment upon the lapse of 30 days from receipt of it.

Alcantara contends that the CA erred in ruling that the proper appellate court to bring his appeal to was the CTA; that following Section 7 of Republic Act No. 1125, as amended by Republic Act No. 9282, the CTA had no jurisdiction to declare the certificate of titles null and void; and that the CA was instead the proper appellate court to review the adverse decision of the RTC in his case.

The contention lacks persuasive force.

The complaint was brought to assail the assessment and collection made by the Commissioner of Internal Revenue. Based on Republic Act No.1125, prior to its amendment by Republic Act No. 9282, the CTA had exclusive appellate jurisdiction over the appeal of the decisions of the Commissioner of Internal Revenue, to wit:

Section 7. *Jurisdiction*. — The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided.

(1) **Decisions of the Collector of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto**, **or other matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue**;

x x x x x x x x x

Accordingly, the CA correctly dismissed Alcantara's appeal on the ground of lack of jurisdiction to entertain the same. The erroneous appeal deserved no fate but dismissal. Section 2, Rule 50 of the *Rules of Court* expressly states: "*An appeal erroneously taken to the Court of Appeals shall not be transferred to the appropriate court but shall be dismissed outright*." In *Balaba v. People*,[13] the Court affirmed the CA's dismissal of the appeal because the appeal had been erroneously taken to the CA instead of to the Sandiganbayan.

WHEREFORE, the Court **DENIES** the petition for review on *certiorari*; **AFFIRMS** the decision promulgated on November 4, 2009 by the Court of Appeals; and **ORDERS** the petitioner to pay the cost of the suit.

SO ORDERED.

Velasco, Jr. (Chairperson), Reyes, Jardeleza, and *Tijam, JJ.,* concur.

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[13] G.R. No. 169519, July 17, 2009, 593 SCRA 210, 215.

THIRD DIVISION

[G.R. No. 192648. March 15, 2017]

DE OCAMPO MEMORIAL SCHOOLS, INC., *petitioner, vs.* **BIGKIS MANGGAGAWA SA DE OCAMPO MEMORIAL SCHOOL, INC.,** *respondent.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR CODE; LABOR UNION; NATURE OF FRAUD AND MISREPRESENTATION TO CONSTITUTE GROUNDS FOR CANCELLATION OF UNION REGISTRATION; RESPONDENT DID NOT COMMIT MISREPRESENTATION OR FALSE STATEMENT IN ITS APPLICATION.—** For fraud and misrepresentation to constitute grounds for cancellation of union registration under the Labor Code, the nature of the fraud and misrepresentation must be **grave and compelling** enough to vitiate the consent of a majority of union members. x x x We agree with the BLR and the CA that BMDOMSI did not commit fraud or misrepresentation in its application for registration. In the form "Report of Creation of Local Chapter" filed by BMDOMSI, the applicant indicated in the portion "Description of the Bargaining Unit" that it is composed of "Rank and File" and under the "Occupational Classification," it marked "Technical" and "Faculty." Further, the members appearing in the Minutes of the General Membership and the List of Workers or Members who attended the organizational meeting and adopted/ratified the Constitution and By-Laws are, as represented, employees of the school and the General Services Division, though some of the latter employees service the hospital. Moreover, there is nothing in the form "Report of Creation of Local Chapter" that requires the applicant to disclose the existence of another union, much less the names of the officers of such other union. Thus, we cannot see how BMDOMSI made the alleged misrepresentation or false statements in its application.

2. **ID.; ID.; ID.; FOR PURPOSES OF DE-CERTIFYING A UNION, IT IS NOT ENOUGH TO ESTABLISH THAT THE RANK-AND-FILE UNION INCLUDES INELIGIBLE**

EMPLOYEES IN ITS MEMBERSHIP, IT MUST BE SHOWN THAT THERE WAS ALSO FRAUD OR MISREPRESENTATION IN SECURING ITS CERTIFICATE OF REGISTRATION; NO EVIDENCE OF FRAUD OR MISREPRESENTATION ADDUCED IN CASE AT BAR.— While the CA may have ruled that there is no mutuality or commonality of interests among the members of BMDOMSI, this is not enough reason to cancel its registration. The only grounds on which the cancellation of a union's registration may be sought are those found in Article 247 of the Labor Code. In *Tagaytay Highlands International Golf Club Incorporated v. Tagaytay Highlands Employees Union-PTGWO*, we ruled that "[t]he inclusion in a union of disqualified employees is not among the grounds for cancellation, unless such inclusion is due to misrepresentation, false statement or fraud under the circumstances enumerated in Sections (a) and (c) of Article [247] x x x of the Labor Code." Thus, for purposes of decertifying a union, it is not enough to establish that the rank-and-file union includes ineligible employees in its membership. Pursuant to paragraphs (a) and (b) of Article 247 of the Labor Code, it must be shown that there was misrepresentation, false statement or fraud in connection with: (1) the adoption or ratification of the constitution and by-laws or amendments thereto; (2) the minutes of ratification; (3) the election of officers; (4) the minutes of the election of officers; and (5) the list of voters. Failure to submit these documents together with the list of the newly elected-appointed officers and their postal addresses to the BLR may also constitute grounds for cancellation, lack of mutuality of interests, however, is not among said grounds. The BLR and the CA's finding that the members of BMDOMSI are rank-and-file employees is supported by substantial evidence and is binding on this Court. On the other hand, other than the allegation that BMDOMSI has the same set of officers with BMDOMMC and the allegation of mixed membership of rank-and-file and managerial or supervisory employees, De Ocampo has cited no other evidence of the alleged fraud and misrepresentation.

APPEARANCES OF COUNSEL

Leynes Lozada-Marquez for petitioner.

DECISION

JARDELEZA, *J.*:

This is a Petition for Review on *Certiorari*[1] assailing the Court of Appeals (CA) Decision[2] dated July 15, 2009 and the Resolution[3] dated June 21, 2010 (assailed Decision). The assailed Decision affirmed the Decision[4] dated December 29, 2004 of the Bureau of Labor Relations (BLR), Department of Labor and Employment (DOLE) in Case No. BLR-A-C-75-8-24-04, *In Re: Petition for Cancellation of Union Registration of Bigkis Manggagawa sa De Ocampo Memorial School, Inc., - Lakas Union Registration Number (NCR-12-CC-002-2003).*

I

De Ocampo Memorial Schools, Inc. (De Ocampo) is a domestic corporation duly-organized and existing under the laws of the Philippines. It has two main divisions, namely: De Ocampo Memorial Medical Center (DOMMC), its hospital entity, and the De Ocampo Memorial Colleges (DOMC), its school entity.[5]

On September 26, 2003, Union Registration No. NCR-UR-9-3858-2002 was issued in favor of *Bigkis Manggagawa sa* De Ocampo Memorial Medical Center – LAKAS (BMDOMMC).[6]

Later, on December 5, 2003, *Bigkis Manggagawa sa* De Ocampo Memorial School, Inc. (BMDOMSI) was issued a Union Registration/Certificate of Creation of Local Chapter No. NCR-12-CC-002-2003 and declared a legitimate labor organization.[7]

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[1] *Rollo*, pp. 13-82.

[2] *Id.* at 84-98. Penned by Associate Justice Priscilla J. Baltazar-Padilla, with Associate Justice Mariano C. del Castillo (now a Member of this Court) and Associate Justice Monina Arevalo-Zenarosa, concurring.

[3] *Id.* at 100-101.

[4] *Id.* at 155-158.

[5] *Id.* at 88.

[6] *Id.*

[7] *Rollo*, p. 183.

On March 4, 2004, De Ocampo filed a Petition for Cancellation of Certificate of Registration[8] with the Department of Labor and Employment -National Capital Region (DOLE-NCR). It sought to cancel the Certificate of Registration of BMDOMSI on the following grounds: 1) misrepresentation, false statement and fraud in connection with its creation and registration as a labor union as it shared the same set of officers and members with BMDOMMC; 2) mixed membership of rank-and-file and managerial/supervisory employees; and 3) inappropriate bargaining unit.[9]

On April 13, 2004, De Ocampo filed a Supplemental Petition,[10] informing the DOLE-NCR of the cancellation of the Certificate of Registration of BMDOMMC in Case No. NCR-OD-0307-009-LRD. It attached a copy of the Decision[11] of the DOLE-NCR dated March 3, 2004, which cancelled and struck off Union Registration No. NCR-UR-9-3858-2002 from the registry of legitimate labor organizations for being an inappropriate bargaining unit.[12]

On May 18, 2004, BMDOMSI filed its Comment-Opposition to Petition for Cancellation of Certificate of Registration and Supplemental Petition,[13] denying De Ocampo's allegations and claiming that the latter only wants to impede the formation of the union.

In a Decision[14] dated July 26, 2004, Acting Regional Director Ciriaco A. Lagunzad III of the DOLE-NCR ruled that BMDOMSI committed misrepresentation by *making it appear* that the bargaining unit is composed of faculty and technical employees.

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[8] *Id.* at 160-182.

[9] *Id.* at 164-165.

[10] *Id.* at 85, 223-227.

[11] *Id.* at 228-229.

[12] *Id.* at 229.

[13] *Id.* at 235-240.

[14] *Id.* at 244-248.

In fact, all the union officers and most of the members are from the General Services Division.[15] Furthermore, the members of the union do not share commonality of interest, as it is composed of academic and non-academic personnel.[16] The nature of work of the employees of the General Services Division, while falling within the category of non-academic personnel, differs from that of the other non-academic employees composed of clerks, messengers, *etc.*, since they also serve the hospital component of De Ocampo.[17]

BMDOMSI then filed an appeal to the BLR alleging that the union members are all employees of De Ocampo and that the bargaining unit it seeks to represent is appropriate.[18]

In a Decision[19] dated December 29, 2004, the BLR reversed the Regional Director's finding of misrepresentation, false statement or fraud in BMDOMSI's application for registration. According to the BLR, De Ocampo failed to adduce proof to support its allegation of mixed membership within respondent union.[20] Further, and contrary to De Ocampo's claim, records show that BMDOMSI stated in its application that its members

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[15] *Id.* at 245.

[16] *Id.* at 246.

[17] *Id.* The dispositive portion reads:

WHEREFORE, premises considered, the Petition is **granted**. The registration of Bigkis Manggagawa sa De Ocampo Memorial School–LAKAS with Certificate of Creation No. NCR-12-CC-002-2003 is ordered cancelled and delisted from the rolls of legitimate labor organizations.

SO ORDERED. *Rollo*, p. 248.

[18] *Id.* at 156.

[19] *Supra* note 4.

[20] *Rollo*, p. 157. The dispositive portion reads:

WHEREFORE, the appeal is **GRANTED** and the Decision dated 26 July 2004 is hereby **REVERSED** and **SET ASIDE**. Accordingly, Bigkis Manggagawa sa De Ocampo Memorial School-LAKAS with Certificate of Creation No. NCR-12-CC-002-2003 shall remain in the roster of legitimate labor organizations.

SO DECIDED. *Id.* at 158.

are composed of rank-and-file employees falling under either faculty or technical occupational classifications.[21] The BLR also held that the existence of an inappropriate bargaining unit would not necessarily result in the cancellation of union registration, and the inclusion of a disqualified employee in a union is not a ground for cancellation.[22] Even if BMDOMSI shared the same set of officers and members of BMDOMMC, the latter had already been delisted on March 3, 2004 and there is no prohibition against organizing another union.[23]

De Ocampo filed a Petition for *Certiorari*[24] with the CA seeking to annul and set aside the BLR Decision as well as the Resolution[25] dated January 24, 2005 denying its motion for reconsideration.

The CA affirmed the Decision of the BLR. It ruled that there was no misrepresentation, false statement or fraud in the application for registration. The record shows that, as BMDOMSI had indicated, the bargaining unit as described is composed of rank-and-file employees with occupational classifications under technical and faculty.[26] The CA found that there could be no misrepresentation as the members appearing in the minutes of the general membership meeting, and the list of members who attended the meeting and ratified the union constitution and by-laws, are in truth employees of the school, though some service the hospital.[27] The CA also ruled that, other than De Ocampo's bare allegations, there was no proof of intent to defraud or mislead on the part of BMDOMSI. Hence, the charge of fraud, false statement or misrepresentation cannot be sustained.[28]

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[21] *Id.* at 156.

[22] *Id.* at 157, citing *Tagaytay Highlands International Golf Club, Incorporated v. Tagaytay Highlands Employees Union-PTGWO*, G.R. No. 142000, January 22, 2003, 395 SCRA 699.

[23] *Rollo*, p. 86.

[24] *Id.* at 102-154.

[25] *Id.* at 159.

[26] *Id.* at 91.

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

[28] *Id.* at 97.

However, the CA observed that the members of the union, who are from academic, non-academic, and general services, do not perform work of the same nature, receive the same wages and compensation, nor share a common stake in concerted activities.[29] While these factors dictate the separation of the categories of employees for purposes of collective bargaining,[30] the CA reasoned that such lack of mutuality and commonality of interest of the union members is not among the grounds for cancellation of union registration under Article 239 of the Labor Code.[31]

De Ocampo filed a motion for reconsideration which was denied in the assailed Resolution dated June 21, 2010. Hence, this petition.

De Ocampo maintains that BMDOMSI committed misrepresentation and fraud in connection with its application, creation and registration. It intentionally suppressed the fact that at the time of its application, there was another union known as BMDOMMC, with whom they shared the same set of officers and members.[32] It was also made to appear that BMDOMMC is a labor union representing a separate bargaining unit whose personality, affairs and composition are unknown to BMDOMSI.[33] Lastly, BMDOMSI suppressed the fact that its members have no mutuality or commonality of interest as they belong to different work classifications, nature and designations.[34]

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[29] *Id.* at 94.

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

[31] *Id.* at 95-97. The dispositive portion reads as follows:

WHEREFORE, in view of the foregoing, the Decision dated December 29, 2004 and the Resolution dated January 24, 2004 (should be January 24, 2005) issued by the Bureau of Labor Relations, Department of Labor and Employment in Case No. BLR-A-C-75-8-24-04 (NCR-OD-0403-002-LRD) are **AFFIRMED**.

SO ORDERED. *Id.* at 97-98.

[32] *Id.* at 36.

[33] *Id.* at 37.

[34] *Id.*

II

We deny the petition.

Article 247, previously Article 239 of the Labor Code[35] provides:

Art. 247. *Grounds for Cancellation of Union Registration*. — The following may constitute grounds for cancellation of union registration:

(a) Misrepresentation, false statement or fraud in connection with the adoption or ratification of the constitution and by-laws or amendments thereto, the minutes of ratification, and the list of members who took part in the ratification;

(b) Misrepresentation, false statements or fraud in connection with the election of officers, minutes of the election of officers, and the list of voters;

(c) Voluntary dissolution by the members.

For fraud and misrepresentation to constitute grounds for cancellation of union registration under the Labor Code, the nature of the fraud and misrepresentation must be **grave and compelling** enough to vitiate the consent of a majority of union members.[36]

De Ocampo insists that "by conveniently disregarding" BMDOMMC's existence during the filing of its application, despite having the same set of officers and members,[37] BMDOMSI "had misrepresented facts, made false statements and committed fraud in its application for union registration for alleging facts therein which they [know] or ought to have known to be false."[38]

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[35] DOLE, Department Advisory No. 01, Series of 2015, Renumbering of the Labor Code of the Philippines, as Amended.

[36] *Mariwasa Siam Ceramics, Inc. v. Secretary of the Department of Labor and Employment*, G.R. No. 183317, December 21, 2009, 608 SCRA 706, 716.

[37] *Rollo*, p. 46.

[38] *Id.* at 44.

We agree with the BLR and the CA that BMDOMSI did not commit fraud or misrepresentation in its application for registration. In the form "Report of Creation of Local Chapter"[39] filed by BMDOMSI, the applicant indicated in the portion "Description of the Bargaining Unit" that it is composed of "Rank and File" and under the "Occupational Classification," it marked "Technical" and "Faculty."

Further, the members appearing in the Minutes of the General Membership and the List of Workers or Members who attended the organizational meeting and adopted/ratified the Constitution and By-Laws are, as represented, employees of the school and the General Services Division, though some of the latter employees service the hospital.[40]

Moreover, there is nothing in the form "Report of Creation of Local Chapter" that requires the applicant to disclose the existence of another union, much less the names of the officers of such other union. Thus, we cannot see how BMDOMSI made the alleged misrepresentation or false statements in its application.

De Ocampo likewise claims that BMDOMSI committed fraud and misrepresentation when it suppressed the fact that there exists "no mutuality and/or communality of interest"[41] of its members. This, De Ocampo asserts, is a ground for the cancellation of its registration.

We disagree.

While the CA may have ruled that there is no mutuality or commonality of interests among the members of BMDOMSI, this is not enough reason to cancel its registration. The only grounds on which the cancellation of a union's registration may be sought are those found in Article 247 of the Labor Code. In *Tagaytay Highlands International Golf Club Incorporated v.*

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[39] BLR records, p. 95.

[40] *Rollo*, pp. 89-92.

[41] *Id.* at 60.

Tagaytay Highlands Employees Union-PTGWO,[42] we ruled that "[t]he inclusion in a union of disqualified employees is not among the grounds for cancellation, unless such inclusion is due to misrepresentation, false statement or fraud under the circumstances enumerated in Sections (a) and (c) of Article [247] x x x of the Labor Code."[43] Thus, for purposes of decertifying a union, it is not enough to establish that the rank-and-file union includes ineligible employees in its membership. Pursuant to paragraphs (a) and (b) of Article 247 of the Labor Code, it must be shown that there was misrepresentation, false statement or fraud in connection with: (1) the adoption or ratification of the constitution and by-laws or amendments thereto; (2) the minutes of ratification; (3) the election of officers; (4) the minutes of the election of officers; and (5) the list of voters.[44] Failure to submit these documents together with the list of the newly elected-appointed officers and their postal addresses to the BLR may also constitute grounds for cancellation, lack of mutuality of interests, however, is not among said grounds.[45]

The BLR and the CA's finding that the members of BMDOMSI are rank-and-file employees is supported by substantial evidence and is binding on this Court.[46] On the other hand, other than

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[42] G.R. No. 142000, January 22, 2003, 395 SCRA 699.

[43] *Id*. at 709. Italics omitted.

[44] Art. 247. *Grounds for Cancellation of Union Registration*. – The following may constitute grounds for cancellation of union registration:

(a) Misrepresentation, false statement or fraud in connection with the adoption or ratification of the constitution and by-laws or amendments thereto, the minutes of ratification, and the list of members who took part in the ratification;
(b) Misrepresentation, false statements or fraud in connection with the election of officers, minutes of the election of officers, and the list of voters;

x x x x x x x x x

[45] *Air Philippines Corporation v. Bureau of Labor Relations*, G.R. No. 155395, June 22, 2006, 492 SCRA 243, 249-250.

[46] *Cosmos Bottling Corporation v. Nagrama, Jr.*, G.R. No. 164403, March 4, 2008, 547 SCRA 571, 584-587.

the allegation that BMDOMSI has the same set of officers with BMDOMMC and the allegation of mixed membership of rank-and-file and managerial or supervisory employees, De Ocampo has cited no other evidence of the alleged fraud and misrepresentation.

A final word. A party seeking the cancellation of a union's certificate of registration must bear in mind that:

> x x x [A] direct challenge to the legitimacy of a labor organization based on fraud and misrepresentation in securing its certificate of registration is a serious allegation which deserves careful scrutiny. Allegations thereof should be compounded with supporting circumstances and evidence. The records of the case are devoid of such evidence. Furthermore, this Court is not a trier of facts, and this doctrine applies with greater force in labor cases. Findings of fact of administrative agencies and quasi-judicial bodies, such as the BLR, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only great respect but even finality.[47]

WHEREFORE, the petition is hereby **DENIED** for lack of merit. The Decision of the Court of Appeals in CA-G.R. SP No. 89162 dated July 15, 2009 is **AFFIRMED**.

SO ORDERED.

Velasco, Jr. (Chairperson), Bersamin, Reyes, and *Tijam, JJ.,* concur.

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[47] *San Miguel Corporation Employees Union-Phil. Transport and General Workers Org. v. San Miguel Packaging Products Employees Union-Pambansang Diwa ng Manggagawang Pilipino*, G.R. No. 171153, September 12, 2007, 533 SCRA 125, 144.

FIRST DIVISION

[G.R. No. 193069. March 15, 2017]

NSC HOLDINGS (PHILIPPINES), INC., *petitioner, vs.* **TRUST INTERNATIONAL PAPER CORPORATION (TIPCO) and ATTY. MONICO JACOB,** *respondents.*

SYLLABUS

1. **COMMERCIAL LAW; CORPORATIONS; INTERIM RULES OF PROCEDURE ON CORPORATE REHABILITATION; PETITIONER IS BARRED FROM RAISING BEFORE THE COURT OF APPEALS THE ISSUE OF ITS INCLUSION AS A CREDITOR IN THE APPROVED REHABILITATION PLAN BEFORE THE COURT OF APPEALS VIA RULE 43 PETITION FOR REVIEW; THE PROPER REMEDY, THE ASSAILED ORDER LAPSED INTO FINALITY.—** In the present case, the RTC in its First Order determined that NSC was a creditor whose claims must be paid in accordance with the approved rehabilitation plan. It must be emphasized that this determination was made after addressing NSC's contentions and TIPCO's counter-allegations with respect to the receivables in the initial hearing as well as in the Receiver's Report which we find to be credible. It must also be noted that after the initial hearing, the RTC issued an Order stating that both parties had "agreed to submit the issue that receivables transferred to NSC should not be included as TIPCO's assets for the resolution of the Court-appointed Rehabilitation Receiver, subject to the Court's approval." Accordingly, the trial court adopted the findings of the Receiver in his Report. It approved the inclusion of NSC in the plan as a creditor and the payment of the latter's claims over the receivables in accordance with the approved rehabilitation plan. Definitely, the RTC was able to resolve the issue of the inclusion of NSC as a creditor in the plan. Thus, the latter was wrong in its contention that the First Order did not resolve its contentions. On the contrary, it is an order that definitely settled the issue. This makes it a final order with respect to that issue. Therefore, pursuant to the Interim Rules of Procedure on Corporate Rehabilitation (Interim Rules), petitioner should have ventilated its discontent with the First Order via a Rule 43 petition for review before the CA, and not

through a mere motion before the RTC. However, the records show that NSC failed to file such a petition before the CA within 15 days from the former's receipt of the First Order. Instead, it filed a motion before the RTC. That motion, however, did not stop the First Order from lapsing into finality. Clearly, NSC availed of the wrong remedy and the issue on its inclusion as a creditor in the approved rehabilitation plan has already lapsed into finality. Therefore, the CA was correct in denying its appeal. We cannot allow petitioner to benefit from its negligence in failing to find out what its remedies were and to promptly avail itself of any of them. As ruled by the CA, there is no compelling reason for this Court to relax the rules on appeal only to accommodate petitioner's contentions.

2. **ID.; ID.; ID.; PETITIONER'S CLAIM THAT IT WAS A TRUSTOR AND NOT A CREDITOR OF RESPONDENT CORPORATION IS NOT A SUPERVENING EVENT THAT WARRANTS THE MODIFICATION OF THE APPROVED REHABILITATION PLAN.—** Section 26 of the Interim Rules allows the modification and alteration of the approved rehabilitation plan, if these steps are necessary to achieve the desired targets or goals set forth therein. As explained by this Court in *Victorio-Aquino v. Pacific Plans,* the Interim Rules allow the modification of the plan, precisely because of conditions that may supervene or affect its implementation subsequent to its approval. In this case, NSC based its motion to revise the approved plan on its persistent contention that it was a trustor, not a creditor, of TIPCO. However, this contention is not a supervening event that warrants the modification of the rehabilitation plan under Section 26 of the Interim Rules. The facts clearly show that this issue was raised at the start of the rehabilitation proceedings, considered by the Receiver in his Report, and accordingly resolved by the RTC in its First Order as extensively discussed above. Therefore, petitioner's contention could not have been a supervening matter that arose only after the approval of the rehabilitation plan and would thereby affect its implementation.

APPEARANCES OF COUNSEL

Sycip Salazar Hernandez & Gatmaitan for petitioner.
Santiago & Santiago for respondent TIPCO.

DECISION

SERENO, *C.J.*:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, assailing the Decision[1] and the Resolution[2] of the Court of Appeals (CA). The CA upheld the validity of the assailed Omnibus Order[3] issued by the Regional Trial Court (RTC), Branch 42, City of San Fernando, Pampanga. The RTC denied the motion of NSC Holdings (Phils.) Inc. (NSC) to revise the approved rehabilitation plan.

THE ANTECEDENT FACTS

Trust International Paper Corporation (TIPCO) is a pulp and paper manufacturing company organized and existing under the laws of the Republic of the Philippines.[4] On 29 July 2005, TIPCO filed a "Petition for Corporate Rehabilitation with Prayer for Suspension of Payments"[5] before the RTC.

The trial court subsequently issued a Stay Order directing, among others, the appointment of respondent Atty. Monico Jacob as the rehabilitation receiver (Receiver).[6]

NSC filed its "Comment with Motion,"[7]alleging that certain receivables, as well as the authority to collect payments for these receivables, were being held by TIPCO for and on behalf of NSC as its agent. This was pursuant to a Trade Receivables

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[1] *Rollo,* pp. 33-50; dated 19 January 2010; penned by Associate Justice Jane Aurora C. Lantion, with Associate Justices Rebecca de Guia-Salvador and Estela M. Perlas-Bernabe (now a member of this Court) concurring; docketed as CA-G.R. SP No. 93873.

[2] *Id*. at 30-31; dated 21 July 2010.

[3] *Id* at 71-74; penned by acting Presiding Judge Benjamin D. Tugano.

[4] *Id*. at 99.

[5] *Id*. at 99-118.

[6] *Id*. at 34.

[7] *Id*. at 119-122.

Purchase and Sale Agreement (TRPSA)[8] entered into by both parties.[9]

NSC claimed that under the TRPSA, it entered into a Certificate of Assignment with TIPCO. In that agreement, the latter sold and assigned receivables to NSC in the total amount of ₱155,380,590.[10] There was supposedly a stipulation therein designating TIPCO as servicing agent with the obligation to enforce the rights and interests of NSC over the purchased receivables, as well as to hold the collections in trust for the latter.[11]

In light of the TRPSA, NSC claimed that it was a trustor, not a creditor, of TIPCO. As such, it moved that TIPCO be directed to segregate the receivables held by the latter on behalf of NSC. These receivables would thereby be excluded from TIPCO's list of assets and payables that would be subject to the rehabilitation plan. NSC likewise prayed that TIPCO be ordered to directly remit any collection or payment to the former as soon as practicable.[12]

During the initial hearing, the Court summarily heard NSC's contentions[13] as well as TIPCO's counter-argument that the true agreement was really one of a loan.[14] Afterwards, the RTC issued an Order[15] holding that both parties had "agreed to submit the issue that receivables transferred to NSC should not be included as TIPCO's assets for the resolution of the Court-appointed Rehabilitation Receiver, subject to the Court's approval."[16]

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[8] *Id*. at 75-97.

[9] *Id*. at 119.

[10] *Id*. at 35.

[11] *Id*. at 120.

[12] *Id*. at 121-122.

[13] *Id*. at 140.

[14] *Id*. at 286.

[15] *Id*. at 139-143; penned by acting Judge Divina Luz P. Aquino-Simbulan.

[16] *Id*. at 140.

On 20 January 2006, the Receiver submitted to the RTC his "Evaluation and Recommendation Report" (Report) which addressed NSC's contentions.[17] He stated therein that after a review of the documents, he found that NSC was an unsecured creditor,[18] and that the receivables were covered by the rehabilitation plan.[19]

First Order

Through an Order[20] dated 31 January 2006 (First Order), the RTC approved TIPCO's proposed rehabilitation plan as amended and modified by the "Evaluation and Recommendation Report."[21] NSC received a copy of the Order on 9 February 2006.

On 2 February 2006, unaware that the RTC had already approved the proposed rehabilitation plan in the First Order, NSC filed a Motion[22] praying for the suspension of the approval of the plan. In this Motion, it claimed that it had called the Receiver's attention to the fact that the Report lacked legal and factual basis insofar as its claim was concerned. NSC alleged that, as a result, the Receiver manifested at the hearing on 23 January 2006 that he was amenable to a further discussion of its claim and subsequently submitting his report thereon to the trial court.[23]

Second Order

The RTC then issued an Omnibus Order[24] dated 21 February 2006 (Second Order), which treated NSC's prior Motion as a motion for reconsideration. Consequently, it denied the Motion

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[17] *Id*. at 145-183.

[18] *Id*. at 182.

[19] *Id*. at 166.

[20] *Id*. at 184-192; penned by acting Presiding Judge Benjamin D. Turgano.

[21] *Id*. at 189.

[22] *Id*. at 193-196.

[23] *Id*. at 194.

[24] *Id*. at 198-199.

for being a prohibited pleading. Nevertheless, it directed the Receiver to comment on the nature of NSC's claim.[25]

Meanwhile, prior to its receipt of the Second Order but after it had finally received a copy of the First Order, NSC filed another Motion.[26] It stated therein that it had received the First Order and held a meeting with the Receiver. It then reiterated its contentions and asked that the Receiver be directed to submit its report. By that submission, NSC sought the resolution of its claims and the revision of the approved rehabilitation plan.

The Receiver filed a "Manifestation"[27] stating that he had a meeting with the parties' respective counsels on 7 February 2006. In that meeting, the parties insisted on their respective positions with respect to the nature of TIPCO's obligation to NSC. Both counsels exhibited pieces of documentary evidence to support their respective allegations.

The Receiver rendered the opinion that the issue raised in that meeting needed to be litigated separately, as to make a recommendation thereon was not within his competence. He also said that the approval of the rehabilitation plan need not be affected, particularly since the plan also called for the payment of TIPCO's obligation to NSC.[28]

Third Order

The RTC agreed with the Receiver's recommendations in its assailed Omnibus Order[29] dated 9 March 2006 (Third Order), in which it held as follows:

> The court finds the Receiver's position, namely, that the issues involved would require a full blown litigation, justified. Considering the seriousness of the issues and the legal implications of a resolution

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[25] *Id*. at 199.

[26] *Id*. at 200-203.

[27] *Id*. at 211-212.

[28] *Id*. at 212.

[29] *Id*. at 71-74.

thereon, the Court rules that it is not within the competence of a Rehabilitation Receiver to adjudicate and resolve the said issues.

x x x x x x x x x

Considering that the rehabilitation plan calls for the payment of the obligations of petitioner to NSC, the implementation of the rehabilitation plan shall not be suspended because of the pendency of this issue. x x x While the parties may decide to elevate the matter for determination in an appropriate court, the rehabilitation plan shall continue to be implemented without prejudice to a final and executory decision on such issue.[30]

Aggrieved, petitioner NSC appealed the Third Order before the CA. The former argued that there was no legal or jurisprudential basis for the RTC's ruling that the Receiver was not competent to determine whether the receivables should be excluded from TIPCO's assets. Petitioner further alleged that it was not a creditor of TIPCO, since the latter merely held the purchased receivables in trust as evidence by the TRPSA.[31]

The CA dismissed NSC's appeal and affirmed the Third Order *in toto*. According to the appellate court, petitioner essentially moved to amend the approved rehabilitation plan in the latter's petition. Hence, petitioner should have appealed the First, and not the Third Order of the RTC, as it was the First Order that had approved the rehabilitation plan.[32] The failure to appeal the First Order supposedly rendered it final and executory and effectively prevented NSC from challenging the recommendations made by the Receiver.[33]

For the CA, NSC could no longer insist that the receivables be excluded from TIPCO's assets. The appellate court held that this matter had already been addressed and resolved by the RTC when the latter approved the rehabilitation plan in its First Order.[34]

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[30] *Id*. at 71-72.

[31] *Id*. at 40.

[32] *Id*. at 47.

[33] *Id*. at 42.

[34] *Id*. at 43.

Upon the denial of its Motion for Reconsideration,[35] NSC is now assailing the CA's ruling before this Court by raising the following arguments: (a) the CA erred in holding that the NSC should have appealed the First Order; (b) the CA erred in affirming the RTC's finding that the matters presented by NSC were beyond the scope of the rehabilitation receiver's authority, and; (c) the CA erred in affirming the inclusion of NSC as a creditor of TIPCO in the approved rehabilitation plan.

ISSUE

Given the recital of facts, it is apparent that petitioner's Motion subsequent to the First Order was actually a move to modify the approved rehabilitation plan. Notably, the Motion of NSC is based on the same assertions it presented to the RTC and the Receiver at the start of the rehabilitation proceedings.

Therefore, the threshold issue to be resolved is whether or not petitioner could still raise the issue before the CA of its inclusion as a creditor in the approved rehabilitation plan, considering that the RTC had already resolved this issue in the First Order.

THE COURT'S RULING

We deny the petition.

The issues raised by petitioner center on its inclusion as a creditor in the approved rehabilitation plan. We agree with the CA ruling that it was the First, not the Third Order, that should have been appealed by NSC; and that the latter's failure to appeal the First Order barred it from insisting that it be excluded from the rehabilitation plan as a creditor.

For reasons as follows, the First Order is valid, final, and executory.

NSC is barred from raising before the CA the issue of its inclusion as a creditor in the approved rehabilitation plan.

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

Certain fundamental principles must be considered. First, a court order is final in character if it puts an end to the particular matter resolved or definitely settles the matter disposed therein, such that no further questions can come before the court except the execution of that order.[36]

Second, it is an established rule that the perfection of an appeal within the period and in the manner prescribed by law is jurisdictional. Non-compliance with such legal requirements is fatal and has the effect of rendering the judgment final and executory.[37] As explained by this Court in *Pascual v. Robles*:[38]

> The failure to perfect an appeal as required by the rules has the effect of defeating the right to appeal of a party and precluding the appellate court from acquiring jurisdiction over the case. The right to appeal is not a natural right nor a part of due process; it is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of the law. The party who seeks to avail of the same must comply with the requirement of the rules. Failing to do so, the right to appeal is lost. The reason for rules of this nature is because the dispatch of business by courts would be impossible, and intolerable delays would result, without rules governing practice. Public policy and sound practice demand that judgments of courts should become final and irrevocable at some definite date fixed by law. Such rules are a necessary incident to the proper, efficient and orderly discharge of judicial functions. Thus, we have held that the failure to perfect an appeal within the prescribed reglementary period is not a mere technicality, but jurisdictional. Just as a losing party has the privilege to file an appeal within the prescribed period, so does the winner also have the correlative right to enjoy the finality of the decision. Failure to meet the requirements of an appeal deprives the appellate court of jurisdiction to entertain any appeal.[39]

In the present case, the RTC in its First Order determined that NSC was a creditor whose claims must be paid in accordance

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[36] *Spouses Curata v. Philippine Ports Authority,* 608 Phil. 9 (2009).

[37] *K & G Mining Corp. v. Acoje Mining Co., Inc.,* G.R. No. 188364, 11 February 2015, 750 SCRA 361.

[38] *Pascual v. Robles,* 622 Phil. 804 (2009).

[39] *Pascual v. Robles, id.* at 811-812.

with the approved rehabilitation plan. It must be emphasized that this determination was made after addressing NSC's contentions and TIPCO's counter-allegations with respect to the receivables in the initial hearing as well as in the Receiver's Report which we find to be credible.

It must also be noted that after the initial hearing, the RTC issued an Order[40] stating that both parties had "agreed to submit the issue that receivables transferred to NSC should not be included as TIPCO's assets for the resolution of the Court-appointed Rehabilitation Receiver, subject to the Court's approval."[41] Accordingly, the trial court adopted the findings of the Receiver in his Report. It approved the inclusion of NSC in the plan as a creditor and the payment of the latter's claims over the receivables in accordance with the approved rehabilitation plan. Definitely, the RTC was able to resolve the issue of the inclusion of NSC as a creditor in the plan. Thus, the latter was wrong in its contention that the First Order did not resolve its contentions. On the contrary, it is an order that definitely settled the issue.

This makes it a final order with respect to that issue. Therefore, pursuant to the Interim Rules of Procedure on Corporate Rehabilitation (Interim Rules),[42] petitioner should have ventilated its discontent with the First Order via a Rule 43 petition for review before the CA, and not through a mere motion before the RTC.[43] However, the records show that NSC failed to file

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[40] *Rollo,* pp. 139-143; penned by acting Judge Divina Luz P. Aquino-Simbulan.

[41] *Id*. at 140.

[42] A.M. No. 00-8-10-SC; The applicable rule of procedure in the instant petition is the Interim Rules of Procedure on Corporate Rehabilitation which was adopted by the Court on 15 December 2000 since the petition for rehabilitation was filed on 29 July 2005.

[43] To clarify the proper mode of appeal from decisions and final orders of rehabilitation courts, this Court issued A.M. No. 04-9-07-SC on 14 September 2004 (*Re: Mode of Appeal in Cases Formerly Cognizable by the Securities and Exchange Commission*), which provides as follows:

such a petition before the CA within 15 days from the former's receipt of the First Order. Instead, it filed a motion before the RTC. That motion, however, did not stop the First Order from lapsing into finality.

Clearly, NSC availed of the wrong remedy and the issue on its inclusion as a creditor in the approved rehabilitation plan has already lapsed into finality. Therefore, the CA was correct in denying its appeal. We cannot allow petitioner to benefit from its negligence in failing to find out what its remedies were and to promptly avail itself of any of them. As ruled by the CA, there is no compelling reason for this Court to relax the rules on appeal only to accommodate petitioner's contentions.[44]

NSC argues that the First Order was not final insofar as its claims were concerned. This contention is based on its allegation that prior to the issuance of the First Order, specifically during the hearing held on 23 January 2006, the Receiver manifested a willingness to study petitioner's contentions further and to submit a report thereafter.[45] To NSC, this manifestation prior to the issuance of the First Order had the effect of explicitly setting aside the issue for study, evaluation, and recommendation.[46]

Unfortunately, petitioner failed to support this allegation with any proof. The records are bereft of any clear indication that the Receiver indeed made the alleged manifestation. What is clear from the records is that the RTC issued an Order dated 23 January 2006.[47] The trial court stated that after holding a

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1. All decisions and final orders in cases falling under the Interim Rules of Corporate Rehabilitation and the Interim Rules of Procedure Governing Intra-Corporate Controversies under Republic Act No. 8799 shall be appealable to the Court of Appeals through a petition for review under Rule 43 of the Rules of Court.
2. The petition for review shall be taken within fifteen (15) days from notice of the decision or final order of the Regional Trial Court. x x x

[44] *Id*. at 48.

[45] *Id.* at 11-12.

[46] *Id*. at 11.

[47] *Id*. at 410.

hearing on even date and listening to the parties' remarks on the Receiver's Report, it considered the proposed rehabilitation plan and the Report "submitted for approval." Notably, NSC never questioned the latter Order.

If the Receiver indeed made the purported manifestation, NSC should have immediately appealed the Order dated 23 January 2006. It should have done so upon realizing that the Order did not reflect what it alleged to have really happened during that hearing. The allegation, therefore, appears to be a mere afterthought.

The Second and the Third Orders did not modify or reverse the First Order.

It cannot be said that it is the Second or Third Orders that should be appealed by petitioner.

The Second and the Third Orders were acts of the RTC that were distinct and separate from the First Order. They did not reverse or modify it. Nowhere did the foregoing orders modify the validity, content, or immediate enforceability of the First Order or the approved rehabilitation plan.

In view of the foregoing and the finding that petitioner's Motion subsequent to the First Order was in reality a motion to revise the approved plan, the Third Order had the effect of simply denying NSC's Motion and clarifying the First Order. We take note of the fact that the RTC did not order the parties to initiate the suggested separate action, but left it to their discretion. As the trial court pronounced in its Third Order, "[w]hile the parties **may decide** to elevate the matter for determination in an appropriate court, the rehabilitation plan shall continue to be implemented without prejudice to a final and executory decision on such issue." (emphasis supplied)[48]

The terms of the approved rehabilitation plan were therefore not conditioned on the results of the separate litigation. The

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[48] *Id*. at 72.

plan stands on its own, whether or not a separate action was initiated by the parties. Should they opt to initiate such action and a decision be issued on the issue, only then will the RTC resolve the effect of the decision on the approved rehabilitation plan. Until then, the matter remains beyond the appellate jurisdiction of this Court.

NSC would have us believe that what the RTC granted with one hand, it denied with the other. The fact remains, however, that the approved rehabilitation plan, uncontested, is the final will of the trial court.

The motion to revise the rehabilitation plan was properly denied by the RTC.

In view of our conclusion that the Third Order was essentially a denial of NSC's motion to revise the approved rehabilitation plan, we find this course of action to be in line with the law. The motion to revise the plan had no basis in law.

Section 26 of the Interim Rules allows the modification and alteration of the approved rehabilitation plan, if these steps are necessary to achieve the desired targets or goals set forth therein. As explained by this Court in *Victorio-Aquino v. Pacific Plans,*[49] the Interim Rules allow the modification of the plan, precisely because of conditions that may supervene or affect its implementation subsequent to its approval.[50]

In this case, NSC based its motion to revise the approved plan on its persistent contention that it was a trustor, not a creditor, of TIPCO. However, this contention is not a supervening event that warrants the modification of the rehabilitation plan under Section 26 of the Interim Rules. The facts clearly show that this issue was raised at the start of the rehabilitation proceedings, considered by the Receiver in his Report, and accordingly

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[49] *Victorio-Aquino v. Pacific Plans, Inc.,* G.R. No. 193108, 10 December 2014, 744 SCRA 480.

[50] *Id.*

resolved by the RTC in its First Order as extensively discussed above. Therefore, petitioner's contention could not have been a supervening matter that arose only after the approval of the rehabilitation plan and would thereby affect its implementation. As discussed above, it was a matter that should have been timely raised before the CA via a Rule 43 Petition for Review. Hence, the denial of the motion to revise was proper.

In view of the foregoing conclusion, we find no need to resolve the other issues raised.

WHEREFORE, the Petition for Review on *Certiorari* under Rule 45 is **DENIED** for lack of merit. The Court of Appeals Decision[51] and Resolution[52] in **CA-G.R. SP No. 93873** are hereby **AFFIRMED.**

SO ORDERED.

Leonardo-de Castro, del Castillo, Reyes,[*] and *Caguioa, JJ.*, concur.

SECOND DIVISION

[G.R. No. 195021. March 15, 2017]

NICOLAS VELASQUEZ and VICTOR VELASQUEZ, *petitioners, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

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[51] Dated 19 January 2010.

[52] Dated 21 July 2010.

[*] Designated Additional Member in lieu of Associate Justice Estela M. Perlas-Bernabe, per Raffle dated 18 January 2017.

SYLLABUS

1. **CRIMINAL LAW; REVISED PENAL CODE; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE OR DEFENSE OF A RELATIVE; THE ACCUSED'S ADMISSION TO HAVING INFLICTED HARM UPON ANOTHER PERSON ENABLES THE PROSECUTION TO DISPENSE WITH DISCHARGING ITS BURDEN OF PROVING THAT THE ACCUSED PERFORMED ACTS, WHICH WOULD OTHERWISE BE THE BASIS FOR CRIMINAL LIABILITY.—** A person invoking self-defense (or defense of a relative) admits to having inflicted harm upon another person — a potential criminal act under Title Eight (Crimes Against Persons) of the Revised Penal Code. However, he or she makes the additional, defensive contention that even as he or she may have inflicted harm, he or she nevertheless incurred no criminal liability as the looming danger upon his or her own person (or that of his or her relative) justified the infliction of protective harm to an erstwhile aggressor. The accused's admission enables the prosecution to dispense with discharging its burden of proving that the accused performed acts, which would otherwise be the basis of criminal liability. All that remains to be established is whether the accused were justified in acting as he or she did. To this end, the accused's case must rise on its own merits.

2. **ID.; ID.; ID.; SELF-DEFENSE; REQUISITES.—** To successfully invoke self-defense, an accused must establish: "(1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel such aggression; and (3) lack of sufficient provocation on the part of the person resorting to self-defense." Defense of a relative under Article 11 (2) of the Revised Penal Code requires the same first two (2) requisites as self-defense and, in lieu of the third "in case the provocation was given by the person attacked, that the one making the defense had no part therein." The first requisite — unlawful aggression — is the condition *sine qua non* of self-defense and defense of a relative x x x. The second requisite — reasonable necessity of the means employed to prevent or repel the aggression — requires a reasonable proportionality between the unlawful aggression and the defensive response: "[t]he means employed by the person invoking self-defense contemplates a rational

equivalence between the means of attack and the defense." This is a matter that depends on the circumstances x x x. The third requisite — lack of sufficient provocation — requires the person mounting a defense to be reasonably blameless. He or she must not have antagonized or incited the attacker into launching an assault. This also requires a consideration of proportionality. As explained in *People v. Boholst-Caballero*, "[p]rovocation is sufficient when it is proportionate to the aggression, that is, adequate enough to impel one to attack the person claiming self-defense."

3. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; WITNESSES CANNOT BE EXPECTED TO RECOLLECT WITH EXACTITUDE EVERY MINUTE DETAIL OF AN EVENT.—** Jurisprudence is replete with clarifications that a witness' recollection of crime need not be foolproof: "Witnesses cannot be expected to recollect with exactitude every minute detail of an event. This is especially true when the witnesses testify as to facts which transpired in rapid succession, attended by flurry and excitement." This is especially true of a victim's recollection of his or her own harrowing ordeal. One who has undergone a horrifying and traumatic experience "cannot be expected to mechanically keep and then give an accurate account" of every minutiae. Certainly, Jesus' supposed inconsistencies on the intricacies of who struck him which specific blow can be forgiven. The merit of Jesus' testimony does not depend on whether he has an extraordinary memory despite being hit on the head multiple times. Rather, it is in his credible narration of his entire ordeal, and how petitioners and their co-accused were its authors. On this, his testimony was unequivocal.

APPEARANCES OF COUNSEL

Bautista Limbos & Torre Law Office for petitioners.
Office of the Solicitor General for respondent.

DECISION

LEONEN, *J*.:

An accused who pleads a justifying circumstance under Article 11 of the Revised Penal Code[1] admits to the commission of acts, which would otherwise engender criminal liability. However, he asserts that he is justified in committing the acts. In the process of proving a justifying circumstance, the accused risks admitting the imputed acts, which may justify the existence of an offense were it not for the exculpating facts. Conviction

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[1] REV. PEN. CODE, Art. 11 provides:

Article 11. Justifying Circumstances.— The following do not incur any criminal liability:

1. Anyone who acts in defense of his person or rights, provided that the following circumstances concur:

First. Unlawful aggression;

Second. Reasonable necessity of the means employed to prevent or repel it;
Third. Lack of sufficient provocation on the part of the person defending himself.

2. Anyone who acts in defense of the person or rights of his spouse, ascendants, descendants, or legitimate, natural or adopted brothers or sisters, or of his relatives by affinity in the same degrees, and those by consanguinity within the fourth civil degree, provided that the first and second requisites prescribed in the next preceding circumstance are present, and the further requisite, in case the provocation was given by the person attacked, that the one making defense had no part therein.

3. Anyone who acts in defense of the person or rights of a stranger, provided that the first and second requisites mentioned in the first circumstance of this article are present and that the person defending be not induced by revenge, resentment, or other evil motive.

4. Any person who, in order to avoid an evil or injury, does an act which causes damage to another, provided that the following requisites are present:

First. That the evil sought to be avoided actually exists;

Second. That the injury feared be greater than that done to avoid it;

Third. That there be no other practical and less harmful means of preventing it.

5. Any person who acts in the fulfillment of a duty or in the lawful exercise of a right or office.

6. Any person who acts in obedience to an order issued by a superior for some lawful purpose.

follows if the evidence for the accused fails to prove the existence of justifying circumstances.

Through this Petition for Review on Certiorari[2] under Rule 45 of the Rules of Court, the accused petitioners pray that the assailed March 17, 2010 Decision[3] and December 10, 2010 Resolution[4] of the Court of Appeals in CA-G.R. CR. No. 31333 be reversed and set aside, and that they be absolved of any criminal liability.

The Court of Appeals' assailed rulings sustained the July 5, 2007 Decision[5] of the Regional Trial Court, Branch 41, Dagupan City, which found petitioners guilty beyond reasonable doubt of attempted murder.

In an Information, petitioners Nicolas Velasquez (Nicolas) and Victor Velasquez (Victor), along with four (4) others — Felix Caballeda (Felix), Jojo Del Mundo (Jojo), Sonny Boy Velasquez (Sonny), and Ampong Ocumen (Ampong) — were charged with attempted murder under Article 248,[6]

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[2] *Rollo*, pp. 24-40.

[3] *Id*. at 49-59. The Decision was penned by Associate Justice Arcangelita M. Romilla-Lontok and concurred in by Associate Justices Portia Aliño-Hormachuelos and Mario V. Lopez of the Second Division, Court of Appeals, Manila.

[4] *Id*. at 60-62. The Resolution was penned by Associate Justice Mario V. Lopez and concurred in by Associate Justices Josefina Guevara-Salonga and Juan Q. Enriquez, Jr. of the Special Former Second Division, Court of Appeals, Manila.

[5] No copy annexed to any of the parties' submissions.

[6] REV. PEN. CODE, Art. 248 provides:

Article 248. Murder. — Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by reclusión temporal in its maximum period to death, if committed with any of the following attendant circumstances:
1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.
2. In consideration of a price, reward or promise.

in relation to Article 6,[7] of the Revised Penal Code, as follows:

That on May 24, 2003 in the evening at Brgy. Palua, Mangaldan, Pangasinan and within the jurisdiction of this Honorable Court, the above named accused while armed with stones and wooden poles, conspiring, confederating and mutually helping one another, with intent to kill, with treachery and abuse of superior strength, did, then and there willfully, unlawfully and feloniously attack, maul and hit JESUS DEL MUNDO inflicting upon him injuries in the vital parts of his body, the said accused having thus commenced a felony directly by overt acts, but did not perform all the acts of execution which could have produced the crime of Murder but nevertheless did not produce it by reason of some causes or accident other than their own spontaneous desistance to his damage and prejudice.

Contrary to Article 248 in relation to Article 6 and 50 of the Revised Penal Code.[8]

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3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a street car or locomotive, fall of an airship, by means of motor vehicles, or with the use of any other means involving great waste and ruin.
4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic, or any other public calamity.
5. With evident premeditation.
6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

[7] REV. PEN. CODE, Art. 6 provides:

Article 6. Consummated, Frustrated, and Attempted Felonies. — Consummated felonies, as well as those which are frustrated and attempted, are punishable.
A felony is consummated when all the elements necessary for its execution and accomplishment are present; and it is frustrated when the offender performs all the acts of execution which would produce the felony as a consequence but which, nevertheless, do not produce it by reason of causes independent of the will of the perpetrator.
There is an attempt when the offender commences the commission of a felony directly by overt acts, and does not perform all the acts of execution which should produce the felony by reason of some cause or accident other than his own spontaneous desistance.

[8] *Rollo*, pp. 187-188. Memorandum.

All accused, except Ampong, who remained at large, pleaded not guilty upon arraignment.[9] Trial then ensued.[10]

According to the prosecution, on May 24, 2003, at about 10:00 p.m., the spouses Jesus and Ana Del Mundo (Del Mundo Spouses) left their home to sleep in their nipa hut, which was about 100 meters away.[11] Arriving at the nipa hut, the Del Mundo Spouses saw Ampong and Nora Castillo (Nora) in the midst of having sex.[12] Aghast at what he perceived to be a defilement of his property, Jesus Del Mundo (Jesus) shouted invectives at Ampong and Nora, who both scampered away.[13] Jesus decided to pursue Ampong and Nora, while Ana Del Mundo (Ana) left to fetch their son, who was then elsewhere.[14] Jesus went to the house of Ampong's aunt, but neither Ampong nor Nora was there.[15] He began making his way back home when he was blocked by Ampong and his fellow accused.[16]

Without provocation, petitioner Nicolas hit the left side of Jesus' forehead with a stone. Petitioner Victor also hit Jesus' left eyebrow with a stone.[17] Accused Felix did the same, hitting Jesus above his left ear.[18] Accused Sonny struck Jesus with a bamboo, hitting him at the back, below his right shoulder.[19] Ampong punched Jesus on his left cheek. The accused then left Jesus on the ground, bloodied. Jesus crawled and hid behind

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[9] *Id*. at 188.

[10] *Id*.

[11] *Id*. at 136. Comment.

[12] *Id*. at 136–137. Comment.

[13] *Id*. at 137.

[14] *Id*.

[15] *Id*.

[16] *Id*.

[17] *Id*.

[18] *Id*.

[19] *Id*.

blades of grass, fearing that the accused might return. He then got up and staggered his way back to their house.[20]

Jesus testified on his own ordeal. In support of his version of the events, the prosecution also presented the testimony of Maria Teresita Viado (Maria Teresita). Maria Teresita was initially approached by Jesus' wife, Ana, when Jesus failed to immediately return home.[21] She and Ana embarked on a search for Jesus but were separated.[22] At the sound of a man being beaten, she hid behind some bamboos.[23] From that vantage point, she saw the accused mauling Jesus.[24] The prosecution noted that about four (4) or five (5) meters away was a lamp post, which illuminated the scene.[25]

At the Del Mundo Spouses' residence, Maria Teresita recounted to them what she had witnessed (Jesus had managed to return home by then).[26] Ana and Maria Teresita then brought Jesus to Barangay Captain Pilita Villanueva, who assisted them in bringing Jesus to the hospital.[27]

After undergoing an x-ray examination, Jesus was found to have sustained a crack in his skull.[28] Dr. Jose D. De Guzman (Dr. De Guzman) issued a medico-legal certificate indicating the following findings:

> x.x. Positive Alcoholic Breath
> 3 cms lacerated wound fronto-parietal area left
> 1 cm lacerated wound frontal area left

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

[21] *Id*. at 138.

[22] *Id*.

[23] *Id*.

[24] *Id*.

[25] *Id*.

[26] *Id*.

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

[28] *Id*. at 139.

Abrasion back left multi linear approximately 20 cm
Abrasion shoulder left, confluent 4x10 cm
Depressed skull fracture parietal area left.
x.x.[29]

Dr. De Guzman noted that Jesus' injuries required medical attention for four (4) to six (6) weeks.[30] Jesus was also advised to undergo surgery.[31] He was, however, unable to avail of the required medical procedure due to shortage of funds.[32]

The defense offered a different version of events.

According to the accused, in the evening of May 24, 2003, petitioner Nicolas was roused in his sleep by his wife, Mercedes Velasquez (Mercedes), as the nearby house of petitioner Victor was being stoned.[33]

Nicolas made his way to Victor's place, where he saw Jesus hacking Victor's door. Several neighbors — the other accused — allegedly tried to pacify Jesus.[34] Jesus, who was supposedly inebriated, vented his ire upon Nicolas and the other accused, as well as on Mercedes.[35] The accused thus responded and countered Jesus' attacks, leading to his injuries.[36]

In its July 5, 2007 Decision,[37] the Regional Trial Court, Branch 41, Dagupan City found petitioners and Felix Caballeda guilty beyond reasonable doubt of attempted murder.[38] The court also found Sonny Boy Velasquez guilty beyond reasonable doubt

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[29] *Id*.

[30] *Id*. at 140.

[31] *Id*. at 139.

[32] *Id*.

[33] *Id*. at 27.

[34] *Id*.

[35] *Id*.

[36] *Id*.

[37] No copy annexed to any of the parties' submissions.

[38] *Id*. at 28.

of less serious physical injuries.[39] He was found to have hit Jesus on the back with a bamboo rod. Jojo Del Mundo was acquitted.[40] The case was archived with respect to Ampong, as he remained at large.[41]

The dispositive portion of its Decision read:

> WHEREFORE, premises considered, judgment is hereby rendered finding accused NICOLAS VELASQUEZ, VICTOR VELASQUEZ and FELIX CABALLEDA guilty beyond reasonable doubt of the crime of Attempted Murder defined and penalized under Article 248 in relation to Articles 6, paragraph 3 and 51 of the Revised Penal Code, and pursuant to the law, sentences each of them to suffer on (sic) indeterminate penalty of four (4) years and one (1) day of Arrested (sic) Mayor in its maximum period as minimum to eight (8) years of Prison (sic) Correctional (sic) in its maximum period to Prison (sic) Mayor in its medium period as maximum and to pay proportionately to private complainant Jesus del Mundo the amount of Php55,000.00 as exemplary damages, and to pay the cost of suit.
>
> The Court likewise finds the accused SONNY BOY VELASQUEZ [guilty] beyond reasonable doubt of the [crime] of Less Serious Physical Injuries defined and penalized under Article 265 of the Revised Penal Code and pursuant thereto, he is hereby sentenced to suffer the penalty of Arresto Mayor on one (1) month and one (1) day to six (6) months.
>
> Accused JOJO DEL MUNDO is hereby acquitted on the ground of absence of evidence.
>
> With respect to accused AMPONG OCUMEN, the case against him is archived without prejudice to its revival as soon as he is arrested and brought to the jurisdiction of this Court.[42]

Petitioners and Felix Caballeda filed a motion for reconsideration, which the Regional Trial Court denied.[43]

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[39] *Id*.

[40] *Id*.

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

[42] *Id*. at 28.

[43] *Id*. at 189. Memorandum.

On petitioners' and Caballeda's appeal, the Court of Appeals found that petitioners and Caballeda were only liable for serious physical injuries because "first, intent to kill was not attendant inasmuch as the accused-appellants, despite their superiority in numbers and strength, left the victim alive and, second, none of [the] injuries or wounds inflicted upon the victim was fatal."[44] The Court of Appeals thus modified the sentence imposed on petitioners and Caballeda.

The dispositive portion of its assailed March 17, 2010 Decision[45] read:

WHEREFORE, premises considered, the July 25, 2007 Decision of Branch 41, Regional Trial Court of Dagupan City is hereby **MODIFIED**. Instead, accused-appellants are found guilty of Serious Physical Injuries and each of them is sentenced to suffer the penalty of imprisonment of six (6) months of *arresto mayor* as minimum to four (4) years and two (2) months of *prisión correccional* as maximum.

SO ORDERED.[46] (Emphasis in the original)

Following the denial of their Motion for Reconsideration, petitioners filed the present Petition.[47] They insist on their version of events, particularly on how they and their co-accused allegedly merely acted in response to Jesus Del Mundo's aggressive behavior.

For resolution is the issue of whether petitioners may be held criminally liable for the physical harm inflicted on Jesus Del Mundo. More specifically, this Court is asked to determine whether there was sufficient evidence: first, to prove that justifying circumstances existed, and second, to convict the petitioners.

I

Petitioners' defense centers on their claim that they acted in defense of themselves, and also in defense of Mercedes, Nicolas'

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[44] *Id*. at 56.

[45] *Id*. at 49-59.

[46] *Id*. at 59.

[47] *Id*. at 24-40.

wife and Victor's mother. Thus, they invoke the first and second justifying circumstances under Article 11 of the Revised Penal Code:

ARTICLE 11. Justifying Circumstances. — The following do not incur any criminal liability:

1. Anyone who acts in defense of his person or rights, provided that the following circumstances concur:

   First. Unlawful aggression;

   Second. Reasonable necessity of the means employed to prevent or repel it;

   Third. Lack of sufficient provocation on the part of the person defending himself.

2. Anyone who acts in defense of the person or rights of his spouse, ascendants, descendants, or legitimate, natural or adopted brothers or sisters, or of his relatives by affinity in the same degrees, and those by consanguinity within the fourth civil degree, provided that the first and second requisites prescribed in the next preceding circumstance are present, and the further requisite, in case the provocation was given by the person attacked, that the one making defense had no part therein.

A person invoking self-defense (or defense of a relative) admits to having inflicted harm upon another person – a potential criminal act under Title Eight (Crimes Against Persons) of the Revised Penal Code. However, he or she makes the additional, defensive contention that even as he or she may have inflicted harm, he or she nevertheless incurred no criminal liability as the looming danger upon his or her own person (or that of his or her relative) justified the infliction of protective harm to an erstwhile aggressor.

The accused's admission enables the prosecution to dispense with discharging its burden of proving that the accused performed acts, which would otherwise be the basis of criminal liability. All that remains to be established is whether the accused were justified in acting as he or she did. To this end, the accused's case must rise on its own merits:

It is settled that when an accused admits [harming] the victim but invokes self-defense to escape criminal liability, the accused assumes the burden to establish his plea by credible, clear and convincing evidence; otherwise, conviction would follow from his admission that he [harmed] the victim. Self-defense cannot be justifiably appreciated when uncorroborated by independent and competent evidence or when it is extremely doubtful by itself. Indeed, in invoking self-defense, the burden of evidence is shifted and the accused claiming self-defense must rely on the strength of his own evidence and not on the weakness of the prosecution.[48]

To successfully invoke self-defense, an accused must establish: "(1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel such aggression; and (3) lack of sufficient provocation on the part of the person resorting to self-defense."[49] Defense of a relative under Article 11 (2) of the Revised Penal Code requires the same first two (2) requisites as self-defense and, in lieu of the third "in case the provocation was given by the person attacked, that the one making the defense had no part therein."[50]

The first requisite — unlawful aggression — is the condition *sine qua non* of self-defense and defense of a relative:

At the heart of the claim of self-defense is the presence of an unlawful aggression committed against appellant. Without unlawful aggression, self-defense will not have a leg to stand on and this justifying circumstance cannot and will not be appreciated, even if the other elements are present. Unlawful aggression refers to an

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[48] *Belbis v. People*, 698 Phil. 706, 719 (2012) [Per *J.* Peralta, Third Division], citing *People v. Tagana*, 468 Phil. 784, 800 (2004) [Per *J.* Austria-Martinez, Second Division]; and *Marzonia v. People*, 525 Phil. 693, 702-703 (2006) [Per *J.* Quisumbing, Third Division].

[49] *Id*. at 719-720, citing *People v. Silvano*, 403 Phil. 598, 606 (2001) [Per *J.* De Leon, Jr., Second Division]; *People v. Plazo*, 403 Phil. 347, 357 (2001) [Per *J.* Quisumbing, Second Division]; *Roca v. Court of Appeals*, 403 Phil. 326, 335 (2001) [Per *J.* Quisumbing, Second Division].

[50] *People v. Eduarte*, 265 Phil. 304, 309 (1990) [Per *J.* Guttierez, Jr., Third Division].

attack amounting to actual or imminent threat to the life and limb of the person claiming self-defense.[51]

The second requisite — reasonable necessity of the means employed to prevent or repel the aggression — requires a reasonable proportionality between the unlawful aggression and the defensive response: "[t]he means employed by the person invoking self-defense contemplates a rational equivalence between the means of attack and the defense."[52] This is a matter that depends on the circumstances:

> Reasonable necessity of the means employed does not imply material commensurability between the means of attack and defense. What the law requires is rational equivalence, in the consideration of which will enter as principal factors the emergency, the imminent danger to which the person attacked is exposed, and the instinct, more than the reason, that moves or impels the defense, and the proportionateness thereof does not depend upon the harm done, but rests upon the imminent danger of such injury . . . As WE stated in the case of People vs. Lara, in emergencies of this kind, human nature does not act upon processes of formal reason but in obedience to the instinct of self-preservation; and when it is apparent that a person has reasonably acted upon this instinct, it is the duty of the courts to sanction the act and hold the act irresponsible in law for the consequences.[53] (Citations omitted)

The third requisite — lack of sufficient provocation — requires the person mounting a defense to be reasonably blameless. He or she must not have antagonized or incited the attacker into launching an assault. This also requires a consideration of

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[51] *People v. Caratao,* 451 Phil. 588, 602 (2003) [Per *J.* Azcuna, First Division], citing *People v. Saure*, 428 Phil. 916, 928 (2002) [Per *J.* Puno, First Division]; and *People v. Enfectana, et al*., 431 Phil. 64, 77 (2002) [Per *J*. Quisumbing, Second Division].

[52] *People v. Obordo*, 431 Phil. 691, 712 (2002) [Per *J.* Kapunan, First Division], citing *People vs. Encomienda*, 150-B Phil. 419, 433 (1972) [Per *J*. Makasiar, First Division].

[53] *People v. Encomienda*, 150-B Phil. 419, 433-434 (1972), citing *People vs. Lara*, 48 Phil. 153, 159 (1925) [Per *J*. Street, *En Banc*]; *People vs. Paras*, 9 Phil. 367, 370 (1907) [Per *J.* Makasiar, First Division].

proportionality. As explained in *People v. Boholst-Caballero*,[54] "[p]rovocation is sufficient when it is proportionate to the aggression, that is, adequate enough to impel one to attack the person claiming self-defense."[55]

II

We find petitioners' claims of self-defense and defense of their relative, Mercedes, to be sorely wanting.

Petitioners' entire defense rests on proof that it was Jesus who initiated an assault by barging into the premises of petitioners' residences, hacking Victor's door, and threatening physical harm upon petitioners and their companions. That is, that unlawful aggression originated from Jesus.

Contrary to what a successful averment of self-defense or defense of a relative requires, petitioners offered nothing more than a self-serving, uncorroborated claim that Jesus appeared out of nowhere to go berserk in the vicinity of their homes. They failed to present independent and credible proof to back up their assertions. The Regional Trial Court noted that it was highly dubious that Jesus would go all the way to petitioners' residences to initiate an attack for no apparent reason.[56]

The remainder of petitioners' recollection of events strains credulity. They claim that Jesus launched an assault despite the presence of at least seven (7) antagonists: petitioners, Mercedes, and the four (4) other accused. They further assert that Jesus persisted on his assault despite being outnumbered, and also despite their and their co-accused's bodily efforts to restrain Jesus. His persistence was supposedly so likely to harm them that, to neutralize him, they had no other recourse but to hit him on the head with stones for at least three (3) times, and to hit him on the back with a bamboo rod, aside from dealing him with less severe blows.[57]

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[54] 158 Phil. 827 (1974) [Per *J.* Muñoz-Palma, First Division].

[55] *Id*. at 845.

[56] *Rollo*, p. 196. Memorandum.

[57] *Id*. at 27.

As the Regional Trial Court noted, however:

> The Court takes judicial notice of (the) big difference in the physical built of the private complainant and accused Victor Velasquez, Sonny Boy Velasquez, Felix Caballeda and Jojo del Mundo, private complainant is shorter in height and of smaller built than all the accused. The said accused could have had easily held the private complainant, who was heavily drunk as they claim, and disarmed him without the need of hitting him.[58]

The injuries which Jesus were reported to have sustained speak volumes:

> 3 cms lacerated wound fronto-parietal area left
> 1 cm lacerated wound frontal area left
> Abrasion back left multi linear approximately 20 cm
> Abrasion shoulder left, confluent 4x10 cm
> Depressed skull fracture parietal area left.[59]

Even if it were to be granted that Jesus was the initial aggressor, the beating dealt to him by petitioners and their co-accused was still glaringly in excess of what would have sufficed to neutralize him. It was far from a reasonably necessary means to repel his supposed aggression. Petitioners thereby fail in satisfying the second requisite of self-defense and of defense of a relative.

III

In addition to their tale of self-defense, petitioners insist that the testimony of Maria Teresita is not worthy of trust because she parted ways with Ana while searching for Jesus.[60] They characterize Maria Teresita as the prosecution's "lone eyewitness."[61] They make it appear that its entire case hinges on her. Thus, they theorize that with the shattering of her

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[58] *Id*. at 196.

[59] *Id*.

[60] *Id*. at 34-37.

[61] *Id*. at 34.

credibility comes the complete and utter ruin of the prosecution's case.[62] Petitioners claim that Maria Teresita is the prosecution's lone eyewitness at the same time that they acknowledge Jesus' testimony, which they dismissed as laden with inconsistencies.[63]

These contentions no longer merit consideration.

Petitioners' averment of justifying circumstances was dispensed with the need for even passing upon their assertions against Maria Teresita's and Jesus' testimonies. Upon their mere invocation of self-defense and defense of a relative, they relieved the prosecution of its burden of proving the acts constitutive of the offense. They took upon themselves the burden of establishing their innocence, and cast their lot on their capacity to prove their own affirmative allegations. Unfortunately for them, they failed.

Even if we were to extend them a measure of consideration, their contentions fail to impress.

Petitioners' primordial characterization of Maria Teresita as the "lone eyewitness," upon whose testimony the prosecution's case was to rise or fall, is plainly erroneous. Apart from her, Jesus testified about his own experience of being mauled by petitioners and their co-accused. Maria Teresita's testimony was only in support of what Jesus recounted.

Moreover, we fail to see how the mere fact of Maria Teresita's having parted ways with Ana while searching for Jesus diminishes her credibility. No extraordinary explanation is necessary for this. Their having proceeded separately may be accounted for simply by the wisdom of how independent searches enabled them to cover more ground in less time.

Regarding Jesus' recollection of events, petitioners' contention centers on Jesus' supposedly flawed recollection of who among the six (6) accused dealt him, which specific blow, and using

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[62] *Id*. at 34-37.

[63] *Id*. at 37-38.

which specific weapon.[64] These contentions are too trivial to even warrant an independent, point by point audit by this Court.

Jurisprudence is replete with clarifications that a witness' recollection of crime need not be foolproof: "Witnesses cannot be expected to recollect with exactitude every minute detail of an event. This is especially true when the witnesses testify as to facts which transpired in rapid succession, attended by flurry and excitement."[65] This is especially true of a victim's recollection of his or her own harrowing ordeal. One who has undergone a horrifying and traumatic experience "cannot be expected to mechanically keep and then give an accurate account"[66] of every minutiae.

Certainly, Jesus' supposed inconsistencies on the intricacies of who struck him which specific blow can be forgiven. The merit of Jesus' testimony does not depend on whether he has an extraordinary memory despite being hit on the head multiple times. Rather, it is in his credible narration of his entire ordeal, and how petitioners and their co-accused were its authors. On this, his testimony was unequivocal.

WHEREFORE, the Petition is **DENIED**. The Decision of the Court of Appeals in CA-G.R. CR. No. 31333 is **AFFIRMED**.

SO ORDERED.

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

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[64] *Id.*

[65] *People v. Alolod*, 334 Phil. 135, 141 (1997) [Per *J.* Bellosillo, First Division].

[66] *People v. Rabosa*, 339 Phil. 339, 346 (1997) [Per *J*. Kapunan, First Division], citing *People v. Ching*, 310 Phil. 269, 286 (1995) [Per *J*. Regalado, Second Division].

THIRD DIVISION

[G.R. No. 199810. March 15, 2017]

BEVERLY ANNE C. YAP, *petitioner, vs.* **REPUBLIC OF THE PHILIPPINES, represented by THE REGIONAL EXECUTIVE DIRECTOR, DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES (DENR),** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; *RES JUDICATA*; DOCTRINE OF CONCLUSIVENESS OF JUDGMENT; INAPPLICABLE WHEN THE COURT'S PRONOUNCEMENT IS A MERE *OBITER DICTUM*, FOR IT IS NOT A FINAL OR CONCLUSIVE DECISION ON AN ISSUE OF FACT; CASE AT BAR.—** In *Nabus v. CA*, the Court stressed that when a party seeks relief upon a cause of action different from the one asserted by him in a previous one, **the judgment in the former suit is conclusive only as to such points or questions as were actually in issue or adjudicated therein**. However, in *Calalang v. Register of Deeds of Quezon City*, the Court clarified that the bar on re-litigation of a matter or question extends to those questions *necessarily implied* in the final judgment, although no specific finding may have been made in reference thereto, and although those matters were directly referred to in the pleadings and were not actually or formally presented. **"If the record of the former trial shows that the judgment could not have been rendered without deciding a particular matter, it will be considered as having settled that matter as to all future actions between the parties."** Verily, as developed, these principles now embody paragraph (c) of Section 47, Rule 39 of the Rules of Court x x x. [T]he question of whether or not Yap and Villamor are innocent purchasers was not an actual issue of fact in the case before the RTC Branch 13, and which called for said court's adjudication. "An issue of fact is a point supported by one party's evidence and controverted by another's." That Yap and Villamor were buyers in good faith is merely an allegation which was not proven in court. The RTC Branch 13 did not actually make

any clear pronouncement on the matter. The expropriation proceeding was filed on February 28, 1997. The protestants caused the annotation of a notice of *lis pendens* on the original copy of OCT No. P-11182 on January 27, 1992. Accordingly, if indeed the question on whether Yap and Villamor are buyers in good faith was an actual issue of fact before the expropriation proceeding, the protestants could have easily controverted such claim by the mere expedience of presenting a certified original copy of OCT No. P-11182. Forsooth, the notice at the back of a Torrens title serves as notice to the whole world of the pending controversy over the land so registered. x x x [T]he RTC Branch 13's pronouncement that Yap and Villamor were buyers in good faith was, at best, a mere *obiter dictum*. Contrary to Yap's claim, there was nothing final or conclusive with the decision of the RTC Branch 13 which the CA should be bound.

2. **ID.; EVIDENCE; BURDEN OF PROOF; THE BURDEN OF PROOF TO ESTABLISH THE STATUS OF A PURCHASER AND REGISTRANT IN GOOD FAITH LIES UPON THE ONE WHO ASSERTS IT.—** Time and again, the Court has ruled that the burden of proof to establish the status of a purchaser and registrant in good faith lies upon the one who asserts it. This *onus probandi* cannot be discharged by mere invocation of the legal presumption of good faith. It must be emphasized that aside from the fact that a notice of *lis pendens* was already annotated on OCT No. P-11182 even before Yap and Villamor purchased the subject property, it was also established that when they did so, the said property was still registered in the name of Pagarigan since the Bank did not consolidate its title thereto. **Stated simply, Yap and Villamor purchased the subject property not from the registered owner.**

3. **ID.; ACTIONS; DEFENSES OF ESTOPPEL AND LACHES; INAPPLICABLE IN CASE AT BAR.—** In the instant case, it was established that Pagarigan's FPA was secured on the basis of his fraudulent representations. The respondent cannot be faulted for having been misled into believing that an applicant is legally qualified to be granted free patent as to render it estopped from asserting its right to recover its own property. While the action for reversion was instituted only in 2003, the circumstances leading to the institution of the case hardly spells inaction or neglect on the part of the respondent as to be

considered guilty of laches. Forsooth, there was no prolonged inaction on the part of the respondent in this case. This can be gleaned in the decision of the DENR Secretary. Shortly after the protestants filed a formal protest with the Bureau on October 24, 1990, the Officer-in-Charge, Regional Executive Director (RED) of the DENR Region XI, Davao City immediately ordered an investigation on November 15, 1990, and the same commenced on November 19, 1990. On February 14, 1994, the RED issued a decision dismissing the protestants' protest. Undaunted, the protestants elevated their case to the Office of the DENR Secretary. On May 15, 1995, the DENR Secretary set-aside the RED's decision and ordered the institution of appropriate action for the cancellation of OCT No. P-11182, and for the reversion of the property covered thereby to the government.

4. **CIVIL LAW; PUBLIC LAND ACT; ACTION FOR REVERSION; A FREE PATENT THAT WAS FRAUDULENTLY ACQUIRED, AND THE CERTIFICATE OF TITLE ISSUED PURSUANT TO THE SAME, MAY ONLY BE ASSAILED BY THE GOVERNMENT IN AN ACTION FOR REVERSION.—** In the case of *Lorzano v. Tabayag, Jr.*, the Court reiterated that a Torrens title emanating from a free patent which was secured through fraud does not become indefeasible because the patent from whence the title sprung is itself void and of no effect whatsoever. x x x [A] free patent that was fraudulently acquired, and the certificate of title issued pursuant to the same, may only be assailed by the government in an action for reversion, pursuant to Section 101 of the Public Land Act.

APPEARANCES OF COUNSEL

Aldevera Law Office for petitioner.
Office of the Solicitor General for respondent.

DECISION

REYES, *J.*:

This is a petition for review on *certiorari*[1] seeking to annul and set aside the Decision[2] dated June 30, 2011 and Resolution[3] dated November 14, 2011 of the Court of Appeals (CA) in CA-G.R. CV No. 01753-MIN which reversed and set aside the Decision[4] dated October 24, 2008 of the Regional Trial Court (RTC) of Davao City, Branch 16, in Civil Case No. 29,705-03, dismissing the complaint for reversion of a parcel of land.

Antecedent Facts

Consuelo *Vda. de* dela Cruz applied for free patent over a parcel of land constituting about 1,292 square meters, designated as Lot No. 9087, Cad. 102, located in Daliao, Toril, Davao City. As she could not wait for the approval of her application, she executed a Deed of Waiver/Quitclaim[5] on November 25, 1981 in favor of Rollie Pagarigan (Pagarigan).[6]

Pagarigan filed his own Free Patent Application (FPA)[7] and subsequently, Free Patent No. (XI-I)5133 was issued to him over said lot. Original Certificate of Title (OCT) No. P-11182[8] was thereby issued in his name on November 25, 1982.[9]

On September 5, 1989, Pagarigan mortgaged the lot to Banco Davao- Davao City Development Bank (the Bank). For failure

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[1] *Rollo*, pp. 20-41.

[2] Penned by Associate Justice Edgardo T. Lloren, with Associate Justices Romulo V. Borja and Carmelita S. Manahan concurring; *id.* at 79-92.

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

[4] Rendered by Presiding Judge Emmanuel C. Carpio; CA *rollo*, pp. 50-56.

[5] Records, Vol. I, pp. 243-244.

[6] *Rollo*, p. 45.

[7] Records, Vol. I, p. 240.

[8] Records, Vol. II, pp. 434-435.

[9] *Rollo*, p. 45.

to pay his loan, the property was foreclosed, and was eventually sold to the Bank at public auction on October 26, 1990. These proceedings were duly annotated in the title.[10]

However, the land covered by OCT No. P-11182 was allegedly occupied by Teodoro Valparaiso and Pedro Malalis (protestants). On October 24, 1990, the protestants filed a formal protest with the Bureau of Lands (Bureau). They prayed for the recall of the free patent issued to Pagarigan, and for the institution of a corresponding action for reversion considering that they have been in adverse, exclusive, and continuous occupation of the subject property since 1945, cultivating it, and planting various crops, *nipa* palms and coconut trees on said land.[11]

On January 27, 1992, the protestants caused the annotation of a notice of *lis pendens* in OCT No. P-11182. Assigned as Entry No. 647677, said notice of *lis pendens* pertained to Civil Case No. 20-435-9[12] instituted by the protestants against Pagarigan, Menardo Metran and Rene Galope to enjoin them from demolishing the former's houses pending the determination of the Department of Environment and Natural Resources (DENR) on the propriety of cancelling the title obtained by Pagarigan.[13]

The administrative protest of the protestants reached the Office of the Secretary of the DENR. On May 15, 1995, Secretary Angel C. Alcala rendered a Decision[14] against Pagarigan, the salient portion and the *fallo* of which read as follows:

> From the Investigation Reports submitted by both the Department's Regional Office involved and this Office as well as from the other pieces of evidence available, both documentary and testimonial, it

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[10] *Id*.

[11] Records, Vol. I, pp. 245-246.

[12] Complaint for Injunction with Application for the Issuance of Temporary Restraining Order and/or Preliminary Injunction, Damages and Attorney's fees.

[13] *Rollo*, p. 46.

[14] *Id*. at 150-154.

is obvious that actual fraud and bad faith have been committed by [Pagarigan] in his subject public land application which led to the issuance of the title. The following facts and circumstances are uncontroverted, to wit; that the [protestants] have been in actual occupation of the land in dispute since 1945 and have introduced improvements thereon; that [Pagarigan] never occupied the same nor his predecessor-in-interest, Consuelo dela Cruz, that [Pagarigan] misrepresented in his application that he was the actual occupant and that there were no others who occupied the lot in dispute; that the title was issued sans an actual ground survey; and that [Pagarigan] did not post a copy of his Notice for [FPA] on both the Bulletin Boards of Daliao and Lizardo as required by law.

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WHEREFORE, the instant appeal is hereby given **DUE COURSE** and the subject Decision appealed from **SET ASIDE** and **REVOKED**. Consequently, the Regional Executive Director (RED), DENR Region XI, Davao City, is hereby ordered to institute an action for cancellation of Original Certificate of Title (OCT) No. V-11182 of the Registry of Deeds of Davao City covering Lot No. 9087, Cad-102, and for the reversion of the property covered thereby to the government.

After the cancellation of the subject title and the land already reverted to the government, Regional Executive Director (RED) concerned shall then order the ground survey of the land in dispute and give due course to the public land applications of the [protestants].

SO ORDERED.[15]

Meanwhile, on November 5, 1992, without consolidating title over the land in its name, the Bank sold the subject property to herein petitioner Beverly Anne C. Yap (Yap) and Rosanna F. Villamor (Villamor). Upon the execution of the deed of sale, OCT No. P-11182 was delivered to them and Transfer Certificate of Title No. 366983[16] was eventually issued in the name of Yap and Villamor on December 16, 2003.[17]

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[15] *Id*. at 153-154.

[16] Records, Vol. II, p. 436.

[17] *Rollo*, p. 46.

On February 28, 1997, the Department of Transportation and Communication filed a complaint for expropriation of a portion of the subject lot before the RTC of Davao City, Branch 13, docketed as Civil Case No. 25,084-97.[18]

On February 19, 2003, the RTC Branch 13 rendered its Decision.[19] Confronted with the issue of who among the claimants shall be entitled to just compensation, the trial court ruled in this wise:

> WHEREFORE, it is the judgment of this court that[:]
>
> 1. The plaintiff is entitled to expropriate the land subject of this case for the purpose of road right of way to the Davao Fish Port, which is for public use;
> 2. The just compensation for the land is **P278,[000].00**;
> 3. [Villamor and Yap] are the ones entitled to the payment of just compensation for the property subject of this case, and plaintiff is directed to pay the said amount to the said defendants;
> 4. The Commissioner's Fee of **P3,850.00** shall be paid by plaintiff to Asian Appraisal Company, Inc., and may be deducted from the just compensation for the land being expropriated.
>
> This case is now considered closed.
>
> SO ORDERED.[20]

Ruling of the RTC

On May 22, 2003, the respondent, through the Office of the Solicitor General (OSG), filed the Complaint for Cancellation of Patent, Nullification of Title and Reversion with the RTC of Davao City.[21] The case was raffled to Branch 16 thereof.

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[18] *Id*. at 47.

[19] Rendered by Judge Isaac G. Robillo, Jr., *id*. at 154A-157.

[20] *Id*. at 156-157.

[21] Records, Vol. I, pp. 3-11.

On October 24, 2008, the RTC Branch 16 rendered a Decision[22] dismissing the respondent's complaint. The court ruled that since the subject land has already been sold to third persons, it must be shown that the latter were part of the fraud and/or misrepresentation committed by the original grantee, or at least were aware of it. However, since the RTC Branch 13 already declared in its decision in Civil Case No. 25,084-97 that Yap and Villamor were purchasers in good faith and for value of the land in question, RTC Branch 16 maintained that, as a court of co-equal jurisdiction, it is bound by the said finding under the principle of conclusiveness of judgment. Moreover, the fact that it took the respondent 26 years, from the issuance of the free patent before it instituted an action for reversion, militates against its cause. The *fallo* of the trial court's decision reads:

> IN VIEW of the foregoing, judgment is hereby rendered dismissing the instant complaint.
>
> Defendants' [sic] [Bank] and Pagarigan compulsory counterclaim[s] are likewise dismissed in the absence of proof that there was malice or bad faith on [the respondent's] part when it sought the reversion of the property.
>
> The dismissal of the action necessarily carries with it the dismissal of defendant's [sic] [Bank] cross-claim against [Pagarigan].
>
> SO ORD[E]RED.[23]

Ruling of the CA

The respondent elevated its case to the CA. On June 30, 2011, the CA rendered the assailed Decision[24] reversing that of the trial court. In so ruling, the CA adopted the findings of the DENR as to the commission of fraud by Pagarigan in his FPA, and held that neither the Bank nor Yap and Villamor were innocent purchasers for value. Further, the CA maintained that the decision of the RTC Branch 13 did not constitute *res judicata*

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[22] CA *rollo*, pp. 50-56.

[23] *Id*. at 56.

[24] *Rollo*, pp. 79-92.

insofar as the same has not yet attained finality. The *fallo* of the CA decision reads:

WHEREFORE, We GRANT the appeal and REVERSE the decision of the [RTC]. We declare Free Patent No. (XI-I)5133 and [OCT] No. P-11182 issued in the name of [Pagarigan], and [TCT] No. T-366983 in the name of [Yap] and [Villamor], and all subsequent [TCTs] derived therefrom, as null and void. We order the reversion of Lot 9087, Cad. 102, [l]ocated in Daliao, Toril, Davao City, to the mass of public domain.

SO ORDERED.[25]

The Bank,[26] Yap,[27] and Villamor[28] sought reconsideration of the CA decision, but their motion was evenly denied in the Resolution[29] dated November 14, 2011.

Hence this petition filed solely by Yap.

Yap propounds the following assignments of errors:

I. Whether or not the decision of the CA is not in accord with the applicable decision enunciated by the Court in the case of *Spouses Macadangdang v. Spouses Martinez*;[30]

II. Whether or not the CA departed from the rule declared by the Court in the case of *Saad Agro-Industries, Inc. v. Republic of the Philippines*,[31] that in reversion proceedings the same must be proved by clear and convincing evidence, mere preponderance of evidence not even being adequate; and

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

[26] CA *rollo*, pp. 194-198.

[27] *Id*. at 174-191.

[28] *Id*. at 201-206.

[29] *Rollo*, pp. 59-60.

[30] 490 Phil. 774 (2005).

[31] 534 Phil. 648 (2006).

III. Whether or not the decision of the CA runs counter to the rule on *res judicata*.[32]

Yap asserts that she and Villamor purchased the subject property in good faith and for value. She maintains that on its face, nothing appears in OCT No. P-11182 indicating that some other person has a right to, or interest over the property covered thereby. As such, there was no obligation on their part to look beyond the certificate of title to determine the legal condition of the concerned property.

Granting that a notice of *lis pendens* was annotated in OCT No. P-11182 filed before the Register of Deeds of Davao City, the same, however, was not offered in evidence and should not have been considered. Accordingly, the presumption that Yap and Villamor were purchasers in good faith and for value was not effectively rebutted.

Moreover, in the case for expropriation heard before the RTC Branch 13, they were already adjudged as innocent purchasers for value. Under the principle of *res judicata,* it was but proper for RTC Branch 16 to uphold said pronouncement. Accordingly, it was an error on the part of the CA to reverse the same.

Invoking the Court's ruling in *Saad Agro-Industries*,[33] Yap asserts that the respondent failed to discharge the burden of proving the alleged fraud and misrepresentation which attended Pagarigan's FPA.

Ruling of the Court

Yap's contentions are untenable.

The decision of the CA does not run counter to the rule on conclusiveness of judgment.

Yap asserts that the CA erred in setting aside the decision of RTC Branch 16 in violation of the rule on *res judicata*. It

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[32] *Rollo*, pp. 23-24.

[33] *Supra* note 31.

was a finding already made by the RTC Branch 13, a co-equal branch that the land is now in the hands of innocent purchasers for value. Thus, the respondent's complaint for reversion must be dismissed on the basis of the principle of conclusiveness of judgment.

The Court does not agree.

In a catena of cases, the Court discussed the doctrine of conclusiveness of judgment, as a concept of *res judicata* as follows:

> The second concept — conclusiveness of judgment — states that <u>a fact or question</u> **which was in issue in a former suit and was there judicially passed upon and determined by a court of competent jurisdiction, is conclusively settled by the judgment therein as far as the parties to that action and persons in privity with them are concerned and cannot be again litigated in any future action between such parties or their privies, in the same court or any other court of concurrent jurisdiction on either the same or different cause of action, while the judgment remains unreversed by proper authority**. It has been held that in order that a judgment in one action can be conclusive as to a particular matter in another action between the same parties or their privies, it is essential that the issue be identical. If a particular point or question is in issue in the second action, and the judgment will depend on the determination of that particular point or question, a former judgment between the same parties or their privies will be final and conclusive in the second if that same point or question was in issue and adjudicated in the first suit x x x. Identity of cause of action is not required but merely identity of issue.
>
> Justice Feliciano, in *Smith Bell & Company (Phils.), Inc. v. Court of Appeals* x x x, reiterated *Lopez v. Reyes* x x x in regard to the distinction between bar by former judgment which bars the prosecution of a second action upon the same claim, demand, or cause of action, and conclusiveness of judgment which bars the relitigation of particular facts or issues in another litigation between the same parties on a different claim or cause of action.
>
>> The general rule precluding the re-litigation of material facts or questions which were in issue and adjudicated in former action are commonly applied to all matters essentially connected with the subject matter of the litigation. Thus, it extends to

> questions necessarily implied in the final judgment, although no specific finding may have been made in reference thereto and although such matters were directly referred to in the pleadings and were not actually or formally presented. Under this rule, if the record of the former trial shows that the judgment could not have been rendered without deciding the particular matter, it will be considered as having settled that matter as to all future actions between the parties and if a judgment necessarily presupposes certain premises, they are as conclusive as the judgment itself.[34] (Emphasis and underlining ours, and emphasis in the original deleted)

In *Nabus v. CA*,[35] the Court stressed that when a party seeks relief upon a cause of action different from the one asserted by him in a previous one, **the judgment in the former suit is conclusive only as to such points or questions as were actually in issue or adjudicated therein**.[36] However, in *Calalang v. Register of Deeds of Quezon City*,[37] the Court clarified that the bar on re-litigation of a matter or question extends to those questions *necessarily implied* in the final judgment, although no specific finding may have been made in reference thereto, and although those matters were directly referred to in the pleadings and were not actually or formally presented.[38] "**If the record of the former trial shows that the judgment could not have been rendered without deciding a particular matter, it will be considered as having settled that matter as to all future actions between the parties**."[39] Verily, as developed,

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[34] *Republic of the Philippines v. Mega Pacific eSolutions, Inc., et al.*, G.R. No. 184666, June 27, 2016, citing *Calalang v. Register of Deeds of Quezon City*, 301 Phil. 91, 103-104 (1994); *Rodriguez v. Philippine Airlines, Inc.*, G.R. No. 178501, January 11, 2016, 778 SCRA 334, 376-377; *Facura, et al. v. CA, et al.,* 658 Phil. 554, 587 (2011).

[35] 271 Phil. 768 (1991).

[36] *Id.* at 783-784.

[37] 301 Phil. 91 (1994).

[38] *Id.* at 103-104.

[39] *Republic of the Philippines v. Mega Pacific eSolutions, Inc., et al.*, *supra* note 34.

these principles now embody paragraph (c) of Section 47, Rule 39 of the Rules of Court, which reads:

> (c) In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment or final order which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto.

Guided by the foregoing, the Court finds that RTC Branch 16 falsely appreciated the decision of RTC Branch 13. The Court quotes the pertinent portions of the Decision dated February 19, 2003 of the RTC Branch 13:

> THE COURT'S RULING:
>
> CLAIMS OF [THE PROTESTANTS]:
>
> [The protestants] claim that the decision of the Secretary of the DENR in effect conferred ownership of the land to them, so that they should be paid the compensation and not defendants Yap and Villamor. In fact, defendant Malalis had declared the property for taxation purposes, and had paid the taxes thereon from the time they had occupied the land.
>
> [The protestants] alleged that the land subject of this case is still in the name of [Pagarigan], and OCT No. P-11182 has not yet been cancelled and transferred in the names of defendants Yap and Villamor, who never even set foot on the land, nor declared the land for taxation purposes. The alleged sale of [the Bank] of the land to Yap and Villamor did not confer ownership of the land to them, because the land had not been delivered to them by the owner, and they have not exercised ownership over the same. In short their claim of ownership is based on a technicality, and no amount of technicality may serve as a solid foundation for the enjoyment of the fruits of fraud, [the protestants] alleged.
>
> CLAIMS OF DEFENDANTS YAP AND VILLAMOR:
>
> Defendants Yap and Villamor for their part, dispute the claim of [the protestants]. They alleged that they were buyers in good faith of the property, and in fact, the owner's copy of OCT No. P-11182 has been delivered to them by [the Bank]. They alleged that the title which was issued to [Pagarigan] cannot be attacked collaterally as in this case. There should be a case filed in court to annul the title

if indeed the same was fraudulently issued. For as long as the title is not yet declared null and void, the same remains valid, and whoever succeeds to the same is the owner of the land, they alleged. Moreover, since they are purchasers in good faith, and for value, they have a right to be protected, defendants Yap and Villamor alleged.

THE COURT'S RULING:

The Decision of the Secretary of the DENR, in the case cited by [the protestants] cannot justify the court to declare that the title issued to [Pagarigan] is void, and that [the protestants] are the owners of the property in question.

As correctly stated by defendants Yap and Villamor in their Memorandum, a Torrens title cannot be collaterally attacked. The title must be attacked directly in a case filed in court specifically to annul the said title. The alleged fraud in the issuance of OCT No. P-11182 therefore cannot be raised in this case, and the court will not consider the decision of the DENR Secretary to say that the title of [Pagarigan] is void, and that the [protestants] are the owners of the land subject of this case.

Moreover, a Torrens title has the presumption of having been validly issued, and the defendants Yap and Villamor are not expected to look beyond the title to determine its validity. They are purchasers in good faith and for value, and are therefore entitled to the protection of the court.

Contrary to the allegation of [the protestants], there was in fact a valid delivery of the land to defendants Yap and Villamor. The execution of a Deed of Sale in their favor by defendant [Bank], and delivery to them of the owner's copy of OCT No. P-11182 is a constructive delivery of the property sold to them.

Although defendants Yap and Villamor had not taken actual physical possession of the property covered by OCT No. P-11182, the same did not divest them of the ownership of the land covered by the said title. The occupation and possession of [the protestants] of the land in question did not ripen into ownership because their occupation (even in the concept of an owner) cannot defeat a Torrens title. OCT No. P-11182 is presumed to be valid until declared void by the courts.[40]

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[40] *Rollo*, pp. 155-156.

The foregoing shows that the question of whether or not Yap and Villamor are innocent purchasers was not an actual issue of fact in the case before the RTC Branch 13, and which called for said court's adjudication. "An issue of fact is a point supported by one party's evidence and controverted by another's."[41] That Yap and Villamor were buyers in good faith is merely an allegation which was not proven in court. The RTC Branch 13 did not actually make any clear pronouncement on the matter.

The expropriation proceeding was filed on February 28, 1997. The protestants caused the annotation of a notice of *lis pendens* on the original copy of OCT No. P-11182 on January 27, 1992. Accordingly, if indeed the question on whether Yap and Villamor are buyers in good faith was an actual issue of fact before the expropriation proceeding, the protestants could have easily controverted such claim by the mere expedience of presenting a certified original copy of OCT No. P-11182. Forsooth, the notice at the back of a Torrens title serves as notice to the whole world of the pending controversy over the land so registered.[42]

The RTC Branch 13 basically anchored its judgment on the indefeasibility of a Torrens title. Pursuant to the well-settled rule that a certificate of title cannot be subject to collateral attack and can only be altered, modified, or cancelled in a direct proceeding in accordance with law,[43] it was clear that the trial court was without jurisdiction in an expropriation proceeding, to rule whether the title issued to Pagarigan is void — notwithstanding the decision of the DENR Secretary. Thereupon, since the position of the protestants rests mainly on the validity of Pagarigan's title which cannot be considered in the action, RTC Branch 13, in effect, posited that there was no legal way for it to rule otherwise.

Accordingly, and as similarly advanced by the OSG in its Comment, the RTC Branch 13's pronouncement that Yap and

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[41] Black's Law Dictionary, 8th Ed., p. 849.

[42] Court's First Division Resolution dated July 1, 2015 in G.R. No. 169952 entitled *Nereo J. Paculdo v. Bonifacio C. Regalado*.

[43] *Presidential Decree No. 1529*, Section 48.

Villamor were buyers in good faith was, at best, a mere *obiter dictum*. Contrary to Yap's claim, there was nothing final or conclusive with the decision of the RTC Branch 13 which the CA should be bound.

Neither the Bank, nor Yap and Villamor were purchasers in good faith and for value. Reversion of subject lot is in order.

"[F]actual findings of administrative or quasi-judicial bodies, which are deemed to have acquired expertise in matters within their respective jurisdictions, are generally accorded not only respect but even finality, and bind the Court when supported by substantial evidence."[44]

The fact that Pagarigan fraudulently secured his free patent was duly established by the investigation conducted by the DENR through Senior Special Investigator Domingo Mendez. The decision of the DENR is very clear in this regard, thus:

> From the Investigation Reports submitted by both the Department's Regional Office involved and this Office as well as from the other pieces of evidence available, both documentary and testimonial, it is obvious that actual fraud and bad faith have been committed by [Pagarigan] in his subject public land application which led to the issuance of the title. **The following facts and circumstances are uncontroverted**, to wit; that the [protestants] have been in actual occupation of the land in dispute since 1945 and have introduced improvements thereon; that [Pagarigan] never occupied the same nor his predecessor-in-interest, Consuelo dela Cruz; that [Pagarigan] misrepresented in his application that he was the actual occupant and that there were no others who occupied the lot in dispute; that the title was issued sans an actual ground survey; and that [Pagarigan] did not post a copy of his Notice for [FPA] on both the Bulletin Boards of Daliao and Lizardo as required by law.[45] (Emphasis ours)

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[44] *Noblado v. Alfonso*, G.R. No. 189229, November 23, 2015, 775 SCRA 178, 187-188.

[45] *Rollo*, p. 153.

Thus, the DENR ordered for the institution of the present action seeking the cancellation of the certificate of title issued in the name of Pagarigan, and for the reversion of the land covered thereby to the government.

However, as adverted to above, Section 32 of Presidential Decree No. 1529 mandates that for a reversion case to prosper, it is not enough to prove that the original grantee of a patent has obtained the same through fraud; it must also be proven that the subject property has not yet been acquired by an innocent purchaser for value, because fraudulent acquisition cannot affect the titles of the latter.

Henceforth, the ultimate resolution of this case boils down to the determination on whether the subsequent conveyances of the subject lot from Pagarigan were made to innocent purchasers for value. Specifically, based on the records, can we regard the Bank, and thereafter, Yap and Villamor as innocent purchasers for value?

The Court answers in the negative.

Verily, the Court is in full accord with the following disquisitions of the CA on the matter, thus:

> It cannot be overemphasized that [the Bank], being in the business of extending loans secured by real estate mortgage, is familiar with rules on land registration. As such, it was, as here, expected to exercise more care and prudence than private individuals in its dealings with registered lands. Accordingly, given inter alia the suspicion-provoking presence of occupants other than the owner on the land to be mortgaged, it behooved them to conduct a more exhaustive investigation on the history of the mortgagor's title. That appellee Bank accepted in mortgage the property in question notwithstanding the existence of structures on the property and which were in actual, visible, and public possession of persons other than the mortgagor, constitutes gross negligence amounting to bad faith.[46] (Citation omitted)

Yap and Villamor are not innocent purchasers for value.

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[46] *Id.* at 88.

As pointed out by the CA, the respondent argued that at the time Yap and Villamor purchased the said lot from the Bank, a notice of *lis pendens* was already annotated on OCT No. P-11182; hence, they cannot be considered as innocent purchasers for value. Yap and Villamor, on the other hand, contended that the owner's duplicate copy they received from the Bank did not contain any annotations of encumbrance or liens; hence, they cannot be bound by such annotation.[47]

In the present petition, Yap maintains that the presumption that she and Villamor are buyers in good faith and for value has not been rebutted. She adds that even if it is assumed, for the sake of argument, that their predecessor-in-interest committed fraud and misrepresentation, their title as innocent purchasers and for value will not in any way be affected.[48]

This Court cannot sanction Yap's assertion. Time and again, the Court has ruled that the burden of proof to establish the status of a purchaser and registrant in good faith lies upon the one who asserts it. This *onus probandi* cannot be discharged by mere invocation of the legal presumption of good faith.[49]

It must be emphasized that aside from the fact that a notice of *lis pendens* was already annotated on OCT No. P-11182 even before Yap and Villamor purchased the subject property, it was also established that when they did so, the said property was still registered in the name of Pagarigan since the Bank did not consolidate its title thereto.[50] **Stated simply, Yap and Villamor purchased the subject property not from the registered owner.**

In *Trifonia D. Gabutan, et al. v. Dante D. Nacalaban, et al.*,[51] the Court held that:

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

[48] *Id.* at 26.

[49] *Spouses Pudadera v. Magallanes, et al.*, 647 Phil. 655, 673 (2010).

[50] *Rollo*, pp. 154A-155.

[51] G.R. Nos. 185857-58, June 29, 2016.

A buyer for value in good Faith is one who buys property of another, without notice that some other person has a right to, or interest in, such property and pays full and fair price for the same, at the time of such purchase, or before he has notice of the claim or interest of some other persons in the property. He buys the property with the well-founded belief that the person from whom he receives the thing had title to the property and capacity to convey it.

To prove good faith, a buyer of registered and titled land need only show that he relied on the face of the title to the property. He need not prove that he made further inquiry for he is not obliged to explore beyond the four corners of the title. **Such degree of proof of good faith, however, is sufficient only when the following conditions concur: *first*, the seller is the registered owner of the land; *second*, the latter is in possession thereof; and *third*, at the time of the sale, the buyer was not aware of any claim or interest of some other person in the property, or of any defect or restriction in the title of the seller or in his capacity to convey title to the property.**

Absent one or two of the foregoing conditions, then the law itself puts the buyer on notice and obliges the latter to exercise a higher degree of diligence by scrutinizing the certificate of title and examining all factual circumstances in order to determine the seller's title and capacity to transfer any interest in the property. Under such circumstance, it is no longer sufficient for said buyer to merely show that he relied on the face of the title; he must now also show that he exercised reasonable precaution by inquiring beyond the title. Failure to exercise such degree of precaution makes him a buyer in bad faith.[52] (Emphasis and italics in the original)

Verily, as the Court held in a catena of cases:

[T]he law protects to a greater degree a purchaser who buys from the registered owner himself. **Corollarily, it requires a higher degree of prudence from one who buys from a person who is not the registered owner, although the land object of the transaction is registered.** While one who buys from the registered owner does not need to look behind the certificate of title, **one who buys from one who is not the registered owner is expected to examine not**

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[52] *Id.*, citing *Spouses Bautista v. Silva*, 533 Phil. 627, 638-639 (2006).

only the certificate of title but all factual circumstances necessary for him to determine if there are any flaws in the title of the transferor, or in his capacity to transfer the land.

This Court has consistently applied the **stricter rule** when it comes to deciding the issue of good faith of one who buys from one who is not the registered owner, but who exhibits a certificate of title.[53] (Emphasis in the original)

Neither estoppel nor laches lies against the respondent in the present case

Citing the cases of *Saad Agro-Industries*[54] and *Republic of the Philippines v. CA*,[55] the RTC Branch 16 opined that ***in an action for reversion***, the defenses of equitable *estoppel*, laches and Torrens System in land titles are available — without, however, stating that the foregoing also applies in this case, and how.

In any event, neither of said cases is on all fours with the present case. Said cases did not dwell on whether an FPA was granted through the employment of fraud and/or misrepresentation, nor the question of whether the concerned properties were conveyed to innocent purchasers.

In *Saad Agro-Industries*, free patent was alleged to have been mistakenly issued over a property that was claimed by therein respondent as inalienable for being part of a track of land classified as forest land. However, it was established that government has not yet classified the lot in question as forest reserve prior to the issuance of the concerned free patent. Moreover, it was also established that therein subject property was already conveyed to an innocent purchaser for value, Saad Agro-Industries, Inc. before the action for reversion was instituted.

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[53] *Spouses Yu v. Pacleb, et al.* 599 Phil. 354, 366 (2009), citing *Revilla and Fajardo v. Galindez*, 107 Phil. 480, 485 (1960).

[54] *Supra* note 31.

[55] 361 Phil. 319 (1999).

In *Republic of the Philippines v. CA*,[56] therein petitioner instituted an action to annul the certificates of title that were issued on the basis of a null and void subdivision plan. While therein petitioner sufficiently proved that the actual area of the disputed property was unduly enlarged in the said subdivision plan, it, however, presented no proof that therein respondent committed fraud when it submitted the subdivision plan to the Land Registration Commission for approval. Since the plan was presumed to have been subjected to investigation, study and verification by said commission, there was no one to be blamed except therein petitioner, acting through said body, itself. Thus, for having allowed and approved the subdivision plan, the government was held to be in *estoppel* to question the same, and seek the annulment of titles issued pursuant thereto. Moreover, when the action was instituted, the subdivided properties were already sold to innocent purchasers for value. Additionally, although therein petitioner asserted that the action was instituted to protect the integrity of the Torrens System, it was, however, unjustifiable that it took nearly 20 years before therein petitioner acted on the matter. Verily, therein petitioner's prolonged inaction was held as tantamount to laches.

In the instant case, it was established that Pagarigan's FPA was secured on the basis of his fraudulent representations. The respondent cannot be faulted for having been misled into believing that an applicant is legally qualified to be granted free patent as to render it estopped from asserting its right to recover its own property. While the action for reversion was instituted only in 2003, the circumstances leading to the institution of the case hardly spells inaction or neglect on the part of the respondent as to be considered guilty of laches.

Forsooth, there was no prolonged inaction on the part of the respondent in this case. This can be gleaned in the decision[57] of the DENR Secretary. Shortly after the protestants filed a formal protest with the Bureau on October 24, 1990, the Officer-

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[56] *Id*.

[57] *Rollo*, pp. 150-154.

in-Charge, Regional Executive Director (RED) of the DENR Region XI, Davao City immediately ordered an investigation on November 15, 1990,[58] and the same commenced on November 19, 1990. On February 14, 1994, the RED issued a decision dismissing the protestants' protest.[59] Undaunted, the protestants elevated their case to the Office of the DENR Secretary. On May 15, 1995, the DENR Secretary set-aside the RED's decision and ordered the institution of appropriate action for the cancellation of OCT No. P-11182, and for the reversion of the property covered thereby to the government.

The instant action does not undermine the indefeasibility of Torrens title

In the case of *Lorzano v. Tabayag, Jr.*,[60] the Court reiterated that a Torrens title emanating from a free patent which was secured through fraud does not become indefeasible because the patent from whence the title sprung is itself void and of no effect whatsoever. Thus:

> Once a patent is registered and the corresponding certificate of title is issued, the land covered thereby ceases to be part of public domain and becomes private property, and the Torrens Title issued pursuant to the patent becomes indefeasible upon the expiration of one year from the date of such issuance. However, a title emanating from a free patent which was secured through fraud does not become indefeasible, precisely because the patent from whence the title sprung is itself void and of no effect whatsoever.[61]

On this point, the Court's ruling in *Republic v. Heirs of Felipe Alejaga, Sr.*[62] is instructive:

> True, once a patent is registered and the corresponding certificate of title [is] issued, the land covered by them ceases to be part of the

[58] Records, Vol. I, p. 247.

[59] *Id*. at 150.

[60] 681 Phil. 39 (2012).

[61] *Id*. at 52-53.

[62] 441 Phil. 656 (2002).

public domain and becomes private property. Further, the Torrens Title issued pursuant to the patent becomes indefeasible a year after the issuance of the latter. However, this indefeasibility of a title does not attach to titles secured by fraud and misrepresentation. Well-settled is the doctrine that the registration of a patent under the Torrens System does not by itself vest title; it merely confirms the registrant's already existing one. Verily, registration under the Torrens System is not a mode of acquiring ownership.[63] (Citations omitted)

A fraudulently acquired free patent may only be assailed by the government in an action for reversion

Nonetheless, a free patent that was fraudulently acquired, and the certificate of title issued pursuant to the same, may only be assailed by the government in an action for reversion, pursuant to Section 101 of the Public Land Act. In *Sherwill Development Corporation v. Sitio Sto. Niño Residents Association, Inc.*,[64] the Court pointed out that:

It is also to the public interest that one who succeeds in fraudulently acquiring title to a public land should not be allowed to benefit therefrom, and the State should, therefore, have an even existing authority, thru its duly-authorized officers, to inquire into the circumstances surrounding the issuance of any such title, to the end that the Republic, thru the Solicitor General or any other officer who may be authorized by law, may file the corresponding action for the reversion of the land involved to the public domain, subject thereafter to disposal to other qualified persons in accordance with law. In other words, the indefeasibility of a title over land previously public is not a bar to an investigation by the Director of Lands as to how such title has been acquired, if the purpose of such investigation is to determine whether or not fraud had been committed in securing such title in order that the appropriate action for reversion may be filed by the Government.[65]

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[63] *Id*. at 674.

[64] 500 Phil. 288 (2005).

[65] *Id*. at 299-300, citing *Republic of the Philippines v. CA*, 262 Phil. 677, 685 (1990).

WHEREFORE, the petition is hereby **DENIED**. The Decision dated June 30, 2011 and Resolution dated November 14, 2011 of the Court of Appeals in CA-G.R. CV No. 01753-MIN are **AFFIRMED**.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta,[*] *Bersamin,* and *Tijam, JJ.,* concur.

FIRST DIVISION

[G.R. No. 206891. March 15, 2017]

ERNESTO BROWN, *petitioner, vs.* **MARSWIN**[*] **MARKETING, INC., and SANY**[**] **TAN, represented by BERNADETTE S. AZUCENA,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION UNDER RULE 45 OF THE RULES OF COURT; ONLY QUESTIONS OF LAW MAY BE RAISED THEREIN; EXCEPTION; PRESENT IN CASE AT BAR.—** As a rule, the Court is not a trier of facts and only questions of law may be raised in a petition under Rule 45 of the Rules of Court. A departure from this rule is nevertheless allowed where the factual findings of the CA are contrary to those of the lower courts or tribunals. In this case, the findings of the CA vary with those of the NLRC and LA. As such, the Court deems it necessary to review the records and determine which findings and conclusion truly conform with the evidence adduced by the parties.

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[*] Designated additional Member per Raffle dated February 15, 2017 vice Associate Justice Francis H. Jardeleza.

[*] Mars Win in some parts of the records.

[**] Spelled in some parts of the records as Sonny.

2. **LABOR AND SOCIAL LEGISLATION; LABOR CODE; TERMINATION OF EMPLOYMENT; ABANDONMENT; REQUISITES; THE EMPLOYER HAS THE BURDEN TO PROVE THAT THE EMPLOYEE COMMITTED ABANDONMENT WHICH CONSTITUTES NEGLECT OF DUTY.—** [I]n dismissal cases, the employer bears the burden of proving that the employee was not terminated, or if dismissed, that the dismissal was legal. Resultantly, the failure of the employer to discharge such burden would mean that the dismissal is unjustified and thus, illegal. The employer cannot simply discharge such burden by its plain assertion that it did not dismiss the employee; and it is highly absurd if the employer will escape liability by its mere claim that the employee abandoned his or her work. In fine, where there is no clear and valid cause for termination, the law treats it as a case of illegal dismissal. Thus, in order for the employer to discharge its burden to prove that the employee committed abandonment, which constitutes neglect of duty, and is a just cause for dismissal, the employer must prove that the employee 1) failed to report for work or had been absent without valid reason; and 2) had a clear intention to discontinue his or her employment. The second requirement must be manifested by overt acts and is more determinative in concluding that the employee is guilty of abandonment. This is because abandonment is a matter of intention and cannot be lightly presumed from indefinite acts.

3. **ID.; ID.; ID.; ID.; THE IMMEDIATE FILING OF AN ILLEGAL DISMISSAL CASE WHICH INCLUDES A PRAYER FOR REINSTATEMENT IS TOTALLY CONTRARY TO THE CHARGE OF ABANDONMENT.—** [O]n June 7, 2010, or just ten days after Brown's last day at work (May 28, 2010), he already filed an illegal dismissal suit against his employer. Such filing conveys his desire to return, and strengthens his assertion that he did not abandon his work. To add, in his Complaint, Brown prayed for reinstatement, which further bolsters his intention to continue working for Marswin, and negates abandonment. Indeed, the immediate filing of an illegal dismissal case especially so when it includes a prayer for reinstatement is totally contrary to the charge of abandonment.

4. **ID.; ID.; ID.; AN EMPLOYEE WHO IS ILLEGALLY DISMISSED IS ENTITLED TO REINSTATEMENT WITHOUT LOSS OF SENIORITY RIGHTS AND TO FULL BACKWAGES.—**

[T]here is clearly no showing that Brown committed abandonment; instead, evidence proved that he was illegally dismissed from work. Thus, as properly found by the LA and affirmed by the NLRC, by reason of his illegal termination, Brown is entitled to reinstatement without loss of seniority rights, and to full backwages, which include allowances and other benefits or their monetary equivalent, from the time his compensation was withheld until his actual reinstatement. At the same time, Brown is entitled to attorney's fees of 10% of the total monetary award, as he was compelled to litigate to protect his rights and interest. The legal interest of 6% *per annum* shall also be imposed on the total monetary awards from the finality of this Decision until fully paid.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Cornelio P. Aldon for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

This Petition for Review on *Certiorari*[1] assails the January 18, 2013 Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 124098. The CA annulled and set aside the December 19, 2011[3] and January 31, 2012[4] Resolutions of the National Labor Relations Commission (NLRC), which affirmed the June 30, 2011 Decision[5] of the Labor Arbiter (LA) declaring illegal

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[1] *Rollo*, pp. 10-23.

[2] CA *rollo*, pp. 155-169; penned by Associate Justice Romeo F. Barza and concurred in by Associate Justices Noel G. Tijam (now a Member of this Court) and Ramon A. Cruz.

[3] *Id*. at 72-79; penned by Presiding Commissioner Raul T. Aquino and concurred in by Commissioners Teresita D. Castillon-Lora and Napoleon M. Menese.

[4] *Id*. at 90-91.

[5] *Id*. at 50-58; penned by Labor Arbiter Jenneth B. Napiza.

the dismissal from work of Ernesto Brown (Brown). Likewise assailed is the April 23, 2013 CA Resolution[6] denying Brown's Motion for Reconsideration.

Factual Antecedents

On June 7, 2010, Brown filed a Complaint[7] for illegal dismissal, non-payment of salary and 13th month pay as well as claim for moral and exemplary damages and attorney's fees against Marswin Marketing, Inc. (Marswin) and Sany Tan (Tan), its owner and President. He prayed for reinstatement with full backwages and payment of his other monetary claims.

In his Position Paper,[8] Brown alleged that on October 5, 2009, Marswin employed him as building maintenance/electrician with a salary of ₱500.00 per day; he was assigned at Marswin's warehouse in Valenzuela, and was tasked to maintain its sanitation and make necessary electrical repairs thereon.

Brown further averred that on May 28, 2010, he reported at the Main Office of Marswin, and was told that it was already his last day of work. Allegedly, he was made to sign a document that he did not understand; and, thereafter, he was no longer admitted back to work. Thus, he insisted that he was terminated without due process of law.

For their part, Marswin/Tan argued in their Position Paper[9] and Comment[10] that on October 4, 2009, Marswin, a domestic corporation engaged in wholesale trade of construction materials, employed Brown as electrician; during his eight-month stay, Marswin received negative reports anent Brown's work ethics, competence, and efficiency. On May 28, 2010, they summoned him at its Main Office to purportedly discuss the complaints of the Warehouse Manager and the Warehouse Supervisor; during

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[6] *Id*. at 181-182.

[7] *Id*. at 22.

[8] *Id*. at 23-30.

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

[10] *Id*. at 47-49.

the meeting, they informed Brown of the following charges against him:

1. x x x [D]isobedience to instructions given by the Electrical Engineer and Contractor during the time [of] the renovation of the staff room at the Valenzuela warehouse; making himself scarce and worse not responding to calls for errands regarding electrical connections at the warehouse;

2. Exposing the office to possible criminal liability for installing a jumper at the Valenzuela warehouse without being told to [make such installation];

3. Not performing his job well as electrician, thus, resulting to additional expenses to the company, when it could have been avoided had he been following x x x orders given to him;

4. Unreasonable refusal to perform his assigned tasks despite being repeatedly ordered to do so x x x.[11]

Marswin/Tan stated that during the meeting, Brown excused himself purportedly to get in touch with his wife; however, he never returned and no longer reported for work.

According to Marswin/Tan, Brown's work as electrician did not involve an activity usually necessary or desirable in the usual business of Marswin; thus, he was not its regular employee. They also contended that during the May 28, 2010 meeting, Bernadette S. Azucena (Azucena), its Accounting Supervisor and Human Resource Head, only admonished Brown but he left the meeting and no longer returned to work. They attached in their Position Paper the *Sinumpaang Salaysay*[12] executed by Azucena stating the alleged complaints she received against Brown, and the events that transpired during the May 28, 2010 meeting, to wit:

x x x x x x x x x

11. x x x [Si] Ernesto Brown ay aking pinatawag sa main office noong Mayo 28, 2010 para kausapin dahil sa mga nasabing

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[11] *Id*. at 32.

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

reklamo sa kanyang pagtatrabaho; noong aking binanggit sa kanya [ang] mga nasabing reklamo ay wala man lang siyang kaimik imik; sinabi ko sa kanya na kung ipagpapatuloy [nya] ang maling pagtrabaho at hindi pagsunod sa mga pinagagawa sa kanya ay walang magagawa ang opisina kundi tanggalin na siya; nanatili siyang walang imik at nagsabi siya na tatawag siya sa kanyang asawa at umalis sya; hindi na siya bumalik noon at hindi na pumasok magmula noon at nakatanggap na nga lang kami ng reklamo [mula] sa tanggapa[n] ng Labor Arbiter. x x x

12. Hindi totoo ang kanyang reklamo na siya ay dinismis; may legal na kadahilanan na para siya ay dismisin pero hindi pa siya dinismis noong Mayo 28, 2010; siya mismo ang hindi na bumalik sa tanggapan x x x[13]

Ruling of the Labor Arbiter

On June 30, 2011, the LA rendered a Decision declaring Brown's dismissal illegal, the decretal portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered declaring complainant Ernesto Brown to have been illegally dismissed from work.

Respondents are directed to reinstate complainant Brown to his former position without loss of seniority rights and to notify this Office of their compliance thereto within ten (10) days from receipt of this Decision. Further respondent Marswin Marketing, Inc. is hereby directed to pay complainant Brown's backwages computed from the time he was illegally dismissed from work until his actual reinstatement pursuant to Article 279 of the Labor Code and to pay his 13th month pay computed as follows:

a)	backwages	-	₱188,335.98
b)	13th month pay	-	₱ 5,308.33

All other claims are dismissed for lack of merit.

SO ORDERED.[14]

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[13] *Id*. at 35.

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

The LA held that Brown was a regular employee of Marswin because Marswin/Tan confirmed hiring him on October 4, 2009; they paid him salary; they had the power to control his conduct, especially on how he should do his work; and, they had the power to dismiss him.

In ruling that Brown was illegally dismissed, the LA noted that the alleged complaints against Brown were embodied in Azucena's affidavit yet no actual complaints or reports against him were adduced in evidence. The LA was also unconvinced that Brown left Marswin's premises and abandoned his work considering that he filed this illegal dismissal case; and his employer failed to notify him to report back to work.

Ruling of the National Labor Relations Commission

On appeal,[15] the NLRC, through its Resolution dated December 19, 2011, affirmed the LA Decision.

The NLRC held that the purported complaints against Brown were only gathered by Azucena from the reports she supposedly received from the Warehouse Manager and Supervisor; thus, her affidavit was hearsay and of poor evidentiary value. It ratiocinated that Marswin/Tan did not give Brown the opportunity to confront his accusers, and did not observe due process in terminating him. It also declared that there was no showing that Brown abandoned his work as Marswin/Tan did not cite him for his alleged refusal to return to work.

On January 31, 2012, the NLRC denied the Motion for Reconsideration filed by Marswin/Tan.

Ruling of the Court of Appeals

Undaunted, Marswin/Tan filed a Petition for *Certiorari* with the CA arguing that the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction in affirming the LA Decision.

On January 18, 2013, the CA annulled and set aside the NLRC Resolutions. It entered a new judgment declaring that Brown

[15] *Id*. at 60-65.

was legally dismissed and therefore not entitled to backwages and 13th month pay.

According to the CA, aside from his allegation that he was unceremoniously terminated, Brown presented no evidence supporting such claim. It also held that there was no showing that Brown was prevented from returning or was deprived of work. It likewise gave weight to the affidavit of Azucena, which asserted that during the May 28, 2010 meeting, Brown was not dismissed but was only informed of the complaints against him.

In sum, the CA decreed that this case did not involve the dismissal of an employee on the ground of abandonment, there being no evidence proving that Brown was actually dismissed.

In its Resolution dated April 23, 2013, the CA denied the Motion for Reconsideration filed by Brown.

Issue

Aggrieved, Brown filed this Petition raising the sole issue as follows:

WHETHER THE COURT OF APPEALS GRAVELY ERRED WHEN IT REVERSED THE NLRC'S RESOLUTIONS AFFIRMING THE LABOR ARBITER'S DECISION THAT THE PETITIONER ERNESTO BROWN WAS ILLEGALLY DISMISSED BY THE PRIVATE RESPONDENTS.[16]

Brown contends that Marswin failed to discharge its burden to prove that he committed abandonment. He argues that the fact that he challenges his dismissal disproves that he abandoned his employment. He also stresses that the reliance of the CA on Azucena's affidavit is unwarranted as no actual complaints as regards his supposed infractions were adduced in evidence. He posits that the bare allegations of Azucena are hearsay, and are not proof that he committed any infraction.

Marswin/Tan, on their end, counter that the Court should not give due course to this Petition because it raises factual

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[16] *Rollo*, p. 15.

issues which are not within the ambit of a petition under Rule 45 of the Rules of Court.

Our Ruling

The Court grants the Petition.

As a rule, the Court is not a trier of facts and only questions of law may be raised in a petition under Rule 45 of the Rules of Court. A departure from this rule is nevertheless allowed where the factual findings of the CA are contrary to those of the lower courts or tribunals. In this case, the findings of the CA vary with those of the NLRC and LA. As such, the Court deems it necessary to review the records and determine which findings and conclusion truly conform with the evidence adduced by the parties.[17]

Moreover, in dismissal cases, the employer bears the burden of proving that the employee was not terminated, or if dismissed, that the dismissal was legal. Resultantly, the failure of the employer to discharge such burden would mean that the dismissal is unjustified and thus, illegal.[18] The employer cannot simply discharge such burden by its plain assertion that it did not dismiss the employee; and it is highly absurd if the employer will escape liability by its mere claim that the employee abandoned his or her work. In fine, where there is no clear and valid cause for termination, the law treats it as a case of illegal dismissal.[19]

Thus, in order for the employer to discharge its burden to prove that the employee committed abandonment, which constitutes neglect of duty, and is a just cause for dismissal, the employer must prove that the employee 1) failed to report for work or had been absent without valid reason; and 2) had a clear intention to discontinue his or her employment. The second requirement must be manifested by overt acts and is more determinative in concluding that the employee is guilty

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[17] See *Manarpiis v. Texan Philippines, Inc.,* G.R. No. 197011, January 28, 2015, 748 SCRA 511, 521-522.

[18] See *DUP Sound Phils. v. Court of Appeals*, 676 Phil. 472, 479 (2011).

[19] *People's Security, Inc. v. Flores*, G.R. No. 211312, December 5, 2016.

of abandonment. This is because abandonment is a matter of intention and cannot be lightly presumed from indefinite acts.[20]

Here, Brown contends that on May 28, 2010, his employer informed him that it was already his last day of work; and, thereafter, he was no longer admitted back to work. On the other hand, Marswin/Tan confirmed having summoned Brown on May 28, 2010 but they denied that he was dismissed, but that he left the meeting and since then never returned for work.

Nonetheless, apart from the allegation of abandonment, Marswin/Tan presented no evidence proving that Brown failed to return without justifiable reasons and had clear intentions to discontinue his work.

In fact, in her affidavit, Azucena did not specify any overt act on the part of Brown showing that he intended to cease working for Marswin. At the same time, Azucena did not establish that Marswin, on its end, exerted effort to convince Brown to return for work, if only to show that Marswin did not dismiss him and it was Brown who actually refused to return to work.[21] And neither did Marswin send any notice to Brown to warn him that his supposed failure to report would be deemed as abandonment of work.[22] Clearly from the foregoing, Marswin failed to discharge the burden of proving that Brown abandoned his work.

In addition, on June 7, 2010, or just ten days after Brown's last day at work (May 28, 2010), he already filed an illegal dismissal suit against his employer. Such filing conveys his desire to return, and strengthens his assertion that he did not abandon his work. To add, in his Complaint, Brown prayed for reinstatement, which further bolsters his intention to continue

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[20] *Tan Brothers Corporation of Basilan City v. Escudero*, 713 Phil. 392, 400-402 (2013).

[21] See *Litex Glass and Aluminum Supply v. Sanchez*, G.R. No. 198465, April 22, 2015, 757 SCRA 206, 217.

[22] See *Harpoon Marine Services, Inc. v. Francisco*, 659 Phil. 453, 467 (2011).

working for Marswin, and negates abandonment.[23] Indeed, the immediate filing of an illegal dismissal case especially so when it includes a prayer for reinstatement is totally contrary to the charge of abandonment.[24]

Furthermore, Marswin/Tan presented the affidavit of Azucena, their Accounting Supervisor and HR Head, as proof that Brown committed abandonment. However, aside from being insufficient, self-serving, and unworthy of credence,[25] such affidavit did not allege any actual complaint against Brown when Marswin summoned him on May 28, 2010. In said affidavit, Azucena did not at all specify the name of any officer or employee against whom Brown allegedly committed an infraction, and neither did any of these persons submit their own affidavits to prove that Brown should be disciplined by his employer. As stated by Azucena:

> 5. Na tumanggap ako ng mga reklamo sa aming Warehouse Manager at Warehouse Supervisor ng aming bodega sa Valenzuela na [si] Ernesto Brown ay madalas na maraming dahilan kapag ito ay pinapapunta sa Valenzuela para maggawa; x x x
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> 6. Na noong buwan ng Enero hanggang Marso ng taong ito (2010) ay ginawa ang opisina ng staff sa bodega sa Valenzuela at bilang elek[t]risyan ay inatasan siyang gawin ang 'electrical wireline' doon; Na nakarating [sa amin] ang sumbong nina Electrical Engineer at Contraktor x x x na si Ernesto Brown ay hindi sumusunod sa mga pinauutos nila at madalas na makagalitan dahil doon;
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> 7. Na noong nawalan ng electric power ang bodega sa Valenzuela dahil sa electric shortage ay pinatingnan ito sa kanya, ngunit sa halip na ayusin ng tama ang problema sa electrical wireline ay nilagyan niya ito ng 'jumper' at ito ay nakita ng taga Meralco x x x,;

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[23] *Julie's Bakeshop v. Arnaiz,* 682 Phil. 95, 111 (2012).

[24] See *Tan Brothers Corporation of Basilan City v. Escudero*, *supra* note 20 at 401.

[25] See *DUP Sound Phils. v. Court of Appeals*, *supra* note 18 at 480.

8. Nito lang buwan ng Abril 2010 ay gumawa na naman ng kapalpakan si Ernesto Brown dito naman sa main office sa Binondo; iyong electronic lock ng front door ng office sa third floor x x x ay nagmalfunction at nasira; ang nasabing electronic lock ay covered pa ng warranty x x x; [n]ang suriin ang nasabing electronic lock ay nalaman nami[n] na may nakialam sa loob ng lock kung kaya hindi ito nakober ng warranty at nagbayad ang kumpanya ng halagang ₱6,000.0[0] sa pagsasaayos nito; x x x

9. x x x [Nang] ipatawag nami[n] ang security guard ay doon lang namin nalaman na pinakialaman pala ni Ernesto Brown ang loob ng nasabing elect[r]onic lock samantalang hindi naman ito pinagagawa sa kanya;

10. Na noong ipasuri ang electrical wireline sa bodega ng Valenzuela, nakita ang sala-salabat o 'spaghetti type' na wiring nito; ilan[g] beses iniutos sa kanya na ayusin at iwasto [ang] nasabing wiring pero hindi nya ito ginagawa x x x;

11. Dahil dito si Ernesto Brown ay aking pinatawag sa main office noong Mayo 28, 2010 para kausapin dahil sa mga nasabing reklamo sa kanyang pagtatrabaho x x x[.][26]

Given all these, there is clearly no showing that Brown committed abandonment; instead, evidence proved that he was illegally dismissed from work.

Thus, as properly found by the LA and affirmed by the NLRC, by reason of his illegal termination, Brown is entitled to reinstatement without loss of seniority rights, and to full backwages, which include allowances and other benefits or their monetary equivalent, from the time his compensation was withheld until his actual reinstatement.[27]

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[26] CA *rollo*, pp. 34-35.

[27] Article 279. *Security of Tenure*. — In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual

At the same time, Brown is entitled to attorney's fees of 10% of the total monetary award as he was compelled to litigate to protect his rights and interest. The legal interest of 6% *per annum* shall also be imposed on the total monetary awards from the finality of this Decision until fully paid.[28]

WHEREFORE, the Petition is **GRANTED**. The January 18, 2013 Decision and April 23, 2013 Resolution of the Court of Appeals in CA-G.R. SP No. 124098 are **REVERSED and SET ASIDE**.

Accordingly, the June 30, 2011 Decision of the Labor Arbiter, as affirmed by the December 19, 2011 Resolution of the National Labor Relations Commission, is **REINSTATED and AFFIRMED** with **MODIFICATIONS** in that Ernesto Brown is also entitled to receive attorney's fees of 10% of the total monetary awards. The legal interest of 6% *per annum* shall be imposed on the monetary grants from the date of finality of this Decision until fully paid.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 207146. March 15, 2017]

SPOUSES LARRY AND ROSARITA WILLIAMS, *petitioners, vs.* **RAINERO A. ZERDA,** *respondent*.

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reinstatement. (now Article 294 of the *Labor Code of the Philippines, Amended & Renumbered, July 21, 2015)*

[28] *Balais, Jr. v. Se'Lon*, G.R. No. 196557, June 15, 2016.

SYLLABUS

1. **CIVIL LAW; CIVIL CODE; PROPERTY, OWNERSHIP, AND ITS MODIFICATIONS; EASEMENTS OR SERVITUDES; LEGAL EASEMENT OF RIGHT OF WAY; REQUISITES. —** The conferment of the legal easement of right of way is governed by Articles 649 and 650 of the Civil Code x x x. [A]n entitlement to the easement of right of way requires that the following requisites must be met. 1. The dominant estate is surrounded by other immovables and has no adequate outlet to a public highway (Art. 649, par. 1); 2. There is payment of proper indemnity (Art. 649, par. 1); 3. The isolation is not due to the acts of the proprietor of the dominant estate (Art. 649, last par.); and 4. The right of way claimed is at the point least prejudicial to the servient estate; and insofar as consistent with this rule, where the distance from the dominant estate to a public highway may be the shortest (Art. 650).

2. **ID.; ID.; ID.; ID.; ID.; THE CRITERION OF LEAST PREJUDICE TO THE SERVIENT ESTATE MUST PREVAIL OVER THE CRITERION OF SHORTEST DISTANCE.—** Even assuming that the right of way being claimed by the respondent is not the shortest distance from the dominant estate to the public highway, it is well-settled that "[t]he criterion of *least prejudice* to the servient estate must prevail over the criterion of *shortest distance* although this is a matter of judicial appreciation. x x x In other words, where the easement may be established on any of several tenements surrounding the dominant estate, the one where the way is *shortest* and will cause the *least damage* should be chosen. If having these two (2) circumstances do not concur in a single tenement, the way which will cause the least damage should be used, even if it will not be the shortest." x x x [T]he right of way claimed by the respondent is at a point least prejudicial to the servient estate.

APPEARANCES OF COUNSEL

Reserva Filoteo Law Office for petitioners.
Edmundo L. Zerda for respondent.

DECISION

MENDOZA, *J*.:

This is a petition for review on *certiorari* assailing the November 28, 2012 Decision[1] and the April 16, 2013 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. CV No. 01115-MIN, which reversed and set aside the September 11, 2006 Decision[3] and the February 8, 2007 Order[4] of the Regional Trial Court, Branch 30, Surigao City, *(RTC)* in Civil Case No. 6285, a case for easement of right of way.

The Facts

Respondent Rainero A. Zerda *(Zerda)* was the owner of a parcel of land, known as Lot No. 1177-B *(dominant estate)* of the Surigao Cadastre, situated in Barangay Lipata, Surigao City, with an area of 16,160 square meters (sq. m.), and covered by Transfer Certificate of Title *(TCT)* No. T-18074. Immediately behind the dominant estate was Lot No. 7298, a swampy mangrove area owned by the Republic of the Philippines. On both sides were Lot No. 1177-C, registered under the name of Woodridge Properties, Inc. and Lot No. 1206, in the name of Luis G. Dilag. In front was Lot No. 1201-A owned by petitioner-spouses Larry and Rosarita Williams *(Spouses Williams)*, where the national highway ran along.[5]

On July 28, 2004, Zerda filed a complaint against Spouses Williams for easement of right of way. The complaint alleged that Zerda's lot was without adequate outlet to a public highway, that it could not be accessed except by passing through Spouses

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[1] Penned by Associate Justice Jhosep Y. Lopez with Associate Justice Edgardo T. Lloren and Associate Justice Henri Jean Paul B. Inting, concurring; *rollo*, pp. 30-42.

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

[3] Penned by Presiding Judge Floripinas C. Buyser; *id*. at 43-49.

[4] *Id*. at 50-53.

[5] *Rollo*, pp. 30-31.

Williams' property; that the isolation of Zerda's property was not due to his own acts, as it was the natural consequence of its location; that the right of way he was claiming was at a point least prejudicial to Spouses Williams' property; and that on January 27, 2004, Zerda wrote to Spouses Williams formally asking them to provide him with right of way, for which he was willing to pay its reasonable value or to swap a portion of his property, but Spouses Williams refused.[6]

Spouses Williams countered that the complaint should be dismissed for lack of cause of action because Zerda failed to establish the requisites for the existence of right of way. They claimed that sometime in May 2003, they were in negotiation with Agripino Sierra *(Sierra)*, the former owner of the dominant estate, for its sale to them but the sale did not materialize due to the intervention of Zerda. Spouses Williams further averred that they undertook visible development projects on their property as early as May 2003 amounting to ₱6,619,678.00; that the isolation of the dominant estate was Zerda's fault; and that his requested right of way would cause great damage and prejudice to them.[7]

The RTC Ruling

In its September 11, 2006 Decision, the RTC ruled in favor of Spouses Williams. It found that the isolation of Zerda's lot was due to his own acts because when he bought the said property, he was aware that Spouses Williams had already started introducing improvements on their own property. It stated that Spouses Williams were able to prove that while they were in negotiation with Sierra for the purchase of the dominant estate, Zerda intervened and bought the land himself, knowing full well that the land was surrounded by other immovables.[8]

The RTC also noted that the right of way requested by Zerda was not the shortest distance from the dominant estate to the

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[6] *Id*. at 31.

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

[8] *Id*. at 47.

public highway. It observed that the shortest distance began "from the northeastern corner of Lot 1177-B, the dominant estate, following the northern boundary of Lot 1201-A, the servient estate, and running across the southeastern portion of Lot 1177-C straight up to the public highway."[9]

Finally, the RTC granted the claim of Spouses Williams for moral damages and exemplary damages. The *fallo* reads:

WHEREFORE, premises considered, let the herein complaint be DISMISSED without pronouncement as to costs. However, on the compulsory counterclaim, plaintiff is hereby ordered to pay defendants moral damages in the sum of ₱30,000.00 and exemplary damages of ₱20,000.00.

SO ORDERED.[10]

Zerda filed a motion for reconsideration. In its February 8, 2007 Order,[11] the RTC partially granted the motion by deleting the award of moral damages.

Aggrieved, Zerda appealed before the CA.

The CA Ruling

In its assailed November 28, 2012 Decision, the CA *reversed* and *set aside* the ruling of the RTC. It explained that the isolation of Zerda's property was not due to his own acts, and to deny the right of way to a purchaser of an enclosed estate simply because of his prior knowledge that the same was surrounded by immovables would render the law on easements nugatory. "In effect, the purchaser would only be filling into the shoe[s] of the previous owner of the isolated property in the exercise of his right to demand an easement of right of way. The new owner did not do anything that would have caused the deliberate isolation of the property."[12]

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[9] *Id*. at 48.

[10] *Id*. at 49.

[11] *Id*. at 50-53.

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

Further, the CA declared that Zerda was not in bad faith when he intervened in the negotiation for the sale of the dominant estate between Sierra, the previous owner and Spouses Williams. It noted that Sierra himself denied knowing Larry Williams, thereby negating the spouses' claim of a negotiation. The CA added that even if there was a prior negotiation, Sierra could not be deprived of his right to sell his property to a buyer of his own choosing.[13]

The CA also found that the right of way, proposed by Zerda, was the shortest distance to the national highway and the least prejudicial to the servient estate. It laid emphasis on Spouses Williams' admission that they had no intention to build houses in the area sought and that the 705.20 sq. m. long pathway would only affect a small portion of their lot which had a total area of 12,200 sq. m. The dispositive portion of the CA ruling reads:

> WHEREFORE, the appeal is GRANTED. The September 11, 2006 Decision and February 8, 2007 Order of the Regional Trial Court, Branch 30, Surigao City is REVERSED and SET ASIDE.
>
> We hereby order (a) appellees to allow the right of passage by the appellant thru their Lot 1201-A; and (b) appellant to pay private respondent the indemnity therefor to be determined by the trial court. The case is hereby REMANDED to the trial court for the determination of the proper amount of indemnity for the easement of right of way under Article 649.
>
> SO ORDERED.[14]

Spouses Williams moved for reconsideration, but their motion was denied by the CA in its assailed resolution, dated April 16, 2013.

Hence, this petition.

ISSUE

WHETHER RESPONDENT ZERDA IS ENTITLED TO AN EASEMENT OF RIGHT OF WAY.

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[13] *Id*. at 40.

[14] *Id*. at 41.

Spouses Williams argue that the respondent caused the isolation of his property because he bought the lot with notice that it had no access to the national highway and was surrounded by other immovables; that the respondent was in bad faith because he was aware that they were negotiating with Sierra over the purchase of the dominant estate when he intervened and bought the property himself; that the shortest distance from the dominant estate to the public highway began from the northeastern corner of Lot No. 1177-B (the dominant estate) following the northern boundary of Lot No. 1201-A, then passing through the southeastern portion of Lot No. 1171-C; and that the right of way requested by the respondent was not the least prejudicial in view of the developments introduced by them thereon.

Zerda was ordered by the Court to file his comment on the petition of Spouses Williams. Despite several opportunities granted to him, he failed to file his comment. Thus, his right to file a comment on the petition for review was deemed waived.

<u>The Court's Ruling</u>

The conferment of the legal easement of right of way is governed by Articles 649 and 650 of the Civil Code:

ART. 649. The owner, or any person who by virtue of a real right may cultivate or use any immovable, which is surrounded by other immovables pertaining to other persons and without adequate outlet to a public highway, is entitled to demand a right of way through the neighboring estates, after payment of the proper indemnity.

Should this easement be established in such a manner that its use may be continuous for all the needs of the dominant estate, establishing a permanent passage, the indemnity shall consist of the value of the land occupied and the amount of the damage caused to the servient estate.

In case the right of way is limited to the necessary passage for the cultivation of the estate surrounded by others and for the gathering of its crops through the servient estate without a permanent way, the indemnity shall consist in the payment of the damage caused by such encumbrance.

This easement is not compulsory if the isolation of the immovable is due to the proprietor's own acts.

ART. 650. The easement of right of way shall be established at the point least prejudicial to the servient estate, and, insofar as consistent with this rule, where the distance from the dominant estate to a public highway may be the shortest.

In summary, an entitlement to the easement of right of way requires that the following requisites must be met.

1. The dominant estate is surrounded by other immovables and has no adequate outlet to a public highway (Art. 649, par. 1);
2. There is payment of proper indemnity (Art. 649, par. 1);
3. The isolation is not due to the acts of the proprietor of the dominant estate (Art. 649, last par.); and
4. The right of way claimed is at the point least prejudicial to the servient estate; and insofar as consistent with this rule, where the distance from the dominant estate to a public highway may be the shortest (Art. 650).[15]

All the above requisites are present in this case.

As regards the first requisite, there is no dispute that the respondent's property was surrounded by other immovables owned by different individuals, including Spouses Williams. The isolation was further shown in the Sketch Plan[16] prepared by Honorato R. Bisnar, the geodetic engineer deputized by the parties. Moreover, contrary to Spouses Williams' claim that there was a barangay road closest to the dominant estate, the RTC, during the ocular inspection, observed that "there was no existing barangay road x x x."[17]

The second requisite of payment of indemnity was also complied with by the respondent when he wrote Spouses

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[15] *Dichoso, Jr. v. Marcos*, 663 Phil. 48, 55 (2011).

[16] *CA Records*, p. 94.

[17] TSN Vol. I, p. 6.

Williams on January 27, 2004, formally asking them to provide him with a right of way, for which he was willing to pay a reasonable value or to swap a portion of his property.[18]

Anent the third requisite, the isolation of the dominant estate was not due to the respondent's own acts. The property he purchased was already surrounded by other immovables leaving him no adequate ingress or egress to a public highway. Spouses Williams refused to grant a right of way and averred that the isolation of the dominant estate was attributable to the respondent's own acts. They pointed out that when the respondent purchased the dominant estate, he knew that Sierra was in negotiation with them for the sale of the dominant estate, thus, he was in bad faith. Nonetheless, it cannot be used to defeat the respondent's claim for a right of way. Sierra had every right to sell his property to anybody. Further, when the respondent bought the dominant estate there could have been no existing contract of sale yet considering that Spouses Williams and Sierra were still in negotiation. Hence, consent, one of the essential requisites for a valid contract, was lacking.

As to the fourth requisite, the Court finds that the right of way sought by the respondent is at the point least prejudicial to the servient estate and it is the shortest distance to the national highway. This is evident in the Sketch Plan[19] showing that the requested right of way was alongside the perimeter of Spouses Williams' property. Moreover, during the ocular inspection, the RTC observed that the right of way, which the respondent was seeking was alongside a precipice.[20] Spouses Williams insisted that they intended to build structures on the portion claimed by the respondent, but at a safe distance from the precipice, not immediately beside it. In addition, the 705.20 sq. m long pathway would only affect a small portion of the 12,200 sq. m. property of Spouses Williams, and for which the respondent expressed willingness to pay.

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[18] *CA Records*, p. 99.

[19] *CA Records*, p. 94.

[20] TSN Vol. I, p. 3.

Even assuming that the right of way being claimed by the respondent is not the shortest distance from the dominant estate to the public highway, it is well-settled that "[t]he criterion of *least prejudice* to the servient estate must prevail over the criterion of *shortest distance* although this is a matter of judicial appreciation. x x x In other words, where the easement may be established on any of several tenements surrounding the dominant estate, the one where the way is *shortest* and will cause the *least damage* should be chosen. If having these two (2) circumstances do not concur in a single tenement, the way which will cause the least damage should be used, even if it will not be the shortest."[21] As previously discussed, the right of way claimed by the respondent is at a point least prejudicial to the servient estate.

WHEREFORE, the petition is **DENIED**. The November 28, 2012 Decision and the April 16, 2013 Resolution of the Court of Appeals in CA-G.R. CV No. 01115-MIN, are **AFFIRMED** *in toto*.

SO ORDERED.

Carpio (Chairperson), Peralta, Leonen, and *Martires, JJ.,* concur.

FIRST DIVISION

[G.R. No. 209057. March 15, 2017]

RENATO S. MARTINEZ, *petitioner, vs.* **JOSE MARIA V. ONGSIAKO,** *respondent.*

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[21] *Quimen v. CA*, 326 Phil. 969, 972, 979 (1996).

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; TESTIMONIAL EVIDENCE; EXCEPTIONS TO THE HEARSAY RULE; TESTIMONY OR DEPOSITION AT A FORMER PROCEEDING; DEPOSITIONS PREVIOUSLY TAKEN ARE ONLY ADMISSIBLE IN EVIDENCE AGAINST THE ADVERSE PARTY WHO HAD THE OPPORTUNITY TO CROSS-EXAMINE THE WITNESS BUT THE RIGHT TO CROSS-EXAMINE MAY BE WAIVED BY CONDUCT AMOUNTING TO A RENUNCIATION OF THE RIGHT.—** The right to cross-examine opposing witnesses has long been considered a fundamental element of due process in both civil and criminal proceedings. In proceedings for the perpetuation of testimony, the right to cross-examine a deponent is an even more vital part of the procedure. In fact, the Revised Rules on Evidence provide that depositions previously taken are only admissible in evidence against an adverse party who had the opportunity to cross-examine the witness. Because depositions are an exception to the general rule on the inadmissibility of hearsay testimony, the process of cross-examination is an important safeguard against false statements. x x x Nevertheless, it is true that the right to cross-examination is far from absolute. Indeed, it may be waived by conduct amounting to a renunciation of the right; for instance, the failure of a party to avail itself of the opportunity to cross-examine a deponent.

2. **ID.; ID.; ID.; ID.; ID.; ID.; A PARTY'S FAILURE TO ATTEND A SCHEDULED HEARING THROUGH NO FAULT OF HIS OWN CANNOT BE CONSIDERED AS A WAIVER OF HIS RIGHT TO CROSS-EXAMINE.—** In this case, we find that the conduct of petitioner cannot be construed as a waiver of his right to cross-examine respondent. The ruling of the RTC declaring that petitioner waived his right to cross-examination was premised on his failure to attend the scheduled hearing on 18 August 2010. However, the records of the case reveal that neither he nor his counsel was adequately informed of the new schedule for the cross-examination of respondent. While the RTC ordered that Notices of Hearing be sent to both petitioner and his counsel, they did not receive these processes in time for the hearing through no fault of their own. x x x Taking all factors into account, it would be unfair and unjust to consider the failure of petitioner to attend the hearing on 18

August 2010 as signifying his intention to waive the right to cross-examine respondent. For this reason, we are compelled to remand the case to the RTC to allow petitioner to conduct his cross-examination of respondent.

APPEARANCES OF COUNSEL

Puno and Puno Law Offices for respondent.

R E S O L U T I O N

SERENO, *C.J.*:

In this Petition for Review on Certiorari,[1] petitioner Renato S. Martinez seeks to set aside the Decision[2] and the Resolution[3] of the Court of Appeals (CA) in CA-G.R. CV No. 96202. He contends that the CA committed an egregious error when it denied his appeal from the Order[4] and the Resolution[5] of the Regional Trial Court (RTC) declaring that he had waived his right to cross-examine respondent Jose Maria V. Ongsiako during the proceedings for the perpetuation of the latter's testimony.

ANTECEDENT FACTS

The facts, as culled from the records, are as follows.

On 17 May 2010, respondent filed a Petition[6] before the RTC of Makati seeking permission to perpetuate his testimony under

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[1] Petition for Review on *Certiorari* dated 30 October 2013; *rollo*, pp. 9-28.

[2] *Rollo*, pp. 30-35; Decision dated 14 May 2013; penned by Court of Appeals Associate Justice Florito S. Macalino and concurred in by Associate Justices Sesinando E. Villon and Pedro B. Corales.

[3] *Id*. at 37-39; Resolution dated 10 September 2013.

[4] Records, p. 315; Order given in open court by Presiding Judge J. Cedrick O. Ruiz on 18 August 2010.

[5] *Id*. at 512-529; Resolution dated 8 November 2010; penned by Presiding Judge J. Cedrick O. Ruiz.

[6] *Rollo*, pp. 40-46; Petition dated 11 May 2010.

Rule 24 of the Rules of Civil Procedure.[7] He alleged that the taking of his deposition was necessary, because (a) he expected to be a party to certain actions involving properties in which he had an interest; (b) he was diagnosed with end-stage renal disease secondary to chronic glomerulonephritis; (c) his health continued to deteriorate; and (d) he needed to preserve his testimony on certain material facts in anticipation of future suits. He also identified the areas to be covered by his proposed testimony.[8]

In his Petition, respondent named the expected adverse parties in the actions he anticipated would be filed: (a) petitioner as the administrator of the estate of Nori V. Ongsiako; (b) Juan Miguel V. Ongsiako, respondent's brother; and (c) the Bank of the Philippines Islands (BPI), a mortgagee of a certain property over which respondent had an interest.

On 17 June 2010, petitioner filed a Comment/Opposition[9] to the Petition. He objected to the proceedings on the ground that estate proceedings over the properties mentioned by respondent in the latter's petition were then pending before

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[7] The case was docketed as Civil Case No. 10-467 and assigned to Branch 61, RTC Makati.

[8] In his Petition (*supra* note 1, at 43), respondent identified the circumstances in his proposed testimony as follows:

a. The circumstances surrounding the execution of the [Special Powers of Attorney] in favor of Juan Miguel Ongsiako;
b. The circumstances surrounding the execution of Mrs. Ongsiako's Last Will and Testament and the probate proceedings, including the identification of the properties belonging to petitioner's deceased parents, Atty. and Mrs. Oscar Ongsiako;
c. The circumstances surrounding the constitution of REMs over Petitioner's properties;
d. The circumstances surrounding the sale of some shares of stock in Industrial Realties, Inc.;
e. The circumstances surrounding the transfer of some of Mrs. Ongsiako's properties to Juan Miguel V. Ongsiako; and
f. Other matters related to the foregoing.

[9] Records, pp. 16-22; Comment/Opposition [Re: Petition for the Perpetuation of Testimony of Jose Maria V. Ongsiako].

Branch 58 of the RTC Makati. He explained that it was more appropriate to perpetuate the testimony of respondent in those proceedings, since the latter was also an active participant in that case, in which the intended testimony would inevitably be used. Petitioner likewise asserted that the filing of a separate action for the perpetuation of testimony was tantamount to forum shopping.

In a Resolution[10] dated 21 June 2010, the RTC granted the Petition. It noted that all the requirements under Rule 24 of the Rules of Court had been satisfied; hence, respondent should be allowed to perpetuate his testimony. The trial court ordered his deposition to be taken on 23 June 2010.

Petitioner, along with the other expected adverse parties, sought a reconsideration of the RTC Resolution. To resolve the motion, the trial court directed the parties to orally argue their grounds in support of, or against, the reconsideration of the earlier Resolution during the hearing on 23 June 2010.[11] After considering the contentions of all the parties, the RTC thereafter denied the motions in open court.[12] The hearing then proceeded with the parties agreeing that the direct testimony of respondent would be taken through a judicial affidavit to be submitted on or before 4 June 2010, while the cross-examination by adverse parties would be on 7 July 2010.[13] The RTC eventually reset the hearing scheduled for 7 July 2010 to 13 July 2010.[14]

On 13 July 2010, the hearing proceeded notwithstanding the absence of petitioner and his counsel, and the direct examination of respondent was concluded. The RTC thereafter scheduled the cross-examination of the expected adverse parties on 21 July, 4 August, and 11 August 2010.[15]

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[10] *Id*. at 31-34; Resolution dated 21 June 2010.

[11] *Id*. at 16-22; Order dated 23 June 2010.

[12] *Id*. at 35.

[13] *Id*. at 36.

[14] *Id*. at 39.

[15] *Id*. at 138; Order dated 13 July 2010.

To allow the parties to attempt settlement negotiations, the scheduled cross-examination did not proceed on 21 July 2010. Instead, the RTC conducted confidence-building activities for respondent and his brother. The hearing on 4 August 2010 did not push through either, presumably for the same reason. The parties, however, failed to reach an agreement.

The inability of the parties to settle their conflict prompted the RTC to continue the proceedings on 11 August 2010. The scheduled hearing was, however, impeded by the withdrawal of appearance[16] by the law firm representing Juan Miguel. Again, the trial court was constrained to cancel the cross-examination of respondent and reset the hearing to 18 August 2010.[17] This directive was announced to all parties present in open court.[18] For those who were absent during the hearing, such as petitioner and his counsel, the RTC directed that copies of the written order be served upon them.[19]

On 16 August 2010, the RTC received a copy of the Petition for Certiorari[20] filed by petitioner with the CA. The Petition questioned the Resolution dated 21 June 2010, as affirmed by the Order dated 23 June 2010, allowing the perpetuation of respondent's testimony in a separate proceeding.

On 18 August 2010, the cross-examination of respondent finally proceeded.[21] Juan Miguel's new counsel requested for a continuance to have more time to prepare for the cross-examination, but the RTC denied his request upon noting that he had already been given sufficient time to do so.[22] It likewise observed that the proceedings had already suffered many

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[16] *Id*. at 153-154; Withdrawal of Appearance dated 6 August 2010.

[17] *Id*. at 157-158; Order dated 11 August 2010.

[18] *Id*. at 158.

[19] *Id*.

[20] *Id*. at 163-180; Petition for Certiorari dated 10 August 2010.

[21] *Id*. at 607-661; Transcript of Stenographic Notes (TSN), 18 August 2010.

[22] *Id*. at 617.

delays.[23] BPI's counsel then proceeded to cross-examine respondent;[24] Juan Miguel's counsel, on the other hand, persisted in his refusal to participate in the proceedings.[25]

As to petitioner and his counsel, both were again absent at the hearing.[26] The RTC noted, however, that petitioner had filed a Motion to Suspend Proceedings[27] right before the start of hearing on 18 August 2010. In his motion, he requested that the proceedings for the perpetuation of testimony be suspended pending the final resolution of the Petition for Certiorari earlier filed with the CA.

THE RULING OF THE RTC

Towards the end of the proceedings on 18 August 2010, the RTC issued an Order[28] declaring that petitioner and Juan Miguel had waived their right to cross-examine respondent:

> Considering that Mr. Juan Miguel Ongsiako has been forewarned by the Court to be prepared to cross-examine the petitioner herein last week, he is hereby now deemed to have waived his right to cross-examine herein petitioner Jose Maria V. Ongsiako.
>
> **The prospective adverse party Renato Martinez is hereby also declared to have waived his right to cross-examine the herein petitioner.**
>
> A fortiori, the testimony of Mr. Jose Maria V. Ongsiako is now perpetuated.
>
> Considering that the testimony of Jose Maria V. Ongsiako has already been perpetuated, the petition extant is now deemed CLOSED and TERMINATED.[29] (Emphasis supplied)

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[23] *Id*.

[24] *Id*. at 626-648.

[25] *Id*. at 648-658.

[26] *Id*. at 608, 660.

[27] *Id*. at 320-327; Motion to Suspend Proceedings dated 17 August 2010.

[28] *Id*. at 315; Order dated 18 August 2010.

[29] *Id*.

On 20 August 2010, counsel for petitioner appeared before the trial court for the hearing of the Motion to Suspend Proceedings. He was informed that the motion had merely been noted by the RTC, considering that the testimony of respondent had already been perpetuated.[30]

Petitioner thereafter filed a Motion for Reconsideration[31] of the Order dated 18 August 2010. He pointed out that neither he nor his counsel received notice of the scheduled hearing on 18 August 2010 and for this reason, they were not in court at the time. Petitioner emphasized that under the circumstances, their absence should not have been taken as a waiver of his right to cross-examine respondent. He also argued that it was imperative for the trial court to allow all the expected adverse parties to cross-examine respondent in the interest of justice.

In a Resolution[32] dated 8 November 2010, the RTC denied the Motion for Reconsideration. It ruled that petitioner and his counsel had been properly notified of the hearing, although the notice sent to counsel was returned unserved, because the latter had moved to a new address without notifying the trial court. The RTC also noted that petitioner and his counsel failed to attend the hearing on 11 August 2010 despite due notice, and that their absence caused them to miss the announcement of the resetting. The Resolution stated:

Contrary to the stand of Mr. Martinez, he is legally and judicially presumed to have been validly and duly notified of the 18 August 2010 hearing apropos.

x x x x x x x x x

Since the counsel of record of Mr. Juan Miguel withdrew his appearance on the very same day of 11 August 2010, the Court had no other option left but to cancel the 11 August 2010 schedule and reset the same to 18 August 2010 at ten o'clock in the morning. It

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[30] *Id*. at 328; Order dated 20 August 2010.

[31] *Id*. at 487-492; Motion for Reconsideration (Re: Order dated 18 August 2010).

[32] *Id*. at 512-529; Resolution dated 8 November 2010.

is to be underscored that it was incumbent upon Mr. Martinez and/ or his counsel to have attended the 11 August 2010 setting but they unjustifiably did not. At any rate, facsimiles of the 11 August 2010 Order of the Court were served by registered mail to both Mr. Martinez and his attorney. However, the copy for the counsel of record for Mr. Martinez was returned unserved as the Ongsiako Dela Cruz Antonio and Timtiman Law Firm moved out of its office sans apprising the Court accordingly. It goes without saying that the counsel for Mr. Martinez was inexcusably negligent in not informing this Court of its change of address at once so the Court could have sent the copy of its 11 August 2010 Order to its new address. But it lamentably did not. Its negligence definitely binds its client, Mr. Martinez.

In fine, the aforementioned are the reasons why this Court deemed Mr. Martinez to have waived its right to cross-examine Mr. Ongsiako.[33]

On 24 November 2010, petitioner filed a Notice of Appeal[34] with the RTC to manifest his intention to elevate the matter to the CA. The trial court gave due course to the appeal on 25 November 2010.[35]

THE RULING OF THE CA

In his appeal before the CA, petitioner claimed that the RTC had deprived him of the right to cross-examine respondent in violation of the fundamental principles of due process.[36] Petitioner contradicted the trial court's pronouncement that he had been given sufficient notice of the hearing to be held on 18 August 2010. He pointed out that the records clearly showed that the copy intended for his counsel had been sent to the wrong address.[37] Petitioner likewise emphasized that the RTC erred in allowing respondent to perpetuate testimony in a separate proceeding.[38]

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[33] *Id*. at 517-519.

[34] *Id*. at 531-533; Notice of Appeal dated 23 November 2010.

[35] *Id*. at 538; Order dated 25 November 2010.

[36] CA *rollo*, pp. 38-69. Brief for Oppositor-Appellant dated 5 August 2011.

[37] *Id*. at 58-61.

[38] *Id*. at 63-67.

Respondent, on the other hand, sought the dismissal of the appeal. He maintained that the RTC did not err in giving due course to the Petition for the perpetuation of testimony;[39] and that it correctly ruled that petitioner had waived the latter's right to cross-examination.[40]

In a Decision[41] dated 14 May 2013, the CA denied the appeal. It ruled that since depositions consist merely in the taking down of statements of witnesses for discovery purposes, the rules governing the procedure are accorded a broad and liberal treatment:

> Thus, the perpetuation of testimony is not a trial where the opposing party has to introduce his evidence. It is again, merely taking down the statements of the witnesses with opportunity to cross-examine them. That the opportunity for cross-examination was afforded during the taking of the deposition does not matter as much as whether such opportunity was accorded a party at the time the testimonial evidence is actually presented against him during the trial or hearing. Deposition-discovery rules are to be accorded a broad and liberal treatment and the liberty of a party to make discovery is well-nigh unrestricted if the matters inquired into are otherwise relevant and not privileged, and the inquiry is made in good faith and within the bounds of the law.
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> x x x x x x x x x
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> Guided by these principles, oppositor-appellant's contentions are clearly wanting in merit. Utmost freedom is allowed in taking depositions and restrictions are imposed upon their use. No limitations other than relevancy and privilege have been placed on the taking of depositions. Oppositor-appellant has the burden to show that the deposition requested is not relevant to the issues and/or establish the existence of any claimed privilege. These, the oppositor-appellant has failed to do.[42]

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[39] *Id*. at 124-130.

[40] *Id*. at 118-124.

[41] Decision dated 14 May 2013, *supra* note 2.

[42] *Id*. at 33-35.

Petitioner sought a reconsideration of the Decision but the CA denied the motion. In its Resolution, it reiterated its discussion on the nature of depositions. In addition, it affirmed the findings of the RTC on the waiver of petitioner's right to cross-examine respondent. The appellate court ruled that the failure of petitioner and his counsel to attend hearings without justification was sufficient to warrant the waiver of the party's right to cross-examination.[43]

PROCEEDINGS BEFORE THIS COURT

Before this Court, petitioner asserts that the CA erred in affirming the pronouncements of the RTC. He reiterates his arguments on the invalidity of the trial court's ruling citing due process grounds. He likewise insists that it was a grave error for the RTC to allow the perpetuation of respondent's testimony in a separate proceeding despite the pendency of a related estate case. In doing so, the trial court allegedly allowed respondent to commit forum shopping.

In his Opposition,[44] respondent seeks the dismissal of the petition on the following grounds: (a) failure to raise new issues for the consideration of this Court; (b) absence of proof that the CA committed a reversible error in affirming the RTC ruling; (c) the negligence exhibited by petitioner and his counsel in their failure to attend hearings before the RTC, which thereby justified the Order depriving petitioner of the right to cross-examination; and (d) the absence of any proof that respondent committed forum shopping.

ISSUE

We note the attempt of petitioner to raise before this Court the issue of whether the CA correctly ruled that the deposition of respondent was properly taken in a separate proceeding. From the records of this case, however, it is evident that this very

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[43] *Id.* at 38.

[44] *Rollo*, pp. 64-88; Opposition to the Petition for Review on *Certiorari* dated 30 October 2013.

question was the subject of a Petition for Certiorari[45] earlier filed by petitioner before the CA. Both parties have neglected to inform this Court of the outcome of the case. Nonetheless, the existence of that petition renders it improper for us to rule on that question.

In any event, the RTC Order and Resolution assailed in this case only involve the supposed waiver by petitioner of his right to cross-examine respondent. Hence, the sole issue presented to this Court for resolution is whether the CA correctly affirmed the RTC ruling that declared petitioner to have waived his right to cross-examination.

OUR RULING

We **GRANT** the Petition.

An examination of the records of the RTC reveals that petitioner and his counsel had not been properly notified of the hearing to be held on 18 August 2010. Consequently, their failure to attend the hearing must be considered an excusable circumstance, and not a waiver of the right to cross-examine respondent. It is therefore evident that the CA committed a reversible error when it sustained the pronouncement of the RTC depriving petitioner of his right to cross-examine respondent.

The right to cross-examine opposing witnesses has long been considered a fundamental element of due process in both civil and criminal proceedings.[46]

In proceedings for the perpetuation of testimony, the right to cross-examine a deponent is an even more vital part of the procedure. In fact, the Revised Rules on Evidence provide that depositions previously taken are only admissible in evidence against an adverse party who had the opportunity to cross-

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[45] *See* Petition for *Certiorari* dated 10 August 2010, *supra* note 20.

[46] *Vertudes v. Buenaflor*, 514 Phil. 399 (2005) citing *Fulgado v. CA*, 261 Phil. 189 (1990) and *Savory Luncheonette v. Lakas ng Manggagawang Pilipino*, 159 Phil. 310 (1975).

examine the witness.[47] Because depositions are an exception[48] to the general rule on the inadmissibility of hearsay testimony, the process of cross-examination is an important safeguard against false statements. As the Court explained in *Republic v. Sandiganbayan*:[49]

> The function of cross-examination is to test the truthfulness of the statements of a witness made on direct examination. The opportunity of cross-examination has been regarded as an essential safeguard of the accuracy and completeness of a testimony. In civil cases, the right of cross-examination is absolute, and is not a mere privilege of the party against whom a witness may be called. This right is available, of course, at the taking of depositions, as well as on the examination of witnesses at the trial. The principal justification for the general exclusion of hearsay statements and for the admission, as an exception to the hearsay rule, of reported testimony taken at a former hearing where the present adversary was afforded the opportunity to cross-examine, is based on the premise that the opportunity of cross-examination is an essential safeguard against falsehoods and frauds.[50] (Citations and italics omitted)

Nevertheless, it is true that the right to cross-examination is far from absolute. Indeed, it may be waived by conduct amounting to a renunciation of the right; for instance, the failure of a party to avail itself of the opportunity to cross-examine a deponent.[51] In *Luncheonette v. Lakas ng Manggagawang Pilipino*,[52] the Court explained:

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[47] Rule 130, Section 47 of the Rules of Court, provides:

SEC. 47. Testimony or deposition at a former proceeding. — The testimony or deposition of a witness deceased or unable to testify, given in a former case or proceeding, judicial or administrative, involving the same parties and subject matter, may be given in evidence against the adverse party who had the opportunity to cross-examine him.

[48] *See* Rule 130(C)(6) for the list of exceptions to the hearsay rule.

[49] 678 Phil. 358 (2011).

[50] *Id*. at 417.

[51] *Ayala Land Inc. v. Tagle*, 504 Phil. 94 (2005).

[52] 159 Phil. 310 (1975).

The right of a party to confront and cross-examine opposing witnesses in a judicial litigation, be it criminal or civil in nature, or in proceedings before administrative tribunals with quasi-judicial powers, is a fundamental right which is part of due process. However, the right is a personal one which may be waived expressly or impliedly by conduct amounting to a renunciation of the right of cross-examination. **Thus, where a party has had the opportunity to cross-examine a witness but failed to avail himself of it, he necessarily forfeits the right to cross-examine and the testimony given on direct examination of the witness will be received or allowed to remain in the record.**

The conduct of a party which may be construed as an implied waiver of the right to cross-examine may take various forms. **But the common basic principle underlying the application of the rule on implied waiver is that the party was given the opportunity to confront and cross-examine an opposing witness but failed to take advantage of it for reasons attributable to himself alone.**[53] (Emphases supplied)

In this case, we find that the conduct of petitioner cannot be construed as a waiver of his right to cross-examine respondent.

The ruling of the RTC declaring that petitioner waived his right to cross-examination was premised on his failure to attend the scheduled hearing on 18 August 2010. However, the records of the case reveal that neither he nor his counsel was adequately informed of the new schedule for the cross-examination of respondent. While the RTC ordered that Notices of Hearing be sent to both petitioner and his counsel, they did not receive these processes in time for the hearing through no fault of their own.

With respect to the Notice of Hearing sent to petitioner himself, the registry receipt attached to the records of the RTC indicates that the letter was only received on 14 September 2010.[54] The reason for the delay in the delivery of the notice is unclear.

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[53] *Id*. at 315-318.

[54] Records, p. 159.

On the other hand, the Notice of Hearing sent to petitioner's counsel never reached the intended recipient because of the incorrect address indicated on the registered envelope containing the letter. Based on the records, the address of Ongsiako Dela Cruz Antonio & Timtiman, counsel for petitioner, was indicated as "Second Floor, Number 134 Sedeño Street, Salcedo Village, Makati" in the pleadings it filed prior to the hearing.[55] In contrast, the envelope containing the Notice of Hearing for 18 August 2010 was addressed to the same law firm, but with the address indicated as "Second Floor, Ortigas Building, Ortigas Avenue, Pasig City."[56] Because of the error in the address, the letter was returned to the RTC with the notation "RTS moved out."

After due consideration of the above circumstances, we conclude that the absence of petitioner and his counsel at the hearing was clearly not due to their own fault.

The failure of petitioner to receive the Notice of Hearing prior to the date of the scheduled cross-examination is not attributable to him. In *Soloria v. De la Cruz*,[57] the Court considered a similar circumstance as an "accident" that would justify the grant of a new trial:

> We disagree with the above conclusion of the court *a quo*. It is not disputed that counsel for respondents (petitioners herein) did not receive notice of hearing on or before June 8, 1962, which was the scheduled date of trial; hence, they failed to attend said hearing. This circumstance, i.e., failure to attend trial for lack of advance notice, has been held in previous cases to constitute an "accident" within the meaning of Section 1, Rule 37, of the (old or revised) Rules of Court which, in turn, is a proper and valid ground to grant a new trial *(Muerteguy v. Delgado, 22 Phil.* 109 [1912]; *Lavitoria v. Judge of Court of First Instance of Tayabas*, 32 Phil. 204 [1915]; *Villegas v. Roldan,* 76 Phil 349 [1946]). x x x.

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[55] See Comment/Opposition, *supra* note 9; Urgent Ex Parte Motion to Reset Hearing; records, pp. 98-101.

[56] *Id*. at 366.

[57] 122 Phil. 1218 (1966).

As regards the incorrectly addressed Notice meant for petitioner's counsel, we find no basis to hold it responsible for this error. Contrary to the pronouncement of the RTC, petitioner's counsel did not change its address prior to the hearing on 18 August 2010. The inaccurate address used to send notices and processes to the law firm was solely due to the oversight of the trial court. The ruling in *Cañas v. Castigador*[58] is therefore applicable:

> The lack of notice of hearing, however, is not the only legal infirmity on this issue because, as earlier shown, the registered mail containing copies of the respondent judge's order dated August 14, 1996 and September 11, 1996 *never reached petitioner as they were returned to sender (RTS) because of the imprecise and incomplete address*, "c/o Pepsi Cola Products, Phils., Inc., San Fernando Plant" *stamped on the envelope*. For the appellate court to fault petitioner for her failure to receive the lower court's processes is unfair or unreasonable because it cannot be gainsaid that her address was clearly stated in her handwritten note dated May 23, 1996 addressed to respondent judge.

Taking all factors into account, it would be unfair and unjust to consider the failure of petitioner to attend the hearing on 18 August 2010 as signifying his intention to waive the right to cross-examine respondent. For this reason, we are compelled to remand the case to the RTC to allow petitioner to conduct his cross-examination of respondent.

WHEREFORE, the Petition for Review is hereby **GRANTED**. The Decision and the Resolution of the Court of Appeals dated 14 May 2013 and 10 September 2013, respectively, in CA-G.R. CV No. 96202 are **SET ASIDE**. The case is **REMANDED** to the Regional Trial Court to allow petitioner Renato S. Martinez to conduct the cross-examination of respondent Jose Maria V. Ongsiako.

SO ORDERED.

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

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[58] 401 Phil. 618 (2000).

FIRST DIVISION

[G.R. No. 213390. March 15, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JESSIE GABRIEL *y* GAJARDO,** *accused-appellant.*

SYLLABUS

REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE TRIAL COURT'S FINDINGS THEREON ARE GENERALLY BINDING AND CONCLUSIVE UPON THE APPELLATE COURT.— The trial court's assessment and evaluation of the credibility of witnesses vis-à-vis their testimonies ought to be upheld as a matter of course because of its direct, immediate and first hand opportunity to observe the deportment of witnesses as they delivered their testimonies in open court. Thus, the trial court's findings bearing on the credibility of witnesses on these matters are invariably binding and conclusive upon the appellate court unless of course, there is a showing that the trial court had overlooked, misapprehended or misconstrued some fact or circumstance of weight or substance, or had failed to accord or assign such fact or circumstance its due import or significance.

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

DEL CASTILLO, *J.*:

This is an appeal from the March 25, 2014 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 05147 which

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[1] CA *rollo*, pp. 122-132; penned by Associate Justice Melchor Q.C. Sadang and concurred in by Associate Justices Japar B. Dimaampao and Elihu A. Ybañez.

affirmed with modification the July 19, 2011 Decision[2] of the Regional Trial Court (RTC) of Dagupan City, Branch 43, in Criminal Case No. 2010-0118-D finding appellant Jessie Gabriel *y* Gajardo guilty of the crime of rape and imposing upon him the penalty of *reclusion perpetua*.

The facts of the case are as follows:

Appellant was indicted for rape in an Information which alleged:

> That on or about the 17th day of February 2010, in the City of Dagupan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused JESSIE GABRIEL *y* GAJARDO, with force and intimidation, did then and there, willfully, unlawfully and criminally, have carnal knowledge upon one ["AAA"],[3] a 17-year old minor, against her will and consent, to the damage and prejudice of the latter.
>
> Contrary to Article 266-A par. 1-a, in relation to the 2nd par. of Article 266-B of the Revised Penal Code as amended by RA 8353.[4]

Arraigned thereon, appellant entered a negative plea.

"AAA" at the time material to this case is a 17-year old first-year nursing student at the Colegio de Dagupan and temporarily resides at the boarding house of appellant in Dagupan City. "AAA" testified that at about 6:00 p.m. of February 17, 2010, she, with her cousin and co-boarder "BBB," was inside their

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[2] Records, pp. 89-105; penned by Judge Caridad Villegas-Galvez.

[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, or The Rule on Violence against Women and Their Children, effective November 15, 2004. *People v. Dumadag*, 667 Phil. 664, 669 (2011).

[4] Records, p. 1.

room at the second floor of the said boarding house when appellant suddenly entered their room and accused them of having stolen items of merchandise from his store located near the said boarding house. "AAA" and "BBB" vehemently denied this accusation, but appellant did not believe them. Instead, appellant directed them to see him in his room at the first floor of the boarding house to talk about the matter. When "AAA" went inside appellant's room, the latter renewed his insistence that "AAA" own up to having stolen the merchandise in question, otherwise he would bring her to the Police Station and have a theft case against her blottered. He then told her to sit on his lap and began caressing her back. "AAA" demanded that he stop what he was doing because she did not like it, but he paid no heed to her demand. When "AAA" stood up to leave, appellant pulled her back, compelled her to sit on his lap anew, and then proceeded to unhook her bra. What took place after this, "AAA" herself graphically recounted thus:

PROS. PERALTA:

x x x x x x x x x

Q We go back to that incident when he removed the hook of your bra, what happened after that?
A He made me lie down, Madam.

Q What happened next?
A [T]hen he forced me, he raped me, Madam.

Q When you said he raped you, what do you mean by that?
A He made me lie down, he made me spread my legs and he undressed me, Madam.

Q What were you wearing at that time?
A I was wearing t-shirt and pajama, madam.

Q And x x x after spreading your legs, what did he do next?
A He x x x inserted his penis [into] my vagina, Madam.

Q What happened when he inserted his penis [into] your vagina
A I [cried] and I told him that I don't like [what he was doing] but he insisted, Madam.

Q When you refused, what did he do, if any?
A I just cried, Madam.

Q How about the accused?
A He continued what he was doing, Madam.

Q What was he doing?
A He was raping me, Madam.

Q For how long did it happen?
A Minutes, Madam.

Q When you said minutes, you mean one (1) minute?
A Around thirty (30) minutes, madam.

Q What was his position at that time?
A He was on top of me, madam.

Q While he was on top of [you], what did [he] do?
A He raped me, Madam.

Q When you said he raped you, what do you mean by that?
A He inserted his penis [into] my vagina, Madam.

Q What did you feel at that time when he inserted his penis [into] your vagina?
A None, [M]adam.

Q What, if any, did you feel or notice while his penis was inside your vagina?
A None, [M]adam.

Q You said that you were crying while he was raping you, why were you crying?
A I was afraid and I don't like it, Madam.

Q When he started to insert his penis [into] your vagina, did you feel anything?
A Yes, [M]adam.

Q What did you feel?
A It was painful, [M]adam.

COURT:

Q Why did you not push him while he was on top of you?
A He was forceful, [M]adam.

Q What do you mean when you said her was forceful?
A He [was strong], [M]adam.[5]

[5] TSN, September 3, 2010, pp. 17-20.

Appellant's lecherous assault upon "AAA" ceased only when his child knocked on the door and called for him. When he heard his child's knocking, he released "AAA" from his clutches, told her to get dressed and leave the room. "AAA" then went to the bathroom to wash and then returned to her room at the second floor where she continued to cry. "BBB" asked her why she was crying but she could not tell her of her forcible violation. Later that evening, "AAA's" aunt, "CCC," and her husband "DDD," together with "BBB's" mother "EEE" (who was earlier texted by "BBB" to come to the boarding house) arrived. They confronted appellant about his accusation that "AAA" and "BBB" had stolen certain items from his store. It was then that "AAA" told "CCC" and "DDD" that she had been raped by appellant. A call was then made to the city police department which deployed SPO1 Esteban Martinez and PO1 Ramon Valencerina, Jr. who, upon reaching the boarding house, were informed that "AAA" had been raped by appellant. These police officers arrested appellant and brought him to the police station. After this, "AAA" submitted herself to physical examination at the Region 1 Medical Center in that city.

The other prosecution witnesses, namely "BBB," "EEE" and "CCC," not having actually witnessed "AAA's" violation, claimed that they came to know of "AAA's" rape from "AAA" herself. However, they were present just outside the boarding house when "CCC", "AAA's" aunt, exploded into hysterical outburst on hearing from "AAA" that she had been raped by appellant. The Medico-Legal Report issued by Dr. Marlene Quiramol moreover showed tell-tale evidence that "AAA" had indeed been sexually abused, as there were erythema and fossa navicularis at the external genitalia, as well as multiple *fresh* lacerations at the 3, 6, 9 and 12 o'clock positions in "AAA's" hymen.

Appellant denied that he raped "AAA". He claimed that on the morning of February 17, 2010, he noticed that some items of merchandise in his store were missing and he suspected that "AAA" and "BBB" were the culprits; hence, he went to their room to confront them. These two however denied his accusation, so he confronted them with the pictures of the missing items

which he earlier took in the locker inside the room rented by "AAA" and "BBB."

Appellant nevertheless admitted that on said occasion, he talked with "AAA" inside his room at the first floor of the boarding house for some 15 minutes, but stressed that after their conversation, "AAA" went outside while he proceeded to his store.

The only other witness presented by appellant, one Sandro Montañez, a boarder in the former's boarding house, simply testified that on the day in question (February 17, 2010), he saw "AAA" doing her laundry and that he did not notice anything unusual in her appearance at all.

Ruling of the Regional Trial Court

Synthesizing the conflicting contentions of the prosecution and the defense, the RTC held:

> The instant rape case is one of multifarious cases where there are no identified witnesses, and where the evidence effectively boils down to the complainant's word against the accused's. However, a pronouncement of guilt arising from the sole testimony of the victim is not unheard of, so long as her testimony meets the test of credibility. This is especially true in the crime of rape the evidentiary character of which demands so much on the part of the victim – it entails her to submit to an examination of her private parts, and to subject the sordid details of her story to a public trial and against a given presumption of the accused's innocence.
>
> To establish the crime of Rape under the article cited above, two elements must be shown to exist. And these are; 'that the accused had carnal knowledge of the offended party; and that the coitus was done through the use of force or intimidation.'
>
> AAA cried profusely while recounting her awful experience at the hands of her abuser. As has been repeatedly held, 'no young girl would concoct a sordid tale of so serious a crime as rape, undergo medical examination, then subject herself to the stigma and embarrassment of a public trial, if her motive was other than a fervent desire to seek justice.' AAA had revealed the incident to her relatives. If it is not rape, what is it?

Accused's attempt to characterize the testimony of 'AAA' as incredible lacks merit. Accused['s] defense of denial must crumble in light of AAA's positive and specific testimony. It is an established jurisprudential rule that denial, like alibi, being negative self-serving defense*,* cannot prevail over the affirmative allegations of the victim and her categorical and positive identification of the accused as her assailant. 'Denial must be proved by the accused with clear and convincing evidence otherwise they cannot prevail over the positive testimony of credible witnesses who testify on affirmative matters.'

Moreover, AAA's testimony is corroborated by the findings of the examining physician, Dr. Marlene Quiramol x x x viz[.]; (+) Erythema at the peri hymenal and fossa navicularis; (+) Multiple fresh lacerations at 3, 6, 9 & 12 o'clock positions. Medical examination showed evidence of sexual abuse. 'When a rape victim's account is straightforward and candid, and is corroborated by the medical findings of the examining physician, the same is sufficient to support a conviction for rape.' As the Highest Court succinctly stated in People vs. Borja, 'a victim who says she has been raped almost always says all there is to be said.'

The defense made it appear x x x that there were other people at the time of the incident. Granting arguendo that there were other people in the house when the rape was committed, rapists are not deterred from committing their odious act by the presence of people nearby or the members of the family. Lust, being a very powerful human urge is, to borrow from *People v. Virgilio Bernabe*, 'no respecter of time and place.' For the crime of rape to be committed, it is not necessary for the place to be ideal or the weather to be fine, for rapists bear no respect for locale and time when they carry out their evil deed. Rape can be committed in even the unlikeliest places and circumstances and by the most unlikely persons. The beast in a man bears no respect for time and place, driving him to commit rape anywhere – even in places where people congregate, in parks, along the roadsides, in school premises, in a house where there are other occupants, in the same room where other members of the family are also sleeping, and even in places which to many would appear unlikely and high risk venues for its commission. Besides, there is no rule that rape can be committed only in seclusion.

In stark contrast to AAA's firm declaration, the defense of denial invoked by the accused rests on shaky grounds. The accused insists that 'the accusation is a lie' and claims that he did not rape the victim. It should be noted however that accused himself admitted having a

one-on-one confrontation with AAA in his room about the alleged missing items as he required her to see him in his room and it lasted for around 15 minutes. Why would he require her to go to his room when he had already confronted them inside their room if not for his bestial desire and intention? Besides, he already went to the extent of taking pictures of the alleged missing items inside the locker of the victim and her cousin in their absence so as to compel them to admit the crime. Why did he not complain right away to the police if indeed his accusation against the victim is true?

Judicial experience has taught this Court that denial like alibi are the common defenses in rape cases. Denial is an intrinsically weak defense which must be buttressed with strong evidence of non-culpability to merit credibility. It is a negative self-serving assertion that deserves no weight in law if unsubstantiated by clear and convincing evidence. The barefaced denial of the charge by the accused even if one of his boarder had testified cannot prevail over the positive and forthright identification of him as the perpetrator of the dastardly act.

In rape, force and intimidation must be viewed in the light of the victim's perception and judgment at the time of the commission of the crime. AAA's failure to shout or to tenaciously resist accused should not be taken against her since such negative assertion would not *ipso facto* make voluntary her submission to accused's criminal act. As already settled in our jurisprudence, not all victims react the same way. Some people may cry out, some may faint, some may be shocked into insensibility, while others may appear to yield to the intrusion. Some may offer strong resistance while others may be too intimidated to offer any resistance at all. Moreover, resistance is not an element of rape. A rape victim has no burden to prove that she did all within her power to resist the force or intimidation employed upon her. As long as the force or intimidation is present, whether it was more or less irresistible is beside the point. Though a man puts no hand on a woman, yet if by the use of mental and moral coercion and intimidation, the accused so overpowers her mind out of fear that as a result she dare not resist the dastardly act inflicted on her person, accused is guilty of the crime imputed to him. In this case, the threat of reporting her to the police and have the incident blottered regarding his accusation of theft against her speaks loudly of accused's use of force and intimidation.

Moreover, AAA said she was not able to do anything to resist the accused [when] he was raping her. She told him to stop what he was

doing [because] she didn't like it but he [persisted]. The most that she did was to cry. Owing to the minority of AAA and her physique as compared to her molester, the Court believes that she was cowed by the accused's act of forcing himself upon her especially so when he threatened to report them to the authorities. 'Physical resistance need not be established in rape when threats and intimidation are employed and the victim submits herself to her attacker because of fear — physical resistance is not the sole test to ascertain whether or not a woman involuntarily yielded to the lust of her attacker.'

AAA's account evinced sincerity and truthfulness and she never wavered in her story, consistently pointing to accused as her rapist. Besides, no woman would willingly submit herself to the rigors, humiliation and stigma attendant in a rape case if she was not motivated by an earnest desire to punish the culprit. While there may be inconsistencies in AAA's testimony, they refer only to trivial matters which did not affect at all her account of the incident. 'Errorless recollection of a traumatic and agonizing incident cannot be expected of a witness when she is recounting details of an experience as humiliating and as painful as rape.'[6]

Against this backdrop, the RTC disposed thus —

WHEREFORE, in the light of the foregoing, judgment is hereby rendered finding accused JESSIE GABRIEL GUILTY beyond reasonable doubt of the crime of Rape, defined and penalized under Article 266-A (a) of the Revised Penal Code as amended by Republic Act No. 8353, or the Anti Rape Law of 1997 and is hereby imposed with the penalty of *Reclusion Perpetua*. He is ordered to pay AAA the sum of FIFTY THOUSAND PESOS (₱50,000.00), by way of civil indemnity, FIFTY THOUSAND PESOS (₱50,000.00), as moral damages and THIRTY THOUSAND PESOS (₱30,000.00) as exemplary damages.

SO ORDERED. [7]

Ruling of the Court of Appeals

From this judgment, appellant appealed to the CA maintaining that the RTC erred in finding him guilty of the crime of rape.

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[6] Records, pp. 101-104.

[7] *Id*. at 105.

But the CA thumbed down the appeal, anchoring its verdict on the RTC's aforequoted ratiocination, and more particularly on "AAA's" testimony-in-chief relative to the actual assault on her person in the manner quoted. Indeed, the CA's findings that "AAA" was raped by appellant were a virtual reiteration of the RTC's own summation as regards the rape.

The CA characterized "AAA's" testimony in this wise:

> The testimony of AAA is *simple*, *candid*, *straightforward*, and *consistent* on material points, detailing the act of rape against her by appellant. *It is corroborated by the physical evidence of fresh hymenal lacerations*. The medico-legal report revealed that AAA's perihymenal areal and fossa navicularis had erythema and her hymen had multiple fresh lacerations at 3, 6, 9 & 12 o'clock positions. In short, the medical examination showed evidence of sexual abuse. x x x[8]

After this, the CA addressed appellant's assault upon "AAA's" credibility, to wit:

> Appellant, however, casts doubts on the credibility of AAA. He contends that AAA was motivated by revenge because he had accused her of stealing and insisted that she admit the act. He also assails the credibility of AAA's account of the rape by pointing out that: AAA offered no resistance; she first claimed that she did not feel appellant's penis inside her vagina but later abandoned her claim; x x x she did not tell her boardmate Montanez, "BBB", and her aunt "CCC" [about the alleged rape] but confided to them, except Montanez, that appellant was forcing her to admit to the theft; AAA did not immediately reveal the rape to the police but first talked to her uncle after which the latter confronted appellant.[9]

The CA however found appellant's contentions unconvincing:

> It is highly improbable that a young, decent woman taking up nursing would concoct a rape story against a man who is accusing her of a petty crime which she denies. A woman who claims rape exposes herself to the spectacle of a public trial where she would recount the sordid details of her ordeal. Thus, it has been repeatedly

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[8] CA *rollo*, p. 129.

[9] *Id*.

ruled that no young and decent woman in her right mind would concoct a story of defloration, allow an examination of her private parts, and thereafter pervert herself by being subjected to a public trial if she was not motivated solely by her desire to obtain justice for the wrong committed against her.

Even assuming that AAA did not tenaciously resist the sexual assault[,] that does not negate rape. In rape, the force and intimidation must be viewed in the light of the victim's perception and judgment at the time of the commission of the crime. It is settled that not all victims react the same way. Some victims may cry out, some may faint, some may be shocked into insensibility, while others may appear to yield to the intrusion. Some may offer strong resistance while others may be too intimidated to offer any resistance at all. Moreover, resistance is not an element of rape. A rape victim has no burden to prove that she did all within her power to resist the force or intimidation employed upon her. *As long as the force or intimidation is present, whether it was more or less irresistible is beside the point*. In this case, what is important is that AAA did not consent to the intercourse. She cried as appellant ravished her and told her uncle about the rape at the first opportunity.

x x x x x x x x x

That AAA did not immediately report the rape to the police when they came to the house but to her uncle enhances rather than weakens her testimony. It is consistent with human experience for a woman to prefer to reveal the assault on her honor to her kin first rather than to strangers, including the police.[10]

Expounding on the usual reason for the seeming inability of the prosecution to assemble a number of witnesses to establish a rape case, like the present case, the CA posited:

Inasmuch as the crime of rape is essentially committed in relative isolation or even secrecy, it is usually the victim alone who can testify on the forced sexual intercourse. Therefore, in a prosecution for rape, the credibility of the victim is almost always the single and most important point to consider. If the victim's testimony meets the test of credibility, the accused can justifiably be convicted on the basis of her lone testimony.[11]

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[10] *Id*. at 129-130.

[11] *Id*. at 130.

In the end, the CA sustained the factual underpinnings of the RTC's verdict, harking back to the well-settled dictum that the trial court is the best assayer and evaluator of witnesses and their testimonies, thus:

The trial court gave credence to AAA and her testimony. Since the trial court had the opportunity to examine her demeanor and conduct on the stand, We do not find any reason to depart from its findings. Time and time again, it has been ruled that the assessment of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court because of its unique firsthand opportunity to observe them under examination. x x x

There is no showing that the trial court overlooked, misapprehended, or misinterpreted some facts or circumstances of weight and substance in convicting appellant. Its decision must be upheld. Besides, appellant's defense is in the nature of a denial which hardly creates reasonable doubt of his guilt in light of his testimony that he was at the place and time of the rape. Appellant's denial cannot prevail over AAA's direct, positive and categorical assertion that rings with truth. Denial is inherently a weak defense which cannot outweigh positive testimony. As between a categorical statement that has the earmarks of truth on the one hand and bare denial, on the other, the former is generally held to prevail.[12]

The dispositive portion of the CA Decision reads:

WHEREFORE, premises considered, the Decision of the Regional Trial Court of Dagupan City, Branch 43, dated July 19, 2011, in Criminal Case No. 2010-0118-D is AFFIRMED with modification in that accused-appellant Jessie Gabriel is further ordered to pay interest on all damages awarded at the rate of 6% per annum from the date of finality of judgment until fully paid.

SO ORDERED.[13]

Our Ruling

We find no reason to disturb the CA's above-mentioned findings and conclusion, especially so because in the case at

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[12] *Id*. at 131.

[13] *Id*. at 131-132.

bench the CA and the RTC have uniformly given short shrift to appellant's bare denial.

In the 1901 case of *United States v. Ramos*,[14] this Court had already declared that "[w]hen a woman testifies that she has been raped she says, in effect, that all that is necessary to constitute the commission of this crime has been committed. It is merely a question then, whether or not this court accepts her statement." Jurisprudence has clung with unrelenting grasp to this precept.

The trial court's assessment and evaluation of the credibility of witnesses vis-à-vis their testimonies ought to be upheld as a matter of course because of its direct, immediate and first hand opportunity to observe the deportment of witnesses as they delivered their testimonies in open court. Thus, the trial court's findings bearing on the credibility of witnesses on these matters are invariably binding and conclusive upon the appellate court unless of course, there is a showing that the trial court had overlooked, misapprehended or misconstrued some fact or circumstance of weight or substance, or had failed to accord or assign such fact or circumstance its due import or significance. Here, it bears stressing that the CA itself declared in its Decision that:

> There is no showing that the trial court overlooked, misapprehended or misinterpreted some facts or circumstances of weight and substance in convicting appellant. Its decision must be upheld. Besides, appellant's defense is in the nature of a denial which hardly creates reasonable doubt of his guilt in light of his testimony that he was at the place and time of the rape. Appellant's denial cannot prevail over "AAA's" direct, positive and categorical assertion that rings with truth. Denial is inherently a weak defense which cannot outweigh positive testimony. As between a categorical statement that has the earmarks of truth on the one hand and bare denial, on the other, the former is generally held to prevail.[15]

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[14] 1 Phil. 81, 82 (1901).

[15] CA *rollo*, p. 131.

To these postulations by the CA, we give our unreserved assent.

Nonetheless, we have to modify the awards for civil indemnity, moral damages, and exemplary damages. Conformably to this Court's holding in *People v. Jugueta*,[16] the awards for civil indemnity, moral damages, and exemplary damages should be upgraded to ₱75,000.00 each. The CA, however correctly imposed interest at the rate of six percent (6%) *per annum* on all monetary awards.

WHEREFORE, the appeal is **DISMISSED**. The assailed March 25, 2014 Decision of the Court of Appeals in CA-G.R. CR-HC No. 05147 finding appellant Jessie Gabriel *y* Gajardo guilty of the crime of rape and sentencing him to suffer the penalty of *reclusion perpetua* is **AFFIRMED with FURTHER MODIFICATIONS** that the awards for civil indemnity, moral damages and exemplary damages are increased to ₱75,000.00 each.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 213500. March 15, 2017]

OFFICE OF THE OMBUDSMAN and THE FACT-FINDING INVESTIGATION BUREAU (FFIB), OFFICE OF THE DEPUTY OMBUDSMAN FOR THE MILITARY AND OTHER LAW ENFORCEMENT OFFICES (MOLEO), *petitioners, vs.* **PS/SUPT. RAINIER A. ESPINA,** *respondent.*

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

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; FINDINGS OF FACT BY THE OMBUDSMAN; FACTUAL FINDINGS OF THE OMBUDSMAN ARE CONCLUSIVE WHEN SUPPORTED BY SUBSTANTIAL EVIDENCE AND ARE ACCORDED DUE RESPECT AND WEIGHT, ESPECIALLY WHEN AFFIRMED BY THE COURT OF APPEALS; CASE AT BAR.—** At the outset, the Court emphasizes that as a general rule, factual findings of the Ombudsman are conclusive when supported by substantial evidence and are accorded due respect and weight, especially when affirmed by the CA. In this case, except as to the legal conclusion on what administrative offense was committed by Espina, the Ombudsman and the CA both found that Espina signed the IRFs even if there were actually no tires delivered to the PNP and no repair and refurbishment works performed on the LAVs. Accordingly, these findings of fact are conclusive and binding and shall no longer be delved into, and this Court shall confine itself to the determination of the proper administrative offense chargeable against Espina and the appropriate penalty therefor.

2. **POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS; MISCONDUCT; A TRANSGRESSION OF SOME ESTABLISHED AND DEFINITE RULE OF ACTION, MORE PARTICULARLY UNLAWFUL BEHAVIOR OR GROSS NEGLIGENCE BY A PUBLIC OFFICER.—** Misconduct generally means wrongful, improper or unlawful conduct motivated by a premeditated, obstinate or intentional purpose. It is intentional wrongdoing or deliberate violation of a rule of law or standard of behavior and to constitute an administrative offense, the misconduct should relate to or be connected with the performance of the official functions and duties of a public officer. It is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer.

3. **ID.; ID.; ID.; GRAVE MISCONDUCT AND SIMPLE MISCONDUCT, DISTINGUISHED.—** There are two (2) types of misconduct, namely: grave misconduct and simple misconduct. In grave misconduct, as distinguished from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of an established rule must be manifest.

Without any of these elements, the transgression of an established rule is properly characterized as simple misconduct only.

4. **ID.; ID.; ID.; DISHONESTY; THREE (3) GRADATIONS OF DISHONESTY, EXPLAINED.—** On the other hand, dishonesty, which is defined as the "disposition to lie, cheat, deceive, or defraud; untrustworthiness, lack of integrity," is classified in three (3) gradations, namely: serious, less serious, and simple. Serious dishonesty comprises dishonest acts: (*a*) causing serious damage and grave prejudice to the government; (*b*) directly involving property, accountable forms or money for which respondent is directly accountable and the respondent shows an intent to commit material gain, graft and corruption; (*c*) exhibiting moral depravity on the part of the respondent; (*d*) involving a Civil Service examination, irregularity or fake Civil Service eligibility such as, but not limited to, impersonation, cheating and use of crib sheets; (*e*) committed several times or in various occasions; (*f*) committed with grave abuse of authority; (*g*) committed with fraud and/or falsification of official documents relating to respondent's employment; and (*h*) other analogous circumstances. A dishonest act without the attendance of any of these circumstances can only be characterized as simple dishonesty. In between the aforesaid two forms of dishonesty is less serious dishonesty which obtains when: (*a*) the dishonest act caused damage and prejudice to the government which is not so serious as to qualify as serious dishonesty; (*b*) the respondent did not take advantage of his/her position in committing the dishonest act; and (*c*) other analogous circumstances. Both grave misconduct and serious dishonesty, of which Espina was charged, are classified as grave offenses for which the penalty of dismissal is meted even for first time offenders.

5. **ID.; ID.; ID.; GROSS NEGLECT OF DUTY; GROSS NEGLECT OF DUTY IS THE OMISSION OF THAT CARE THAT EVEN INATTENTIVE AND THOUGHTLESS MEN NEVER FAIL TO GIVE TO THEIR OWN PROPERTY; ESTABLISHED IN CASE AT BAR.—** [T]he FFIB-MOLEO's supplemental complaint accused Espina with <u>failure to exercise due diligence</u> in signing the IRFs, which is sufficient to hold him liable for Gross Neglect of Duty. Gross neglect of duty is defined as "[n]egligence characterized by 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 willfully 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." In contrast, simple neglect of duty is 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." x x x In *Lihaylihay v. People*, the Court pointed out that the nature of the public officers' responsibilities and their role in the procurement process are compelling factors that should have led them to examine with greater detail the documents which they are made to approve. x x x As aptly pointed out by the Ombudsman in its Joint Order dated July 8, 2013, "it was incumbent upon [Espina] to affix his signature only after checking the completeness and propriety of the documents." However, while Espina claims that all the necessary supporting documents such as photographs and delivery receipts were attached to the IRFs at the time they were routed to him for his signature, the Court is hard-pressed to find proof substantiating such claim to justify his passive attitude towards them. In this jurisdiction, it is axiomatic that he who alleges a fact has the burden of proving it. Without evidence showing otherwise, the Court is constrained to conclude that the IRFs submitted to Espina for his signature were without supporting documents and could not, perforce, be taken at face value and relied upon. As this Court ruled in *Jaca v. People*, a superior cannot rely in good faith on the act of a subordinate where the documents that would support the subordinate's action were not even in his (the superior's) possession for examination.

6. **ID.; ID.; ID.; PUBLIC OFFICERS, AS RECIPIENTS OF PUBLIC TRUST, ARE UNDER OBLIGATION TO PERFORM THE DUTIES OF THEIR OFFICES HONESTLY, FAITHFULLY, AND TO THE BEST OF THEIR ABILITY.—** Verily, this Court has repeatedly emphasized the time-honored rule that a "[p]ublic office is a public trust [and] [p]ublic officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency, act with patriotism and justice and lead modest lives." This high constitutional standard of conduct is not intended to be mere rhetoric and taken lightly as those in the public service are

enjoined to fully comply with this standard or run the risk of facing administrative sanctions ranging from reprimand to the extreme penalty of dismissal from the service. Erring public officials may also be held personally liable for disbursements made in violation of law or regulation, as stated in Section 52, Chapter 9, Subtitle B, Title I, Book V of the Administrative Code of 1987. Thus, public officers, as recipients of public trust, are under obligation to perform the duties of their offices honestly, faithfully, and to the best of their ability.

CAGUIOA, *J.*, *separate concurring opinion*:

POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS; GROSS NEGLECT OF DUTY; THE LIABILITY OF PUBLIC OFFICER ARISES FROM HIS RELIANCE ON THE FINDINGS AND RECOMMENDATION OF HIS PROPERTY INSPECTORS DESPITE THE GLARING IRREGULARITIES APPEARING ON THE FACE OF THE INSPECTION REPORT FORMS; CASE AT BAR.— Standard Operating Procedure XX4 (SOP 24) prescribes the guidelines for inspection and acceptance of deliveries of supplies, police products, materials and equipment, as well as the repair, renovation and construction works rendered in favor of the PNP. x x x In this case, Espina does not deny that he did not conduct further inquiry before affixing his signature on the IRFs [Inspection Report Forms] in question despite the suspiciously short 7-day period indicated therein within which the repair and refurbishment works on the LAVs were supposedly completed. x x x Thus, Espina's liability for gross negligence arises from his reliance on the findings and recommendations of his property inspectors *despite* the glaring irregularities appearing on the face of the IRFs. Notably, while Espina claims that no apparent irregularities were in fact ascertainable from the IRFs' supporting documents, he failed to submit these supporting documents in evidence, nor prove, by any other means, that these supporting documents were in fact appended to the IRFs at the time he affixed his signature thereon. These evidentiary lapses, whether inadvertent or otherwise, place Espina's compliance with SOP 24 in serious doubt. It bears stressing that his duty to ascertain the propriety of the repairs conducted on the LAVs and the reasonableness of the corresponding cost were positive ones spelled out in

SOP 24. It was thus incumbent upon him to show proof that such duty was in fact complied with, particularly in this case, where the anomalies behind the transactions in question could have been easily uncovered, if only he complied with SOP 24.

APPEARANCES OF COUNSEL

The Solicitor General for petitioners.
Kapunan Garcia and Castillo Law Offices for respondent.

D E C I S I O N

***PER CURIAM*:**

Before the Court is a petition for review on *certiorari*[1] assailing the Decision[2] dated February 27, 2014 and the Resolution[3] dated July 15, 2014 of the Court of Appeals in CA-G.R. SP No. 131114, which modified the Joint Resolution[4] dated December 19, 2012 and the Joint Order[5] dated July 8, 2013 of petitioner the Office of the Ombudsman (Ombudsman) in the administrative aspect of the case, docketed as OMB-P-A-12-0532-G,[6] and, thereby, found respondent PS/Supt. Rainier A. Espina (Espina) administratively liable for Simple Misconduct.

The Facts

On July 11 and 17, 2012, petitioner the Fact-Finding Investigation Bureau (FFIB) of the Office of the Deputy

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[1] *Rollo*, pp. 13-37.

[2] *Id*. at 47-66. Penned by Associate Justice Jane Aurora C. Lantion with Associate Justices Vicente S.E. Veloso and Nina G. Antonio-Valenzuela concurring.

[3] *Id*. at 69-72.

[4] Records, Vol. 65, pp. 07529-07636. Signed by the Investigating Panel created Pursuant to Office No. 248, Series of 2012 and approved by Ombudsman Conchita Carpio Morales.

[5] *Id*. at 07637-07704.

[6] The criminal aspect of the case was docketed as OMB-P-C-12-0503-G.

Ombudsman for the Military and Other Law Enforcement Offices (MOLEO) filed before the Ombudsman an affidavit-complaint[7] and a supplemental complaint,[8] respectively, charging Espina and several other PNP officers and private individuals for: (*a*) violation of Republic Act No. (RA) 7080,[9] RA 3019,[10] RA 9184[11] and its Implementing Rules and Regulations (IRR), and Malversation of Public Funds through Falsification of Public Documents under Article 217 in relation to Article 171 of the Revised Penal Code (RPC); and (*b*) Grave Misconduct and Serious Dishonesty; arising from alleged anomalies that attended the Philippine National Police's (PNP) procurement of 40 tires, and repair, refurbishment, repowering, and maintenance services of a total of 28 units of V-150 Light Armored Vehicles (LAVs), and the related transportation and delivery expenses of 18 units of LAVs between August and December 2007.[12] It averred that the PNP did not comply with the bidding procedure prescribed under RA 9184 and its IRR, in that: (*a*) copies of the bid documents were not furnished to possible bidders; (*b*) no pre-procurement and pre-bid conferences were held; (*c*) the invitation to bid was not published in a newspaper of general circulation; (*d*) the procuring agency did not require the submission of eligibility requirements as well as the technical and financial documents from the bidders; and (*e*) no post qualification was conducted. Further, it claimed that there were "ghost deliveries," *i.e.*, the tires were never delivered to the

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[7] Dated July 10, 2012. Records, Vol. 56, pp. 02658-02667.

[8] Dated July 17, 2012. *Rollo*, pp. 131-156.

[9] Otherwise known as the "GOVERNMENT PROCUREMENT REFORM ACT" and entitled "AN ACT DEFINING AND PENALIZING THE CRIME OF PLUNDER" (approved on July 12, 1991).

[10] Entitled "ANTI-GRAFT AND CORRUPT PRACTICES ACT," as amended (approved on August 17, 1960).

[11] Entitled "AN ACT PROVIDING FOR THE MODERNIZATION, STANDARDIZATION AND REGULATION OF THE PROCUREMENT ACTIVITIES OF THE GOVERNMENT AND FOR OTHER PURPOSES," OTHERWISE KNOWN AS THE GOVERNMENT PROCUREMENT REFORM ACT" (approved on January 10, 2003).

[12] See Records, Vol. 65, pp. 07532-07542.

PNP and no repair and refurbishment works were actually performed on the LAVs.[13] The alleged anomalous transactions are as follows:

	Transactions	Amount
1.	Procurement of 40 tires for 10 LAVs	₱ 2,940,000.00
2.	Repowering and refurbishing of 10 LAVs	142,000,000.00
3.	Repair and maintenance of 18 LAVs	255,600,000.00
4.	Transportation and delivery expenses[14]	9,200,000.00
	Total	**₱409,740,000.00**[15]

Espina, as the Acting Chief of the Management Division of the PNP Directorate for Comptrollership at the time the procurements were made,[16] was impleaded in the aforesaid complaints for noting/signing the Inspection Report Forms (IRFs),[17] which confirmed the PNP's receipt of the tires and other supplies, and the performance of repair and refurbishment works on the LAVs. According to the FFIB-MOLEO, by affixing his signature on the IRFs, Espina supposedly facilitated the fraudulent disbursement of funds amounting to ₱409,740,000.00 when no goods were actually delivered and no services were actually rendered.[18]

In defense, Espina denied any participation in the bidding and/or procurement process and maintained that he belonged to the Management Division which is responsible for the inspection of deliveries made to the PNP after the bidding and procurement process.[19] He also pointed out that pursuant to

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[13] See *id*. at 07577-07580.

[14] The fund therefor was realigned on December 17, 2007 to "Other Supplies Expenses." See *id*. at 07542-07543.

[15] *Id*. at 07533-07534.

[16] *Rollo,* p. 53.

[17] *Id*. at 229. See also the IRFs dated December 14, 18, and 27, 2007; records, Vol. 21, pp. 36-41.

[18] See records, Vol. 65, pp. 07612-07613 and 07627-07628.

[19] *Id*. at 07563-07564.

the Standing Operating Procedure (SOP) No. XX4[20] dated November 17, 1993, his only duty, as the said division's Acting Chief, was to note the reports. According to him, it was not his responsibility to personally inspect and confirm deliveries and go beyond the contents of the IRFs submitted by his subordinates, absent any irregularity reported by the property inspectors who are tasked to check and examine deliveries.[21]

The Ombudsman Ruling

In a Joint Resolution[22] dated December 19, 2012, the Ombudsman found probable cause to indict Espina and several other PNP officers for violation of Section 3 (e) of RA 3019, Section 65 (b) (4) of RA 9184, and for Malversation of Public Funds through Falsification under Article 217 in relation to Article 171 of the RPC. The Ombudsman also found them guilty of Grave Misconduct and Serious Dishonesty and, accordingly, recommended their dismissal from government service.[23]

Specifically, the Ombudsman held that Espina executed indispensable acts which led to the completion of the illegal transactions.[24] The Ombudsman likewise found it incredulous that the repair and refurbishment works on the LAVs were completed in only seven (7) days, *i.e.*, from December 20, 2007 to December 27, 2007, considering the magnitude of the work involved, which included the delivery of the LAVs for repair, the inspection and acceptance of materials to be used, the actual conduct of repair and refurbishment works, and the delivery, inspection, and acceptance of the repaired and refurbished LAVs.[25] The Ombudsman even noted the admission of one of

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[20] *Rollo*, pp. 125 and 127-129.

[21] *Id.* at 228-230. See also records, Vol. 65, pp. 07563-07564.

[22] Records, Vol. 65, pp. 07529-07636.

[23] *Id.* at 07633-07634.

[24] *Id.* at 07628.

[25] *Id.* at 07611-07612.

the experts engaged in the repair of the LAVs that the repair and refurbishment works thereon were still on-going as late as February 2008 until 2010 and, hence, could not have been completed in December 2007.[26]

On reconsideration, the Ombudsman, through a Joint Order[27] dated July 8 2013, dropped the charges against Espina and several other PNP Officers, for violation of Section 65 (b) (4) of RA 9184, but sustained the other findings, including their dismissal from service in view of their administrative liability. In denying Espina's motion for reconsideration in the administrative case, the Ombudsman pointed out that while it was not Espina's duty to make his own inspections of the alleged deliveries and work as the same devolved upon the property inspectors, "it was incumbent upon [Espina] to affix his signature only after checking the completeness and propriety of the documents."[28] Such disregard of duty paved the way for the consummation of four (4) highly illegal and irregular transactions, *i.e.*, the disbursement of government funds despite apparent non-delivery of the items and non-performance of works procured.[29]

Aggrieved, Espina filed a petition for review[30] before the CA, impleading both the Ombudsman and the FFIB-MOLEO (collectively, petitioners), docketed as CA-G.R. SP No. 131114.

The CA Ruling

In a Decision[31] dated February 27, 2014, the CA ruled in favor of Espina and held that his act of affixing his signature on the IRFs could not be considered as Grave Misconduct because he did not: (*a*) unlawfully use his official position

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[26] *Id*. at 07612.

[27] *Id*. at 07637-07704.

[28] See Joint Order dated July 8, 2013; *id.* at 07679.

[29] *Id*. at 07681-07682.

[30] Not attached to the *rollo*.

[31] *Rollo*, pp. 47-66.

for the purpose of benefiting himself;[32] and (*b*) exhibit corrupt or depraved motives, clear intent to violate the law, or flagrant disregard of established rules. It observed that Espina had no participation in the bidding and procurement process as he belonged to the PNP's Management Division whose function is to inspect and note the deliveries to the PNP after the required bidding and procurement process had taken place. As such, no liability could attach to him absent a nexus between his functions as Acting Chief of the Management Division and the alleged anomalous procurement process.[33]

The CA found Espina guilty, instead, of Simple Misconduct, a less grave offense punishable with suspension for one (1) month and one (1) day to six (6) months for the first offense, and dismissal for the second offense. It rejected Espina's defense of reliance in good faith on the acts of his subordinates, holding that he had the obligation to supervise them and ensure that the IRFs and Work Orders they prepared, as well as every procurement-related document released by his division, were regular, lawful, valid, and accurate, considering the significance of the transaction related to the disbursement of public funds over which great responsibility attached.[34]

However, the CA absolved Espina from the charge of Serious Dishonesty, considering that he did not personally prepare the IRFs but merely affixed his signatures thereon. At best, he imprudently failed to check and counter-check the contents of the IRFs and the Work Orders he signed, which, however, does not equate to Serious Dishonesty.[35]

There being no aggravating or mitigating circumstance, the CA imposed on Espina a three-month suspension reckoned from the time he was actually dismissed from service.[36]

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[32] *Id*. at 60.

[33] *Id*. at 61.

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

[35] *Id*. at 64.

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

Dissatisfied, petitioners moved for reconsideration[37] which was, however, denied by the CA in a Resolution[38] dated July 15, 2014; hence, the present petition.

The Issue Before the Court

The core issue for the Court's resolution is whether or not Espina should be held administratively liable for the charges imputed against him.

The Court's Ruling

The petition is partly meritorious.

At the outset, the Court emphasizes that as a general rule, factual findings of the Ombudsman are conclusive when supported by substantial evidence and are accorded due respect and weight, especially when affirmed by the CA.[39] In this case, except as to the legal conclusion on what administrative offense was committed by Espina, the Ombudsman and the CA both found that Espina signed the IRFs even if there were actually no tires delivered to the PNP and no repair and refurbishment works performed on the LAVs. Accordingly, these findings of fact are conclusive and binding and shall no longer be delved into, and this Court shall confine itself to the determination of the proper administrative offense chargeable against Espina and the appropriate penalty therefor.

In the case at bar, Espina was charged with grave misconduct and serious dishonesty before the Ombudsman which found him guilty as charged, and imposed on him the supreme penalty of dismissal from government service with all its accessory penalties, while the CA adjudged him guilty only of simple misconduct and punished him with a three-month suspension.

Misconduct generally means wrongful, improper or unlawful conduct motivated by a premeditated, obstinate or intentional

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[37] Not attached to the *rollo*.

[38] *Rollo*, pp. 69-72.

[39] *Cabalit v. Commission on Audit-Region VII*, 679 Phil. 138, 157-158 (2012).

purpose.[40] It is intentional wrongdoing or deliberate violation of a rule of law or standard of behavior and to constitute an administrative offense, the misconduct should relate to or be connected with the performance of the official functions and duties of a public officer.[41] It is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer.[42]

There are two (2) types of misconduct, namely: grave misconduct and simple misconduct. In grave misconduct, as distinguished from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of an established rule must be manifest.[43] Without any of these elements, the transgression of an established rule is properly characterized as simple misconduct only.[44]

On the other hand, dishonesty, which is defined as the "disposition to lie, cheat, deceive, or defraud; untrustworthiness, lack of integrity,"[45] is classified in three (3) gradations, namely: serious, less serious, and simple.[46] Serious dishonesty comprises dishonest acts: (*a*) causing serious damage and grave prejudice to the government; (*b*) directly involving property, accountable forms or money for which respondent is directly accountable and the respondent shows an intent to commit material gain, graft and corruption; (*c*) exhibiting moral depravity on the part of the respondent; (*d*) involving a Civil Service examination, irregularity or fake Civil Service eligibility such as, but not

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[40] *Ombudsman v. Magno*, 592 Phil. 636, 658 (2008).

[41] *Ganzon v. Arlos*, 720 Phil. 104, 113 (2013).

[42] *Amit v. Commission on Audit* (*COA*), 699 Phil. 9, 26 (2012).

[43] *Ganzon v. Arlos*, *supra* note 41.

[44] *Imperial v. GSIS,* 674 Phil. 286, 296 (2011).

[45] *Light Rail Transit Authority v. Salvaña*, 736 Phil. 123, 151 (2014), citation omitted.

[46] *Id*. at 173, citing Civil Service Commission (CSC) Resolution No. 060538 dated April 4, 2006, otherwise known as the "Rules on the Administrative Offense of Dishonesty."

limited to, impersonation, cheating and use of crib sheets; (*e*) committed several times or in various occasions; (*f*) committed with grave abuse of authority; (*g*) committed with fraud and/or falsification of official documents relating to respondent's employment; and (*h*) other analogous circumstances.[47] A dishonest act without the attendance of any of these circumstances can only be characterized as simple dishonesty.[48] In between the aforesaid two forms of dishonesty is less serious dishonesty which obtains when: (*a*) the dishonest act caused damage and prejudice to the government which is not so serious as to qualify as serious dishonesty; (*b*) the respondent did not take advantage of his/her position in committing the dishonest act; and (*c*) other analogous circumstances.[49]

Both grave misconduct and serious dishonesty, of which Espina was charged, are classified as grave offenses for which the penalty of dismissal is meted even for first time offenders.[50]

Here, the CA correctly observed that while Espina may have failed to personally confirm the delivery of the procured items, the same does not constitute dishonesty of any form inasmuch as he did not personally prepare the IRFs but merely affixed his signature thereon after his subordinates supplied the details therein.

Neither can Espina's acts be considered misconduct, grave or simple. The records are bereft of any proof that Espina was motivated by a premeditated, obstinate or deliberate intent of violating the law, or disregarding any established rule, or that he wrongfully used his position to procure some benefit for himself or for another person, contrary to duty and the rights of others.

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[47] See CSC Resolution No. 060538, Section 3.

[48] See CSC Resolution No. 060538, Section 5.

[49] See CSC Resolution No. 060538, Section 4.

[50] See Section 46 (A) (1) and (3), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service (RRACCS).

However, after a circumspect review of the records, the Court finds Espina administratively liable, instead, for Gross Neglect of Duty, warranting his dismissal from government service.[51] At the outset, it should be pointed out that the designation of the offense or offenses with which a person is charged in an administrative case is not controlling, and one may be found guilty of another offense where the substance of the allegations and evidence presented sufficiently proves one's guilt,[52] as in this case. Notably, the FFIB-MOLEO's supplemental complaint accused Espina with failure to exercise due diligence in signing the IRFs, which is sufficient to hold him liable for Gross Neglect of Duty.[53]

Gross neglect of duty is defined as "[n]egligence characterized by 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 willfully 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."[54] In contrast, simple neglect of duty is 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."[55]

As aptly observed by the CA, Espina had the obligation to supervise his subordinates and see to it that they have performed their respective functions in accordance with law.[56] To recall, Espina was the Acting Chief and Head of the PNP's Management

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[51] See Section 46 (A) (2), Rule 10 of the RRACCS.

[52] *Pia v. Gervacio*, *Jr.*, 710 Phil. 196, 207 (2013), citing *Avenido v. CSC*, 576 Phil. 654, 661 (2008).

[53] See *rollo*, p. 148.

[54] See *Ombudsman v. Delos Reyes, Jr.*, 745 Phil. 366, 381 (2014).

[55] *Ombudsman v. De Leon*, 705 Phil. 26, 38 (2013), citing *Republic v. Canastillo*, 551 Phil. 987, 996 (2007).

[56] *Rollo*, p. 63.

Division and, as such, had **supervisory powers** over the departments or sections which comprise it, namely: (*a*) the Internal Control and Inspection Section (ICIS); (*b*) the Accountability and Assistance Section; (*c*) the Management Improvement Section; and (*d*) the Claims and Examination Section (CES).[57] Espina himself admitted that the property inspectors who were tasked to personally inspect deliveries to the PNP belong to the ICIS which was under his management and stewardship.[58] In *Lihaylihay v. People*,[59] the Court pointed out that the nature of the public officers' responsibilities and their role in the procurement process are compelling factors that should have led them to examine with greater detail the documents which they are made to approve.

Here, while SOP No. XX4 dated November 17, 1993 which Espina cited does not expressly require the Head of the Management Division to physically re-inspect, re-check, and verify the deliveries to the PNP as reported by the property inspectors under him, his duty was not simply to "note" or take cognizance of the existence of the IRFs, but to reasonably ensure that they were prepared in accordance with law, keeping in mind the basic requirement that the goods allegedly delivered to and services allegedly performed for the government have actually been delivered and performed. As aptly pointed out by the Ombudsman in its Joint Order dated July 8, 2013, "it was incumbent upon [Espina] to affix his signature only after checking the completeness and propriety of the documents."[60] However, while Espina claims that all the necessary supporting documents such as photographs and delivery receipts were attached to the IRFs at the time they were routed to him for his signature,[61] the Court is hard-pressed to find proof substantiating

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[57] *Id*. at 123.

[58] *Id*. at 84-85.

[59] 715 Phil. 722, 732 (2013).

[60] See records, Vol. 65, p. 07679; underscoring supplied.

[61] *Rollo*, pp. 532-533.

such claim to justify his passive attitude towards them. In this jurisdiction, it is axiomatic that he who alleges a fact has the burden of proving it.[62] Without evidence showing otherwise, the Court is constrained to conclude that the IRFs submitted to Espina for his signature were without supporting documents and could not, perforce, be taken at face value and relied upon. As this Court ruled in *Jaca v. People*,[63] a superior cannot rely in good faith on the act of a subordinate where the documents that would support the subordinate's action were not even in his (the superior's) possession for examination.

Moreover, the timing of the alleged repair and refurbishment works was suspect. The short seven (7)-day period in December, 2007 during which the repair and refurbishment works were made on the LAVs should have prompted Espina to doubt the veracity of the IRFs. As correctly observed by the Ombudsman, it is improbable that the repair and refurbishment works on the LAVs were carried out from December 20 to 27, 2007, given the magnitude of the work involved and the fact that such period included the delivery of the LAVs for repair, the inspection and approval of the materials to be used for the repairs, the actual repair and refurbishment, and the delivery of the LAVs to the PNP after the repair.[64]

The foregoing should not have escaped Espina's attention had he faithfully discharged the obligations attendant to his office. Indeed, the Court has pronounced that a public officer's high position imposes upon him greater responsibility and obliges him to be more circumspect in his actions and in the discharge of his official duties.[65] This particularly applies to the instant controversy, especially where Espina's signature was one of the final steps needed for the release of payment for the procured

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[62] *Luxuria Homes, Inc. v. CA*, 361 Phil. 989, 1000 (1999).

[63] 702 Phil. 210, 250 (2013).

[64] See Joint Resolution dated December 19, 2012; records, Vol. 65, pp. 07611-07612.

[65] *Amit v. COA*, *supra* note 42, at 24.

items.[66] In fact, the disbursement vouchers prepared by the Logistics Support Service (LSS) Finance Service were routed back to the CES of the Management Division under Espina's supervision for final examination of all claims.[67] With all these considerations, Espina was expected to employ diligence in ensuring that all claims were supported by complete pertinent documents. As succinctly put by the CA, Espina's duty as Acting Chief was not merely ministerial and perfunctory as it related to the disbursement of funds over which a great responsibility attached.[68]

More so, considering the sheer magnitude of the amount in taxpayers' money involved, *i.e.*, ₱409,740,000.00, Espina should have exercised utmost care before signing the IRFs. It is of no moment that the disbursement of the ₱409,740,000.00 was spread over several transactions and not through a single payment or that only the IRFs relating to the delivery of supplies were allegedly presented;[69] the fact remains that taxpayers' money was spent without the corresponding goods and services having been delivered to the government. Indeed, no rule is more settled than that a public office is a public trust and public officers and employees must, at all times, be accountable to the people.[70]

Espina cannot trivialize his role in the disbursement of funds and bank on the lack of confidential written reports from his subordinates which would have prompted him to make further inquiry. As aptly pointed out by petitioners, Espina was the last person to affix his signature and, as such, had the power, if not the duty, to unearth and expose anomalous or irregular transactions.[71] Espina cannot blindly adhere to the findings and

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[66] *Rollo*, pp. 84-85.

[67] See Joint Order dated July 8, 2013; records, Vol. 65, p. 07682.

[68] *Rollo*, p. 63.

[69] *Id*. at 95.

[70] See Section 1, Article XI of the 1987 Constitution.

[71] See *rollo*, p. 35.

opinions of his subordinates, lest he be reduced to a mere clerk who has no authority over his subordinates and the sections he oversees.

The Court is not unaware of the ruling in *Arias v. Sandiganbayan*[72] (*Arias*) that heads of offices may rely on their subordinates. For the *Arias* doctrine to apply, however, there must be no reason for the head of offices to go beyond the recommendations of their subordinates,[73] which is not the case here.

Given the amounts involved and the timing of the alleged deliveries, the circumstances reasonably impose on Espina a higher degree of care and vigilance in the discharge of his duties. Thus, he should have been prompted to make further inquiry as to the truth of his subordinates' reports. Had he made the proper inquiries, he would have discovered the non-delivery of the procured items and the non-performance of the procured services, and prevented the unlawful disbursement. However, he did not do this at all. Instead, he blindly relied on the report and recommendation of his subordinates and affixed his signature on the IRFs. Plainly, Espina acted negligently, unmindful of the high position he occupied and the responsibilities it carried, and without regard to his accountability for the hundreds of millions in taxpayers' money involved.

Verily, this Court has repeatedly emphasized the time-honored rule that a "[p]ublic office is a public trust [and] [p]ublic officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency, act with patriotism and justice and lead modest lives."[74] This high constitutional standard of conduct is not intended to be mere rhetoric and taken lightly as those in the public service are enjoined to fully comply with this standard or run the risk of facing administrative sanctions ranging from

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[72] 259 Phil. 794, 801 (1989).

[73] *Id.*; See also *Jaca v. People*, *supra* note 63, at 314.

[74] Section 1, Article XI of the 1987 Constitution

reprimand to the extreme penalty of dismissal from the service.[75] Erring public officials may also be held personally liable for disbursements made in violation of law or regulation, as stated in Section 52,[76] Chapter 9, Subtitle B, Title I, Book V of the Administrative Code of 1987.[77] Thus, public officers, as recipients of public trust, are under obligation to perform the duties of their offices honestly, faithfully, and to the best of their ability.[78] Unfortunately, Espina failed miserably in this respect.

WHEREFORE, the petition is **PARTLY GRANTED**. The Decision dated February 27, 2014 and the Resolution dated July 15, 2014 of the Court of Appeals in CA-G.R. SP No. 131114 are hereby **SET ASIDE**. A new one is **ENTERED** finding respondent Rainier A. Espina **GUILTY** of **GROSS NEGLECT OF DUTY**. Accordingly, he is **DISMISSED** from government service with all the accessory penalties.

SO ORDERED.

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

Caguioa, J., see separate concurring opinion.

SEPARATE CONCURRING OPINION

CAGUIOA, *J.*:

I concur with the *ponencia* in so far as it holds PS/Supt. Rainier A. Espina (Espina) liable for Gross Neglect of Duty under the Revised Rules on Administrative Cases in the Civil

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[75] *Amit v. COA*, *supra* note 42, at 25.

[76] SECTION 52. General Liability for Unlawful Expenditures.– Expenditures of government funds or uses of government property in violation of law or regulations shall be a personal liability of the official or employee found to be directly responsible therefor.

[77] Executive Order No. 292, series of 1987, entitled "INSTITUTING THE 'ADMINISTRATIVE CODE of 1987'" (approved on July 25, 1987).

[78] *Peñalosa v. Viscaya*, *Jr.*, 173 Phil. 487, 489 (1978).

Service (RRACCS). I submit this opinion to further emphasize the exceptional circumstances that render the doctrine espoused in *Arias v. Sandiganbayan*[1] *(Arias)* inapplicable to this case.

The facts are simple.

Respondent PS/Supt. Rainier Espina (Espina) served as Acting Chief of the Management Division of the Philippine National Police (PNP) Directorate for Comptrollership (Acting Chief) from September 28, 2007 to February 28, 2008.[2]

Several months after Espina's term expired, the Fact Finding Investigation Bureau (FFIB) of the Office of the Deputy Ombudsman for the Military and Other Law Enforcement Offices (MOLEO) filed before the Office of the Ombudsman (Ombudsman) an affidavit-complaint and a supplemental complaint charging Espina, several PNP officers and private individuals of: (i) violation of the Plunder Law; (ii) violation of the Anti-Graft and Corrupt Practices Act; (iii) Malversation of Public Funds through Falsification of Public Documents; (iv) violation of the Government Procurement Reform Act and its Implementing Rules and Regulations (IRR);[3] and (v) Grave Misconduct and Serious Dishonesty.[4] The charges stem from the transactional anomalies that attended the repair, refurbishment and procurement of tires relating to twenty-eight (28) units of V-150 Light Armored Vehicles (LAVs) owned by the PNP.[5]

Espina was impleaded in his capacity as Acting Chief, for signing Inspection Report Forms (IRFs) which falsely confirmed PNP's receipt of procured LAV parts and the completion of the contracted repair and refurbishment works, thereby facilitating the fraudulent disbursement of government funds in the amount of ₱409,740,000.00.[6]

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[1] 259 Phil. 794 (1989).

[2] *Rollo,* p. 53.

[3] *Id.*

[4] *Id.* at 57.

[5] Decision, p. 2.

[6] *Id.*

The Ombudsman initially found probable cause to indict Espina for violation of Section 3(e) of the Anti-Graft and Corrupt Practices Act,[7] Section 65 (b)(4) of the Government Procurement Reform Act[8] and Malversation of Public Funds through Falsification under Article 217 of the Revised Penal Code.[9]

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[7] Section 3(e) provides:

SEC. 3. *Corrupt practices of public officers.–* In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x x x x x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

[8] Section 65(b)(4) provides:

(b) Private individuals who commit any of the following acts, including any public officer, who conspires with them, shall suffer the penalty of imprisonment of not less than six (6) years and one (1) day but not more than fifteen (15) years:

x x x x x x x x x

(4) When a bidder, by himself or in connivance with others, employ schemes which tend to restrain the natural rivalry of the parties or operates to stifle or suppress competition and thus produce a result disadvantageous to the public.

In addition, the persons involved shall also suffer the penalty of temporary or perpetual disqualification from public office and be permanently disqualified from transacting business with the Government.

[9] Article 217 provides, in part:

Malversation of public funds or property; Presumption of malversation.— Any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same or shall take or misappropriate or shall consent, through abandonment or negligence, shall permit any other person to take such public funds, or property, wholly or partially, or shall otherwise be guilty of the misappropriation or malversation of such funds or property, shall suffer:

x x x x x x x x x

The Ombudsman likewise found Espina guilty of Grave Misconduct and Serious Dishonesty, warranting the penalty of dismissal from service.[10] Subsequently, the Ombudsman dropped the charges for violation of the Government Procurement Reform Act, but sustained all its prior findings.

In the CA Decision subject of the instant appeal by *certiorari*, the CA ruled that Espina could not be held liable for Grave Misconduct and Serious Dishonesty in the absence of proof of corrupt motives, intent to violate the law and flagrant disregard of established rules.[11] Consequently, the CA found Espina guilty only of Simple Misconduct, thus:

WHEREFORE, premises considered, the Petition is PARTIALLY GRANTED. The Joint Resolution dated 19 December 2012 issued by the Office of the Ombudsman, and its Joint Order dated 08 July 2013 are hereby MODIFIED, as follows:

(1) The portions in the assailed 19 December 2012 Joint Resolution and 08 July 2013 Joint Order finding Petitioner guilty of Grave Misconduct and Serious Dishonesty are REVERSED and SET ASIDE;

(2) The penalties of dismissal from government service with forfeiture of all benefits and perpetual disqualification to hold public office meted upon Petitioner are likewise SET ASIDE;

(3) Petitioner is found GUILTY only of Simple Misconduct and the penalty of SUSPENSION of THREE (3) MONTHS is hereby imposed on him, to be reckoned from the time of his actual dismissal from the service.

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4. The penalty of *reclusion temporal*, in its medium and maximum periods, if the amount involved is more than twelve thousand pesos but is less than twenty-two thousand pesos. If the amount exceeds the latter, the penalty shall be *reclusion temporal* in its maximum period to *reclusion perpetua*.

In all cases, persons guilty of malversation shall also suffer the penalty of perpetual special disqualification and a fine equal to the amount of the funds malversed or equal to the total value of the property embezzled x x x.

[10] Decision, p. 3.

[11] *Rollo,* pp. 60-64.

The period of time that Petitioner remained dismissed from service shall be credited in the implementation of the penalty of THREE (3) MONTHS [s]uspension herein imposed.

After service of the aforesaid suspension period, the Petitioner shall be REINSTATED to his former rank as Police Senior Superintendent (PS/Supt.) and the retirement benefits as well as Petitioner's right to hold public office shall be RESTORED.

SO ORDERED.[12]

On review before this Court, the *ponencia* set aside the findings of the RTC and CA, holding that the petitioners failed to sufficiently establish Espina's guilt for Serious Dishonesty and Misconduct, both grave and simple.[13] Instead, the *ponencia* finds that Espina's acts constitute Gross Neglect of Duty under Section 46(A)(1) and (3) of the RRACCS, meriting the penalty of dismissal from government service.[14]

While I concur with the *ponencia,* I wish to emphasize that the Court's ruling in this case should not be misconstrued as disregarding the inescapable realities of government service which the Court had taken judicial notice of in *Arias* — "dishonest or negligent subordinates, overwork, multiple assignments and positions." In *Arias,* the Court, recognizing the volume of documents department heads are required to routinely sign, held that such heads "have to rely, to a reasonable extent, on their subordinates and on the good faith of those who prepare bids, purchase supplies, or enter into negotiations." Therein, the Court proceeded to rule that a finding of conspiracy to defraud the government cannot be made to rest on the department head's signature alone, in the absence of some reason or irregularity which would impel further inquiry.

The *ponencia* holds that the *Arias* doctrine cannot be applied in this case due to the existence of reasons that should have

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[12] *Id*. at 65.

[13] Decision, pp. 5-7.

[14] *Id*. at 7.

impelled Espina to go beyond the findings and recommendations reflected on the face of the IRFs. I agree.

Standard Operating Procedure XX4 (SOP 24) prescribes the guidelines for inspection and acceptance of deliveries of supplies, police products, materials and equipment, as well as the repair, renovation and construction works rendered in favor of the PNP. It provides:

a. Pre-inspection or inspection before an equipment/machinery/vehicle is repaired is done in order that the Technical Property Inspector/Mngmt. Div., DC-Inspector will have a basis of (sic) determining whether a repair is really needed, the scope of work to be done could be established and missing/damaged/worn-out spare parts to be supplied/replaced be determined. Findings of the pre-repair inspection will guide him in the conduct of post-repair inspection.

b. Pre-repair inspection is [a] pre-requisite for preparation and approval of the corresponding contract.

c. The **pre-repair portion of the Request for Pre-Repair Inspection Form must be duly accomplished** by Property Officer of the Unit/Office concerned x x x **and shall be forwarded to the ODC**[15] (Attn: Mgmt. Div.)[.]

d. The corresponding property card should be made available for it is the only evidence/proof that the equipment/vehicle subject for repair is a (sic) government property.

e. The acquisition date will show if the equipment really warrants outside services. Manufacturers/suppliers usually give a guarantee period of one (1) year for their products. If the equipment is still within the warranty period, repair should then be made by manufacturer/supplier concerned.

f. The acquisition cost will serve as basis for determining the reasonableness of the cost of repair. More than sixty percent (60%) of the acquisition cost (converted to current rate) is already considered uneconomical.

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[15] Office of the Directorate for Comptrollership.

g. **The date and nature of the last repair will ensure that repair of the same nature or the same scope of work to be done is not repeated**.

h. The list of complaints and possible causes related thereto, including the scope of work to be done[,] are determined by the agency authorized technician and engineer.

i. The property inspectors (ODC & Technical Inspectors) shall then inspect and verify the correctness of the complaint and causes of malfunctioning including the scope and nature of work to be done to the unit in the presence of the Unit, technician/engineer and/or property officer.

j. All findings/recommendations of the Technical Inspector/ Mgmt. Div. ODC Inspector shall be reflected on the pre-[repair] inspection form and should be noted by Chief-Mgmt. Div, ODC.

k. x x x **the accomplished form, together with the approved Work/Job Order/Contract, supplier's invoice/billing account shall be attached to the request for post-repair inspection**.[16] (Emphasis supplied)

In this case, Espina does not deny that he did not conduct further inquiry before affixing his signature on the IRFs in question despite the suspiciously short 7-day period indicated therein within which the repair and refurbishment works on the LAVs were supposedly completed.[17] Espina merely claims that he was not bound to go beyond the findings and recommendations reflected on the IRFs, as he was merely required to "note" the same. A holistic reading of clauses (a) to (k) above, however, shows that in "noting" the findings and recommendations of the ODC inspectors, the Chief of the Management Division is bound to ascertain whether (i) the property subjected to repair constitutes government property, (ii) the conduct of repair was in fact necessary, and (iii) the cost expended for the work done is reasonable. Evidently, these matters can only be verified through a review of the IRFs and the supporting documents that must be appended thereto.

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[16] *Rollo*, pp. 125-129.

[17] *Id*. at 9.

Thus, Espina's liability for gross negligence arises from his reliance on the findings and recommendations of his property inspectors *despite* the glaring irregularities appearing on the face of the IRFs.

Notably, while Espina claims that no apparent irregularities were in fact ascertainable from the IRFs' supporting documents, he failed to submit these supporting documents in evidence, nor prove, by any other means, that these supporting documents were in fact appended to the IRFs at the time he affixed his signature thereon. These evidentiary lapses, whether inadvertent or otherwise, place Espina's compliance with SOP 24 in serious doubt. It bears stressing that his duty to ascertain the propriety of the repairs conducted on the LAVs and the reasonableness of the corresponding cost were positive ones spelled out in SOP 24. It was thus incumbent upon him to show proof that such duty was in fact complied with, particularly in this case, where the anomalies behind the transactions in question could have been easily uncovered, if only he complied with SOP 24.

For these reasons, the instant Petition is hereby denied.

SECOND DIVISION

[G.R. No. 223751. March 15, 2017]

MIGUEL "LUCKY" GUILLERMO and AV MANILA CREATIVE PRODUCTION CO., *petitioners, vs.* **PHILIPPINE INFORMATION AGENCY and DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; MOTION TO DISMISS; FAILURE TO STATE A CAUSE OF ACTION;

WHEN THE MOTION TO DISMISS IS BASED ON THIS GROUND, ONLY THE FACTS ALLEGED IN THE COMPLAINT SHOULD BE CONSIDERED, IN RELATION TO WHETHER ITS PRAYER MAY BE GRANTED.— [T]o determine the sufficiency of a cause of action in a motion to dismiss, only the facts alleged in the complaint should be considered, in relation to whether its prayer may be granted. x x x To sufficiently state a cause of action, the Complaint should have alleged facts showing that the trial court could grant its prayer based on the strength of its factual allegations. x x x To support the x x x prayer, the Complaint attempted to lay down the elements of a contract between the petitioners on one hand, and respondents on the other. Thus, it alleged a series of communications, meetings, and memoranda, all tending to show that petitioners agreed to complete and deliver the "Joyride" project, and that respondents agreed to pay ₱25,000,000.00 as consideration. Assuming that the Complaint's factual allegations are true, they are not sufficient to establish that the Regional Trial Court could grant its prayer. The Complaint attempts to establish a contract that involves expenditure of public funds. x x x [C]ontracts involving the expenditure of public funds have additional requisites to be valid. Sections 46, 47, and 48 of Book V, Title I, Subtitle B, Chapter 8 of the Administrative Code provides for essential requisites for the validity of contracts x x x. The Complaint, however, completely ignored the x x x requisites for the validity of contracts involving expenditure of public funds. Thus, the Regional Trial Court could not order the enforcement of the alleged contract on the basis of the Complaint, and the Complaint was properly dismissed for failure to state a cause of action.

2. **POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CODE; CONTRACTS INVOLVING EXPENDITURE OF PUBLIC FUNDS; REQUISITES; ANY CONTRACT ENTERED INTO WITHOUT COMPLYING WITH THE REQUIREMENTS IS VOID AND THE OFFICERS ENTERING INTO THE CONTRACT ARE LIABLE TO THE GOVERNMENT OR TO THE OTHER CONTRACTING PARTY FOR DAMAGES.—** In *Philippine National Railways v. Kanlaon Construction Enterprises Co., Inc.,* this Court has held that contracts that do not comply with the foregoing requirements are void: "Thus, the Administrative Code of 1987 expressly prohibits the entering into contracts

involving the expenditure of public funds unless two prior requirements are satisfied. First, there must be an appropriation law authorizing the expenditure required in the contract. Second, there must be attached to the contract a certification by the proper accounting official and auditor that funds have been appropriated by law and such funds are available. Failure to comply with any of these two requirements renders the contract void." x x x [A]s in *Philippine National Railways,* petitioners are not without recourse. Under the Administrative Code, officers who enter into contracts contrary to Sections 46 and 47 of Book V, Title I, Subtitle B, Chapter 8 of the Administrative Code are liable to the government or to the other contracting party for damages x x x. Thus, assuming petitioners are able to prove a contract was entered into, they may go after the officers who entered into said contract and hold them personally liable.

APPEARANCES OF COUNSEL

Padilla Asuncion Bote-Veguillas Matta Cariño Law Offices for petitioners.

Office of the Solicitor General for respondents.

D E C I S I O N

LEONEN, *J*.:

In determining the sufficiency of a cause of action for resolving a motion to dismiss, a court must determine, hypothetically admitting the factual allegations in a complaint, whether it can grant the prayer in the complaint.[1]

This resolves the Petition for Review on Certiorari[2] praying that respondents Philippine Information Agency and Department of Public Works and Highways be ordered to pay the money claims of petitioners Miguel "Lucky" Guillermo and AV Manila Creative Production, Co.

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[1] *Heirs of Maramag v. Maramag*, 606 Phil. 782 (2009) [Per *J*. Nachura, Third Division].

[2] *Rollo*, pp. 3-45.

On December 10, 2010, Miguel "Lucky" Guillermo (Guillermo) and AV Manila Creative Production, Co. (AV Manila) filed a Complaint[3] for a sum of money and damages before the Regional Trial Court of Marikina City, Branch 263.

Guillermo and AV Manila alleged that in the last few months of the Administration of Former President Gloria Macapagal-Arroyo (Arroyo Administration), then Acting Secretary of the Department of Public Works and Highways Victor Domingo (Acting Secretary Domingo), consulted and discussed with Guillermo and AV Manila the urgent need for an advocacy campaign (Campaign).[4] The purpose of the Campaign was to counteract the public's negative perception of the performance of the outgoing Arroyo Administration.[5] After meetings with Acting Secretary Domingo and some preliminary work, Guillermo and AV Manila formally submitted in a letter-proposal dated February 26, 2010 the concept of "Joyride," a documentary film showcasing milestones of the Arroyo Administration.[6] Acting Secretary Domingo signed a marginal note on the letter-proposal, which read, "OK, proceed!"[7] Guillermo and AV Manila allegedly worked on "Joyride" on a tight schedule and submitted the finished product on April 4, 2010.[8] "Joyride" was aired on NBN-Channel 4 on April 5, 2010.[9]

Guillermo and AV Manila further claimed that communications and meetings on the Campaign and "Joyride" ensued between them and various government agencies.[10] These covered instructions from government agencies, emphasis on the proprietary nature of "Joyride," and discussions on the terms

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[3] *Id*. at 64-85.

[4] *Id*. at 66, Complaint.

[5] *Id*. at 65.

[6] *Id*. at 67.

[7] *Id*.

[8] *Id*. at 68.

[9] *Id*. at 69.

[10] *Id*. at 69-71.

of reference, deliverables, and submissions.[11] Among the government agencies alleged by Guillermo and AV Manila to have been involved in the communications and meetings were: the National Economic and Development Authority and National Anti-Poverty Commission,[12] Former Cabinet Secretary Corazon K. Imperial,[13] Department of Public Works and Highways Senior Undersecretary Manuel M. Bonoan,[14] the Pro Performance System-Steering Committee (PPS-SC),[15] and respondent Philippine Information Agency.[16]

Petitioners alleged that under the foregoing exchanges, they, working with the Department of Public Works and Highways' production team, committed to the following deliverables: (a) reproduction and distribution of a revised, expanded, and more comprehensive "Joyride" documentary, for distribution to the Department of Foreign Affairs, the Department of Transportation and Communication, Philippine consulates and embassies, and for showing to various transport sectors, as well as to the audience of the Independence Day rites on June 12, 2010 at the Quirino Grandstand in Rizal Park;[17] (b) production and distribution of a "Joyride" coffee table book;[18] (c) production of "Joyride" comics;[19] (d) production of a "Joyride" infomercial entitled "Sa Totoo Lang!" in the form of a 45-second advertisement, which captured the essence of the full length film;[20] and (e) production of a "Joyride" infomercial entitled "Sa Totoo Lang-GFX", which was a representation of improved government services, presented

[11] *Id.* at 71.

[12] *Id.* at 69.

[13] *Id.*

[14] *Id.* at 70.

[15] *Id.* at 75.

[16] *Id.*

[17] *Id.* at 72.

[18] *Id.*

[19] *Id.*

[20] *Id.* at 73.

in a 45-second advertisement.[21] On April 20, 2010, petitioners submitted samples and storyboards of the foregoing to respondent Department of Public Works and Highways.[22] Petitioner also presented to respondent Department of Public Works and Highways the total consideration for the services to be rendered and for the deliverable items committed to be delivered:

a)	Production of Documentary Film "Joyride" including 5,000 copies of DVD Reproduction	₱5,500,000.00
b)	Production of 45secs Infomercials "Sa Totoo Lang" including Reproduction in Prints, Betacam Tapes and Film Rolls	₱4,500,000.00
c)	Creatives and Concept Design of "Joyride" Coffee Table Book and Comics	₱4,600,000.00
d)	Pre-Production Lay-out and Proofings	₱ 500,000.00
e)	Reproduction of Video	₱1,200,000.00
f)	Production of Coffee Table Book	₱7,500,000.00
g)	Production of Comics	₱1,000,000.00
h)	Freight and Handling	₱ 200,000.00
TOTAL		₱25,000,000.00[23]

Petitioners further alleged that Acting Secretary Domingo informed them that the total consideration of ₱25,000,000.00 for their services and deliverable items was acceptable and approved.[24] A Memorandum dated May 6, 2010[25] addressed to Former President Gloria Macapagal-Arroyo pertaining to the "Joyride" materials was issued by Acting Secretary Domingo.[26] It stated that petitioners were asked to produce the "Joyride"

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[21] *Id*.

[22] *Id*.

[23] *Id*. at 74.

[24] *Id*. at 75.

[25] *Id*. at 97.

[26] *Id*. at 98-100.

materials. A Memorandum of Agreement dated April 30, 2010[27] was entered into by the Road Board and respondent Philippine Information Agency. In the agreement, the Road Board was to provide ₱15,000,000.00 to be released to the Philippine Information Agency for the "Joyride" materials, and AV Manila was the preferred production agency.[28] Thereafter, Joan Marzan, Philippine Information Agency's representative to PPS-SC, and Executive Assistant of Philippine Information Agency Secretary Conrado Limcauco, advised that, in light of the foregoing agreement, a separate written contract was no longer necessary.[29] Thus, the Philippine Information Agency instructed Guillermo to send billings directly to the Philippine Information Agency.[30]

Petitioners averred to have delivered a total of 10,000 copies of the "Joyride" documentary to respondent Department of Public Works and Highways,[31] and billed respondent Philippine Information Agency the amount of ₱10,000,000.00. Thereafter, petitioners delivered 10,000 "Joyride" comics to the Department of Public Works and Highways, and subsequently billed the Philippine Information Agency ₱15,000,000.00.[32] No funds were released by the Philippine Information Agency.[33]

Petitioners alleged in the Complaint that because of lack of funds, petitioner Guillermo had to secure financial assistance to deliver the subsequent deliverable items to defendants.[34] Thus, on June 23, 25, and 28, 2010, petitioners delivered copies of the "Joyride" coffee table book with DVD inserts, and comics, to the Department of Public Works and Highways.[35]

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[27] *Id*. at 26.

[28] *Id*. at 77.

[29] *Id*. at 78.

[30] *Id*.

[31] *Id*.

[32] *Id*. at 79.

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

[34] *Id*. at 80.

[35] *Id*.

After all the deliverables had been delivered, petitioners followed up on the payment from the Philippine Information Agency. Despite several demands, no payments were made.[36]

Petitioners said that they made demands through letters dated August 19, September 20, and October 12, 2010, to various officials of the Philippine Information Agency, under the Administration of Former President Benigno Aquino III.[37] However, respondents refused and failed to pay the amount of ₱25,000,000.00.[38]

The Office of the Solicitor General moved to dismiss the Complaint for failure to state a cause of action and for failure to exhaust administrative remedies.[39]

In the Order[40] dated August 14, 2012, the Regional Trial Court of Marikina granted the Office of the Solicitor General's Motion to Dismiss, finding that, although a contract existed between petitioners and Acting Secretary Domingo, this contract was not binding on the government of the Philippines.[41] Because of absence of legal requirements for entering into a contract with the government, petitioners could not file a complaint for specific performance against the government.[42]

Petitioners moved for reconsideration,[43] which the Regional Trial Court of Marikina denied in the Order[44] dated February 7, 2013.

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[36] *Id*. at 81.

[37] *Id*.

[38] *Id*. at 82.

[39] *Id.* at 127-137.

[40] *Id*. at 188-191. The Order was issued by Presiding Judge Armando C. Velasco of Branch 263, Regional Trial Court, Marikina.

[41] *Id*. at 190, Regional Trial Court Order.

[42] *Id*.

[43] *Id*. at 192–204.

[44] *Id*. at 217.

Petitioners appealed to the Court of Appeals. In the Decision[45] dated December 18, 2015, the Court of Appeals affirmed the Regional Trial Court Order dismissing petitioners' Complaint. The Court of Appeals found that the Complaint sought to enforce a legal right based on a contract.[46] However, petitioners failed to prove the existence of a contract,[47] considering that the elements of a contract were absent.[48] The Court of Appeals also found the doctrine of *quantum meruit* inapplicable because of absence of any contract or legal right in favor of petitioners, and lack of evidence of public benefit derived from the "Joyride" project.[49] Thus, the Court of Appeals held:

> Having resolved that the Complaint failed to state a cause of action, we deem it unnecessary to address the other issue presented by plaintiffs-appellants pertaining to non-exhaustion of administrative remedies.
>
> We **DISMISS** this appeal, and **AFFIRM** the Order dated 14 August 2012 issued by the Regional Trial Court, Branch 263, Marikina City.
>
> **IT IS SO ORDERED**.[50]

The Court of Appeals denied petitioners' Motion for Reconsideration in the Resolution[51] dated February 29, 2016.

Thus, on April 20, 2016, petitioners filed this Petition.[52]

Petitioners argue that the Court of Appeals erred when it found that petitioners had failed to prove the existence of a contract,

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[45] *Id*. at 47-60. The Decision was penned by Associate Justice Nina G. Antonio-Valenzuela and concurred in by Associate Justices Fernanda Lampas Peralta and Jane Aurora C. Lantion of the Sixth Division, Court of Appeals, Manila.

[46] *Id*. at 56, Court of Appeals Decision.

[47] *Id*.

[48] *Id*. at 56-58.

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

[50] *Id*. at 59.

[51] *Id*. at 62-63.

[52] *Id*. at 3-45.

and dismissed their appeal on that ground.[53] Proof of the existence of a contract is evidentiary in nature.[54] Moreover, in instances where there is no written contract, a perfected contract may be found to exist by examining prior, subsequent, and contemporaneous actions of the parties.[55] In this case, existence of a contract was shown by petitioners' submission of "Joyride" materials, and the various meetings and memoranda issued by respondents.[56] These official memoranda showed that the "Joyride" project was approved, adopted, and pushed by the Office of the President.[57]

Petitioners also insist that the Court of Appeals should have found respondents liable for damages under the principle of *quantum meruit*.[58] Petitioners point out that this Court has directed the government to pay a project contractor despite the absence of public bidding, and, in case of failure to meet certain technicalities, on the basis of *quantum meruit*.[59] Petitioners claim that the principle of *quantum meruit* does not only apply to tangible things[60] and that there were countless intangible benefits reaped by the public from the "Joyride" project.[61] It informed people about public concerns,[62] gave them hope, and encouraged tourism and employment through information dissemination.[63]

Respondents assert that petitioners have failed to exhaust administrative remedies.[64] Under Section 26 of Presidential

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[53] *Id*. at 24, Petition.

[54] *Id*.

[55] *Id*.

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

[57] *Id*. at 26.

[58] *Id*. at 27.

[59] *Id*. at 28-36.

[60] *Id*. at 36.

[61] *Id*. at 37.

[62] *Id*.

[63] *Id*. at 38.

[64] *Id*. at 356-360, Comment.

Decree No. 1445,[65] all claims from or owing to the government or any of its subdivisions, agencies, or instrumentalities should be filed before the Commission on Audit.[66]

Respondents also argue that the Complaint was properly dismissed for failure to state a cause of action.[67] The Complaint prayed for disbursement of public funds and was a suit against the State.[68] However, the State was immune from suit, and thus, petitioners had no cause of action against respondents.[69] Further, respondents noted that petitioners claimed "a separate contract between [them] and respondent Public (sic) Information Agency (PIA) is no longer necessary as they were instructed by respondent PIA to just send and direct the billings to them".[70] Consequently, there was no contract on which to base petitioners' cause of action, and the Complaint

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[65] Ordaining and Instituting a Government Auditing Code of the Philippines (1978).

[66] *Rollo*, pp. 356-360.

See Pres. Decree No. 1445 (1978), Sec. 26, which provides:

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 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 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.

[67] *Id*. at 360.

[68] *Id*.

[69] *Id*.

[70] *Id*. at 366.

was properly dismissed.[71] Additionally, the absence of public bidding for the "Joyride" project renders it null and void *ab initio*.[72] Sections 46, 47, and 48 of Book V, Title I, Subtitle B, Chapter 8 of the Administrative Code requires appropriation before entering into a contract, as well as a certificate showing said appropriation.[73] Contracts entered into without these requirements are void.[74] Finally, the principle of *quantum meruit* is not applicable here because there is no showing that the public reaped benefits from petitioners' alleged media services.[75]

The primordial issue is whether the Complaint was properly dismissed for failure to state a cause of action.

In *Zuñiga-Santos v. Santos-Gran*:[76]

> A complaint states a cause of action if it sufficiently avers the existence of the three (3) essential elements of a cause of action, namely: *(a)* a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; *(b)* an obligation on the part of the named defendant to respect or not to violate such right; and *(c)* an act or omission on the part of the named defendant violative of the right of the plaintiff or constituting a breach of the obligation of defendant to the plaintiff for which the latter may maintain an action for recovery of damages. If the allegations of the complaint do not state the concurrence of these elements, the complaint becomes vulnerable to a motion to dismiss on the ground of failure to state a cause of action.
>
> It is well to point out that the plaintiff's cause of action should not merely be "stated" but, importantly, the statement thereof should be "sufficient." This is why the elementary test in a motion to dismiss on such ground is whether or not the complaint alleges facts which if true would justify the relief demanded. As a corollary, it has been

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[71] *Id*.

[72] *Id*.

[73] *Id*. at 367.

[74] *Id*. at 368.

[75] *Id*. at 371.

[76] G.R. No. 197380, October 8, 2014, 738 SCRA 33 [Per *J*. Perlas-Bernabe, First Division].

held that only ultimate facts and not legal conclusions or evidentiary facts are considered for purposes of applying the test. This is consistent with Section 1, Rule 8 of the Rules of Court which states that the complaint need only allege the ultimate facts or the essential facts constituting the plaintiff's cause of action. A fact is essential if they cannot be stricken out without leaving the statement of the cause of action inadequate. Since the inquiry is into the sufficiency, not the veracity, of the material allegations, it follows that the analysis should be confined to the four corners of the complaint, and no other.[77]

Thus, to determine the sufficiency of a cause of action in a motion to dismiss, only the facts alleged in the complaint should be considered, in relation to whether its prayer may be granted. In *Heirs of Maramag v. Maramag*:[78]

When a motion to dismiss is premised on this ground, the ruling thereon should be based only on the facts alleged in the complaint. The court must resolve the issue on the strength of such allegations, assuming them to be true. The test of sufficiency of a cause of action rests on whether, hypothetically admitting the facts alleged in the complaint to be true, the court can render a valid judgment upon the same, in accordance with the prayer in the complaint. This is the general rule.[79]

To sufficiently state a cause of action, the Complaint should have alleged facts showing that the trial court could grant its prayer based on the strength of its factual allegations.

The Complaint in this case prayed:

WHEREFORE, premises considered, it is respectfully prayed of this Honorable Court that, after proper proceedings, judgment be rendered ordering the defendants to jointly and severally:

1. Pay the plaintiffs the amount of PESOS: TWENTY-FIVE MILLION (Php25,000,000.00) to cover plaintiffs' services and the delivered items which were received and used by the defendants as above-mentioned;

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[77] *Id*. at 41-43.

[78] 606 Phil. 782 (2009) [Per *J*. Nachura, Third Division].

[79] *Id*. at 792.

2. Pay the plaintiff Guillermo an amount of not less than PESOS: ONE HUNDRED THOUSAND (₱100,000.00) as and by way of moral damages;

3. Pay the plaintiffs an amount of not less than PESOS: ONE HUNDRED THOUSAND (₱100,000.00) as and by way of exemplary or corrective damages;

4. Pay the plaintiffs an amount of not less than PESOS: ONE HUNDRED THOUSAND (₱100,000.00) as and by way of attorney's fees and litigation expenses; and

5. Pay the cost of the suit.[80]

To support the foregoing prayer, the Complaint attempted to lay down the elements of a contract between the petitioners on one hand, and respondents on the other. Thus, it alleged a series of communications, meetings, and memoranda, all tending to show that petitioners agreed to complete and deliver the "Joyride" project, and that respondents agreed to pay ₱25,000,000.00 as consideration.[81]

Assuming that the Complaint's factual allegations are true, they are not sufficient to establish that the Regional Trial Court could grant its prayer.

The Complaint attempts to establish a contract that involves expenditure of public funds. As pointed out by respondents, contracts involving the expenditure of public funds have additional requisites to be valid. Sections 46, 47, and 48 of Book V, Title I, Subtitle B, Chapter 8 of the Administrative Code provides for essential requisites for the validity of contracts:

SECTION 46. *Appropriation Before Entering into Contract.* — (1) No contract involving the expenditure of public funds shall be entered into unless there is an appropriation therefor, the unexpended balance of which, free of other obligations, is sufficient to cover the proposed expenditure; and

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[80] *Rollo,* p. 83, Complaint.

[81] *Id.* at 69-75.

(2) Notwithstanding this provision, contracts for the procurement of supplies and materials to be carried in stock may be entered into under regulations of the Commission provided that when issued, the supplies and materials shall be charged to the proper appropriations account.

SECTION 47. *Certificate Showing Appropriation to Meet Contract.* — Except in the case of a contract for personal service, for supplies for current consumption or to be carried in stock not exceeding the estimated consumption for three (3) months, or banking transactions of government-owned or controlled banks, no contract involving the expenditure of public funds by any government agency shall be entered into or authorized unless the proper accounting official of the agency concerned shall have certified to the officer entering into the obligation that funds have been duly appropriated for the purpose and that the amount necessary to cover the proposed contract for the current calendar year is available for expenditure on account thereof, subject to verification by the auditor concerned. The certificate signed by the proper accounting official and the auditor who verified it, shall be attached to and become an integral part of the proposed contract, and the sum so certified shall not thereafter be available for expenditure for any other purpose until the obligation of the government agency concerned under the contract is fully extinguished.

SECTION 48. *Void Contract and Liability of Officer.* — Any contract entered into contrary to the requirements of the two (2) immediately preceding sections shall be void, and the officer or officers entering into the contract shall be liable to the Government or other contracting party for any consequent damage to the same extent as if the transaction had been wholly between private parties.

In *Philippine National Railways v. Kanlaon Construction Enterprises Co., Inc.*,[82] this Court has held that contracts that do not comply with the foregoing requirements are void:

Thus, the Administrative Code of 1987 expressly prohibits the entering into contracts involving the expenditure of public funds unless two prior requirements are satisfied. First, there must be an appropriation law authorizing the expenditure required in the contract. Second, there must be attached to the contract a certification by the proper accounting official and auditor that funds have been

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[82] 662 Phil. 771 (2011) [Per *J.* Carpio, Second Division].

appropriated by law and such funds are available. Failure to comply with any of these two requirements renders the contract void.

In several cases, the Court had the occasion to apply these provisions of the Administrative Code of 1987 and the Government Auditing Code of the Philippines. In these cases, the Court clearly ruled that the two requirements—the existence of appropriation and the attachment of the certification—are "conditions *sine qua non* for the execution of government contracts."

In *COMELEC v. Quijano-Padilla*, we stated:

> It is quite evident from the tenor of the language of the law that the existence of appropriations and the availability of funds are indispensable pre-requisites to or conditions *sine qua non* for the execution of government contracts. The obvious intent is to impose such conditions as a *priori* requisites to the validity of the proposed contract.

The law expressly declares void a contract that fails to comply with the two requirements, namely, an appropriation law funding the contract and a certification of appropriation and fund availability. The clear purpose of these requirements is to insure that government contracts are never signed unless supported by the corresponding appropriation law and fund availability.

The three contracts between PNR and Kanlaon do not comply with the requirement of a certification of appropriation and fund availability. Even if a certification of appropriation is not applicable to PNR if the funds used are internally generated, still a certificate of fund availability is required. Thus, the three contracts between PNR and Kanlaon are void for violation of Sections 46, 47, and 48, Chapter 8, Subtitle B, Title I, Book V of the Administrative Code of 1987, as well as Sections 85, 86, and 87 of the Government Auditing Code of the Philippines.

However, Kanlaon is not left without recourse. The law itself affords it the remedy. Section 48 of the Administrative Code of 1987 provides that "the officer or officers entering into the contract shall be liable to the Government or other contracting party for any consequent damage to the same extent as if the transaction had been wholly between private parties." Kanlaon could go after the officers who signed the contract and hold them personally liable.[83] (Citations omitted)

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[83] *Id*. at 779-781 [Per *J.* Carpio, Second Division].

The Complaint, however, completely ignored the foregoing requisites for the validity of contracts involving expenditure of public funds. Thus, the Regional Trial Court could not order the enforcement of the alleged contract on the basis of the Complaint, and the Complaint was properly dismissed for failure to state a cause of action.

Finally, petitioners' invocation of the principle of *quantum meruit* could not save the Complaint from dismissal. A careful reading reveals that the Complaint does not mention the principle of *quantum meruit*, or any facts showing that the public has derived any benefit from the "Joyride" project. Even assuming that basis exists to reimburse petitioners under the principle of *quantum meruit*, no factual basis for its application was laid down in the Complaint. Its belated invocation does not retroactively make the Complaint sufficient.

However, as in *Philippine National Railways*, petitioners are not without recourse.

Under the Administrative Code, officers who enter into contracts contrary to Sections 46 and 47 of Book V, Title I, Subtitle B, Chapter 8 of the Administrative Code are liable to the government or to the other contracting party for damages:

> SECTION 48. *Void Contract and Liability of Officer.* — Any contract entered into contrary to the requirements of the two (2) immediately preceding sections shall be void, and the officer or officers entering into the contract shall be liable to the Government or other contracting party for any consequent damage to the same extent as if the transaction had been wholly between private parties.

Thus, assuming petitioners are able to prove a contract was entered into, they may go after the officers who entered into said contract and hold them personally liable.

WHEREFORE, the Petition is **DENIED**.

SO ORDERED.

Carpio (Chairperson), Mendoza, Reyes,[*] and *Martires, JJ.*, concur.

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[*] Designated as additional member per Raffle dated February 15, 2017.

FIRST DIVISION

[G.R. No. 224834. March 15, 2017]

JONATHAN Y. DEE, *petitioner, vs.* **HARVEST ALL INVESTMENT LIMITED, VICTORY FUND LIMITED, BONDEAST PRIVATE LIMITED, and ALBERT HONG HIN KAY, as Minority Shareholders of ALLIANCE SELECT FOODS INTERNATIONAL, INC., and HEDY S.C. YAP-CHUA, as Director and Shareholder of ALLIANCE SELECT FOODS INTERNATIONAL, INC.**, *respondents.*

[G.R. No. 224871. March 15, 2017]

HARVEST ALL INVESTMENT LIMITED, VICTORY FUND LIMITED, BONDEAST PRIVATE LIMITED, ALBERT HONG HIN KAY, as Minority Shareholders of Alliance Select Foods International, Inc., and HEDY S.C. YAP-CHUA, as a Director and Shareholder of Alliance Select Foods International, Inc., *petitioners, vs.* **ALLIANCE SELECT FOODS INTERNATIONAL, INC., GEORGE E. SYCIP, JONATHAN Y. DEE, RAYMUND K.H. SEE, MARY GRACE T. VERA-CRUZ, ANTONIO C. PACIS, ERWIN M. ELECHICON, and BARBARA ANNE C. MIGALLOS**, *respondents.*

SYLLABUS

1. **CIVIL LAW; CIVIL CODE; EFFECT AND APPLICATION OF LAWS; *STARE DECISIS*; AN OPINION DELIVERED BY A COURT IN RELATION TO A HYPOTHETICAL SCENARIO WHICH IS DIFFERENT FROM THE ACTUAL CASE BEFORE IT CANNOT BE A CONTROLLING JURISPRUDENCE TO BIND THE COURTS WHEN IT ADJUDICATES SIMILAR CASES UPON THE PRINCIPLE OF *STARE DECISIS*; CASE AT BAR.—** [T]he Court notes that in ruling that the correct filing fees for Harvest All, *et al.*'s complaint should be based on the ₱1 Billion value of the SRO — and, thus, essentially holding that such complaint was

capable of pecuniary estimation — both the RTC and the CA heavily relied on the Court's pronouncement in *Lu*. In *Lu*, the Court mentioned that in view of A.M. No. 04-2-04-SC dated July 20, 2004 which introduced Section 21 (k) to Rule 141 of the Rules of Court, it seemed that "an intra-corporate controversy always involves a property in litigation" and that "there can be no case of intra-corporate controversy where the value of the subject matter cannot be estimated." However, after a careful reading of *Lu*, it appears x x x that the foregoing statements were in the nature of an *obiter dictum.* To recount, in *Lu*, the Court ruled, *inter alia*, that the case involving an intra-corporate controversy instituted therein, *i.e*., declaration of nullity of share issuance, is incapable of pecuniary estimation and, thus, the correct docket fees were paid. Despite such pronouncement, the Court still went on to say that had the complaint therein been filed during the effectivity of A.M. No. 04-2-04-SC, then it would have ruled otherwise because the amendments brought about by the same "seem to imply that there can be no case of intra-corporate controversy where the value of the subject matter cannot be estimated" x x x. [T]he passages in *Lu* that "an intra-corporate controversy always involves a property in litigation" and that "there can be no case of intra-corporate controversy where the value of the subject matter cannot be estimated" are clearly non-determinative of the antecedents involved in that case and, hence, cannot be controlling jurisprudence to bind our courts when it adjudicates similar cases upon the principle of *stare decisis*. As it is evident, these passages in *Lu* only constitute an opinion delivered by the Court as a "by the way" in relation to a hypothetical scenario (*i.e*., if the complaint was filed during the effectivity of A.M. No. 04-2-04-SC, which it was not) different from the actual case before it. x x x [T]herefore, the courts *a quo* erred in applying the case of *Lu*.

2. **MERCANTILE LAW; CORPORATION LAW; CORPORATION CODE; INTRA-CORPORATE CONTROVERSY; MAY BE CLASSIFIED AS AN ACTION WHOSE SUBJECT MATTER IS INCAPABLE OF PECUNIARY ESTIMATION IF THE COMPLAINT'S MAIN PURPOSE DOES NOT INVOLVE THE RECOVERY OF SUM OF MONEY; CASE AT BAR.—** This case is a precise illustration as to how an intra-corporate controversy may be classified as an action whose subject matter is **incapable**

of pecuniary estimation. A cursory perusal of Harvest All, *et al*.'s Complaint and Amended Complaint reveals that **<u>its main purpose is to have Alliance hold its 2015 ASM on the date set in the corporation's by- laws,</u>** or at the time when Alliance's SRO has yet to fully materialize, so that their voting interest with the corporation would somehow be preserved. Thus, Harvest All, *et al.* sought for the nullity of the Alliance Board Resolution passed on May 29, 2015 which indefinitely postponed the corporation's 2015 ASM pending completion of subscription to the SRO. Certainly, Harvest All, *et al*.'s prayer for nullity, as well as the concomitant relief of holding the 2015 ASM as scheduled in the by-laws, do **not** involve the recovery of sum of money. The mere mention of Alliance's impending SRO valued at ₱1 Billion cannot transform the nature of Harvest All, *et al.*'s action to one capable of pecuniary estimation, considering that: (*a*) Harvest All, *et al*. do not claim ownership of, or much less entitlement to, the shares subject of the SRO; and (*b*) such mention was merely narrative or descriptive in order to emphasize the severe dilution that their voting interest as minority shareholders would suffer if the 2015 ASM were to be held after the SRO was completed. If, in the end, a sum of money or anything capable of pecuniary estimation would be recovered by virtue of Harvest All, *et al.*'s complaint, then it would simply be the consequence of their principal action. Clearly therefore, Harvest All, *et al.*'s action was one incapable of pecuniary estimation.

3. **REMEDIAL LAW; LEGAL FEES; THE AMENDMENTS THERETO IN VARIOUS COMMERCIAL CASES, INCLUDING THOSE INVOLVING INTRA-CORPORATE CONTROVERSIES INDICATE THAT THE SUBJECT MATTER OF AN INTRA-CORPORATE CONTROVERSY MAY OR MAY NOT BE CAPABLE OF PECUNIARY ESTIMATION.—** [T]he Court passed A.M. No. 04-02-04-SC dated October 5, 2016, which introduced amendments to the schedule of legal fees to be collected in various commercial cases, including those involving intra-corporate controversies. x x x [T]he **deletion of Section 21 (k) of Rule 141** <u>and</u> in lieu thereof**, the application of Section 7 (a) [fees for actions where the value of the subject matter can be determined/ estimated], 7 (b) (1) [fees for actions where the value of the subject matter cannot be estimated], or 7 (b) (3) [fees for all other actions not involving property] of the same**

Rule to cases involving intra-corporate controversies for the determination of the correct filing fees, as the case may be, serves a dual purpose: on the one hand, the amendments concretize the Court's recognition that the subject matter of an intra-corporate controversy may or may not be capable of pecuniary estimation; and on the other hand, they were also made to correct the anomaly created by A.M. No. 04-2-04-SC dated July 20, 2004 (as advanced by the Lu *obiter dictum*) implying that all intra-corporate cases involved a subject matter which is deemed capable of pecuniary estimation.

4. **ID.; PROCEDURAL RULES; MAY BE GIVEN RETROACTIVE EFFECT.—** While the Court is not unaware that the amendments brought by A.M. No. 04-02-04-SC dated October 5, 2016 only came after the filing of the complaint subject of this case, such amendments may nevertheless be given retroactive effect so as to make them applicable to the resolution of the instant consolidated petitions as they merely pertained to a procedural rule, *i.e.*, Rule 141, and not substantive law. In Tan, *Jr. v. CA,* the Court thoroughly explained the retroactive effectivity of procedural rules x x x.

APPEARANCES OF COUNSEL

Villaraza & Angangco for Jonathan Dee.

Romulo Mabanta Buenaventura Sayoc & Delos Angeles for Harvest All Investment Limited, Victory Fund Limited*, et al.*

Angara Abello Concepcion Regala & Cruz Law Offices for Alliance Select Foods.

Sycip Salazar Hernandez & Gatmaitan for George E. Sycip.

Picazo Buyco Tan Fider & Santos Law Offices for Raymund K.H. See.

Rodrigo Berenguer & Guno for Vera-Cruz & Pacis.

Kapunan Garcia & Castillo for Erwin Elechicon.

Migallos & Luna for Barbara Anne Migallos.

DECISION

PERLAS-BERNABE, *J.*:

Assailed in these consolidated petitions[1] for review on *certiorari* are the Decision[2] dated February 15, 2016 and the Resolution[3] dated May 25, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 142213, which reversed the Resolution[4] dated August 24, 2015 of the Regional Trial Court of Pasig City, Branch 159 (RTC) in COMM'L. CASE NO. 15-234 and, accordingly, reinstated the case and remanded the same to the court *a quo* for further proceedings after payment of the proper legal fees.

The Facts

Harvest All Investment Limited, Victory Fund Limited, Bondeast Private Limited, Albert Hong Hin Kay, and Hedy S.C. Yap Chua (Harvest All, *et al.*) are, in their own capacities, minority stockholders of Alliance Select Foods International, Inc. (Alliance), with Hedy S.C. Yap Chua acting as a member of Alliance's Board of Directors.[5] As per Alliance's by-laws, its Annual Stockholders' Meeting (ASM) is held every June 15.[6] However, in a Special Board of Directors Meeting held at three (3) o'clock in the afternoon of May 29, 2015, the Board of Directors, over Hedy S.C. Yap Chua's objections, passed a Board Resolution indefinitely postponing Alliance's 2015 ASM pending complete subscription to its Stock Rights Offering (SRO)

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[1] *Rollo* (G.R. No. 224834), Vol. I, pp. 45-108; *rollo* (G.R. No. 224871), Vol. I, pp. 14-44.

[2] *Rollo* (G.R. No. 224834), Vol. I, pp. 12-22. Penned by Associate Justice Mario V. Lopez with Associate Justices Rosmari D. Carandang and Myra V. Garcia-Fernandez concurring.

[3] *Id*. at 24-28.

[4] *Id*. at 311-318. Penned by Presiding Judge Elma M. Rafallo-Lingan.

[5] See *rollo* (G.R. No. 224871), Vol. I, pp. 14 and 19.

[6] See *id*. at 121.

consisting of shares with total value of ₱1 Billion which was earlier approved in a Board Resolution passed on February 17, 2015. As per Alliance's Disclosure dated May 29, 2015 filed before the Philippine Stock Exchange, such postponement was made "to give the stockholders of [Alliance] better representation in the annual meeting, after taking into consideration their subscription to the [SRO] of [Alliance]."[7] This prompted Harvest All, *et al*. to file the instant Complaint (with Application for the Issuance of a Writ of Preliminary Mandatory Injunction and Temporary Restraining Order/Writ of Preliminary Injunction)[8] involving an intra-corporate controversy against Alliance, and its other Board members, namely, George E. Sycip, Jonathan Y. Dee, Raymund K.H. See, Mary Grace T. Vera-Cruz, Antonio C. Pacis, Erwin M. Elechicon, and Barbara Anne C. Migallos (Alliance Board). In said complaint, Harvest All, *et al*. principally claimed that the subscription to the new shares through the SRO cannot be made a condition precedent to the exercise by the current stockholders of their right to vote in the 2015 ASM; otherwise, they will be deprived of their full voting rights proportionate to their existing shareholdings.[9] Thus, Harvest All, *et al*., prayed for, *inter alia*, the declaration of nullity of the Board Resolution dated May 29, 2015 indefinitely postponing the 2015 ASM, as well as the Board Resolution dated February 17, 2015 approving the SRO.[10] The Clerk of Court of the RTC assessed Harvest All, *et al*. with filing fees amounting to ₱8,860.00 which they paid accordingly.[11] Later on, Harvest All, *et al*. filed an Amended Complaint:[12] (*a*) deleting its prayer to declare null and void the Board Resolution dated February 17, 2015 approving the SRO; and (*b*) instead, prayed that the Alliance

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[7] See *id*. at 19-20. See also *rollo* (G.R. No. 224834), Vol. I, p. 13.

[8] Dated July 31, 2015. *Rollo* (G.R. No. 224871), Vol. I, pp. 544-577.

[9] See *id*. at 558-568.

[10] See *id*. at 575.

[11] See *rollo* (G.R. No. 224834), Vol. I, p. 14.

[12] See Amended Complaint; *rollo* (G.R. No. 224871), Vol. I, pp. 107-144.

Board be enjoined from implementing and carrying out the SRO prior to and as a condition for the holding of the 2015 ASM.[13]

For its part, the Alliance Board raised the issue of lack of jurisdiction on the ground of Harvest All, *et al*.'s failure to pay the correct filing fees. It argued that the latter should have paid ₱20 Million, more or less, in filing fees based on the SRO which was valued at ₱1 Billion. However, Harvest All, *et al*. did not mention such capital infusion in their prayers and, as such, were only made to pay the measly sum of ₱8,860.00. On the other hand, Harvest All, *et al*. maintained that they paid the correct filing fees, considering that the subject of their complaint is the holding of the 2015 ASM and not a claim on the aforesaid value of the SRO. Harvest All, *et al*. likewise pointed out that they simply relied on the assessment of the Clerk of Court and had no intention to defraud the government.[14]

The RTC Ruling

In a Resolution[15] dated August 24, 2015, the RTC dismissed the instant complaint for lack of jurisdiction due to Harvest All, *et al*.'s failure to pay the correct filing fees.[16] Citing Rule 141 of the Rules of Court, as amended by A.M. No. 04-2-04-SC,[17] and the Court's pronouncement in *Lu v. Lu Ym, Sr.* (*Lu*),[18] the RTC found that the basis for the computation of filing fees should have been the ₱1 Billion value of the SRO, it being the property in litigation. As such, Harvest All, *et al*. should have paid filing fees in the amount of more or less ₱20 Million and not just ₱8,860.00. In this regard, the RTC also found that Harvest All, *et al*.'s payment of incorrect filing fees was done in bad

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[13] See *id*. at 137-138.

[14] See *rollo* (G.R. No. 224834), Vol. I, pp. 13-14.

[15] *Id*. at 311-318.

[16] See *id*. at 316-317.

[17] Entitled "Re: Proposed Revision of Rule 141, Revised Rules of Court, Legal Fees" (August 16, 2004).

[18] 658 Phil. 156 (2011).

faith and with clear intent to defraud the government, considering that: (*a*) when the issue on correct filing fees was first raised during the hearing on the application for TRO, Harvest All, *et al*. never manifested their willingness to abide by the Rules by paying additional filing fees when so required; (*b*) despite Harvest All, *et al.*'s admission in their complaint that the SRO was valued at ₱1 Billion, they chose to keep mum on the meager assessment made by the Clerk of Court; and (*c*) while Harvest All, *et al*. made mention of the SRO in the body of their complaint, they failed to indicate the same in their prayer, thus, preventing the Clerk of Court from making the correct assessment of filing fees.[19]

Aggrieved, Harvest All, *et al*. appealed[20] to the CA.

The CA Ruling

In a Decision[21] dated February 15, 2016, the CA reversed the RTC's order of dismissal and, accordingly, reinstated the case and remanded the same to the court *a quo* for further proceedings after payment of the proper legal fees.[22] Also citing Rule 141 of the Rules of Court, as amended by A.M. No. 04-2-04-SC, and *Lu*, the CA held that the prevailing rule is that all intra-corporate controversies always involve a property in litigation. Consequently, it agreed with the RTC's finding that the basis for the computation of filing fees should have been the ₱1 Billion value of the SRO and, thus, Harvest All, *et al*. should have paid filing fees in the amount of more or less ₱20 Million and not just ₱8,860.00.[23] However, in the absence of contrary evidence, the CA held that Harvest All, *et al*. were not in bad faith and had no intention of defrauding the government,

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[19] See *rollo* (G.R. No. 224834), Vol. I, pp. 312-316.

[20] See Petition for Review (with Prayer for the Issuance of a Temporary Restraining Order and/or Preliminary Injunction) dated September 8, 2015; *id*. at 331-377.

[21] *Id*. at 12-22.

[22] See *id*. at 21.

[23] See *id*. at 15-18.

as they merely relied in the assessment of the Clerk of Court. Thus, in the interest of substantial justice, the CA ordered the reinstatement of Harvest All, *et al.*'s complaint and the remand of the same to the RTC for further proceedings, provided that they pay the correct filing fees.[24]

The parties moved for reconsideration,[25] which were, however, denied in a Resolution[26] dated May 25, 2016. Hence, these consolidated petitions.

The Issues Before the Court

The primordial issues raised for the Court's resolution are: (*a*) whether or not Harvest All, *et al*. paid insufficient filing fees for their complaint, as the same should have been based on the ₱1 Billion value of the SRO; and (*b*) if Harvest All, *et al*. indeed paid insufficient filing fees, whether or not such act was made in good faith and without any intent to defraud the government.

The Court's Ruling

The petition in **G.R. No. 224834** is denied, while the petition in **G.R. No. 224871** is partly granted.

I.

At the outset, the Court notes that in ruling that the correct filing fees for Harvest All, *et al*.'s complaint should be based on the ₱1 Billion value of the SRO — and, thus, essentially holding that such complaint was capable of pecuniary estimation — both the RTC and the CA heavily relied on the Court's pronouncement in *Lu*. In *Lu*, the Court mentioned that in view of A.M. No. 04-2-04-SC dated July 20, 2004 which introduced Section 21 (k)[27]

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[24] See *id*. at 19-21.

[25] See *id*. at 24.

[26] *Id*. at 24-28.

[27] Section 21(k), Rule 141 of the Rules of Court reads:

Section 21. *Other fees*. – The following fees shall also be collected by the clerks of the Regional Trial Courts or courts of the first level, as the case may be:

to Rule 141 of the Rules of Court, it seemed that "an intra-corporate controversy always involves a property in litigation" and that "there can be no case of intra-corporate controversy where the value of the subject matter cannot be estimated."[28]

However, after a careful reading of *Lu*, it appears that Harvest All, *et al*. correctly pointed out[29] that the foregoing statements were in the nature of an *obiter dictum.*

To recount, in *Lu*, the Court ruled, *inter alia*, that the case involving an intra-corporate controversy instituted therein, *i.e.*, declaration of nullity of share issuance, is incapable of pecuniary estimation and, thus, the correct docket fees were paid.[30] Despite such pronouncement, the Court still went on to say that had the complaint therein been filed during the effectivity of A.M. No. 04-2-04-SC, then it would have ruled otherwise because the amendments brought about by the same "seem to imply that there can be no case of intra-corporate controversy where the value of the subject matter cannot be estimated,"[31] *viz.*:

The new Section 21 (k) of Rule 141 of the Rules of Court, as amended by A.M. No. 04-2-04-SC (July 20, 2004), expressly provides that "[f]or petitions for insolvency or other cases involving intra-corporate controversies, the fees prescribed under Section 7 (a) shall apply." *Notatu dignum* is that paragraph (b) 1 & 3 of Section 7 thereof was omitted from the reference. Said paragraph refers to docket fees for filing "[a]ctions where the value of the subject matter cannot be estimated" and "all other actions not involving property."

By referring the computation of such docket fees to paragraph (a) only, it denotes that an intra-corporate controversy always involves a property in litigation, the value of which is always the basis for

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(k) For petitions for insolvency or other cases involving intra-corporate controversies, the fees prescribed under Section 7 (a) shall apply.

[28] *Lu v. Lu Ym, Sr.*, *supra* note 18, at 190.

[29] See *rollo* (G.R. No. 224871), Vol. I, pp. 39-40.

[30] See *Lu v. Lu Ym, Sr.*, *supra* note 18, at 179-184.

[31] *Id*. at 190.

computing the applicable filing fees. The latest amendments seem to imply that there can be no case of intra-corporate controversy where the value of the subject matter cannot be estimated. Even one for a mere inspection of corporate books.

If the complaint were filed today, one could safely find refuge in the express phraseology of Section 21 (k) of Rule 141 that paragraph (a) alone applies.

In the present case, however, the original Complaint was filed on August 14, 2000 during which time Section 7, without qualification, was the applicable provision. Even the Amended Complaint was filed on March 31, 2003 during which time the applicable rule expressed that paragraphs (a) and (b) l & 3 shall be the basis for computing the filing fees in intra-corporate cases, recognizing that there could be an intra-corporate controversy where the value of the subject matter cannot be estimated, such as an action for inspection of corporate books. **The immediate illustration shows that no mistake can even be attributed to the RTC clerk of court in the assessment of the docket fees**.[32] (Emphases and underscoring supplied)

Accordingly, the passages in *Lu* that "an intra-corporate controversy always involves a property in litigation" and that "there can be no case of intra-corporate controversy where the value of the subject matter cannot be estimated" are clearly non-determinative of the antecedents involved in that case and, hence, cannot be controlling jurisprudence to bind our courts when it adjudicates similar cases upon the principle of *stare decisis*. As it is evident, these passages in *Lu* only constitute an opinion delivered by the Court as a "by the way" in relation to a hypothetical scenario (*i.e.*, if the complaint was filed during the effectivity of A.M. No. 04-2-04-SC, which it was not) different from the actual case before it.

In *Land Bank of the Philippines v. Santos*,[33] the Court had the opportunity to define an *obiter dictum* and discuss its legal effects as follows:

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[32] *Id*. at 190-191.

[33] See G.R. Nos. 213863 and 214021, January 27, 2016.

[An obiter dictum] "x x x **is a remark made, or opinion expressed, by a judge, in his decision upon a cause by the way, that is, incidentally or collaterally, and not directly upon the question before him, or upon a point not necessarily involved in the determination of the cause, or introduced by way of illustration, or analogy or argument. It does not embody the resolution or determination of the court, and is made without argument, or full consideration of the point. It lacks the force of an adjudication, being a mere expression of an opinion with no binding force for purposes of *res judicata*.**"[34] (Emphasis and underscoring supplied)

For these reasons, therefore, the courts *a quo* erred in applying the case of *Lu*.

II.

In any event, the Court finds that the *obiter dictum* stated in *Lu* was actually incorrect. This is because depending on the nature of the principal action or remedy sought, an intra-corporate controversy may involve a subject matter which is either capable or incapable of pecuniary estimation.

In *Cabrera v. Francisco*,[35] the Court laid down the parameters in determining whether an action is considered capable of pecuniary estimation or not:

In determining whether an action is one the subject matter of which is not capable of pecuniary estimation this Court has adopted the criterion of first ascertaining the nature of the principal action or remedy sought. If it is primarily for the recovery of a sum of money, the claim is considered capable of pecuniary estimation, and whether jurisdiction is in the municipal courts or in the [C]ourts of [F]irst [I]nstance would depend on the amount of the claim. However, **where the basic issue is something other than the right to recover a sum of money, where the money claim is purely incidental to, or a consequence of, the principal relief sought, this Court has considered such actions as cases where the subject of the litigation may not be estimated in terms of money**, and are cognizable

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[34] See *id*.; citations omitted.

[35] 716 Phil. 574 (2013).

exclusively by [C]ourts of [F]irst [I]nstance (now Regional Trial Courts).[36] (Emphases and underscoring supplied)

This case is a precise illustration as to how an intra-corporate controversy may be classified as an action whose subject matter is **incapable of pecuniary estimation**. A cursory perusal of Harvest All, *et al*.'s Complaint and Amended Complaint reveals that **its main purpose is to have Alliance hold its 2015 ASM on the date set in the corporation's by-laws**, or at the time when Alliance's SRO has yet to fully materialize, so that their voting interest with the corporation would somehow be preserved. Thus, Harvest All, *et al*. sought for the nullity of the Alliance Board Resolution passed on May 29, 2015 which indefinitely postponed the corporation's 2015 ASM pending completion of subscription to the SRO.[37] Certainly, Harvest All, *et al*.'s prayer for nullity, as well as the concomitant relief of holding the 2015 ASM as scheduled in the by-laws, do **not** involve the recovery of sum of money. The mere mention of Alliance's impending SRO valued at ₱1 Billion cannot transform the nature of Harvest All, *et al*.'s action to one capable of pecuniary estimation, considering that: (*a*) Harvest All, *et al*. do not claim ownership of, or much less entitlement to, the shares subject of the SRO; and (*b*) such mention was merely narrative or descriptive in order to emphasize the severe dilution that their voting interest as minority shareholders would suffer if the 2015 ASM were to be held after the SRO was completed. If, in the end, a sum of money or anything capable of pecuniary estimation would be recovered by virtue of Harvest All, *et al*.'s complaint, then it would simply be the consequence of their principal action. Clearly therefore, Harvest All, *et al*.'s action was one incapable of pecuniary estimation.

At this juncture, it should be mentioned that the Court passed A.M. No. 04-02-04-SC[38] dated October 5, 2016, which introduced

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[36] *Id*. at 586-587, citing *De Ungria v. CA*, 669 Phil. 585, 597 (2011).

[37] See *rollo* (G.R. No. 224871), Vol. I, pp. 138 and 575.

[38] Entitled "THE LEGAL FEES TO BE COLLECTED IN CASES OF LIQUIDATION OF SOLVENT JURIDICAL DEBTORS, LIQUIDATION OF INSOLVENT JURIDICAL

amendments to the schedule of legal fees to be collected in various commercial cases, including those involving intra-corporate controversies. Pertinent portions of A.M. No. 04-02-04-SC read:

RESOLUTION

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Whereas, Rule 141 of the Revised Rules of Court, as amended by A.M. No. 04-2-04-SC effective 16 August 2004, incorporated the equitable schedule of legal fees prescribed for petitions for rehabilitation under Section 21 (i) thereof and, furthermore, provided under Section 21(k) thereof that the fees prescribed under Section 7(a) of the said rule shall apply to petitions for insolvency or other cases involving intra-corporate controversies;

x x x x x x x x x

NOW, THEREFORE, the Court resolves to ADOPT a new schedule of filing fees as follows:

x x x x x x x x x

4. **Section 21 (k) of Rule 141 of the Revised Rules of Court is hereby DELETED** as the fees covering petitions for insolvency are already provided for in this Resolution. **As for cases involving intra-corporate controversies, the applicable fees shall be those provided under Section 7 (a), 7 (b) (1), or 7 (b) (3) of Rule 141 of the Revised Rules of Court depending on the nature of the action**.

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This Resolution shall take effect fifteen (15) days following its publication in the Official Gazette or in two (2) newspapers of national circulation. The Office of the Court Administrator (OCA) is directed to circularize the same upon its effectivity. (Emphases and underscoring supplied)

Verily, the **deletion of Section 21 (k) of Rule 141** and in lieu thereof, **the application of Section 7 (a) [fees for actions**

AND INDIVIDUAL DEBTORS, CONVERSION FROM REHABILITATION TO LIQUIDATION PROCEEDINGS, SUSPENSION OF PAYMENTS OF INSOLVENT INDIVIDUAL DEBTORS AND PETITIONS IN AN OUT OF COURT RESTRUCTURING AGREEMENT PROVIDED UNDER A.M. NOS. 12-12-11-SC and 15-04-06-SC."

where the value of the subject matter can be determined/ estimated], 7 (b) (1) [fees for actions where the value of the subject matter cannot be estimated], or 7 (b) (3) [fees for all other actions not involving property] of the same Rule to cases involving intra-corporate controversies for the determination of the correct filing fees, as the case may be, serves a dual purpose: on the one hand, the amendments concretize the Court's recognition that the subject matter of an intra-corporate controversy may or may not be capable of pecuniary estimation; and on the other hand, they were also made to correct the anomaly created by A.M. No. 04-2-04-SC dated July 20, 2004 (as advanced by the *Lu obiter dictum*) implying that all intra-corporate cases involved a subject matter which is deemed capable of pecuniary estimation.

While the Court is not unaware that the amendments brought by A.M. No. 04-02-04-SC dated October 5, 2016 only came after the filing of the complaint subject of this case, such amendments may nevertheless be given retroactive effect so as to make them applicable to the resolution of the instant consolidated petitions as they merely pertained to a procedural rule, *i.e.*, Rule 141, and not substantive law. In *Tan, Jr. v. CA*,[39] the Court thoroughly explained the retroactive effectivity of procedural rules, *viz.*:

The general rule that statutes are prospective and not retroactive does not ordinarily apply to procedural laws. It has been held that "a retroactive law, in a legal sense, is one which takes away or impairs vested rights acquired under laws, or creates a new obligation and imposes a new duty, or attaches a new disability, in respect of transactions or considerations already past. **Hence, remedial statutes or statutes relating to remedies or modes of procedure, which do not create new or take away vested rights, but only operate in furtherance of the remedy or confirmation of rights already existing, do not come within the legal conception of a retroactive law, or the general rule against the retroactive operation of statutes.**" The general rule against giving statutes retroactive operation whose effect is to impair the obligations of contract or to disturb

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[39] 424 Phil. 556 (2002).

vested rights does not prevent the application of statutes to proceedings pending at the time of their enactment where they neither create new nor take away vested rights. **A new statute which deals with procedure only is presumptively applicable to all actions – those which have accrued or are pending.**

Statutes regulating the procedure of the courts will be construed as applicable to actions pending and undetermined at the time of their passage. Procedural laws are retroactive in that sense and to that extent. The fact that procedural statutes may somehow affect the litigants' rights may not preclude their retroactive application to pending actions. **The retroactive application of procedural laws is not violative of any right of a person who may feel that he is adversely affected. Nor is the retroactive application of procedural statutes constitutionally objectionable. The reason is that as a general rule no vested right may attach to, nor arise from, procedural laws.** It has been held that "a person has no vested right in any particular remedy, and a litigant cannot insist on the application to the trial of his case, whether civil or criminal, of any other than the existing rules of procedure."[40] (Emphases and underscoring supplied)

In view of the foregoing, and having classified Harvest All, *et al.*'s action as one incapable of pecuniary estimation, the Court finds that Harvest All, *et al.* should be made to pay the appropriate docket fees in accordance with the applicable fees provided under Section 7 (b) (3) of Rule 141 [fees for all other actions not involving property] of the Revised Rules of Court, in conformity with A.M. No. 04-02-04-SC dated October 5, 2016. The matter is therefore remanded to the RTC in order:

(*a*) to first determine if Harvest, *et al.*'s payment of filing fees in the amount of ₱8,860.00, as initially assessed by the Clerk of Court, constitutes sufficient compliance with A.M. No. 04-02-04-SC;

(*b*) if Harvest All, *et al.*'s payment of ₱8,860.00 is insufficient, to require Harvest, *et al.*'s payment of any discrepancy within a period of fifteen (15) days from notice,

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[40] *Id.* at 569; citation omitted.

and after such payment, proceed with the regular proceedings of the case with dispatch; or

(*c*) if Harvest All, *et al*.'s payment of ₱8,860.00 is already sufficient, proceed with the regular proceedings of the case with dispatch.

WHEREFORE, the petition in **G.R. No. 224834** is **DENIED**, while the petition in **G.R. No. 224871** is **PARTLY GRANTED**. The Decision dated February 15, 2016 and the Resolution dated May 25, 2016 of the Court of Appeals in CA-G.R. SP No. 142213 are hereby **AFFIRMED** with **MODIFICATION** in that COMM'L. CASE NO. 15-234 is hereby **REMANDED** to the Regional Trial Court of Pasig City, Branch 159 for further proceedings as stated in the final paragraph of this Decision.

SO ORDERED.

Sereno, C.J. (Chairperson), Velasco, Jr.,[*] *Leonardo-de Castro,* and *Caguioa, JJ.,* concur.

SECOND DIVISION

[G.R. No. 224900. March 15, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **NESTOR M. BUGARIN,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; ELEMENTS; WHILE ALL THE THREE ELEMENTS MUST CONCUR, SELF-DEFENSE RELIES FIRST AND FOREMOST ON

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[*] Designated additional Member per Raffle dated February 22, 2017.

PROOF OF UNLAWFUL AGGRESSION ON THE PART OF THE VICTIM.— Self-defense is an affirmative allegation and offers exculpation from liability for crimes only if satisfactorily proved. Having admitted the shooting of the victims, the burden shifted to Bugarin to prove that he indeed acted in self-defense by establishing the following with clear and convincing evidence: (1) unlawful aggression on the part of the victims; (2) reasonable necessity of the means employed to prevent or repel the aggression; and (3) lack of sufficient provocation on his part. Bugarin, however, miserably failed to discharge this burden. One who admits killing or fatally injuring another in the name of self-defense bears the burden of proving the aforementioned elements. While all three elements must concur, self-defense relies first and foremost on proof of unlawful aggression on the part of the victim. If no unlawful aggression is proved, no self-defense may be successfully pleaded. Contrary to his claims, the evidence of the case shows that there was no unlawful aggression on the part of the victims.

2. **ID.; ID.; QUALIFYING CIRCUMSTANCES; TREACHERY; CANNOT BE PRESUMED BUT MUST BE PROVED AS CONCLUSIVELY AS THE CRIME ITSELF; IN THE ABSENCE OF PROOF BEYOND REASONABLE DOUBT THAT TREACHERY ATTENDED THE KILLING OF THE VICTIM, THE CRIME IS HOMICIDE, NOT MURDER.—** Murder is committed by any person who, not falling within the provisions of Article 246, shall kill another with treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity. There is treachery when the offender commits any of the crimes against persons, employing means, methods or forms which tend directly and specially to ensure its execution, without risk to himself arising from the defense which the offended party might make. Treachery is not presumed but must be proved as conclusively as the crime itself. Bugarin suddenly fired at Esmeraldo without reason or warning. According to the medical report, Esmeraldo's wounds would establish that he was shot in the back twice and also in his left side, giving him no means of retaliation or escape, and without any risk to Bugarin. In fact, Bugarin himself said that when Esmeraldo was thrown backwards and was about to fall to the ground, he shot him again to make sure he was "finished." A finding of the existence of treachery should be based on clear

and convincing evidence. Such evidence must be as conclusive as the fact of killing itself and its existence cannot be presumed. In the absence of proof beyond reasonable doubt that treachery attended the killing of the victim, the crime is homicide, not murder.

3. **ID.; ID.; ID.; ID.; REQUISITES; THE ESSENCE OF TREACHERY IS THAT THE ATTACK COMES WITHOUT A WARNING AND IN A SWIFT, DELIBERATE, AND UNEXPECTED MANNER, AFFORDING THE HAPLESS, UNARMED AND UNSUSPECTING VICTIM WITH NO CHANCE TO RESIST OR ESCAPE THE SUDDEN BLOW.—** The essence of treachery is the sudden and unexpected attack by the aggressor on the unsuspecting victims, depriving the latter of any real chance to defend themselves, thereby ensuring its commission without risk to the aggressor, and without the slightest provocation on the part of the victims. Here, Bugarin's attack on Cristito was sudden and unexpected. x x x In order for the qualifying circumstance of treachery to be appreciated, the following requisites must be shown: (1) the employment of means, method, or manner of execution would ensure the safety of the malefactor from the defensive or retaliatory acts of the victim, no opportunity being given to the latter to defend himself or to retaliate, and (2) the means, method, or manner of execution was deliberately or consciously adopted by the offender. The qualifying circumstance of treachery or *alevosia* does not even require that the perpetrator attack his victim from behind. Even a frontal attack could be treacherous when unexpected and on an unarmed victim who would be in no position to repel the attack or avoid it. The essence of treachery is that the attack comes without a warning and in a swift, deliberate, and unexpected manner, affording the hapless, unarmed, and unsuspecting victim no chance to resist or escape the sudden blow. Indubitably, Cristito was unarmed and had no inkling that an attack was forthcoming. He neither had a chance to mount a defense. In such a rapid motion, Bugarin shot Cristito, affording the latter no opportunity to defend himself or fight back. The deliberate swiftness of Bugarin's attack significantly diminished the risk to himself that may be caused by the retaliation of the victim. The evidence sufficiently established that Bugarin deliberately and consciously adopted the means of executing the crime against his defenseless 72-year-old father-in-law.

4. **ID.; ID.; ID.; ID.; WHILE THE ABILITY TO AVOID GREATER HARM BY RUNNING AWAY MAY BE AN**

INDICATOR THAT NO TREACHERY EXISTS, TREACHERY MAY STILL BE APPRECIATED WHERE THE VICTIM WAS UNARMED, DEFENSELESS, AND UNABLE TO FLEE AT THE TIME OF THE INFLICTION OF THE *COUP DE GRACE*; CASE AT BAR.— [W]ith respect to Maria Glen, it is true that after having seen what Bugarin had done to her husband and father-in-law, she was already forewarned of the danger to her life. She actually managed to flee and hide after she was shot. While such ability to avoid greater harm by running away may be an indicator that no treachery exists, treachery may still be appreciated where the victim was unarmed, defenseless, and unable to flee at the time of the infliction of the *coup de grace*, as in this case. Bugarin already commenced his attack with a manifest intent to kill Maria Glen but failed to perform all the acts of execution by reason of causes independent of his will, *i.e.*, poor aim. Maria Glen was likewise not in any position to defend herself or repel the attack since she was unarmed. Thus, the trial court aptly appreciated treachery as a circumstance to qualify the crimes to murder and attempted murder.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Atoc Sucalit Leyson Augusto Ocampo and Torres Law Office for accused-appellant.

D E C I S I O N

PERALTA, *J*.:

This case seeks to reverse and set aside the Decision[1] dated July 31, 2015 of the Court of Appeals (*CA*) in CA-G.R. CEB-CR-HC No. 01530. The CA affirmed and modified the Joint Judgment[2] of the Regional Trial Court (*RTC*) of Cebu City,

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[1] Penned by Associate Justice Germano Francisco D. Legaspi, with Associate Justices Pamela Ann Abella Maxino and Jhosep Y. Lopez concurring; *rollo*, pp. 5-28.

[2] Penned by Judge Estela Alma A. Singco; CA *rollo*, pp. 166-190.

Branch 12, dated July 5, 2012 in Criminal Case Nos. CBU-83610, CBU-83611, and CBU-83613, which found accused-appellant Nestor Bugarin y Martinez guilty beyond reasonable doubt of the crimes of double murder and attempted murder.

Informations were filed charging Bugarin with two (2) counts of murder and one (1) count of attempted murder, which read:

Criminal Case No. CBU-83610
For: Murder

That on the 30th day of May 2008 at about 8:50 o'clock in the evening, in the City of Cebu, Philippines and within the jurisdiction of this Honorable Court, the said accused, armed with an unlicensed firearm of undetermined caliber, with deliberate intent, with intent to kill, with treachery and evident premeditation, did then and there suddenly and unexpectedly attack, assault and use personal violence upon one ESMERALDO B. PONTANAR by shooting him repeatedly with the use of said firearm and hitting him on the different parts of his body as a consequence of which said ESMERALDO B. PONTANAR died [a] few minutes thereafter due to "HYPOVOLEMIC SHOCK SECONDARY TO MULTIPLE GUNSHOT WOUNDS."

CONTRARY TO LAW.

Criminal Case No. CBU-83611
For: Murder

That on the 30th day of May 2008 at about 8:50 o'clock in the evening, in the City of Cebu, Philippines and within the jurisdiction of this Honorable Court, the said accused, armed with an unlicensed firearm of undetermined caliber, after having just shot one Esmeraldo B. Pontanar with the use of said firearm for which the accused is also being separately charged with Murder, with deliberate intent, with intent to kill, with treachery and evident premeditation, and without regard to rank and age of victim did then and there suddenly and unexpectedly attack, assault and use personal violence upon one CRISTITO C. PONTANAR, a 72-year old father-in-law of the accused, by shooting him with the use of said firearm when the latter came to the rescue of his said son, Esmeraldo B. Pontanar, by pleading to the accused to stop the shooting, thereby hitting him on the abdomen as a consequence of which said CRISTITO C. PONTANAR

died [a] few minutes thereafter due to "HEMORRHAGIC SHOCK SECONDARY TO GUNSHOT WOUND."

CONTRARY TO LAW.

Criminal Case No. CBU-83613
For: Attempted Murder

That on the 30th day of May 2008 at about 8:50 o'clock in the evening, in the City of Cebu, Philippines and within the jurisdiction of this Honorable Court, the said accused, armed with an unlicensed firearm of undetermined caliber, after having just shot one Esmeraldo B. Pontanar with the use of said firearm for which the accused is also being separately charged with murder and frustrated murder, with deliberate intent, with intent to kill, with treachery and evident premeditation, did then and there suddenly and unexpectedly attack, assault and use personal violence upon one Maria Glen Neis Pontanar by shooting her, thereby inflicting upon her the following injuries:

THROUGH & THROUGH GUNSHOT WOUND DISTAL THIRD, LEFT THIGH

thus, commencing the commission of the felony directly by overt acts but which nevertheless did not perform all the acts of execution which would have produced the crime of murder by reason of some cause or accident other than his own spontaneous desistance, that is, by the timely act of said Maria Glen Neis Pontanar in running away and taking shelter inside a nearby house.

CONTRARY TO LAW.[3]

Upon arraignment, Bugarin pleaded not guilty to the charges. He admitted having shot Esmeraldo, Cristito, and Maria Glen, all surnamed Pontanar, but insisted that he acted in self-defense. Hence, pursuant to Section 11(e), Rule 119 of the Rules of Court, a reverse trial ensued.

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

Bugarin contended that what he had done was merely an act of self-defense. At the time of the incident, he was watching

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[3] *Id*. at 166-168.

television at home when his wife, Anecita went out to walk their dogs. Then he heard her having an altercation with Maria Glen. At first, he did not want to intervene but then he saw his brother-in-law and Maria Glen's husband, Esmeraldo, approaching and carrying a 9 mm pistol, a .45 caliber gun, and an M16 rifle. Then Esmeraldo started shouting in front of their house, challenging him to go out. Bugarin hesitated to go out at first since Esmeraldo could easily shoot him with his firearms. He changed his mind when his son convinced him to go out and help his mother. So Bugarin went out and shouted angrily at Esmeraldo, then the latter began to draw his gun. This prompted Bugarin to draw his own gun and shoot Esmeraldo twice. Esmeraldo was thrown backwards and when he was about to fall to the ground, Bugarin shot him one more time. Thereafter, his father-in-law, Cristito, came rushing towards his son. He confronted Bugarin and tried to slap him, but he was able to avoid getting hit. Cristito then looked at his son's body on the ground. Believing that Cristito would get his son's firearm and shoot him, Bugarin acted quickly and shot him first. Then Esmeraldo's son, Paulo, threw stones at Bugarin. This angered him so he likewise shot him. Thereafter, he saw Maria Glen with a pipe, who was about to strike Anecita with it, so he also shot her, hitting her in the leg.

On the other hand, the prosecution alleged that the Pontanars and the Bugarins had been harboring ill-feelings towards each other. On the evening of May 30, 2008, the spouses Esmeraldo and Maria Glen were on their way to the house of their father, Cristito, which was likewise near the house of the Bugarins. When they were close to the house of the Bugarins, Esmeraldo's sister, Anecita, then started throwing gravel and sand at them. Esmeraldo asked her to stop but she refused to listen. Thereafter, Bugarin, Anecita's husband, came out of their house and suddenly shot Esmeraldo several times. Esmeraldo sustained two (2) gunshot wounds in the back and one (1) in his left side, which later took his life. Maria Glen immediately ran and hid behind a parked car to save herself. She then saw her father-in-law, Cristito, running out of his house towards Esmeraldo's direction. Cristito raised his hands and begged Bugarin to stop shooting.

But Bugarin also shot him, causing his death. Bugarin then looked for Maria Glen and when he finally found her, he also shot her. Fortunately, Maria Glen was only hit in her thigh.

On July 5, 2012, the RTC of Cebu City found Bugarin guilty beyond reasonable doubt of double murder and attempted murder in Criminal Case Nos. CBU-83610, CBU-83611, and CBU-83613, with the special aggravating circumstance of the use of unlicensed firearm in all three (3) cases, thus:

WHEREFORE, judgment is hereby rendered as follows:

1. In Criminal Case No. **CBU-83610**, the court finds the accused NESTOR MARTINEZ BUGARIN guilty beyond reasonable doubt of the offense of Murder defined and penalized under Art. 248 of the Revised Penal Code as amended by Sec. 6 of Republic Act 7659 as charged in the Information, and hereby sentences him to suffer the penalty of Reclusion Perpetua; to indemnify the heirs of the deceased Esmeraldo B. Pontanar the sum of ₱75,000.00 as civil indemnity for his death and ₱50,000.00 as Moral Damages for the pain and anguish suffered by the heirs as a result of his death; Exemplary damages in the amount of ₱25,000.00 and actual damages in the total sum of ₱245,490.00, all indemnifications are without subsidiary imprisonment in case of insolvency.

2. In Criminal Case No. **CBU-83611**, the court finds the accused **NESTOR MARTINEZ BUGARIN** guilty beyond reasonable doubt of the offense of Murder defined and penalized under Art. 248 of the Revised Penal Code as amended by Sec. 6 of Republic Act 7659 as charged in the Information, and hereby sentences him to suffer the penalty of Reclusion Perpetua; to indemnify the heirs of the deceased Cristito C. Pontanar the sum of ₱75,000.00 as civil indemnity for his death and ₱50,000.00 as Moral Damages for the pain and anguish suffered by the heirs as a result of his death, all indemnifications are without subsidiary imprisonment in case of insolvency.

3. In Criminal Case No. **CBU-83613**, the court finds the accused **NESTOR MARTINEZ BUGARIN** guilty beyond reasonable doubt of the offense of Attempted Murder as charged in the Information, and hereby sentences him to suffer the penalty of imprisonment of an indeterminate sentence ranging from six (6) years *prision correccional* as minimum to twelve (12) years of *prision mayor* as maximum to indemnify the offended party Maria Glen Neis Pontanar

the amount of ₱10,000.00 as Moral damages; and actual damages in the amount of ₱30,909.48, all indemnifications are without subsidiary imprisonment in case of insolvency.

In the service of his sentence, accused, who is a detention prisoner, shall be credited with the entire period during which he has undergone preventive imprisonment.

No costs.

SO ORDERED.[4]

This prompted Bugarin to appeal before the CA. On July 31, 2015, the CA denied Bugarin's appeal and affirmed the RTC Decision with modifications, thus:

WHEREFORE, the instant appeal is **DENIED**. The assailed Joint Judgment dated July 5, 2012 of the Regional Trial Court of Cebu City, Branch 12 is hereby **AFFIRMED with MODIFICATION** as follows:

1. In Criminal Case No. CBU-83610, the guilt of Nestor M. Bugarin for the crime of murder and the corresponding penalty imposed upon him are **AFFIRMED**. The grant of civil indemnity, actual damages, and moral damages, in the amount determined by the trial court, is **AFFIRMED**. The award of exemplary damages is **INCREASED** to ₱30,000.00.

2. In Criminal Case No. CBU-83611, Nestor M. Bugarin is found **GUILTY** of **HOMICIDE** and accordingly imposed an indeterminate penalty of ten (10) years and one (1) day of *prision mayor* as minimum to twenty (20) years of *reclusion temporal* as maximum. Bugarin is **ORDERED** to pay the heirs of Cristito the amount of ₱50,000.00 as civil indemnity; ₱50,000.00 as moral damages; and ₱30,000.00 as exemplary damages.

3. In Criminal Case No. CBU-83613, Nestor M. Bugarin is found **GUILTY** of **ATTEMPTED HOMICIDE** and accordingly imposed an indeterminate penalty of six (6) months of *arresto mayor* as minimum to six (6) years of *prision correccional* as maximum. The awards for actual damages and moral damages as imposed by the trial court are **AFFIRMED**.

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[4] *Id*. at 189-190. (Emphasis in the original)

4. The aggregate amount of the monetary awards awarded herein shall earn interest at the rate of six percent (6%) per annum from the finality of this Decision until the same is fully paid.

SO ORDERED.[5]

Bugarin is now before the Court, maintaining his innocence in all the instant cases.

The appeal is bereft of merit.

Self-defense is an affirmative allegation and offers exculpation from liability for crimes only if satisfactorily proved.[6] Having admitted the shooting of the victims, the burden shifted to Bugarin to prove that he indeed acted in self-defense by establishing the following with clear and convincing evidence: (1) unlawful aggression on the part of the victims; (2) reasonable necessity of the means employed to prevent or repel the aggression; and (3) lack of sufficient provocation on his part.[7] Bugarin, however, miserably failed to discharge this burden. One who admits killing or fatally injuring another in the name of self-defense bears the burden of proving the aforementioned elements. While all three elements must concur, self-defense relies first and foremost on proof of unlawful aggression on the part of the victim. If no unlawful aggression is proved, no self-defense may be successfully pleaded.[8] Contrary to his claims, the evidence of the case shows that there was no unlawful aggression on the part of the victims. His version of the events was found to be less credible by the trial court. His testimony is incoherent, incredible, and specious. On the other hand, the trial court found Maria Glen's testimony to be more convincing. As the lone surviving victim, she affirmed that Bugarin suddenly fired at them, without any provocation on their part. As a rule, the appellate courts must give full weight and respect to the determination by the trial court on the credibility of witnesses, since the trial

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[5] *Rollo*, pp. 27-28. (Emphasis in the original)

[6] *People v. Gutierrez*, 625 Phil. 471, 480 (2010).

[7] *Guevarra v. People*, 726 Phil. 183, 194 (2014).

[8] *People v. Gutierrez, supra* note 6, at 481.

judge has the best opportunity to observe their demeanor. While it is true that this rule admits of certain exceptions, none of such are extant in this case.[9]

Self-defense cannot be justifiably appreciated when it is extremely doubtful by itself. Indeed, in invoking self-defense, the burden of evidence is shifted and the accused claiming self-defense must rely on the strength of his own evidence and not on the weakness of the prosecution.[10] In the case at bar, Bugarin likewise failed to sufficiently establish that Esmeraldo was actually carrying three (3) firearms and that he attempted to pull out one of his guns to shoot him. However, when asked what happened to the other firearms or where they went when Esmeraldo pulled out one of the guns, Bugarin answered that he did not know. Also, Anecita herself testified that she did not see Esmeraldo carrying anything. He merely held the railings of their gate when Bugarin went out of their house and shot him. Indeed, nothing in this act would reveal that there was unlawful aggression on Esmeraldo's part. Maria Glen also never actually struck or attempted to strike Anecita with the steel pipe. Neither can Cristito's alleged act of trying to slap Bugarin and thereafter staring at the wounded body of his son on the ground be considered unlawful aggression that he must necessarily repel. Bugarin simply assumed and imagined that Cristito would get his son's gun to shoot him.

Murder is committed by any person who, not falling within the provisions of Article 246, shall kill another with treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.[11] There is treachery when the offender commits any of the crimes against persons, employing means, methods or forms which tend directly and specially to ensure its execution, without risk to himself arising from the defense which the offended party might make. Treachery

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[9] *Id*.

[10] *Id*. at 482.

[11] Article 248, Revised Penal Code.

is not presumed but must be proved as conclusively as the crime itself.[12] Bugarin suddenly fired at Esmeraldo without reason or warning. According to the medical report, Esmeraldo's wounds would establish that he was shot in the back twice and also in his left side, giving him no means of retaliation or escape, and without any risk to Bugarin. In fact, Bugarin himself said that when Esmeraldo was thrown backwards and was about to fall to the ground, he shot him again to make sure he was "finished."[13] A finding of the existence of treachery should be based on clear and convincing evidence. Such evidence must be as conclusive as the fact of killing itself and its existence cannot be presumed.[14] In the absence of proof beyond reasonable doubt that treachery attended the killing of the victim, the crime is homicide, not murder.[15]

As to the shooting of Cristito and Maria Glen, however, the Court has arrived at the conclusion that the trial court was correct in appreciating treachery as a qualifying circumstance. While the CA found Bugarin guilty for the lesser crimes of homicide and attempted homicide, respectively, the Court is constrained to review the entire records of the case pursuant to the well-settled rule that when an accused appeals from the sentence of the trial court, he waives his constitutional safeguard against double jeopardy and throws the entire case open to the review of the appellate court, which is then called upon to render such judgment as the law and justice dictate, whether favorable or unfavorable to him.[16] The essence of treachery is the sudden and unexpected attack by the aggressor on the unsuspecting victims, depriving the latter of any real chance to defend themselves, thereby ensuring its commission without risk to the aggressor, and without the slightest provocation on the part of the victims.[17]

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[12] *People v. Placer*, 719 Phil. 268, 280 (2013).

[13] CA *rollo*, p. 170.

[14] *Cirera v. People*, G.R. No. 181843, July 14, 2014, 730 SCRA 27, 48.

[15] *People v. Placer, supra* note 12, at 281.

[16] *People v. Sanico*, G.R. No. 208469, August 13, 2014, 733 SCRA 158, 170.

[17] *People v. Gutierrez, supra* note 6, at 482.

Here, Bugarin's attack on Cristito was sudden and unexpected. The alleged provocation on Cristito's part was uncorroborated and not proven. While Bugarin claims that Cristito attempted to slap him, Anecita testified that she did not see this as she was already inside their house when Bugarin shot her father. The trial court gave more credence to Maria Glen's narration that Cristito was raising his hands and pleading for Bugarin to stop when the latter shot him at close range. More importantly, Bugarin himself stated that when he shot Cristito in the chest, the latter was looking down at the dead body of his son sprawled on the ground. He shot him "*dahil konsintidor, hindi marunong makisama, magsama na silang mag-ama, because he is siding* (*sic*) *his son*,"[18] clearly manifesting that he knowingly chose his mode of attack and intended it to accomplish his wicked intent of likewise killing the father rather than a mere impulsive reaction to a surprising turn of events. In order for the qualifying circumstance of treachery to be appreciated, the following requisites must be shown: (1) the employment of means, method, or manner of execution would ensure the safety of the malefactor from the defensive or retaliatory acts of the victim, no opportunity being given to the latter to defend himself or to retaliate, and (2) the means, method, or manner of execution was deliberately or consciously adopted by the offender. The qualifying circumstance of treachery or *alevosia* does not even require that the perpetrator attack his victim from behind. Even a frontal attack could be treacherous when unexpected and on an unarmed victim who would be in no position to repel the attack or avoid it. The essence of treachery is that the attack comes without a warning and in a swift, deliberate, and unexpected manner, affording the hapless, unarmed, and unsuspecting victim no chance to resist or escape the sudden blow. Indubitably, Cristito was unarmed and had no inkling that an attack was forthcoming. He neither had a chance to mount a defense. In such a rapid motion, Bugarin shot Cristito, affording the latter no opportunity to defend himself or fight back. The deliberate swiftness of Bugarin's attack significantly diminished the risk to himself

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[18] *Supra* note 13.

that may be caused by the retaliation of the victim.[19] The evidence sufficiently established that Bugarin deliberately and consciously adopted the means of executing the crime against his defenseless 72-year-old father-in-law.

Lastly, with respect to Maria Glen, it is true that after having seen what Bugarin had done to her husband and father-in-law, she was already forewarned of the danger to her life. She actually managed to flee and hide after she was shot. While such ability to avoid greater harm by running away may be an indicator that no treachery exists,[20] treachery may still be appreciated where the victim was unarmed, defenseless, and unable to flee at the time of the infliction of the *coup de grace*,[21] as in this case. Bugarin already commenced his attack with a manifest intent to kill Maria Glen but failed to perform all the acts of execution by reason of causes independent of his will, *i.e.*, poor aim. Maria Glen was likewise not in any position to defend herself or repel the attack since she was unarmed. Thus, the trial court aptly appreciated treachery as a circumstance to qualify the crimes to murder and attempted murder.

With respect to the penalties in Criminal Case Nos. CBU-83610 and CBU-83611, the Court upholds the ones that the RTC imposed, but modifies the amount of damages according to the most recent jurisprudence.[22] Bugarin admitted that he used an unlicensed .45 caliber gun in shooting the victims. Presidential Decree No. 1866,[23] as amended by Republic Act (*R.A.*) No. 8294, treats the unauthorized use of a licensed firearm

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[19] *People v. Amora*, G.R. No. 190322, November 26, 2014, 742 SCRA 667, 680.

[20] *Supra* note 14.

[21] *People v. Fieldad, et al.*, G.R. No. 196005, October 1, 2014, 757 SCRA 455, 471.

[22] *People v. Ireneo Jugueta*, G.R. No. 202124, April 5, 2016.

[23] Entitled *Codifying the Laws on Illegal/Unlawful Possession, Manufacture, Dealing in, Acquisition or Disposition of Firearms, Ammunition or Explosives; and Imposing Stiffer Penalties for Certain Violations Thereof and for Relevant Purposes.*

in the commission of the crimes of homicide or murder as a special aggravating circumstance. Thus, the same cannot be offset by an ordinary mitigating circumstance[24] such as voluntary surrender, as in the instant case. In both Criminal Case Nos. CBU-83610 and CBU-83611, Bugarin must pay Esmeraldo and Cristito's heirs ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages. In Criminal Case No. CBU-83613, however, the lower court should not have appreciated the use of the unlicensed firearm as a special aggravating circumstance since at the time the tragic incident took place, R.A. No. 8294 on illegal possession of firearm was then the applicable law, and as held in the case of *People v. Ladjaalam*,[25] the use of unlicensed firearm may only be considered if the same is used in the killing. Hence, in the absence of the special aggravating circumstance of the use of unlicensed firearm and any other aggravating circumstance, the mitigating circumstance of voluntary surrender should be appreciated in favor of Bugarin. The penalty for attempted murder is *prision mayor*, which is two (2) degrees lower from the penalty of *reclusion perpetua* to death for consummated murder. Since the mitigating circumstance of voluntary surrender is present in this case, the maximum penalty shall be taken from the minimum period of *prision mayor* which is six (6) years and one (1) day to eight (8) years. Applying the Indeterminate Sentence Law, the minimum penalty shall be taken from any of the periods of the penalty next lower in degree which is *prision correccional*. Thus, the penalty of four (4) years, two (2) months, and one (1) day of *prision correccional*, as minimum, to eight (8) years of *prision mayor*, as maximum, would be appropriate. Also, Bugarin must pay Maria Glen ₱25,000.00 as civil indemnity, ₱25,000.00 as moral damages, ₱25,000.00 as exemplary damages, and actual damages in the amount of ₱30,909.48.

WHEREFORE, PREMISES CONSIDERED, the Court **ADOPTS** the findings and conclusions of law in the Decision

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[24] *Palaganas v. People*, 533 Phil. 169, 196 (2006).

[25] 395 Phil. 1, 34 (2000).

dated July 31, 2015 of the Court of Appeals in CA-G.R. CEB-CR-HC No. 01530 and **AFFIRMS with MODIFICATION** said Decision finding accused-appellant Nestor Bugarin y Martinez guilty beyond reasonable doubt as follows:

1. In Criminal Case No. CBU-83610, Bugarin is found guilty beyond reasonable doubt of the crime of Murder and is sentenced to suffer the penalty of *reclusion perpetua*, without eligibility for parole, and ordered to pay Esmeraldo Pontanar's heirs ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, ₱100,000.00 as exemplary damages,[26] and actual damages in the amount of ₱245,490.00;

2. In Criminal Case No. CBU-83611, Bugarin is found guilty beyond reasonable doubt of the crime of Murder and is sentenced to suffer the penalty of *reclusion perpetua*, without eligibility for parole, and ordered to pay Cristito Pontanar's heirs ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, ₱100,000.00 as exemplary damages; and

3. In Criminal Case No. CBU-83613, Bugarin is found guilty beyond reasonable doubt of the crime of Attempted Murder and is sentenced to suffer the indeterminate penalty of four (4) years, two (2) months, and one (1) day of *prision correccional*, as minimum, to eight (8) years of *prision mayor*, as maximum, and ordered to pay Maria Glen Neis Pontanar ₱25,000.00 as civil indemnity, ₱25,000.00 as moral damages, ₱25,000.00 as exemplary damages, and actual damages in the amount of ₱30,909.48.

All of the monetary awards shall incur an interest rate of six percent (6%) *per annum* from the finality of this judgment until fully paid.

SO ORDERED.

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

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[26] *Id.*

FIRST DIVISION

[G.R. No. 181984. March 20, 2017]

REPUBLIC OF THE PHILIPPINES THROUGH ITS TRUSTEE, THE PRIVATIZATION AND MANAGEMENT OFFICE, *petitioner, vs.* **PHILIPPINE INTERNATIONAL CORPORATION,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; AS A GENERAL RULE POINTS OF LAW THEORIES, AND ARGUMENTS NOT BROUGHT BEFORE THE TRIAL COURT CANNOT BE RAISED FOR THE FIRST TIME ON APPEAL; EXCEPTION.—** As a general rule, points of law, theories, and arguments not brought before the trial court cannot be raised for the first time on appeal and will not be considered by this Court; otherwise, a denial of respondent's right to due process would result. Nevertheless, this Court will consider and resolve the issue in the interest of justice and the complete adjudication of the rights and obligations of the parties.

2. **ID.; ID.; JUDGMENTS; WHEN THE FINAL JUDGMENT BECOMES EXECUTORY, IT THEREBY BECOMES IMMUTABLE AND UNALTERABLE.—** It is a fundamental rule that when a final judgment becomes executory, it thereby becomes immutable and unalterable. The judgment may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law. This principle holds regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land. Further, it is settled that the dictum laid down in a final judgment or order becomes binding between the same parties, their privies, and their successors-in-interest. On account of the final judgment that bound APT to the Lease Agreement, PMO is also obligated to respect the lease contract as the former's successor agency.

3. **POLITICAL LAW; REPUBLIC ACT NO. 8758 (AN ACT EXTENDING THE TERM OF THE COMMITTEE ON PRIVATIZATION AND THE ASSET PRIVATIZATION**

TRUST); WHEN THE STATUTORY TERM OF A NON-INCORPORATED AGENCY EXPIRES, THE POWERS, DUTIES AND FUNCTIONS, AS WELL AS THE ASSETS AND LIABILITIES OF THAT AGENCY, REVERT TO AND ARE RE-ASSUMED BY THE REPUBLIC OF THE PHILIPPINES, EXCEPT WHEN THE SPECIAL PROVISIONS OF THE LAW SPECIFIED SOME OTHER MANNER OF DISPOSITION; CASE AT BAR.— In *Iron and Steel Authority v. Court of Appeals*, this Court explained that when the statutory term of a non-incorporated agency expires, the powers, duties and functions, as well as the assets and liabilities of that agency, revert to and are re-assumed by the Republic of the Philippines (Republic). This rule holds in the absence of special provisions of law specifying some other manner of disposition — the devolution or transmission of such powers, duties, and functions — to some other identified successor agency or instrumentality of the Republic. In this case, Republic Act (R.A.) No. 8758 provides that "upon the expiration of the terms of the Committee on Privatization and the Asset Privatization Trust, all their powers, function, duties and responsibilities, all properties, real or personal assets, equipment and records, as well as their obligations and liabilities, shall devolve upon the National Government." In turn, the national government devolved the powers, functions, obligations, and assets of APT to PMO through E.O. 323. One of the existing obligations of APT upon the termination of its term was to respect the Lease Agreement. To recall, there is a previous judgment by the RTC and CA, as affirmed by this Court, finding that APT had an obligation to respect the lease by virtue of its constructive notice of the same. This is a judgment that has lapsed into finality.

4. **CIVIL LAW; CONTRACTS; LEASE; ONCE A LEASE IS ANNOTATED IN THE CERTIFICATE OF TITLE, IT BECOMES BINDING ON THIRD PERSONS.—** PIC's leasehold rights have been clearly annotated on TCT No. 90816. It is settled that once a lease is recorded, as in this case, it becomes binding on third persons. Therefore, from the time of the execution of the lease contract, its efficacy continues until it is terminated on the grounds provided for by law. On account of the foregoing annotation, as well as the finding that APT had constructive notice of the lease, PMO can no longer deflect the binding effect of the Lease Agreement on the latter.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Villareal Rosacia Diño and Patag for respondent.

D E C I S I O N

SERENO, *C.J.*:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, assailing the Decision[1] and the Resolution[2] of the Court of Appeals (CA). The CA upheld the Decision[3] of the Regional Trial Court (RTC), Pasay City, National Capital Judicial Region, Branch 115, in Civil Case No. 04-0806 CFM. The RTC dismissed the appeal filed by petitioner Privatization and Management Office (PMO) against respondent Philippine International Corporation (PIC) in an unlawful detainer case decided by the Metropolitan Trial Court (MeTC).

THE ANTECEDENT FACTS

The facts are not up for debate.

In 1976, the Cultural Center of the Philippines (CCP) and respondent PIC entered into a Lease Agreement.[4] In that agreement, CCP leased to PIC a parcel of land located within the CCP Complex in Pasay City, including the building erected on a portion thereon (subject property).[5]

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[1] *Rollo,* pp. 33-49; dated 20 September 2007; penned by Associate Justice Normandie B. Pizarro, with Associate Justices Edgardo P. Cruz and Mariano C. del Castillo (now a member of this Court) concurring; docketed as CA-G.R. SP No. 89465.

[2] *Id*. at 50-51; dated 3 March 2008.

[3] CA *rollo*, pp. 70-73; penned by Presiding Judge Francisco G. Mendiola.

[4] CA *rollo*, pp. 75-78.

[5] On 18 February 1987, CCP and PIC entered into an agreement denominated as Amendment to Lease Contract. (*Rollo,* pp. 36-37; 53-55) In this amendment, the parties agreed, among others, to increase PIC's annual rentals for the

The Lease Agreement stipulated, among others, as follows:

I.
TERM

1.01. The term of the lease shall be twenty five (25) years from and after the date of this Contract, renewable for a like period under the same terms and conditions at the option of the LESSEE. The LESSEE may however terminate this lease at any time by giving the LESSOR sixty (60) days notice in advance.[6]

Eight years later, CCP alienated the subject property in favor of Philippine National Bank (PNB) through a Deed of *Dacion* in Payment with Lease.[7] In the same deed, PNB leased the subject property back to CCP for a period of five years.[8] Accordingly, the latter's title over the subject property was cancelled and Transfer Certificate Title (TCT) No. 90816[9] issued to PNB.

On 8 December 1986, Proclamation No. 50 was issued. It launched a program for the privatization of certain government corporations and/or assets and created the Committee on Privatization and the Asset Privatization Trust (APT).[10]

Subsequently, on 27 February 1987, PNB assigned the subject property to the national government under a Deed of Transfer pursuant to Proclamation No. 50.[11] On the same day, the national government executed a Trust Agreement[12] with APT, whereby the former conveyed the leased premises in trust to the latter for administration and disposition.

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leased premises and that "all other terms and conditions of the original lease contract shall continue to be in force and effect." (*Rollo,* pp. 53-54)

[6] CA *rollo*, p. 76.

[7] RTC Records, pp. 54-62.

[8] *Id*. at 56.

[9] *Id*. at 63-65.

[10] *Rollo*, p. 36.

[11] RTC Records, pp. 154-156.

[12] *Id*. at 214.

PIC then requested PNB to annotate the former's leasehold rights on TCT No. 90816. However, PNB refused the request in view of the transfer of the subject property to APT and the latter's insistence that it was not bound by the Lease Agreement between CCP and PIC.[13]

By reason of PNB's refusal, PIC instituted a Complaint to compel CCP, PNB, and APT to respect the terms and conditions of the Lease Agreement and the amendment thereto. PIC also wanted the three to be compelled to deliver the title of the subject property, so that the lease could be annotated thereon.[14]

In an Order dated 15 November 1990, the RTC ruled in favor of PIC after finding that APT already had constructive notice of the lease, which the latter must therefore respect.[15] Upon appeal, the CA dismissed APT's petition and affirmed the RTC Decision. The appellate court likewise found that APT was estopped from denying PIC's leasehold rights over the subject property by virtue of the former's acceptance of rentals therefor.[16] The case was brought to this Court, which also denied APT's appeal and sustained the lower courts' rulings.[17]

After the foregoing turn of events, PIC succeeded in having its leasehold rights annotated on the title of the subject property on 19 May 1992.[18]

On 15 February 2000, prior to the expiration of the 25-year lease agreement, PIC wrote APT to reiterate an earlier letter dated 17 October 1991. In that letter, PIC stated that it was exercising its option to renew the lease pursuant to the Lease

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[13] *Rollo*, p. 38.

[14] *Id*.

[15] *Id*.

[16] RTC Records, p. 303.

[17] *Id*.; in a Resolution dated 11 December 1991.

[18] CA *rollo*, p. 269; in July 1992, APT allowed PIC to introduce amusement facilities and hold carnival or national fairs on the subject property. (*Rollo*, p. 39)

Agreement. [19] APT denied the supposed request of PIC to exercise its option.[20]

Meanwhile, the term of APT expired on 31 December 2000. By virtue of Executive Order (E.O.) No. 323 dated 6 December 2000, the PMO was created. It was mandated to take over the assets of APT and inherit the latter's powers and functions. Thus, PMO now holds the subject property on behalf of the national government.[21]

In view of the forthcoming expiration of the lease period on 7 July 2001, PMO informed PIC that its request to exercise its option to renew the lease had been denied.[22] PIC declined PMO's assertion for being without any legal basis.[23] It insisted that it exercised its option and considered the lease renewed thereby.

The conflicting positions of PMO and PIC resulted in a stalemate between them. As a result, PMO demanded that PIC vacate the subject property.[24] Upon the latter's refusal, PMO filed a Complaint for unlawful detainer before the MeTC of Pasay City, Branch 46.[25]

In a Decision dated 20 October 2004, the MeTC ruled in favor of PIC and upheld the validity of the latter's renewal of the lease for another 25 years pursuant to the Lease Agreement.[26] The MeTC held that by PIC's notice of the exercise of its option to renew the lease, the lease was deemed renewed for another 25 years under the same terms and conditions of the Lease Agreement.[27]

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[19] *Id*. at 263-265.

[20] *Id*. at 266.

[21] *Rollo*, pp. 39-40.

[22] RTC Records, p. 304.

[23] *Id*.; through a letter dated 29 July 2001.

[24] *Id*. at 276.

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

[26] CA *rollo*, pp. 123-148; penned by Judge Normando T. Garcia.

[27] *Id*. at 146-147.

PMO appealed the MeTC Decision to the RTC and raised for the first time the contention that the lease contract could not bind a non-party thereto like PMO. [28] The RTC, however, dismissed the appeal and affirmed the MeTC's disposition. Regarding the assertion of PMO that it was a non-party that was not bound by the lease, the RTC ruled that the issue was one that could not be raised for the first time on appeal. Nevertheless, the RTC held that PMO stepped into the shoes of its predecessor-in-interest.[29]

Undaunted, PMO proceeded to the CA via a Rule 42 Petition for Review.[30] There, it raised the issue of the renewal of the lease by a mere notice given by PIC that it would exercise its option to renew.[31]

The CA denied the appeal and affirmed the lower courts, ruling as follows:

> An express agreement which gives the lessee the sole option to renew the lease is frequent and[,] subject to statutory restrictions, valid and binding on the parties. This option, which is provided in the same lease agreement herein, is fundamentally part of the consideration in the contract and is not different from any other provision of the lease carrying an undertaking on the part of the lessor to act conditioned on the performance by the lessee. x x x The right of renewal constitutes a part of the lessee's interest in the land and forms a substantial and integral part of the agreement.[32]

To the CA, PIC already had a vested right to renew the lease. Citing *Allied Banking Corporation v. Court of Appeals*,[33] the appellate court stated that "if we were to adopt the theory that the terms and conditions to be embodied in the renewed contract

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[28] *Id.* at 71.

[29] *Id.* at 72.

[30] *Id.* at 40-65.

[31] *Rollo*, p. 43.

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

[33] 348 Phil. 382 (1998).

were still subject to mutual agreement by and between the parties, then the option — which is an integral part of the consideration for the contract — would be rendered worthless."[34]

Upon the CA's denial of its Motion for Reconsideration, PMO is now before this Court through this Petition assailing the CA ruling. PMO raises the argument that it was not a party to the original lease contract between CCP and PIC; hence, it is not bound by the contract.

ISSUE

The primordial issue raised for this Court's resolution is whether or not PMO is bound by the Lease Agreement.

THE COURT'S RULING

We deny the petition.

At the outset, it must be pointed out that the issue before us was belatedly raised by PMO for the first time on appeal before the RTC.[35] The issue was not brought before the CA, but is being raised again before this Court. As a general rule, points of law, theories, and arguments not brought before the trial court cannot be raised for the first time on appeal and will not be considered by this Court; otherwise, a denial of respondent's right to due process would result.[36] Nevertheless, this Court will consider and resolve the issue in the interest of justice and the complete adjudication of the rights and obligations of the parties.

PMO is bound by the Lease Agreement.

It is undisputed that PMO is the successor agency of APT. Consequently, it assumes the existing obligations of APT upon the termination of the latter's existence. In *Iron and Steel Authority v. Court of Appeals*,[37] this Court explained that when

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[34] *Rollo*, p. 48.

[35] *Id.* at 47.

[36] *Figuera v. Ang,* G.R. No. 204264, 29 June 2016.

[37] 319 Phil. 648 (1995).

the statutory term of a non-incorporated agency expires, the powers, duties and functions, as well as the assets and liabilities of that agency, revert to and are re-assumed by the Republic of the Philippines (Republic). This rule holds in the absence of special provisions of law specifying some other manner of disposition – the devolution or transmission of such powers, duties, and functions – to some other identified successor agency or instrumentality of the Republic.[38]

In this case, Republic Act (R.A.) No. 8758[39] provides that "upon the expiration of the terms of the Committee on Privatization and the Asset Privatization Trust, all their powers, function, duties and responsibilities, all properties, real or personal assets, equipment and records, as well as their obligations and liabilities, shall devolve upon the National Government."[40] In turn, the national government devolved the powers, functions, obligations, and assets of APT to PMO through E.O. 323.

One of the existing obligations of APT upon the termination of its term was to respect the Lease Agreement. To recall, there is a previous judgment by the RTC and CA, as affirmed by this Court, finding that APT had an obligation to respect the lease by virtue of its constructive notice of the same. This is a judgment that has lapsed into finality.

It is a fundamental rule that when a final judgment becomes executory, it thereby becomes immutable and unalterable. The judgment may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law. This principle holds regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land.[41]

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[38] *Id*.

[39] An Act Extending The Term Of The Committee On Privatization And The Asset Privatization Trust Amending For The Purpose Republic Act Numbered Seven Thousand One Hundred Eighty-One, As Amended (28 December 1999).

[40] R.A. 8758, Sec. 2.

[41] *Arcenas v. CA,* 360 Phil. 122 (1998).

Further, it is settled that the dictum laid down in a final judgment or order becomes binding between the same parties, their privies, and their successors-in-interest.[42]

On account of the final judgment that bound APT to the Lease Agreement, PMO is also obligated to respect the lease contract as the former's successor agency.

At any rate, assuming that PMO was a third party to the Lease Agreement, it is still bound by it. PIC's leasehold rights have been clearly annotated on TCT No. 90816.[43] It is settled that once a lease is recorded, as in this case, it becomes binding on third persons. Therefore, from the time of the execution of the lease contract, its efficacy continues until it is terminated on the grounds provided for by law.[44]

On account of the foregoing annotation, as well as the finding that APT had constructive notice of the lease, PMO can no longer deflect the binding effect of the Lease Agreement on the latter.

On the matter of the alleged prejudice to the government caused by the unconscionably low rental rates and for a period that amounts to perpetuity, we find these allegations to be premature and without clear basis. In fact, the MeTC itself doubted the claim on the rental rates, because it appeared that the rental being paid for another land in the vicinity was far lower than that paid by PIC, a fact that was not disputed by PMO.[45] In any event, the parties are not precluded from negotiating an improvement of the financial terms of the Lease Agreement.

Further, if PMO indeed believed that the Lease Agreement was grossly disadvantageous to the government, it should have brought the proper judicial action available under the law.

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[42] *Hacienda Bigaa, Inc. v. Chavez,* 632 Phil. 574 (2010).

[43] CA *rollo*, p. 269.

[44] *Soriano v. Court of Appeals,* 258 Phil. 120 (1989).

[45] CA *rollo*, p. 148.

As correctly ruled by the CA, the mere failure to agree on a new rental rate can no longer divest PIC of the latter's vested right to renew the lease pursuant to paragraph 1.01 of the Lease Agreement.

WHEREFORE, the Petition for Review on *Certiorari* under Rule 45 is **DENIED** for lack of merit. The Court of Appeals Decision[46] and Resolution[47] in **CA-G.R. SP No. 89465** are hereby **AFFIRMED.**

SO ORDERED.

Leonardo-de Castro, Perlas-Bernabe, Jardeleza,[*] and *Caguioa, JJ.,* concur.

THIRD DIVISION

[G.R. No. 182409. March 20, 2017]

FELIX PLAZO URBAN POOR SETTLERS COMMUNITY ASSOCIATION, INC., *petitioner, vs.* **ALFREDO LIPAT, SR. and ALFREDO LIPAT, JR.**, *respondents.*

SYLLABUS

1. **CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; CONTRACT TO SELL; THE OBLIGATION OF THE SELLER TO SELL BECOMES DEMANDABLE ONLY UPON THE OCCURRENCE OF THE SUSPENSIVE CONDITION WHICH IS THE PAYMENT IN FULL OF THE PURCHASE PRICE.—** [T]he contract executed by the

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[46] Dated 20 September 2007.

[47] Dated 3 March 2008.

[*] Designated Additional Member in lieu of Associate Justice Mariano D. del Castillo, as per Raffle dated 20 February 2017;

parties is the law between them. Consequently, from the time the contract is perfected, all parties privy to it are bound not only to the fulfillment of what has been expressly stipulated but likewise to all consequences which, according to their nature, may be in keeping with good faith, usage and law. x x x [I]t is undisputed that the x x x contract is in the nature of a CTS. As such, the obligation of the seller to sell becomes demandable only upon the occurrence of the suspensive condition. In the present case, as correctly observed by the CA, the suspensive condition is the payment in full of the purchase price by the petitioner prior to the expiration of the 90-day period stipulated in their CTS, which the latter failed to do so. x x x In *Spouses Garcia, et al. v. Court of Appeals, et al.*, the Court emphasized that in a CTS, payment of the full purchase price is a positive suspensive condition, failure of which is not considered a breach of the same but an occurrence that prevents the obligation of the seller to transfer title from becoming effective. Here, there is no dispute that the petitioner failed to pay the full purchase price stipulated in the CTS on the date fixed therein. Thus, the respondents are within their rights to refuse to enforce the same.

2. **REMEDIAL LAW; EVIDENCE; DOCUMENTARY EVIDENCE; PAROL EVIDENCE RULE; PAROL EVIDENCE CAN SERVE THE PURPOSE OF INCORPORATING INTO THE CONTRACT ADDITIONAL CONTEMPORANEOUS CONDITIONS, WHICH ARE NOT MENTIONED AT ALL IN THE WRITING, ONLY IF THERE IS FRAUD OR MISTAKE.—** Rule 130, Section 9 of the Revised Rules on Evidence embodies the parol evidence rule x x x. It is well settled that parol evidence can serve the purpose of incorporating into the contract additional contemporaneous conditions, which are not mentioned at all in writing, only if there is fraud or mistake. Here, the petitioner's claim that the reason for their failure to pay the full purchase price was due to the failure of the respondents to settle the pending litigation involving the subject properties is not tenable. Clearly, a perusal of the CTS executed by the parties does not show any provision pertaining to such condition. Also, the petitioner failed to present sufficient evidence to show that such failure was due to fraud or mistake.

3. **CIVIL LAW; CIVIL CODE; HUMAN RELATIONS; UNJUST ENRICHMENT; THE REFUND TO THE BUYER OF ALL**

SUMS PREVIOUSLY MADE, AFTER TERMINATING THE CONTRACT TO SELL FOR FAILURE TO PAY THE PURCHASE PRICE IS BASED ON THE PRINCIPLE AGAINST UNJUST ENRICHMENT.— In *Pilipino Telephone Corporation v. Radiomarine Network (Smartnet) Philippines, Inc.*, the Court ordered the refund to the buyer of all sums previously made, after terminating the CTS for failure to pay the purchase price, based on the principle against unjust enrichment. x x x In the present case, however, since the records are insufficient to use as bases to properly compute all payments previously made by the petitioner to the respondents in connection with the CTS they executed dated December 13, 1991, the case should be remanded to the RTC for a detailed computation of the refund and to include the imposition of an interest at the rate of six percent (6%) *per annum* pursuant to the Court's ruling in *Nacar v. Gallery Frames, et al.*

APPEARANCES OF COUNSEL

Bongat Borja & Associates for petitioner.
Expedito B. Mapa 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 assailing the Decision[2] dated April 30, 2007 and Resolution[3] dated March 17, 2008 of the Court of Appeals (CA) in CA-G.R. CV No. 85684 which granted the appeal of Alfredo Lipat, Sr. (Lipat Sr.) and Alfredo Lipat, Jr. (Lipat Jr.) (respondents) and accordingly dismissed the action for Specific Performance and Damages with Prayer for Preliminary Injunction filed by Felix Plazo Urban Poor Settlers Community Association, Inc. (petitioner) for lack of cause of action.

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[1] *Rollo*, pp. 3-33.

[2] Penned by Associate Justice Amelita G. Tolentino, with Associate Justices Vicente Q. Roxas and Mariflor P. Punzalan-Castillo concurring; *id.* at 36-46.

[3] *Id.* at 52-53.

The Facts

On December 13, 1991, Lipat Sr., as represented by Lipat Jr., executed a Contract to Sell (CTS) in favor of the petitioner, as represented by its President, Manuel Tubao (Tubao), whereby the former agreed to sell to the latter two parcels of land in Naga City covered by Transfer Certificates of Title Nos. 12236 and 12237 (subject properties) for a consideration of ₱200.00 per square meter.[4]

As stipulated in the CTS, the petitioner had 90 days to pay in full the purchase price of the subject properties; otherwise, the CTS shall automatically expire. The period, however, elapsed without payment of the full consideration by the petitioner.[5]

According to the petitioner, the 90-day period provided in the CTS was subject to the condition that the subject properties be cleared of all claims from third persons considering that there were pending litigations involving the same.[6]

Upon the expiry of the 90-day period, and despite the failure to clear the subject properties from the claims of third persons, the petitioner contributed financial assistance for the expenses of litigation involving the subject properties with the assurance that the CTS will still be enforced once the cases are settled.[7]

In the meantime, the petitioner agreed to pay rental fees for their occupation of the subject properties from 1992 to 1996.[8]

After the termination of the cases involving the subject properties, however, the respondents refused to enforce the CTS on the ground that the same had expired and averred that there was no agreement to extend its term.[9]

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[4] *Id*. at 37.

[5] *Id*.

[6] *Id*. at 66.

[7] *Id*.

[8] *Id*.

[9] *Id*. at 67.

Consequently, the petitioner filed a case for Specific Performance and Damages with Prayer for the Issuance of Preliminary Injunction against the respondents on June 10, 1997 before the Regional Trial Court (RTC) of Naga City.[10]

For their defense, the respondents alleged that the CTS was not enforced due to the petitioner's failure to pay the ₱200.00 per sq m selling price before the expiration of its term.[11] As a result, the members of the petitioner were required to pay rental fees corresponding to the area they occupy.[12]

Moreover, the respondents claimed that the so called "financial assistance" they received from the petitioner's members was in the nature of a loan and that it has nothing to do with the alleged extension of their CTS.[13]

Considering that the CTS already expired, Lipat Jr. suggested an individual contract for each member of the petitioner. Only four members, however, were able to buy individual lots, namely, Consuelo Gomez, Edna Estioko, Gina Villar, and Pablo Calubad.[14] Also, Rosemarie Buenaventura, who is not a member of the petitioner, was able to buy two lots on the subject properties. Consequently, she filed an urgent Motion for Leave to Intervene which was granted by the trial court on August 4, 1997.[15]

Ruling of the RTC

On August 9, 2004, the RTC of Naga City, Branch 22, in Civil Case No. RTC '97-3777, rendered a Decision[16] in favor of the petitioner directing the respondent to enforce the CTS after payment by the petitioner of the selling price in the amount of ₱200.00 per sq m. The dispositive portion thereof provides:

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[10] *Id*. at 38.

[11] *Id*. at 79.

[12] *Id*. at 38.

[13] *Id*.

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

[15] *Id*. at 67.

[16] Rendered by Judge Novelita Villegas-Llaguno*; id*. at 65-95.

WHEREFORE, premises considered, the [petitioner] having proved by preponderance of evidence the enforceability of the [CTS], dated December 13, 1991, judgment is hereby rendered ordering the [respondents], to sell to [the petitioner] the propert[ies] subject of this case, previously covered by TCT No. 12236 and 12237, upon payment by the [petitioner] of the selling price of ₱200.00 per square meter.

SO ORDERED.[17]

Aggrieved, the respondents filed an appeal to the CA to assail the RTC decision in holding that the CTS dated December 13, 1991 they entered into with the petitioner is still in force and effect.[18]

Ruling of the CA

In a Decision[19] dated April 30, 2007, the CA granted the appeal of the respondents. Accordingly, it dismissed the action for Specific Performance and Damages with Prayer for Preliminary Injunction filed by the petitioner for being premature. The dispositive portion thereof states:

WHEREFORE, the instant appeal is **GRANTED**. The assailed decision in CIVIL CASE No. RTC '97-3777 is **REVERSED** and **SET ASIDE**. The action for Specific Performance and Damages with Prayer for Preliminary Injunction filed by the [petitioner] against the [respondents] with the court a quo is hereby **DISMISSED** for lack of cause of action. No pronouncement as to costs.

SO ORDERED.[20]

The CA held that the petitioner cannot exact fulfillment from the respondents without itself having first complied with what is incumbent upon it under the CTS. As shown in the records, the petitioner failed to make full payment of the purchase price. Further, records do not show that the petitioner ever attempted

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[17] *Id*. at 95.

[18] *Id*. at 96-107.

[19] *Id*. at 36-46.

[20] *Id*. at 45.

to at least, make the proper consignation of the amounts due to the court.[21]

A Motion for Reconsideration[22] was filed by the petitioner, but the same was denied in a Resolution[23] dated March 17, 2008.

Issues

Hence, the instant petition for review on *certiorari* based on the following assignment of errors:

1. WHETHER OR NOT THE CA ERRED IN REVERSING THE TRIAL COURT'S DECISION THAT THE PETITIONER CAN OBLIGE THE RESPONDENTS TO SELL THE PROPERTIES COVERED BY THE CTS, THE CONTRACT BEING STILL EFFECTIVE;
2. WHETHER OR NOT THE CA ERRED IN DECLARING THAT THE CAUSE OF ACTION IS PREMATURE AND IN DISREGARDING THE PAYMENTS AND EXPENSES MADE BY THE PETITIONER OVER THE PROPERTIES IN QUESTION; and
3. WHETHER OR NOT THE CA ERRED IN NOT GRANTING THE MOTION FOR RECONSIDERATION DESPITE THE FACT THAT THE PETITIONER SHOWED PROOF OF READINESS TO PAY.[24]

Ruling of the Court

To begin with, it bears stressing that the scope of the Court's judicial review under Rule 45 of the Rules of Court is confined only to errors of law. It does not extend to questions of fact.[25] This rule, however, admits of exceptions, such as in the present case, where the factual findings of the CA and the trial court are contradictory.[26]

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

[22] *Id*. at 47-51.

[23] *Id*. at 52-53.

[24] *Id*. at 20-21.

[25] *Skippers United Pacific, Inc. v. NLRC*, 527 Phil. 248, 256 (2006).

[26] *Treñas v. People*, 680 Phil. 368, 378 (2012).

After a careful review of the records of the case, however, the Court upholds the findings of the CA in dismissing the complaint for specific performance filed by the petitioner against the respondents for lack of merit.

The parties are bound to the stipulations they mutually agreed upon in the CTS

Indeed, the contract executed by the parties is the law between them. Consequently, from the time the contract is perfected, all parties privy to it are bound not only to the fulfillment of what has been expressly stipulated but likewise to all consequences which, according to their nature, may be in keeping with good faith, usage and law.[27]

Here, the pertinent provisions of the CTS, denominated as Contract/Agreement, between the parties read:

1. The Parties hereby agree that for and in consideration of the amount of TWO HUNDRED (₱200.00) Pesos, [Philippine] Currency per square meter, the VENDOR shall sell, cede, convey and transfer unto the VENDEE, its assigns, or representative the above mentioned property;

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3. The registration fee for the mortgage to secure the loan to be obtained by the vendee to finance the acquisition of the land shall be for the account of the VENDEE; [and]

4. This Contract/Agreement shall automatically expire on the Ninetyth [sic] (90) th [sic] day commencing from the aforesaid date.[28]

Concededly, it is undisputed that the abovementioned contract is in the nature of a CTS. As such, the obligation of the seller to sell becomes demandable only upon the occurrence of the suspensive condition.[29] In the present case, as correctly observed

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[27] *Valarao v. Court of Appeals*, 363 Phil. 495, 506 (1999).

[28] *Rollo*, p. 146.

[29] *Chua v. Court of Appeals*, 449 Phil. 25, 45 (2003).

by the CA, the suspensive condition is the payment in full of the purchase price by the petitioner prior to the expiration of the 90-day period stipulated in their CTS, which the latter failed to do so. The relevant portion of the CA's decision reads:

> As shown in the case at bar, the [petitioner] did not pay the full purchase price which is its obligation under the [CTS]. As the payment of the full purchase price is a positive suspensive condition the non-fulfillment of which prevents the perfection of a [CTS], it is indubitable that the subject [CTS] is ineffective and without force and effect. x x x.[30]

In *Spouses Garcia, et al. v. Court of Appeals, et al.*,[31] the Court emphasized that in a CTS, payment of the full purchase price is a positive suspensive condition, failure of which is not considered a breach of the same but an occurrence that prevents the obligation of the seller to transfer title from becoming effective.[32] Here, there is no dispute that the petitioner failed to pay the full purchase price stipulated in the CTS on the date fixed therein. Thus, the respondents are within their rights to refuse to enforce the same.

As a rule, proof of verbal agreement that tends to vary the terms of a written agreement, is inadmissible under the parol evidence rule

Rule 130, Section 9 of the Revised Rules on Evidence embodies the parol evidence rule which states:

> SEC. 9. *Evidence of written agreements.* When the terms of an agreement have been reduced to writing, it is considered as containing all the terms agreed upon and there can be, between the parties and their successors-in-interest, no evidence of such terms other than the contents of the written agreement.
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> However, a party may present evidence to modify, explain or add to the terms of the written agreement if he puts in issue in his pleading:

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[30] *Rollo*, p. 43.

[31] 633 Phil. 294 (2010).

[32] *Id*. at 300.

(a) An intrinsic ambiguity, mistake or imperfection in the written agreement;

(b) The failure of the written agreement to express the true intent and agreement of the parties thereto;

(c) The validity of the written agreement; or

(d) The existence of other terms agreed to by the parties or their successors-in-interest after the execution of the written agreement.

The term "agreement" includes wills.

In *Norton Resources and Development Corporation v. All Asia Bank Corporation*,[33] the Court discussed the parol evidence rule in this manner:

The "parol evidence rule" forbids any addition to or contradiction of the terms of a written instrument by testimony or other evidence purporting to show that, at or before the execution of the parties' written agreement, other or different terms were agreed upon by the parties, varying the purport of the written contract. When an agreement has been reduced to writing, the parties cannot be permitted to adduce evidence to prove alleged practices which, to all purposes, would alter the terms of the written agreement. Whatever is not found in the writing is understood to have been waived and abandoned. x x x.[34] (Citation omitted)

These rule and principle notwithstanding, the petitioner would have the Court rule that the CTS it executed with the respondents falls within the exceptions, more specifically that the written agreement failed to express the true intent and agreement of the parties considering that the same is also subject to the condition that all pending litigations relative to the subject properties are settled. This argument is untenable.

It is well settled that parol evidence can serve the purpose of incorporating into the contract additional contemporaneous conditions, which are not mentioned at all in writing, only if

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[33] 620 Phil. 381 (2009).

[34] *Id*. at 389-390.

there is fraud or mistake.[35] Here, the petitioner's claim that the reason for their failure to pay the full purchase price was due to the failure of the respondents to settle the pending litigation involving the subject properties is not tenable. Clearly, a perusal of the CTS executed by the parties does not show any provision pertaining to such condition. Also, the petitioner failed to present sufficient evidence to show that such failure was due to fraud or mistake.

Moreover, the petitioner likewise failed to prove by preponderant evidence their claim that an extension was given to them to pay the full purchase price indicated in the CTS. In main, they presented documents showing that they paid for the expenses and attorney's fees to settle the pending litigations of the subject properties. According to them, in exchange for their financial assistance, the respondents agreed to extend the period of payment until after the conclusion of the pending litigations.

The allegation of the petitioner, however, was successfully rebutted by the respondents when they presented a purported new contract pre-signed by Tubao, the petitioner's former president, and two of its members as witnesses. Clearly, the petitioner itself recognized the expiration of the 90-day period provided in their CTS and instead offered a new contract to Lipat Jr., who, however, refused to sign the same. Unfortunately, this has not been controverted by the petitioner.[36]

At any rate, assuming without conceding that the 90-day period was extended by the parties, the obligation of the respondents based on the CTS did not arise as a result of the continued failure of the petitioner to pay the full purchase price. As the Court held in *Ursal v. Court of Appeals*,[37] the perfected CTS imposed on the buyer the obligation to pay the balance of the purchase price. As such, the buyer should have made the

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[35] *Ortañez v. CA*, 334 Phil. 514, 519 (1997).

[36] *Rollo*, p. 104.

[37] 509 Phil. 628 (2005).

proper tender of payment and consignation of the price in court as required by law. It is essential that consignation be made in court in order to extinguish the obligation of the buyer to pay the balance of the purchase price.[38] Here, records are bereft of any showing that the petitioner even attempted to make the proper consignation of the amounts due, as a result, the obligation on the part of the respondents never acquired obligatory force, thus, the seller is released from his obligation to sell.

Payments made by the petitioner for the subject properties, however, must be refunded

In *Pilipino Telephone Corporation v. Radiomarine Network (Smartnet) Philippines, Inc.*,[39] the Court ordered the refund to the buyer of all sums previously made, after terminating the CTS for failure to pay the purchase price, based on the principle against unjust enrichment. The Court in part stated:

> Likewise, a cause of action for specific performance does not arise where the [CTS] has been cancelled due to nonpayment of the purchase price. Smartnet obviously cannot demand title to the Valgoson Property because it did not pay the purchase price in full. For its part, Piltel also cannot insist on full payment since Smartnet's failure to pay resulted in the cancellation of the [CTS]. Indeed, in the case of *Ayala Life Assurance, Inc. v. Ray Burton Devt. Corp.*, the Court rejected the seller's demand for full payment and instead ordered it to refund to the buyer all sums previously paid. The order to refund is correct based on the principle that no one should unjustly enrich himself at the expense of another.[40] (Citations omitted)

In the present case, however, since the records are insufficient to use as bases to properly compute all payments previously made by the petitioner to the respondents in connection with the CTS they executed dated December 13, 1991, the case should be remanded to the RTC for a detailed computation of the refund

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[38] *Id*. at 647.

[39] 671 Phil. 557 (2011).

[40] *Id*. at 568.

and to include the imposition of an interest at the rate of six percent (6%) *per annum* pursuant to the Court's ruling in *Nacar v. Gallery Frames, et al.*[41]

WHEREFORE, the petition is **DENIED**. The Decision dated April 30, 2007 and Resolution dated March 17, 2008 of the Court of Appeals in CA-G.R. CV No. 85684 are hereby **AFFIRMED with the MODIFICATION** that the case is **REMANDED** to the Regional Trial Court of Naga City, Branch 22, for the computation of all payments previously made by petitioner Felix Plazo Urban Poor Settlers Community Association, Inc. to respondents Alfredo Lipat, Sr. and Alfredo Lipat, Jr. in connection with the Contract to Sell they executed which the respondents should refund without delay. Also, the Regional Trial Court is directed to include the imposition of an interest at the rate of six percent (6%) *per annum* pursuant to prevailing jurisprudence.

SO ORDERED.

Velasco, Jr. (Chairperson), Bersamin, Jardeleza, and *Tijam, JJ.,* concur.

THIRD DIVISION

[G.R. No. 183399. March 20, 2017]

ROGEL ORTIZ, *petitioner, vs.* **DHL PHILIPPINES CORPORATION, *et al.***, *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; TERMINATION OF EMPLOYMENT; WHEN VALID.— It is well settled that a valid dismissal necessitates compliance

[41] 716 Phil. 267 (2013).

with substantive and procedural requirements. Specifically, in *Mantle Trading Services, Inc. and/or Del Rosario v. NLRC, et al.*, the Court emphasized that (a) there should be just and valid cause as provided under Article 282 of the Labor Code, and (b) the employee be afforded an opportunity to be heard and to defend himself.

2. **ID.; ID.; ID.; SERIOUS MISCONDUCT AND GRAVE DISHONESTY; ESTABLISHED IN CASE AT BAR.—** After a careful examination of the facts and the records of this case, the Court finds that the petitioner's dismissal was founded on acts constituting serious misconduct and grave dishonesty which are grounds for a valid dismissal. x x x The truthfulness of the charges against the petitioner was well established by the joint affidavits executed by his co-employees and corroborated by documentary evidence presented by DHL. x x x [P]etitioner readily admitted to the infractions he committed during the investigation conducted by the company.

3. **ID.; ID.; ID.; NOTICE AND HEARING; IN CASES INVOLVING DISMISSALS FOR CAUSE BUT WITHOUT OBSERVANCE OF THE TWIN REQUIREMENTS OF NOTICE AND HEARING, THE VALIDITY OF THE DISMISSAL SHALL BE UPHELD BUT THE EMPLOYER SHALL BE ORDERED TO PAY NOMINAL DAMAGES.—** The Court x x x agrees with the CA that the petitioner was not afforded procedural due process in the process of his termination which warrants the grant of ₱30,000.00 in nominal damages. x x x Based on the records, the petitioner received three notices before he was given the notice of his termination. x x x None of the three notices satisfied the requirements of the law. In the first notice, the allegations against the petitioner were vague and did not make any reference to the company policy violated by the latter nor to any of the grounds for termination in Article 282 of the Labor Code. Apart from this, the notice did not give the petitioner a reasonable opportunity to prepare his explanation as he was only given practically a day or 24 hours to respond to the same. In the same way, the second notice lacked the particularity required by the law. It does not contain a detailed narration of the incidents being alluded to, leaving the petitioner guessing on the particulars of the charges against him. The general description of the charges is not a sufficient compliance with the law. The same can be said of the third notice as it is

completely wanting of the essential details required of a proper notice. There were no details of the charges against the accused, the notice merely stating that the formal investigation concerns the "*offenses for which the petitioner is currently being investigated*." What these offenses are, however, can hardly be gathered with particularity from the two earlier notices given to the petitioner. It is even doubtful whether this notice was ever given to the petitioner at all since the copy of the same submitted in evidence by DHL contained a notation, "REFUSED TO SIGN (6/30/99)", thereby giving the impression that the petitioner was supposedly served a copy of the notice but refused to sign on June 30, 1999, while the formal investigation was held on May 4, 1999. Undoubtedly, there was a considerable lapse by DHL in observing the procedural due process requirements of the law in terminating employment. In such a case, the ruling in *Agabon v. NLRC* is instructive. It was held that in cases involving dismissals for cause but without observance of the twin requirements of notice and hearing, the validity of the dismissal shall be upheld but the employer shall be ordered to pay nominal damages in the amount of ₱30,000.00.

APPEARANCES OF COUNSEL

Arguedo & Associates Law Office for petitioner.
Pacholo Famor, co-counsel for petitioner.
Jo & Pintor Law Offices for respondents.

R E S O L U T I O N

REYES, *J*.:

This is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court filed by Rogel Ortiz (petitioner), assailing the Decision[2] dated October 27, 2006 and Resolution[3] dated December 13, 2007 of the Court of Appeals (CA) in CA-G.R.

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[1] *Rollo*, pp. 10-30.

[2] Penned by Associate Justice Romeo F. Barza, with Associate Justices Isaias P. Dicdican and Priscilla Baltazar-Padilla concurring; *id*. at 33-47.

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

CEB-SP No. 00180, which affirmed with modification the ruling of the National Labor Relations Commission (NLRC) in NLRC Case No. V-000499-2000.

Factual Antecedents

In September 1989, the petitioner was hired by DHL Philippines Corporation (DHL) as Courier/Driver at the Mactan Business Center in Cebu. In 1991, he was promoted to the position of Customs Representative and occupied the said position until 1995 when he was assigned at the Ramos Business Center (RBC). Thereafter, he held the position of a Manifest Clerk up to the time of his termination.[4]

As a Manifest Clerk, the petitioner was specifically tasked to prepare manifest documents of the cargo before the same is forwarded to its destination. He was made to work from 11:00 a.m. until 8:00 p.m., with one-hour meal break and a 15-minute coffee break. On ordinary days, he and the other manifest clerks took charge of the office business from 6:00 p.m. to 8:00 p.m. since their Branch Supervisor, Marivic Jubay (Jubay) leaves by 6:00 p.m.[5]

On March 2, 1999, a little past 7:00 p.m., Jubay dropped by the RBC and found out that the petitioner was not there. She inquired from his co-employees of his whereabouts but nobody knew where he was. She waited until the petitioner returned to the office at 8:55 p.m. to punch out his time card. She then asked him where he went and he told her that he had his tires fixed at a vulcanizing shop. She reprimanded the petitioner and told him to exercise more diligence at work. On the following day, however, the petitioner did not report for work.[6]

On March 19, 1999, at around 6:00 p.m., the RBC Branch Manager, Ramon Tamondong (Tamondong), looked for the petitioner but he was not in his workplace and his co-employees

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[4] *Id*. at 109.

[5] *Id*. at 82.

[6] *Id*.

would not know where he was. Tamondong then asked the security guard if he knew where the petitioner could be and the former answered that he went home to watch a Philippine Basketball Association (PBA) game. Thus, Tamondong called Jubay and directed her to investigate the matter. Jubay immediately called the office but the petitioner was still nowhere to be found. On the following day, Jubay found out that the petitioner punched out his time card 8:46 p.m. on the previous day.[7]

On March 25, 1999, the petitioner received a memorandum[8] from Jubay, directing him to explain why he had left his post during office hours on March 19, 1999. Instead of showing repentance and admitting his faults, he arrogantly hurled invectives at his supervisor in front of his co-employees.[9] On the following day, he submitted his written explanation,[10] wherein he claimed that he only took his 15-minute break since he has yet to avail of the same that day. During the investigation, however, his officemates revealed that he had been regularly leaving the office before his shift ends, just right after their supervisor leaves the office, especially on Tuesdays and Thursdays, and whenever his brother-in-law, who plays for a PBA team, has a scheduled game. In those days, he would call from his residence and ask the security guard or his co-employee, Hubert Enad to punch out his time card. Due to these allegations, Jubay elevated the matter for further investigation to the Human Resources Manager for Visayas and Mindanao. The investigation conducted only confirmed the fact that the petitioner had been leaving the office early two to three times a week to practice basketball or watch PBA games. The security guards likewise disclosed that this practice had been going on for almost two years already. Upon learning that the security guards testified against him, he threatened to retaliate by making them lose their employment and revoke their agency's license.[11]

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[7] *Id*. at 82-83.

[8] *Id*. at 273.

[9] *Id*. at 83.

[10] *Id*. at 274.

[11] *Id*. at 83-84.

After a series of memoranda and written explanations between the personalities involved, the petitioner was issued a notice of formal investigation to be conducted on May 4, 1999.[12] During the confrontation, the petitioner apologized for his ill behavior in front of his supervisor and admitted to all the charges against him. When he was informed that his infractions may warrant his dismissal, he pleaded that he be imposed with suspension instead. He was, thus, advised to write a letter to the management to appeal for a lesser penalty for his infractions, which he submitted on May 5, 1999.[13]

In a memorandum[14] dated May 15, 1999, the management of DHL denied the petitioner's plea for a lesser penalty for his infractions. The memorandum pointed out that the gravity of the infractions and the fact that the same had been continuously committed for a period of two years amount to grave dishonesty and serious misconduct which deserved no less than dismissal. On June 4, 1999, the petitioner received a Notice of Dismissal[15] dated May 29, 1999. Sometime thereafter, he filed a case for unfair labor practice and illegal dismissal, with claims for the payment of indemnity, damages and costs of suit against DHL and its responsible officers.

On February 3, 2000, the Labor Arbiter (LA) rendered a Decision,[16] dismissing the complaint for lack of merit.

Ruling of the NLRC

On appeal, the NLRC, in its Decision[17] dated May 7, 2003, affirmed with modification the decision of the LA in that the petitioner should be awarded separation pay in view of his long service to DHL. It ratiocinated, thus:

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[12] *Id*. at 308.

[13] *Id*. at 309-311.

[14] *Id*. at 313.

[15] *Id*. at 315.

[16] Issued by LA Jose G. Gutierrez; *id*. at 332-344.

[17] Issued by Commissioner Oscar S. Uy and concurred in by Commissioner Edgardo M. Enerlan; *id*. at 80-87.

We find it strange that not a single complaint was made with respect to [the petitioner's] work performance. Indeed, respondent failed to show a single instance that a cargo was not dispatched on time because of [the petitioner's] failure to accomplish the necessary manifesting documents due to his going out of the office early. Indeed, we are inclined to believe [the petitioner's] allegation that he goes out early only when all his work had been accomplished or when there is no more work to be done. It is this circumstance that compels Us to mitigate [the petitioner's] offense. Indeed, where a penalty less punitive would suffice whatever misstep may have been committed by the worker ought not to be meted with a consequence so severe as dismissal without taking into consideration the worker's long and faithful years of service. x x x

x x x x x x x x x

WHEREFORE, premises considered, the decision of the [LA] is **AFFIRMED** with **MODIFICATION** awarding [the petitioner] his separation pay computed at one month for every year of service.

SO ORDERED.[18]

The petitioner filed a motion for reconsideration, but the NLRC denied the same in a Resolution dated October 12, 2004.[19]

Unyielding, the petitioner filed a Petition for *Certiorari*[20] with the CA, assailing the decision of the NLRC. He argued that the NLRC gravely abused its discretion in holding that his dismissal was with a valid cause and that he was accorded due process.

Ruling of the CA

Subsequently, on October 27, 2006, the CA rendered a Decision,[21] affirming with modification the decision of the NLRC. It affirmed the finding that there was no illegal dismissal but deleted the award for separation pay. It, however, found that

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

[19] *Id*. at 40.

[20] *Id*. at 88-103.

[21] *Id*. at 33-47.

the dismissal failed to observe the requirements of procedural due process and awarded the petitioner with nominal damages in the amount of ₱30,000.00. The dispositive portion of the decision reads as follows:

> WHEREFORE, premises considered, the assailed decision of the NLRC dated May 7, 2003 is hereby AFFIRMED with MODIFICATION. We affirm the finding of petitioner's dismissal to be with just cause, but no separation pay is awarded to petitioner. Respondent [DHL] (now known as Widewide World Express, Inc.) is ordered to pay petitioner the amount of Thirty Thousand Pesos (₱30,000.00) as nominal damages for non-compliance with statutory due process. The resolution dated October 12, 2004 denying petitioner's motion for reconsideration on the decision dated May 7, 2003 for lack of merit is likewise AFFIRMED.
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> SO ORDERED.[22]

The petitioner filed a Motion for Partial Reconsideration,[23] but the CA denied the same in its Resolution[24] dated December 13, 2007. Thus, the filing of the instant petition.

Ruling of the Court

The petitioner argues that the CA gravely erred in ruling for his dismissal without a valid ground and in disregard of procedural due process. He contends that the CA erred in affirming his dismissal notwithstanding the lack of evidence, aside from his written admission of his infractions which was obtained through fraud and deception specifically by making him believe that this would help him merit the lesser penalty of suspension for 30 days.

The appeal lacks merit.

It is well settled that a valid dismissal necessitates compliance with substantive and procedural requirements. Specifically, in *Mantle Trading Services, Inc. and/or Del Rosario v. NLRC,*

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

[23] *Id*. at 51-71.

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

et al.,[25] the Court emphasized that (a) there should be just and valid cause as provided under Article 282 of the Labor Code, and (b) the employee be afforded an opportunity to be heard and to defend himself.[26]

After a careful examination of the facts and the records of this case, the Court finds that the petitioner's dismissal was founded on acts constituting serious misconduct and grave dishonesty which are grounds for a valid dismissal. In particular, he repeatedly committed the following serious violations of company policies, to wit:

1) Grave dishonesty and fraud by allowing/asking someone to punch out your timecard for a period of two years[;]
2) Deliberate disregard/disobedience of company rule by frequently leaving work area prior to scheduled dismissal time without permission[;]
3) Disrespect to immediate superior by uttering offensive and lewd remarks and[/]or misbehavior during confrontation last March 25, 1999[; and]
4) Threatening the two security guards on duty last April 9, 1999 and warning them against testifying about violations incurred which constitute an offense against persons[.][27]

The truthfulness of the charges against the petitioner was well established by the joint affidavits executed by his co-employees and corroborated by documentary evidence presented by DHL. For instance, the Joint Affidavit[28] of Ernesto Genotiva and Flaviano Siaton Retada, Jr., security guards of the company, attested to the fact that it had been the petitioner's habit to leave the office early especially every Tuesdays, Thursdays and Fridays, and ask a co-employee to punch out his timecard. And indeed, an examination of the petitioner's timecard for the past two years disclosed the fact that on the mentioned days

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[25] 611 Phil. 570 (2009).

[26] *Id*. at 579.

[27] *Rollo*, p. 315.

[28] *Id*. at 276-277.

of the week, the petitioner punched out way past the end of his duty. Even then, he never submitted any request for overtime pay to the Accounting Department even when he punched out beyond his schedule.[29]

Apart from the foregoing, the petitioner readily admitted to the infractions he committed during the investigation conducted by the company. In his letter[30] dated April 20, 1999, he admitted to going out of the office to play basketball and asking the security guard to punch out his card for him albeit with the excuse that he leaves only after he performed all his tasks. In the same letter, he admitted having uttered words to his supervisor and apologized for the same. He likewise admitted during the formal investigation held on May 4, 1999, to threatening the security guards and explained that he was under the influence of alcohol at that time.[31] Further, right after the formal investigation, he wrote a letter to the management admitting his faults and undertook never to commit the same infractions again.[32] Unfortunately for him, the management of DHL imposed the penalty of dismissal as stated in the company manual, stressing that the totality and the gravity of the offenses he committed do not merit consideration.[33]

Clearly then, the petitioner's dismissal was based on valid causes and the CA was correct in affirming the same.

The Court also agrees with the CA that the petitioner was not afforded procedural due process in the process of his termination which warrants the grant of ₱30,000.00 in nominal damages.

In *New Puerto Commercial, et al. v. Lopez, et al.*,[34] the Court discussed the two facets of procedural due process, to wit:

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[29] *Id*. at 217.

[30] *Id*. at 306.

[31] *Id*. at 309.

[32] *Id*. at 311.

[33] *Id*. at 313.

[34] 639 Phil. 437 (2010).

[P]rocedural due process consists of the twin requirements of notice and hearing. The employer must furnish the employee with two written notices before the termination of employment can be effected: (1) the first apprises the employee of the particular acts or omissions for which his dismissal is sought; and (2) the second informs the employee of the employer's decision to dismiss him. The requirement of a hearing is complied with as long as there was an opportunity to be heard, and not necessarily that an actual hearing was conducted. x x x.[35] (Citation omitted)

In *King of Kings Transport, Inc. v. Mamac*,[36] the twin requirements of notice and hearing were further clarified, thus:

(1) The **first written notice** to be served on the employees should contain the specific causes or grounds for termination against them, and a directive that the employees are given the opportunity to submit their written explanation within a reasonable period. "Reasonable opportunity" under the Omnibus Rules means every kind of assistance that management must accord to the employees to enable them to prepare adequately for their defense. This should be construed as a period of at least five (5) calendar days from receipt of the notice to give the employees an opportunity to study the accusation against them, consult a union official or lawyer, gather data and evidence, and decide on the defenses they will raise against the complaint. Moreover, in order to enable the employees to intelligently prepare their explanation and defenses, the notice should contain a detailed narration of the facts and circumstances that will serve as basis for the charge against the employees. A general description of the charge will not suffice. Lastly, the notice should specifically mention which company rules, if any, are violated and/or which among the grounds under Art. 282 is being charged against the employees.

(2) After serving the first notice, the employers should schedule and conduct a **hearing** or **conference** wherein the employees will be given the opportunity to: (1) explain and clarify their defenses to the charge against them; (2) present evidence in support of their defenses; and (3) rebut the evidence presented against them by the management. During the hearing or conference, the employees are

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[35] *Id*. at 445.

[36] 553 Phil. 108 (2007).

given the chance to defend themselves personally, with the assistance of a representative or counsel of their choice. Moreover, this conference or hearing could be used by the parties as an opportunity to come to an amicable settlement.

(3) After determining that termination of employment is justified, the employers shall serve the employees a **written notice of termination** indicating that: (1) all circumstances involving the charge against the employees have been considered; and (2) grounds have been established to justify the severance of their employment.[37] (Citations omitted and emphasis in the original)

Based on the records, the petitioner received three notices before he was given the notice of his termination. The first notice[38] dated March 25, 1999 given to the petitioner reads as follows:

Please be informed that last March 19, 1999, you left your post during working hours without anybody's knowledge. This is not the first time that you deviated our company policy regarding the above subject matter.

In connection to this, you are instructed to give your **written explanation on the above matter within 24 hours upon receipt of this memo**. (Emphasis ours)

Sometime thereafter, the petitioner was given a second notice[39] on April 16, 1999 which pertinently states:

We were informed that you sometimes leave your work area on Tuesdays or Thursdays to play basketball during office hours in the process you do not go back to the office and asked someone to punched out for you which is a deviation from offenses against company's interest.

Also during the process of investigation on leaving work area during office hours, [y]ou uttered words to your Supervisor in front of your co-employees after being asked by your Supervisor some

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

[38] *Rollo*, p. 273.

[39] *Id*. at 303.

questions. This is categorize as offenses against person or having to be disrespectful to your Supervisor.

We are giving you 48 hours to reply on this matters, [w]hy we should not impose the required disciplinary actions for the things you have done against the company. Failure to comply would mean you waive your right to be heard.

The third notice[40] on April 30, 1999 for formal investigation was rather short and vague. It reads, thus:

Please be informed that there will be a formal investigation to be conducted on 04 MAY 1999 at 9:00 A.M. at the HR Conference Room **concerning your offenses currently investigated**. You may bring along with you a lawyer or representative who may assist you in the investigation. (Emphasis ours)

None of the three notices satisfied the requirements of the law. In the first notice, the allegations against the petitioner were vague and did not make any reference to the company policy violated by the latter nor to any of the grounds for termination in Article 282 of the Labor Code. Apart from this, the notice did not give the petitioner a reasonable opportunity to prepare his explanation as he was only given practically a day or 24 hours to respond to the same.

In the same way, the second notice lacked the particularity required by the law. It does not contain a detailed narration of the incidents being alluded to, leaving the petitioner guessing on the particulars of the charges against him. The general description of the charges is not a sufficient compliance with the law.

The same can be said of the third notice as it is completely wanting of the essential details required of a proper notice. There were no details of the charges against the accused, the notice merely stating that the formal investigation concerns the "*offenses for which the petitioner is currently being investigated*." What these offenses are, however, can hardly

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[40] *Id*. at 308.

be gathered with particularity from the two earlier notices given to the petitioner. It is even doubtful whether this notice was ever given to the petitioner at all since the copy of the same submitted in evidence by DHL contained a notation, "REFUSED TO SIGN (6/30/99)", thereby giving the impression that the petitioner was supposedly served a copy of the notice but refused to sign on June 30, 1999, while the formal investigation was held on May 4, 1999.

Undoubtedly, there was a considerable lapse by DHL in observing the procedural due process requirements of the law in terminating employment. In such a case, the ruling in *Agabon v. NLRC*[41] is instructive. It was held that in cases involving dismissals for cause but without observance of the twin requirements of notice and hearing, the validity of the dismissal shall be upheld but the employer shall be ordered to pay nominal damages in the amount of ₱30,000.00.[42]

Therefore, in view of the foregoing, the Court upholds the validity of the petitioner's dismissal but imposes DHL with nominal damages in the amount of ₱30,000.00 for failure to abide by the statutory standards of procedural due process.

WHEREFORE, the Decision dated October 27, 2006 and Resolution dated December 13, 2007 of the Court of Appeals in CA-G.R. CEB-SP No. 00180 are **AFFIRMED**.

SO ORDERED.

Velasco, Jr. (Chairperson), Bersamin, Jardeleza, and *Tijam, JJ.,* concur.

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[41] 485 Phil. 248 (2004).

[42] *Id*. at 287-288.

FIRST DIVISION

[G.R. No. 198799. March 20, 2017]

BANK OF THE PHILIPPINE ISLANDS, *petitioner, vs.* **AMADO M. MENDOZA and MARIA MARCOS *vda. de* MENDOZA**, *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; AS A GENERAL RULE, THE COURT'S JURISDICTION IN A PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45 OF THE RULES OF COURT IS LIMITED TO REVIEW OF PURE QUESTIONS OF LAW; QUESTION OF LAW DISTINGUISHED FROM QUESTIONS OF FACT.—** As a general rule, the Court's jurisdiction in a petition for review on *certiorari* under Rule 45 of the Rules of Court is limited to the review of pure questions of law. Otherwise stated, a Rule 45 petition does not allow the review of questions of fact because the Court is not a trier of facts. Case law provides that "there is a 'question of law' when the doubt or difference arises as to what the law is on a certain set of facts or circumstances; on the other hand, there is a 'question of fact' when the issue raised on appeal pertains to the truth or falsity of the alleged facts. The test for determining whether the supposed error was one of 'law' or 'fact' is not the appellation given by the parties raising the same; rather, it is whether the reviewing court can resolve the issues raised without evaluating the evidence, in which case, it is a question of law; otherwise, it is one of fact." Where there is no dispute as to the facts, the question of whether or not the conclusions drawn from these facts are correct is a question of law. However, if the question posed requires a re-evaluation of the credibility of witnesses, or the existence or relevance of surrounding circumstances and their relationship to each other, the issue is factual.

2. **ID.; EVIDENCE; WEIGHT AND SUFFICIENCY; IN CIVIL CASES, THE PARTY HAVING THE BURDEN OF PROOF MUST PRODUCE A PREPONDERANCE OF EVIDENCE THEREON, EXPLAINED.—** It is settled that in civil cases,

the party having the burden of proof must produce a preponderance of evidence thereon, with plaintiff having to rely on the strength of his own evidence and not upon the weakness of the defendant's. Preponderance of evidence is the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term 'greater weight of evidence' or 'greater weight of credible evidence.' Succinctly put, it only requires that evidence be greater or more convincing than the opposing evidence.

3. **ID.; ID.; BEST EVIDENCE RULE; GENERALLY, THE ORIGINAL COPY OF THE DOCUMENT MUST BE PRESENTED WHENEVER THE CONTENT OF THE DOCUMENT IS UNDER INQUIRY; PROOF REQUIRED IN ORDER TO FALL UNDER CERTAIN EXCEPTIONS, CITED.—** Anent the subject check, while the Best Evidence Rule under Section 3, Rule 130 of the Rules of Court states that generally, the original copy of the document must be presented whenever the content of the document is under inquiry, the rule admits of certain exceptions, such as "[w]hen the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror." In order to fall under the aforesaid exception, it is crucial that the offeror proves: (*a*) the existence or due execution of the original; (*b*) the loss and destruction of the original, or the reason for its non-production in court; and (*c*) the absence of bad faith on the part of the offeror to which the unavailability of the original can be attributed.

4. **ID.; ID.; PRESENTATION OF EVIDENCE; EVIDENCE NOT OBJECTED TO IS DEEMED ADMITTED AND MAY BE VALIDLY CONSIDERED BY THE COURT IN ARRIVING AT ITS JUDGMENT; CASE AT BAR.—** [I]t should be pointed out that respondents did not proffer any objection to the evidence presented by BPI, as shown by their failure to file their comment or opposition to the latter's formal offer of evidence. It is well-settled that evidence not objected to is deemed admitted and may validly be considered by the court in arriving at its judgment, as what the RTC did in this case, since it was in a better position to assess and weigh the evidence presented during the trial.

5. **CIVIL LAW; DAMAGES; PAYMENT OF INTEREST; NOT BEING A LOAN OR FORBEARANCE OF MONEY, AN INTEREST OF SIX PERCENT (6%) PER ANNUM**

SHOULD BE IMPOSED ON THE AMOUNT TO BE REFUNDED AND ON THE DAMAGES AND ATTORNEY'S FEES AWARDED, COMPUTED FROM THE TIME OF DEMAND UNTIL ITS SATISFACTION.— However, records reveal that BPI's payment of the proceeds of the subject check was due to a mistaken notion that such check was cleared, when in fact, it was dishonored due to an alteration in the amount indicated therein. Such payment on the part of BPI to respondents was clearly made by mistake, giving rise to the quasi-contractual obligation of *solutio indebiti* under Article 2154 in relation to Article 2163 of the Civil Code. Not being a loan or forbearance of money, an interest of six percent (6%) per annum should be imposed on the amount to be refunded and on the damages and attorney's fees awarded, if any, computed from the time of demand until its satisfaction. Consequently, respondents must return to BPI the aforesaid amount, with legal interest at the rate of six percent (6%) per annum from the date of extrajudicial demand — or on June 27, 1997, the date when BPI informed respondents of the dishonor of the subject check and demanded the return of its proceeds — until fully paid.

APPEARANCES OF COUNSEL

Benedicto Versoza Felipe and Burkley for petitioner.
Public Attorney's Office for respondents.

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 February 4, 2011 and the Resolution[3] dated August 26, 2011 of the Court of Appeals (CA) in CA-G.R. CV

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[1] *Rollo*, pp. 8-21.

[2] *Id*. at 22-31. Penned by Associate Justice Mario V. Lopez with Associate Justices Magdangal M. De Leon and Rodil V. Zalameda concurring.

[3] CA *rollo*, pp. 149-150.

No. 91704, which reversed and set aside the Decision[4] dated May 9, 2007 of the Regional Trial Court of Gapan City, Nueva Ecija, Branch 87 (RTC) in Civil Case No. 1913, and consequently, dismissed the complaint filed by petitioner Bank of the Philippine Islands (BPI) against respondents Amado M. Mendoza (Amado) and his mother, Maria Marcos *vda. de* Mendoza (Maria; collectively, respondents).

The Facts

This case stemmed from a Complaint for Sum of Money with Application for Writ of Attachment[5] filed by BPI against respondents before the RTC. BPI alleged that on April 8, 1997, respondents: (*a*) opened a foreign currency savings account with Account No. 0584-0007-08 (US savings account) at BPI-Gapan Branch and deposited therein the total amount of US$16,264.00, broken down as follows: US$100.00 in cash and US$16,164.00 in US Treasury Check with No. 3149-09693369 payable to "Ma. Marcos Vda. de Mendoza" (subject check); and (*b*) placed the amount of US$2,000.00 in a time deposit account. After the lapse of the thirty (30)-day clearing period on May 9 and 13, 1997, respondents withdrew the amount of US$16,244.00 from the US savings account, leaving only US$20.00 for bank charges.[6] However, on June 26, 1997, BPI received a notice from its correspondent bank, Bankers Trust Company New York (Bankers Trust), that the subject check was dishonored due to "amount altered",[7] as evidenced by (1) an electronic mail (e-mail) advice from Bankers Trust,[8] and (2) a photocopy of the subject check with a notation "endorsement cancelled" by Bankers Trust[9] as the original copy of the subject check was allegedly confiscated by the government of the United

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[4] *Id*. at 49-62. Penned by Judge Victoriano B. Cabanos.

[5] Dated January 20, 1998; records, pp. 1-4.

[6] *Rollo*, pp. 22-23. See also records, pp. 1-2.

[7] *Rollo*, p. 23. See also CA *rollo*, pp. 49-50.

[8] See Records, p. 11.

[9] See *id*. at 6.

States of America (US government).[10] This prompted BPI to inform respondents of such dishonor and to demand reimbursement.[11] BPI then claimed that: (*a*) on July 18, 1997, respondents allowed BPI to apply the proceeds of their time deposit account in the amount of US$2,015.00 to their outstanding obligation;[12] (*b*) upon the exhaustion of the said time deposit account, Amado gave BPI a promissory note dated September 8, 1997 containing his promise to pay BPI-Gapan Branch the amount of ₱1,000.00 monthly;[13] and (*c*) when respondents failed to fulfill their obligation despite repeated demands, BPI was constrained to give a final demand letter[14] to respondents on November 27, 1997.[15]

For their part, while respondents admitted the withdrawals and exchanged the same with BPI at the rate of ₱26.159 per dollar, they did not receive the amount of ₱582,140.00 from the proceeds. Respondents then maintained that Amado only affixed his signature in the letter dated July 18, 1997 in order to acknowledge its receipt, but not to give his consent to the application of the proceeds of their time deposit account to their purported obligations to BPI. According to Amado, he would have been willing to pay BPI, if only the latter presented proper and authenticated proof of the dishonor of the subject check. However, since the bank failed to do so, Amado argued that BPI had no cause of action against him and his mother, Maria.[16]

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[10] CA *rollo*, p. 55.

[11] See letter dated June 27, 1997; records, p. 12. See also *rollo*, p. 23.

[12] See letter dated July 18, 1997; records, p. 13. The amount mentioned in the letter dated July 18, 1997 is "$2,000.00" while the amount mentioned in the Complaint is "US$2,015.00"; see records, p. 2. See also *rollo*, p. 23.

[13] Records, p. 14. See also *rollo*, p. 23.

[14] Records, p. 15. See also *rollo*, p. 23.

[15] See also *rollo*, p. 23.

[16] *Id*. at 23. See also records, pp. 51-52, 57-58.

The RTC Ruling

In a Decision[17] dated May 9, 2007, the RTC ruled in BPI's favor, and accordingly, ordered respondents to pay: (*a*) ₱369,600.51 representing the peso equivalent of amounts withdrawn by respondent less the amounts already recovered by BPI, plus legal interest of 12% per annum reckoned from the time the money was withdrawn; and (*b*) 10% of the aforesaid monetary award representing attorney's fees.[18]

The RTC found that: (*a*) BPI duly notified respondents of the dishonor of the subject check, thus, creating an obligation on the part of the respondents to return the proceeds that they had already withdrawn; and (*b*) Amado unmistakably acknowledged the same by executing a promissory note dated September 8, 1997 promising to pay BPI-Gapan Branch the amount of ₱1,000.00 monthly in connection with such obligation. In this regard, the RTC opined that since respondents withdrew the money prior to the dishonor and that BPI allowed such withdrawal by mistake, it is only proper that respondents return the proceeds of the same pursuant to the principle of *solutio indebiti* under Article 2154 of the Civil Code.[19]

Aggrieved, respondents appealed to the CA.[20]

The CA Ruling

In a Decision[21] dated February 4, 2011, the CA reversed and set aside the RTC's ruling, and consequently, dismissed BPI's complaint for lack of merit.[22] It held that BPI failed to prove the dishonor of the subject check, since: (*a*) the presentation of a mere photocopy of the subject check is in violation of the

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[17] CA *rollo*, pp. 49-62.

[18] *Id.* at 61-62.

[19] *Id.* at 58-61.

[20] See Brief for the Defendant-Appellant dated June 1, 2009; *id.* at 30-47.

[21] *Rollo*, pp. 22-31.

[22] *Id.* at 30.

Best Evidence Rule; and (*b*) the e-mail advice from Bankers Trust was not properly authenticated in accordance with the Rules on Electronic Evidence as the person who sent the e-mail advice was neither identified nor presented in court. As such, the CA ordered the dismissal of the complaint due to BPI's failure to prove its claim against respondents.[23]

Dissatisfied, BPI moved for reconsideration,[24] which was, however, denied in a Resolution[25] dated August 26, 2011; hence, this petition.

The Issue Before the Court

The primordial issue for the Court's resolution is whether or not the CA correctly dismissed BPI's complaint for sum of money against respondents.

The Court's Ruling

The petition is meritorious.

As a general rule, the Court's jurisdiction in a petition for review on *certiorari* under Rule 45 of the Rules of Court is limited to the review of pure questions of law. Otherwise stated, a Rule 45 petition does not allow the review of questions of fact because the Court is not a trier of facts.[26] Case law provides that "there is a 'question of law' when the doubt or difference arises as to what the law is on a certain set of facts or circumstances; on the other hand, there is a 'question of fact' when the issue raised on appeal pertains to the truth or falsity of the alleged facts. The test for determining whether the supposed error was one of 'law' or 'fact' is not the appellation given by the parties raising the same; rather, it is whether the reviewing court can resolve the issues raised without evaluating the

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[23] See *id*. at 25-30.

[24] CA *rollo*, pp. 102-105.

[25] *Id*. at 149-150.

[26] See *General Mariano Alvarez Services Cooperative, Inc. v. National Housing Authority*, G.R. No. 175417, February 9, 2015, 750 SCRA 156, 162.

evidence, in which case, it is a question of law; otherwise, it is one of fact."[27] Where there is no dispute as to the facts, the question of whether or not the conclusions drawn from these facts are correct is a question of law. However, if the question posed requires a re-evaluation of the credibility of witnesses, or the existence or relevance of surrounding circumstances and their relationship to each other, the issue is factual.[28]

Notably, however, the foregoing general rule admits of several exceptions, such as where the factual findings of the RTC and the CA are conflicting or contradictory,[29] which is evident in this case. As such, the Court is constrained to make its own factual findings in order to resolve the issue presented before it.

To recapitulate, the RTC declared that BPI was able to sufficiently establish by preponderance of evidence that respondents were duly notified of the dishonor of the subject check, rendering them liable to refund what they had withdrawn from BPI. Pertinently, it hinged its ruling on the pieces of evidence presented during the trial, namely: the e-mail printout

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[27] *Bases Conversion Development Authority v. Reyes*, 711 Phil. 631, 638-639 (2013), citations omitted.

[28] *Id.*

[29] See *Miro v. Vda. de Erederos*, 721 Phil. 772, 786 (2013). See also *Cirtek Employees Labor Union-Federation of Free Workers v. Cirtek Electronics, Inc.* (665 Phil. 784, 789 [2011]) where the Court enumerated the following exceptions to the general rule: (1) When the conclusion is a finding grounded entirely on speculation, surmises and 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) When the findings 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 petitioners' main and reply briefs are not disputed by the respondents; and (10) When the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record.

advice from Bankers Trust informing BPI that the subject check was dishonored, the BPI letters dated June 27, 1997 and July 18, 1997 addressed to respondents, and the subject promissory note voluntarily executed by Amado. On the contrary, the CA held that respondents were not liable to BPI for its failure to competently prove the fact of the subject check's dishonor and its subsequent confiscation by the US government. In this relation, the CA deemed that the printout of the e-mail advice is inadmissible in evidence for lack of proper authentication pursuant to the Rules on Electronic Evidence.

After a judicious review of the records, including a re-evaluation of the evidence presented by the parties, the Court is inclined to sustain the findings of the RTC over that of the CA, as will be explained hereunder.

It is settled that in civil cases, the party having the burden of proof must produce a preponderance of evidence thereon, with plaintiff having to rely on the strength of his own evidence and not upon the weakness of the defendant's.[30] Preponderance of evidence is the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term 'greater weight of evidence' or 'greater weight of credible evidence.'[31] Succinctly put, it only requires that evidence be greater or more convincing than the opposing evidence.[32]

Records evince that BPI was able to satisfactorily prove by preponderance of evidence the existence of respondents' obligation in its favor. Verily, Amado acknowledged its existence and expressed his conformity thereto when he voluntarily: (*a*) affixed his signature in the letters dated June 27, 1997[33]

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[30] See *Republic v. Galeno*, G.R. No. 215009, January 23, 2017.

[31] *Ogawa v. Menigishi*, 690 Phil. 359, 367 (2012), citing *Amoroso v. Alegre, Jr.*, 552 Phil. 22, 34 (2007).

[32] See *Diaz v. People*, G.R. No. 208113, December 2, 2015, 776 SCRA 43, 50.

[33] Records, p. 12.

and July 18, 1997,[34] where he acknowledged the dishonor of the subject check, and subsequently, allowed BPI to apply the proceeds of their US time deposit account to partially offset their obligation to the bank; and (*b*) executed a Promissory Note[35] dated September 8, 1997 wherein he undertook to pay BPI in installments of ₱1,000.00 per month until the remaining balance of his obligation is fully paid.

On the other hand, aside from his bare testimony, Amado did not present any corroborative evidence to support his claim that his performance of the aforesaid voluntary acts was subject to BPI's presentment of the proper and authenticated proof of the dishonored subject check. Amado's unsubstantiated testimony is self-serving at the most, and hence, cannot be relied upon.[36] In fact, the RTC did not lend any credence to Amado's testimony in resolving this case. In this regard, it should be borne in mind that the "findings of the trial court on the credibility of witnesses deserve great weight, as the trial judge is in the best position to assess the credibility of the witnesses, and has the unique opportunity to observe the witness firsthand and note his demeanor, conduct and attitude under gruelling examination. Absent any showing that the trial court's calibration of credibility was flawed, the appellate court is bound by its assessment,"[37] as in this case.

Overall, assessing the pieces of evidence presented by BPI as opposed to the self-serving allegations of respondents, the weight of evidence clearly preponderates in favor of the former. Otherwise stated, BPI has proven by the required quantum of proof, *i.e.*, preponderance of evidence, respondents' obligation towards it, and as such, respondents must be made to fulfill the same.

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[34] *Id*. at 13.

[35] *Id*. at 14.

[36] See *Reyes v. Nieva*, A.C. No. 8560, September 6, 2016, citing *People v. Mangune*, 698 Phil. 759, 771 (2012).

[37] *People v. Sevillano*, G.R. No. 200800, February 9, 2015, 750 SCRA 221, 227.

In any event, the CA erred in concluding that BPI failed to prove the dishonor of the subject check by merely presenting: (*a*) a photocopy thereof with its dorsal portion stamped "ENDORSEMENT CANCELLED" by Bankers Trust;[38] and (*b*) a print-out of the e-mail advice from Bankers Trust stating that the subject check was returned unpaid because the amount was altered.[39]

Anent the subject check, while the Best Evidence Rule under Section 3, Rule 130[40] of the Rules of Court states that generally, the original copy of the document must be presented whenever the content of the document is under inquiry, the rule admits of certain exceptions, such as "[w]hen the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror."[41] In order to fall under the aforesaid exception, it is crucial that the offeror proves: (*a*) the existence or due execution of the original; (*b*) the loss and destruction of the original, or the reason for its non-production in court; and (*c*) the absence of bad faith on the part of the

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[38] Records, p. 6.

[39] *Id*. at 11.

[40] Section 3, Rule 130 of the Rules of Court reads:

Section 3. *Original document must be produced*; *exceptions*. — When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases:

(a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;

(b) When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;

(c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and

(d) When the original is a public record in the custody of a public officer or is recorded in a public office.

[41] *Id*.

offeror to which the unavailability of the original can be attributed.[42]

In this case, BPI sufficiently complied with the foregoing requisities. *First*, the existence or due execution of the subject check was admitted by both parties. *Second*, the reason for the non-presentation of the original copy of the subject check was justifiable as it was confiscated by the US government for being an altered check. The subject check, being a US Treasury Warrant, is not an ordinary check, and practically speaking, the same could not be easily obtained. *Lastly*, absent any proof to the contrary and for the reasons already stated, no bad faith can be attributed to BPI for its failure to present the original of the subject check. Thus, applying the exception to the Best Evidence Rule, the presentation of the photocopy of the subject check as secondary evidence was permissible.

As to the e-mail advice, while it may not have been properly authenticated in accordance with the Rules on Electronic Evidence, the same was merely corroborative evidence, and thus, its admissibility or inadmissibility should not diminish the probative value of the other evidence proving respondents' obligation towards BPI, namely: (*a*) Amado's voluntary acts of conforming to BPI's letters dated June 27, 1997 and July 18, 1997 and executing the promissory note to answer for such obligation; and (*b*) the photocopy of the subject check, which presentation was justified as falling under the afore-discussed exception to the Best Evidence Rule. As such, their probative value remains.

Besides, it should be pointed out that respondents did not proffer any objection to the evidence presented by BPI, as shown by their failure to file their comment or opposition to the latter's formal offer of evidence.[43] It is well-settled that evidence not objected to is deemed admitted and may validly be considered

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[42] See *Heirs of Prodon v. Heirs of Alvarez*, 717 Phil. 54, 66 (2013), citing *Citibank, N.A. Mastercard v. Teodoro*, 458 Phil. 480, 487 (2003).

[43] See Order dated June 17, 2004; records, p. 188.

by the court in arriving at its judgment, as what the RTC did in this case, since it was in a better position to assess and weigh the evidence presented during the trial.[44]

In sum, considering that BPI had proven its cause of action by preponderance of evidence, the Court finds the CA to have erred in dismissing BPI's complaint against respondents. Accordingly, the RTC ruling must be reinstated, subject to modification in the award of interest imposed on the adjudged amount.

To recount, respondents were ordered by the RTC to pay BPI the amount of ₱369,600.51 representing the peso equivalent of the amounts withdrawn by respondents less the amounts already recovered by BPI, plus legal interest of twelve percent (12%) per annum reckoned from the time the money was withdrawn,[45] thus, implying that such amount was a loan or a forbearance of money. However, records reveal that BPI's payment of the proceeds of the subject check was due to a mistaken notion that such check was cleared, when in fact, it was dishonored due to an alteration in the amount indicated therein. Such payment on the part of BPI to respondents was clearly made by mistake, giving rise to the quasi-contractual obligation of *solutio indebiti* under Article 2154[46] in relation to Article 2163[47] of the Civil Code. Not being a loan or forbearance of money, an interest of six percent (6%) per annum should be imposed on the amount to be refunded and on the damages and attorney's fees awarded, if any, computed from

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[44] See *Spouses Enriquez v. Isarog Line Transport, Inc.*, G.R. No. 212008, November 16, 2016, citations omitted.

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

[46] Article 2154 of the Civil Code states:

Article 2154. If something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises.

[47] Article 2163 of the Civil Code states:

Article 2163. It is presumed that there was a mistake in the payment if something which had never been due or had already been paid was delivered; but he from whom the return is claimed may prove that the delivery was made out of liberality or for any other just cause.

the time of demand until its satisfaction.[48] Consequently, respondents must return to BPI the aforesaid amount, with legal interest at the rate of six percent (6%) per annum from the date of extrajudicial demand — or on June 27, 1997, the date when BPI informed respondents of the dishonor of the subject check and demanded the return of its proceeds — until fully paid.

WHEREFORE, the petition is **GRANTED**. The Decision dated February 4, 2011 and the Resolution dated August 26, 2011 of the Court of Appeals in CA-G.R. CV No. 91704 is hereby **REVERSED** and **SET ASIDE**. The Decision dated May 9, 2007 of the Regional Trial Court of Gapan City, Nueva Ecija, Branch 87 in Civil Case No. 1913 is **REINSTATED** with **MODIFICATION**, adjusting the interest imposed on the amount ordered to be returned, *i.e.*, ₱369,600.51, to six percent (6%) per annum reckoned from the date of extrajudicial demand on June 27, 1997, until fully paid.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 200285. March 20, 2017]

FELIX B. TIU, *petitioner, vs.* **SPOUSES JACINTO JANGAS AND PETRONILA MERTO-JANGAS, MARIA G. ORTIZ, MELENCIO ORTIZ, MERLA M. KITANE, PACITO KITANE, CANDELARIA RUSIANA, RODRIGO RUSIANA, JUANA T. JALANDONI, ADELAIDA P. RAGAY and TEOFISTO RAGAY, SR.,** *respondents.*

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[48] *Marilag v. Martinez*, G.R. No. 201892, July 22, 2015, 763 SCRA 533, 549-550.

SYLLABUS

1. **CIVIL LAW; CIVIL CODE; PROPERTY, OWNERSHIP, AND ITS MODIFICATIONS; CO-OWNERSHIP; WHEN A CO-OWNED PROPERTY IS SOLD, THE BUYER'S RIGHT IN THE CO-OWNED PROPERTY IS LIMITED ONLY TO THE SELLER'S SHARE; CASE AT BAR.—** It is undisputed that the subject property was originally owned by Gregorio, and upon his death, the subject property was transmitted by succession to his heirs, as confirmed by the issuance of TD No. 17560 issued in 1961 where the owner described therein were Gregorio's daughters, Adelaida, Bruna and Isabel. Thereafter, the Pajulas sisters equally partitioned the subject property among themselves. Thus, Bruna is entitled to only one-third of the subject property. A scrutiny of the records established the fact that the property sold to the Spouses Delayco was the one-third share only of Bruna over Lot No. 480-A. However, it was clearly ascertained that the heirs of Spouses Delayco, represented by Bridiana, applied for and was granted an FP over the whole Lot No. 480-A as evidenced by OCT No. FV-29932. Furthermore, Bridiana transferred the title to her name alone and was then issued TCT No. FT-4925. As correctly emphasized by the lower courts, the petitioner's right in the subject property is limited only to Bruna's share in the co-owned property. When the subject property was sold to the Spouses Delayco, they merely stepped into the shoes of Bruna and acquired whatever rights and obligations appertain thereto.

2. **ID.; ID.; OBLIGATIONS AND CONTRACTS; SALES; BUYER IN GOOD FAITH; ONE CANNOT CLAIM THAT HE IS A BUYER IN GOOD FAITH IF HE FAILS TO MAKE AN INQUIRY WHEN THE SUBJECT PROPERTY IS IN THE ACTUAL POSSESSION OF PERSONS OTHER THAN THE SELLER.—** [O]ne who purchases real estate with knowledge of a defect or lack of title in his vendor cannot claim that he has acquired title thereto in good faith as against the true owner of the land or of an interest therein; and the same rule must be applied to one who has knowledge of facts which should have put him upon such inquiry and investigation as might be necessary to acquaint him with the defects in the title of his vendor. When a piece of land is in the actual possession of persons other than the seller, the buyer must be wary and should investigate the rights of those in possession. Without

making such inquiry, one cannot claim that he is a buyer in good faith. As in this case, the failure of buyer to take the ordinary precautions which a prudent man would have taken under the circumstances, especially in buying a piece of land in the actual, visible and public possession of another person, other than the vendor, constitutes gross negligence amounting to bad faith. Far from being prudent, it is clear that the petitioner chose to close his eyes to facts which should have put a reasonable man on his guard. Consequently, he cannot now claim that he acted in good faith on the belief that there was no defect in the title of his predecessor-in-interest.

3. **ID.; LAND REGISTRATION; CERTIFICATES OF TITLE; THE INCONTROVERTIBILITY OF TITLE CANNOT BE SUCCESSFULLY INVOKED TO SHIELD A COMMISSION OF FRAUD, FOR CERTIFICATES OF TITLE MERELY CONFIRM OR RECORD TITLE ALREADY EXISTING.—** [T]he petitioner cannot rely on his TCT No. FT-5683 as an incontrovertible evidence of his ownership over the subject property. The fact that he was able to secure a title in his name does not operate to vest ownership upon him of the subject property. x x x The petitioner's reliance on the doctrine that mere possession cannot defeat the right of a holder of a registered Torrens title over property is misplaced, considering that the respondents were almost deprived of their rights over the subject property through fraud and with evident bad faith. The petitioner and Bridiana's failure and intentional omission to disclose the fact of actual physical possession by another person during registration proceedings constitutes actual fraud. Hence, the alleged incontrovertibility of title cannot be successfully invoked by the petitioner because certificates of title merely confirm or record title already existing and cannot be used as a shield for the commission of fraud.

4. **REMEDIAL LAW; ACTIONS; RECONVEYANCE; NOT WARRANTED IN CASE AT BAR.—** [T]he Court is convinced that the petitioner cannot be considered a buyer and registrant in good faith and for value. It is apparent from the records of this case that the respondents have been in actual possession and occupation of the subject property at the time that it was sold by Bridiana to the petitioner. Thus, the petitioner did not acquire any right from Bridiana over two-thirds of the subject property since the latter was no longer the owner of the same

at the time the sale was made to the petitioner. The ownership over the two-thirds-portion of the subject property had already been vested to the respondents prior to such sale. Hence, reconveyance of the subject property to the petitioner is unwarranted.

APPEARANCES OF COUNSEL

M. B. Mahinay & Associates for petitioner.
Leo B. Diocos for respondents.

D E C I S I O N

REYES, *J.*:

Before this Court is a petition for review on *certiorari*[1] seeking to annul and set aside the Decision[2] dated August 31, 2010 and the Resolution[3] dated December 6, 2011 of the Court of Appeals (CA) in CA-G.R. CV No. 00284, which affirmed the Decision[4] dated June 21, 2004 of the Regional Trial Court (RTC) of Dumaguete City, Negros Oriental, Branch 35, in Civil Case No. 10278.

Facts of the Case

This case stemmed from a Complaint[5] dated August 6, 1992 for reconveyance of property filed by Spouses Jacinto and Petronila Merto-Jangas (Spouses Jangas) against Felix Tiu (petitioner) and Rural Bank of Amlan, Inc. (RBAI).

The subject of this petition is a parcel of land designated as Lot No. 480-A, originally owned by Gregorio Pajulas (Gregorio),

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[1] *Rollo*, pp. 13-37.

[2] Penned by Associate Justice Agnes Reyes-Carpio, with Associate Justices Edgardo L. Delos Santos and Eduardo B. Peralta, Jr. concurring; *id.* at 40-50.

[3] *Id*. at 52-53.

[4] Rendered by Judge Victor C. Patrimonio; *id*. at 72-91.

[5] *Id*. at 54-56.

with an area of 25,340 square meters, located in Salag, Siaton, Negros Oriental.[6]

The records of the case show the following sequence of events:

a) During Gregorio's lifetime, he owned a parcel of land known as Lot No. 480. He then gave a portion of the land (Lot No. 480-B) to his granddaughter Lulihala Pajulas who took care of him;[7]

b) In 1956, Gregorio died and was survived by his three daughters, namely, Adelaida, Bruna and Isabel (Pajulas sisters), who adjudicated in 1958 the remaining portion of the land (Lot No. 480-A) unto themselves and declared the same in their names under Tax Declaration (TD) No. 17560;[8]

c) In 1962, the Pajulas sisters agreed to divide Lot No. 480-A equally among themselves;[9]

d) Upon the death of Isabel, her share was inherited by her heirs, namely: her husband and children Iluminada Gadiane (Iluminada), Norma Gadiane (Norma) and Maria Gadiane-Ortiza (Maria) (Gadiane sisters);[10]

e) On August 5, 1974, Norma sold to Spouses Jangas a portion of her share with an area of 1,462 sq m, which the latter declared in the name of Petronila under TD No. 21-827;[11]

f) On December 31, 1981, Iluminada and Norma sold to the Spouses Jangas another portion with an area of 912

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[6] *Id*. at 40-41.

[7] *Id*.

[8] *Id*. at 41.

[9] *Id*.

[10] *Id*.

[11] *Id*.

sq m, which was later also declared in the name of Petronila under TD No. 21-1064;[12]

g) Thereafter, Iluminada made subsequent sales as follows: (1) 288 sq m to Candelaria Rusiana (Candelaria); (2) 3,243 sq m to Merla Macalipay-Kitane (Merla); and (3) 288 sq m to Juana Jalandoni (Juana);[13]

h) Sometime in 1962, Bruna sold her one-third-share of Lot No. 480-A to Spouses Gaudencio Delayco (Gaudencio) and Lucia Amigo-Delayco (Spouses Delayco);[14]

i) On January 8, 1980, the heirs of Gaudencio, represented by Bridiana Delayco (Bridiana), applied for and was granted a free patent over the entire Lot No. 480-A. Consequently, Original Certificate of Title (OCT) No. FV-29932 under Free Patent (FP) No. (VII-3) 9852 was issued in the name of the heirs of Gaudencio;[15]

j) Subsequently, Bridiana transferred the title over Lot No. 480-A to her name alone, and was issued Transfer Certificate of Title (TCT) No. FT-4925 on September 26, 1985. She also declared the subject property under her name for taxation purposes evidenced by TD No. 21-1031;[16]

k) In March of 1990, Bridiana sold the subject property to the petitioner;[17] and

l) On August 24, 1990, TCT No. FT-5683 was issued to Spouses Felix and Evelyn Tiu (Spouses Tiu), who also had the subject property declared in their names under TD No. 21-1097 (A). Then, in 1991, the Spouses Tiu mortgaged the subject property with the RBAI.[18]

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[12] *Id*.

[13] *Id*.

[14] *Id*.

[15] *Id*.

[16] *Id*.

[17] *Id*.

[18] *Id*. at 42.

A summary of the transfer of the property is as follows:

Gregorio Pajulas	Lot 480-A ⇨	Adelaida 8,476.66			
		Bruna 8,476.66 ⇨	Spouses Delayco ⇨	Bridiana ⇨	Felix Tiu
		Isabel 8,476.66 ⇨	Iluminada Norma Maria ⇨	Spouses Jangas, Candelaria, Merla, Juana	
	Lot 480-B ⇨	Lulihala Pajulas			

The aforementioned events prompted the Spouses Jangas to file a complaint[19] for reconveyance and damages against the petitioner and RBAI on August 6, 1992.

A motion for leave to intervene and complaints in intervention was filed, on March 31, 1993, by Spouses Maria and Melencio Ortiz (Spouses Ortiz), Spouses Merla and Pacito Kitane (Spouses Kitane), Spouses Candelaria and Rodrigo Rusiana (Spouses Rusiana) and Juana, who contended that they are now the owners of different portions of Lot No. 480-A, having bought the same from the Gadiane sisters. The complaints in intervention were later amended to include Spouses Adelaida and Teopisto Ragay, Sr. (Spouses Ragay), who assailed that they owned one-third-share of Lot No. 480-A, since Adelaida is the daughter of Gregorio.[20]

After trial, the court *a quo* rendered its judgment in favor of Spouses Jangas, Spouses Ortiz, Spouses Kitane, Spouses Rusiana, Juana and Spouses Ragay (collectively, the respondents). The trial court dismissed the petitioner's claim of ownership over

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[19] *Id.* at 54-56.

[20] *Id.* at 42.

the subject property taking note that the sale and transfer effected by Bruna in favor of the Spouses Delayco was merely her one-third-share of the subject property. Thus:

WHEREFORE, premises considered, judgment is hereby rendered:

1. Declaring [Spouses Jangas] part owners of Lot 480-A of Plan Csd-07-03-000548 to the extent of 2,374 square meters located at the eastern portion;

2. Declaring [Spouses Tiu] as owners of one-third portion of the same Lot No. 480-A located in between the shares of Adelaida and Isabel, both surnamed Pajulas as indicated in the rough sketch plan (Exh. "B") [and] which portion is the only portion being mortgaged by them to [RBAI];

3. Declaring the Heirs of [Adelaida], namely intervenors Marilyn Ragay, married to Casiano Palamos and a resident of Bondo Siaton, Negros Oriental; Melyn Ragay married to Judy Taganile and a resident of Guihulngan, Negros Oriental; Carolina Ragay, married to Efren Bangcairen and a resident of Piapi, Dumaguete City; Teopisto Ragay, Jr., married to Gerfrodes Pahulas and a resident of Mantuyop, Siaton, Negros Oriental, and Susan Ragay, married to Isabelito Guevara, a resident of Siaton, Negros [Oriental], all Filipinos and of legal ages as owners of one-third portion of the same Lot No. [480]-A, which portion is located on the western side of the land;

4. Declaring the Heirs of [Isabel] as owners to the extent of 6,099 square meters plus over the same land and which share is located at the eastern portion; [and]

5. As a consequence, TCT No. FT-5683 covering said Lot No. [480]-A has to be cancelled partially in order to reflect the foregoing lawful and legitimate owners of the said parcel of land and the Register of Deeds for the Province of Negros Oriental, Dumaguete City is directed to effect such partial cancellation.

Plaintiffs' claim for damages as well as defendants' counter-claim is ordered dismissed.

No pronouncement as to costs.

SO ORDERED.[21]

On August 31, 2010, the CA, in its Decision[22] denied the petitioner's appeal and affirmed *in toto* the findings of the RTC. In sustaining the RTC's decision, the appellate court ratiocinated:

In the instant case, Bruna owned 1/3 of Lot 480-A, the same 1/3 share is what she can validly transfer to [S]pouses Delayco and not the whole lot. *Nemo dat quod non habet* – no one can give what one does not have. Accordingly, one can sell only what one owns or is authorized to sell, and the buyer can acquire no more than what the seller can transfer legally. Such being the case, the Delaycos could not validly transfer the whole of Lot 480-A to themselves and sell the same to [S]pouses Tiu.

Although the fact of sale of Bruna's share to the [S]pouses Delaycos was not an issue, this Court however, could not actually determine the extent of the property sold by Bruna to them as there was no deed of sale found in the records. Even assuming *arguendo* that Bruna sold the entire Lot 480-A to the Delaycos, the said sale is not null and void. This only made the Delaycos co-owner of the property which pertains to the share of Bruna.[23]

Aggrieved by the foregoing disquisition, the petitioner moved for reconsideration but it was denied by the CA in its Resolution[24] dated December 6, 2011. Hence, he filed this petition for review.

The Issue Presented

WHETHER THE PETITIONER IS ENTITLED TO THE RECONVEYANCE OF THE SUBJECT PROPERTY.

Ruling of the Court

The petition lacks merit.

In this case, the petitioner's cause of action for reconveyance is grounded on his alleged ownership of the subject property

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

[22] *Id*. at 40-50.

[23] *Id*. at 45.

[24] *Id*. at 52-53.

which he merely purchased from Bridiana. He mainly argues that he acquired the subject property in good faith and for value, and had it recorded in the Registry of Property, since he was unaware of any prior sale over the subject property, and Bridiana's title was free from any liens or encumbrances that could have aroused his suspicion.

The respondents, however, rebut this claim by contending that: (1) Lot No. 480-A was adjudicated among the heirs of Gregorio, who declared the same in their names under TD No. 17560 and later orally partitioned the same; (2) the heirs of Isabel sold an equivalent of 2,374 sq m to Spouses Jangas, in separate notarized deeds of sale while the other respondents also claimed that portions of the share of Isabel had been sold to them by Isabel's heirs; (3) the Spouses Jangas alleged that they had been in possession of the land since 1972; and (4) Bruna sold her one-third-share to the Spouses Delayco, however, the latter caused the titling of the whole Lot No. 480-A in their name.[25]

The main issue to be discussed is whether the petitioner is entitled to reconveyance of the subject property. Consequently, the bone of contention is whether the petitioner is a buyer in good faith.

The determination of whether the petitioner is a buyer in good faith is a factual issue, which generally is outside the province of this Court to determine in a petition for review. Although this rule admits of exceptions, none of these apply to this case. There is no conflict between the factual findings and legal conclusions of the RTC and the CA, both of which found the petitioner to be a buyer in bad faith and not entitled to reconveyance of the subject property.

It is undisputed that the subject property was originally owned by Gregorio, and upon his death, the subject property was transmitted by succession to his heirs, as confirmed by the issuance of TD No. 17560 issued in 1961 where the owner described therein were Gregorio's daughters, Adelaida, Bruna and Isabel. Thereafter, the Pajulas sisters equally partitioned

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[25] *Id.* at 141.

the subject property among themselves. Thus, Bruna is entitled to only one-third of the subject property.

A scrutiny of the records established the fact that the property sold to the Spouses Delayco was the one-third share only of Bruna over Lot No. 480-A. However, it was clearly ascertained that the heirs of Spouses Delayco, represented by Bridiana, applied for and was granted an FP over the whole Lot No. 480-A as evidenced by OCT No. FV-29932. Furthermore, Bridiana transferred the title to her name alone and was then issued TCT No. FT-4925.

As correctly emphasized by the lower courts, the petitioner's right in the subject property is limited only to Bruna's share in the co-owned property. When the subject property was sold to the Spouses Delayco, they merely stepped into the shoes of Bruna and acquired whatever rights and obligations appertain thereto.

The petitioner mistakenly relied upon the title of Bridiana to conclude that the latter was a possessor in good faith and with just title who acquired the subject property through a valid deed of sale. Neither can the petitioner benefit from the contract of sale of the subject property, executed by Bridiana in his favor, to support his claim of possession in good faith and with just title.

Be that as it may, the rights of the respondents as owners of their respective shares of the subject property were never alienated from them despite having the whole Lot No. 480-A titled under Bridiana's name. Neither does the fact that the petitioner had bought the subject property from Bridiana and having a new title issued in his name displaced the existing ownership of the respondents. Besides, it seems that the petitioner knew of the fact that there were other occupants of the subject property. In fact, during cross examination, the petitioner testified that when he visited the subject property for surveying he already saw two structures that were built thereon, thus, he already knew that someone else besides his seller has possession over the same. As the appellate court expressly pointed out:

In, the instant case, We found that [the petitioner] had actual knowledge that other persons were in actual possession of the lot.

[The petitioner] testified during his cross examination that he saw two (2) structures (nipa hut/house) in Lot 480-A during his relocation survey. He admittedly knew the owner of the first structure as a certain Botit Bangay but he did not know the owner of the second one. [The petitioner] admitted that he did not inquire who is the owner thereof. The mere fact that [the petitioner] did not investigate as to the ownership of the land after he knew that other persons other than the seller were in possession thereof only means that he was not an innocent purchaser for value of said land.[26]

The Court has repeatedly emphasized that one who purchases real estate with knowledge of a defect or lack of title in his vendor cannot claim that he has acquired title thereto in good faith as against the true owner of the land or of an interest therein; and the same rule must be applied to one who has knowledge of facts which should have put him upon such inquiry and investigation as might be necessary to acquaint him with the defects in the title of his vendor.[27]

When a piece of land is in the actual possession of persons other than the seller, the buyer must be wary and should investigate the rights of those in possession. Without making such inquiry, one cannot claim that he is a buyer in good faith.[28] As in this case, the failure of buyer to take the ordinary precautions which a prudent man would have taken under the circumstances, especially in buying a piece of land in the actual, visible and public possession of another person, other than the vendor, constitutes gross negligence amounting to bad faith.[29]

Far from being prudent, it is clear that the petitioner chose to close his eyes to facts which should have put a reasonable man on his guard. Consequently, he cannot now claim that he acted in good faith on the belief that there was no defect in the title of his predecessor-in-interest. The fact that Bridiana was

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

[27] *Tan v. Ramirez, et al.*, 640 Phil. 370, 382 (2010), citing *Leung Yee v. F. L. Strong Machinery Co. and Williamson*, 37 Phil. 644, 651 (1918).

[28] *Rosaroso, et al. v. Soria, et al.*, 711 Phil. 644, 658 (2013).

[29] *Id*. at 659, citing *Spouses Sarmiento v. CA*, 507 Phil. 101, 128 (2013).

the first to apply for an FP over the subject property will not help the petitioner's cause.

Moreover, the petitioner cannot rely on his TCT No. FT-5683 as an incontrovertible evidence of his ownership over the subject property. The fact that he was able to secure a title in his name does not operate to vest ownership upon him of the subject property. As the Court reiterated in *Hortizuela v. Tagufa*:[30]

> Registration of a piece of land under the Torrens System does not create or vest title, because it is not a mode of acquiring ownership. A certificate of title is merely an evidence of ownership or title over the particular property described therein. It cannot be used to protect a usurper from the true owner; nor can it be used as a shield for the commission of fraud; neither does it permit one to enrich himself at the expense of others. Its issuance in favor of a particular person does not foreclose the possibility that the real property may be co-owned with persons not named in the certificate, or that it may be held in trust for another person by the registered owner.[31]

The petitioner's reliance on the doctrine that mere possession cannot defeat the right of a holder of a registered Torrens title over property is misplaced, considering that the respondents were almost deprived of their rights over the subject property through fraud and with evident bad faith. The petitioner and Bridiana's failure and intentional omission to disclose the fact of actual physical possession by another person during registration proceedings constitutes actual fraud.[32] Hence, the alleged incontrovertibility of title cannot be successfully invoked by the petitioner because certificates of title merely confirm or record title already existing and cannot be used as a shield for the commission of fraud.

Applying these parameters, the Court is convinced that the petitioner cannot be considered a buyer and registrant in good

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[30] G.R. No. 205867, February 23, 2015, 751 SCRA 371.

[31] *Id.* at 387, citing *Naval v. CA*, 518 Phil. 271, 282-283 (2006).

[32] *Dy v. Yu,* G.R. No. 202632, July 8, 2015, 762 SCRA 357, 385, citing *Alba vda. de Raz vs. CA*, 372 Phil. 710, 738 (1999).

faith and for value. It is apparent from the records of this case that the respondents have been in actual possession and occupation of the subject property at the time that it was sold by Bridiana to the petitioner. Thus, the petitioner did not acquire any right from Bridiana over two-thirds of the subject property since the latter was no longer the owner of the same at the time the sale was made to the petitioner. The ownership over the two-thirds-portion of the subject property had already been vested to the respondents prior to such sale. Hence, reconveyance of the subject property to the petitioner is unwarranted.

WHEREFORE, the petition is **DENIED**. The Decision dated August 31, 2010 and the Resolution dated December 6, 2011 of the Court of Appeals in CA-G.R. CV No. 00284 are **AFFIRMED**.

SO ORDERED.

Velasco, Jr. (Chairperson), Bersamin, Jardeleza, and *Tijam, JJ.,* concur.

FIRST DIVISION

[G.R. No. 210289. March 20, 2017]

TSM SHIPPING PHILS., INC., and/or DAMPSKIBSSELSKABET NORDEN A/S and/or CAPT. CASTILLO, *petitioners, vs.* **LOUIE L. PATIÑO,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; DISABILITY BENEFITS; PERMANENT TOTAL DISABILITY; A COMPLAINT FILED FOR TOTAL AND PERMANENT DISABILITY BENEFITS WITHIN THE 120/

240-DAY PERIOD IS PREMATURELY FILED.— Upon respondent's repatriation on May 24, 2010, he was given extensive medical attention by the company-designated physician. On August 17, 2010, an interim assessment of Grade 10 was given by Dr. Cruz as respondent was still undergoing further treatment and physical therapy. However, on September 8, 2010, or 107 days since repatriation, respondent filed a complaint for total and permanent disability benefits. During this time, he was considered under temporary total disability inasmuch as the 120/240-day period had not yet lapsed. Evidently, the complaint was prematurely filed.

2. **ID.; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION-STANDARD EMPLOYMENT CONTRACT; PERMANENT PARTIAL DISABILITY; A FINAL ASSESSMENT OF GRADE 10 MADE BEFORE THE MAXIMUM 240-DAY MEDICAL TREATMENT PERIOD HAS EXPIRED IS MERELY EQUIVALENT TO A PERMANENT PARTIAL DISABILITY.—** "To stress, the rule is that a temporary total disability only becomes permanent when the company-designated physician, within the 240-day period, declares it to be so, or when after the lapse of the said period, he fails to make such declaration." After the initial interim assessment of Dr. Cruz, respondent continued with his medical treatment. Dr. Cruz then rendered on September 29, 2010 a final assessment of Grade 10 upon reaching the maximum medical cure. Counting from the date of repatriation on May 24, 2010 up to September 29, 2010, this assessment was made within the 240-day period. Clearly, before the maximum 240-day medical treatment period expired, respondent was issued a Grade 10 disability rating which is merely equivalent to a permanent partial disability under the POEA-SEC. Thus, respondent could not have been suffering from a permanent total disability as would entitle him to the maximum benefit of US$60,000.00.

3. **ID.; ID.; DISABILITY BENEFITS; NON-OBSERVANCE OF THE REQUIREMENT TO HAVE THE CONFLICTING ASSESSMENTS OF THE COMPANY-DESIGNATED PHYSICIAN AND THE DOCTOR APPOINTED BY THE SEAFARER DETERMINED BY A THIRD DOCTOR WOULD MEAN THAT THE ASSESSMENT OF THE COMPANY-DESIGNATED PHYSICIAN PREVAILS.—** The Court finds the labor tribunals' rulings seriously flawed

as they were rendered in total disregard of the provisions of the POEA-SEC, which is the law between the parties. The medical opinion of Dr. Escutin ought not to be given more weight than the disability grading given by Dr. Cruz. The POEA-SEC clearly provides that when a seafarer sustains a work-related illness or injury while on board the vessel, his fitness or unfitness for work shall be determined by the company-designated physician. However, if the doctor appointed by the seafarer makes a finding contrary to that of the assessment of the company-designated physician, a third doctor may be agreed jointly between the employer and the seafarer and the latter's decision shall be final and binding on both of them. The Court has held that non-observance of the requirement to have the conflicting assessments determined by a third doctor would mean that the assessment of the company-designated physician prevails. x x x In the absence of a third and binding opinion, the Court has no option but to hold Dr. Cruz's assessment of respondent's disability final and binding. At any rate, more weight should be given to this assessment as Dr. Cruz was able to closely monitor respondent's condition from the time he was repatriated in May 2010 until his last follow-up examination in October 2010. The extensive medical attention given by Dr. Cruz enabled him to acquire a detailed knowledge of respondent's medical condition.

APPEARANCES OF COUNSEL

Del Rosario & Del Rosario Law Offices for petitioners.
Panambo Law Office for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

This Petition for Review on *Certiorari*[1] assails the July 25, 2013 Decision[2] and November 28, 2013 Resolution[3] of the Court

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

[2] CA *rollo,* pp. 416-427; penned by Associate Justice Ramon R. Garcia and concurred in by Associate Justices Amelita G. Tolentino and Danton Q. Bueser.

[3] *Id.* at 461-462.

of Appeals (CA) in CA-G.R. SP No. 128415 affirming the October 17, 2012 Decision[4] and April 25, 2013 Resolution[5] of the National Labor Relations Commission (NLRC), which ordered TSM Shipping Phils., Inc. (TSM), Dampskibsselskabet Norden A/S (DNAS), and Capt. Castillo (collectively petitioners) to pay Louie L. Patiño (respondent) US$60,000.00 as permanent total disability benefits and 10% thereof as attorney's fees.

Antecedent Facts

On January 13, 2010, TSM, for and in behalf of its foreign principal, DNAS, entered into a Contract of Employment[6] with respondent for a period of six months as GP2/OS (General Purpose 2/Ordinary Seaman) for the vessel Nord Nightingale.

On May 20, 2010, while working on board the vessel, respondent injured his right hand while securing a mooring rope. He was brought to a medical facility in Istanbul, Turkey, where X-ray showed a fracture on his 5th metacarpal bone. Respondent's right hand was placed in a cast and thereafter he was repatriated.

Upon arrival in Manila on May 24, 2010, petitioners referred respondent to the company-designated physician, Dr. Nicomedes G. Cruz (Dr. Cruz), for further treatment. Respondent was also referred to an orthopedic surgeon who recommended surgical operation to correct the malunited fractured metacarpal bone. On June 8, 2010, respondent underwent Open Reduction and Internal Fixation of the fractured 5th metacarpal bone at Manila Doctors Hospital.[7] He then went through physical therapy.

After extensive medical treatments, therapy, and follow-up examinations, Dr. Cruz, on August 17, 2010, rendered an interim

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[4] NLRC records pp. 258-267; penned by Commissioner Mercedes R. Posada-Lacap and concurred in by Presiding Commissioner Leonardo L. Leonida and Commissioner Dolores M. Peralta-Beley.

[5] *Id*. at 326-330.

[6] *Id*. at 20.

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

assessment of respondent's disability under the Philippine Overseas Employment Administration – Standard Employment Contract (POEA-SEC),[8] at Grade 10, or loss of grasping power for small objects between the fold of the finger of one hand. Despite continuing physical therapy sessions with the company-designated physician, respondent filed on September 8, 2010 a complaint[9] with the NLRC against petitioners for total and permanent disability benefits, damages, and attorney's fees. Thereafter, in a Medical Report dated October 11, 2010,[10] Dr. Cruz declared respondent to have reached the maximum medical cure after rendering a final disability rating of Grade 10 on September 29, 2010.[11]

On November 19, 2010, respondent consulted Dr. Nicanor Escutin (Dr. Escutin), who assessed him to have permanent disability unfit for sea duty in whatever capacity as a seaman.[12] The following were Dr. Escutin's findings:

DISABILITY RATING:

Based on the physical examination and supported by laboratory examinations, he injured his right hand while working. His right hand was injured by the mooring rope which he was securing. He sustained a fracture on his 5th metacarpal bone. He had medical attention after 2 days. His right hand was placed on a cast and he was repatriated. In Manila, he had another x-ray which showed his 5th metacarpal is not aligned properly, so he had operation on his right hand to fix the 5th metacarpal. He later on had physical therapy up to the time of examination. He has difficulty in flexing his fingers adequately. His thumb cannot touch his small finger. His grip is weak and cannot hold objects for a long time. His job as a seaman entails constant usage of both his hands. At present, he cannot fully flex his fingers which mean [sic] he cannot hold small objects or turn knobs. He

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[8] *Id*. at 86.

[9] *Id*. at 1-3.

[10] *Id*. at 69.

[11] *Id*. at 87.

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

cannot fully perform his job as a seaman. He is not physically fit to perform the job of a seaman.[13]

Proceedings before the Labor Arbiter

In his position paper, respondent asked for permanent total disability benefits in the sum of US$80,000.00 under the Associated Marine Officers and Seamen's Union of the Philippines Collective Bargaining Agreement (AMOSUP CBA) since, according to him, he never recovered completely nor returned to his usual duties and responsibilities, as attested by the medical findings of Dr. Escutin, his own physician.

Petitioners, however, claimed that respondent is only entitled to US$10,075.00 corresponding to Grade 10 disability under the POEA-SEC, as assessed, on the other hand, by Dr. Cruz who made an extensive evaluation of respondent's injury. They maintained that this assessment deserves greater weight than the belated medical report rendered by Dr. Escutin after a single examination on respondent. Petitioners also stressed that respondent cannot claim benefits under the CBA since he has not proven that he is a member of AMOSUP.

In a Decision[14] dated April 18, 2012, the Labor Arbiter awarded respondent total and permanent disability benefits under the AMOSUP CBA in the amount of US$80,000.00, sickness allowance of US$1,732.00, attorney's fees equivalent to 10% of the award or US$8,173.20, and moral and exemplary damages of ₱100,000.00 and ₱50,000.00, respectively, for the fraud and malice that attended the denial of his claims.

The Labor Arbiter observed that respondent is indeed suffering from a total and permanent disability since his rehabilitation took five months or more than 120 days and there was no offer on the part of petitioners to rehire him. The Labor Arbiter found credible Dr. Escutin's finding that respondent's injury had

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[13] *Id*. at 29.

[14] *Id*. at 121-128; penned by Executive Labor Arbiter Fatima Jambaro-Franco.

rendered him inutile as an ordinary seaman and although total disability does not mean absolute helplessness, his incapacity to work resulted in the impairment of his earning capacity. The dispositive portion of the Decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered ordering the respondents TSM Shipping (Phils.), Inc./ Dampskibsselskabet Norden A.S./Capt. Castillo to jointly and severally pay complainant Louie Patiño the amount of EIGHTY NINE THOUSAND EIGHT HUNDRED FIVE US DOLLARS & 20/100 (US$89,805.20) or its equivalent in Philippine Peso at the prevailing rate of exchange at the time of actual payment representing his total permanent disability benefits, sickness allowance and attorney's fees.
>
> Respondents are further ordered to pay complainant the amount of ONE HUNDRED FIFTY THOUSAND PESOS (₱150,000.00) representing moral and exemplary damages.
>
> All other claims are DISMISSED for lack of merit.
>
> SO ORDERED.[15]

Proceedings before the National Labor Relations Commission

On appeal, petitioners attributed serious error to the Labor Arbiter for awarding full disability benefits under the CBA. They argued that an illness which lasted for more than 120 days does not necessarily mean that a seafarer is entitled to full disability benefits, and that the company-designated physician's partial disability grading is still binding and controlling. Further, there was no concrete medical evidence that respondent suffers from a Grade 1 disability and that no third doctor was appointed to resolve any doubts as to the true state of health of respondent. Petitioners also disputed respondent's entitlement to damages and attorney's fees by denying that they acted with malice and fraud.

In a Decision[16] dated October 17, 2012, the NLRC agreed with the Labor Arbiter that respondent is entitled to permanent

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[15] *Id*. at 128.

[16] *Id*. at 258-267.

total disability benefits because his injury had rendered him incapable of using his right hand, based on the last medical report of Dr. Cruz, where the latter acknowledged that respondent's right grip is poor. The NLRC ruled that disability should not be understood based on its medical significance but on the loss of earning capacity. It, however, held that respondent cannot claim benefits under the CBA there being no evidence that he was a member of AMOSUP; likewise, it found no basis in awarding attorney's fees and damages after finding that petitioners did not act in bad faith. It, thus, awarded respondent total and permanent disability benefits in the amount of US$60,000.00 under the POEA-SEC and deleted the award of damages and attorney's fees, thus:

> WHEREFORE, the appeal is partly GRANTED. The Decision of the Labor Arbiter dated April 18, 2012 is AFFIRMED with MODIFICATION; finding appellee entitled to permanent disability benefits under the POEA-SEC. Accordingly appellants are ordered to jointly and severally pay appellee the amount of Sixty Thousand US Dollars (US$60,000.00) or its peso equivalent at the time of payment. The award of attorney's fees is deleted.
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> The award for moral and exemplary damages are deleted.
>
> SO ORDERED.[17]

Both parties filed their respective motions for reconsideration.[18] Petitioners, for their part, questioned the NLRC's award despite lack of proof that respondent suffers from a Grade 1 disability. Respondent, on the other hand, maintained that he is covered by the AMOSUP CBA and that petitioners are also liable for damages and attorney's fees in view of their bad faith.

In a Resolution[19] dated November 23, 2012, the NLRC denied petitioners' motion for reconsideration. In a subsequent

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[17] *Id.* at 266-267.

[18] Petitioners' Motion for Reconsideration, *id.* at 269-289; Patino's Motion for Reconsideration, *id.* at 302-310.

[19] *Id.* at 296-298.

Resolution[20] dated April 25, 2013, the NLRC partly granted respondent's motion for reconsideration by reinstating the Labor Arbiter's award of attorney's fees on the ground that he was forced to litigate his claims. The NLRC made the following disposition in its April 25, 2013 Resolution:

WHEREFORE, apppellee's motion for reconsideration is PARTLY GRANTED. Our Decision dated October 17, 2012 is Modified in that, respondent-appellants are ordered to pay appellee ten percent (10%) of the award as attorney's fees.

SO ORDERED.[21]

Proceedings before the Court of Appeals

Petitioners filed a Petition for *Certiorari* with Prayer for the Issuance of a Writ of Preliminary Injunction and/or Temporary Restraining Order[22] docketed as CA-G.R. SP No. 128415 to enjoin the enforcement/execution of the NLRC judgment. Petitioners attributed grave abuse of discretion on the NLRC in awarding respondent US$60,000.00 without providing any substantial evidence to prove that he was suffering from Grade 1 disability and for unreasonably awarding attorney's fees despite absence of bad faith on their part.[23]

The CA, on July 25, 2013, rendered a Decision[24] dismissing the Petition for *Certiorari* and affirming the October 17, 2012 Decision and April 25, 2013 Resolution of the NLRC. The CA agreed with the findings of both the NLRC and Labor Arbiter that respondent is entitled to a Grade 1 or total permanent disability benefits under the POEA-SEC and that the assessment of respondent's chosen physician, Dr. Escutin, is credible. The CA ratiocinated that both labor tribunals did not merely base

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[20] *Id*. at 326-330.

[21] *Id*. at 330.

[22] CA *rollo,* pp. 3-36.

[23] See petitioner's Manifestation dated May 20, 2013, *id*. at 402-405.

[24] *Id*. at 416-427.

their findings on the mere lapse of the 120-day threshold period but on respondent's inability to perform the duties for which he was trained to do, resulting in the impairment of his earning capability. Besides, it held that factual findings of these administrative agencies should be accorded great respect, if not finality, if supported by substantial evidence.

Petitioners sought reconsideration[25] of this Decision but was denied by the CA in its Resolution[26] of November 28, 2013.

Issues

Hence, the present Petition raising the following issues:

1. Whether the Court of Appeals decided in a way not in accord with law or with the applicable decisions of the Supreme Court in affirming the questioned Decision and Resolution of the Court of Appeals [sic] which held herein petitioners liable for a total of US$60,000.00 as disability benefits despite the glaring fact that the private respondent was declared as merely suffering from a Grade 10 disability as recommended by the company-designated physician;

2. Whether the sole claim of 'loss of earning capacity' and the '120-day rule' should equate to an award of US$60,000.00 despite the lack of substantial evidence to support the allegation that he is actually suffering from a Grade 1 disability and despite the undisputed evidence that he was actually suffering from a Grade 10 disability;

3. Whether the medical findings of the company-designated physician should be upheld over that issued by the physician appointed by the private respondent;

4. Whether the Court of Appeals decided in a way not in accord with law or with the applicable decisions of the Supreme Court in affirming the award for 10% attorney's fees despite the fact that the private respondents [sic] failed to prove that herein petitioners acted in bad faith.[27]

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[25] *Id*. at 430-449.

[26] *Id*. at 461-462.

[27] *Rollo,* p. 177.

Petitioners assert that the mere lapse of the 120-day period does not automatically vest an award of full disability benefits and that the assessment of the company-designated physician is controlling in measuring the degree of the seafarer's disability. At any rate, the 120-day period may be extended to 240 days if the seafarer requires further medical attention, as in this case. Therefore, the partial disability grading rendered by Dr. Cruz within the 240-day medical treatment prevails over the single and belated opinion of Dr. Escutin. Besides, no referral was made to a third doctor who should have rendered a binding third opinion. There was, thus, no basis for respondent to claim total and permanent disability benefits.

Petitioners also insist that the award of attorney's fees had likewise no basis in the absence of any evidence that they acted in bad faith, which brought about this present litigation.

Our Ruling

We find merit in the Petition.

Respondent's complaint for disability benefits was premature.

Because of lack of proof that respondent is covered by the AMOSUP CBA, settled is the finding that his entitlement to disability benefits is governed by the POEA-SEC and relevant labor laws, which are deemed written in the contract of employment with petitioners.

Article 192(c)(1) of the Labor Code provides that:

> Art. 192. Permanent total disability. — x x x
>
> (c) The following disabilities shall be deemed total and permanent:
>
> (1) Temporary total disability lasting continuously for more than one hundred twenty days, except as otherwise provided for in the Rules;

The Rule referred to in this Labor Code provision is Section 2, Rule X of the Amended Rules on Employees' Compensation Implementing Title II, Book IV of the Labor Code, which states:

Sec. 2. Period of Entitlement — (a) The income benefit shall be paid beginning on the first day of such disability. If caused by an injury or sickness it shall not be paid longer than 120 consecutive days except where such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days from onset of disability in which case benefit for temporary total disability shall be paid. However, the System may declare the total and permanent status at any time after 120 days of continuous temporary total disability as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System.

Section 20 B(3) of the POEA-SEC also provides that:

3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one hundred twenty (120) days.

For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the employer and the seafarer. The third doctor's decision shall be final and binding on both parties.

In *Vergara v. Hammonia Maritime Services, Inc.,*[28] the Court ruled that the aforequoted provisions should be read in harmony with each other. The Court held:

As these provisions operate, the seafarer, upon sign-off from his vessel, must report to the company-designated physician within three (3) days from arrival for diagnosis and treatment. For the duration of the treatment but in no case to exceed 120 days, the seaman is on *temporary total disability* as he is totally unable to work. He receives

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[28] 588 Phil. 895 (2008).

his basic wage during this period until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally, as his condition is defined under the POEA Standard Employment Contract and by applicable Philippine laws. If the 120 days initial period is exceeded and no such declaration is made because the seafarer requires further medical attention, then the temporary total disability period may be extended up to a maximum of 240 days, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists. The seaman may of course also be declared fit to work at any time such declaration is justified by his medical condition.[29]

Thus, based on this pronouncement in *Vergara*, the Court then held, in the case of *C.F. Sharp Crew Management, Inc. v. Taok,*[30] that a seafarer may have basis to pursue an action for total and permanent disability benefits in any of the following conditions:

(a) the company-designated physician failed to issue a declaration as to his fitness to engage in sea duty or disability even after the lapse of the 120-day period and there is no indication that further medical treatment would address his temporary total disability, hence, justify an extension of the period to 240 days;

(b) 240 days had lapsed without any certification being issued by the company-designated physician;

(c) the company-designated physician declared that he is fit for sea duty within the 120-day or 240-day period, as the case may be, but his physician of choice and the doctor chosen under Section 20-B(3) of the POEA-SEC are of a contrary opinion;

(d) the company-designated physician acknowledged that he is partially permanently disabled but other doctors whom he consulted, on his own and jointly with his employer, believed that his disability is not only permanent but total as well;

(e) the company-designated physician recognized that he is totally and permanently disabled but there is a dispute on the disability grading;

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[29] *Id*. at 912.

[30] 691 Phil. 521 (2012).

(f) the company-designated physician determined that his medical condition is not compensable or work-related under the POEA-SEC but his doctor-of-choice and the third doctor selected under Section 20-B(3) of the POEA-SEC found otherwise and declared him unfit to work;

(g) the company-designated physician declared him totally and permanently disabled but the employer refuses to pay him the corresponding benefits; and

(h) the company-designated physician declared him partially and permanently disabled within the 120-day or 240-day period but he remains incapacitated to perform his usual sea duties after the lapse of the said periods.[31]

Upon respondent's repatriation on May 24, 2010, he was given extensive medical attention by the company-designated physician. On August 17, 2010, an interim assessment of Grade 10 was given by Dr. Cruz as respondent was still undergoing further treatment and physical therapy. However, on September 8, 2010, or 107 days since repatriation, respondent filed a complaint for total and permanent disability benefits. During this time, he was considered under temporary total disability inasmuch as the 120/240-day period had not yet lapsed. Evidently, the complaint was prematurely filed.

Moreover, it is significant to note that when he filed his complaint, respondent was armed only with the interim medical assessment of the company-designated physician and his belief that his injury had already rendered him permanently disabled. It was only after the filing of such complaint or on November 9, 2010 that he sought the opinion of Dr. Escutin, his own physician. As such, the Labor Arbiter should have dismissed at the first instance the complaint for lack of cause of action.

Respondent is not entitled to total and permanent disability compensation.

We find serious error in the rulings of the Labor Arbiter, NLRC, and CA that respondent's disability is considered

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[31] *Id*. at 538-539.

permanent and total based on the 120-day rule and on his inability to work resulting in the loss of earning capacity.

"To stress, the rule is that a temporary total disability only becomes permanent when the company-designated physician, within the 240-day period, declares it to be so, or when after the lapse of the said period, he fails to make such declaration."[32] After the initial interim assessment of Dr. Cruz, respondent continued with his medical treatment. Dr. Cruz then rendered on September 29, 2010 a final assessment of Grade 10 upon reaching the maximum medical cure. Counting from the date of repatriation on May 24, 2010 up to September 29, 2010, this assessment was made within the 240-day period. Clearly, before the maximum 240-day medical treatment period expired, respondent was issued a Grade 10 disability rating which is merely equivalent to a permanent partial disability under the POEA-SEC. Thus, respondent could not have been suffering from a permanent total disability as would entitle him to the maximum benefit of US$60,000.00.

The Court finds the labor tribunals' rulings seriously flawed as they were rendered in total disgregard of the provisions of the POEA-SEC, which is the law between the parties. The medical opinion of Dr. Escutin ought not to be given more weight than the disability grading given by Dr. Cruz. The POEA-SEC clearly provides that when a seafarer sustains a work-related illness or injury while on board the vessel, his fitness or unfitness for work shall be determined by the company-designated physician. However, if the doctor appointed by the seafarer makes a finding contrary to that of the assessment of the company-designated physician, a third doctor may be agreed jointly between the employer and the seafarer and the latter's decision shall be final and binding on both of them.[33] The Court has held that non-observance of the requirement to have the conflicting assessments determined by a third doctor would mean that the assessment of the company-designated physician

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[32] *Santiago v. Pacbasin ShipManagement, Inc.,* 686 Phil. 255, 267 (2012).

[33] Section 20 B(3) of the POEA-SEC.

prevails. As decreed by this Court in *Veritas Maritime Corporation v. Gepanaga, Jr.*:[34]

x x x Gepanaga failed to observe the prescribed procedure of having the conflicting assessments on his disability referred to a third doctor for a binding opinion. Consequently, the Court applies the following pronouncements laid down in *Vergara*:

> The POEA Standard Employment Contract and the CBA clearly provide that when a seafarer sustains a work-related illness or injury while on board the vessel, his fitness or unfitness for work shall be determined by the company-designated physician. If the physician appointed by the seafarer disagrees with the company-designated physician's assessment, the opinion of a third doctor may be agreed jointly between the employer and the seafarer to be the decision final and binding on them.
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> Thus, while petitioner had the right to seek a second and even a third opinion, the final determination of whose decision must prevail must be done in accordance with an agreed procedure. Unfortunately, the petitioner did not avail of this procedure; hence, we have no option but to declare that the company-designated doctor's certification is the final determination that must prevail. x x x.

Indeed, for failure of Gepanaga to observe the procedures laid down in the POEA-SEC and the CBA, the Court is left without a choice but to uphold the certification issued by the company-designated physician that the respondent was fit to go back to work.[35]

In the absence of a third and binding opinion, the Court has no option but to hold Dr. Cruz's assessment of respondent's disability final and binding. At any rate, more weight should be given to this assessment as Dr. Cruz was able to closely monitor respondent's condition from the time he was repatriated in May 2010 until his last follow-up examination in October 2010. The extensive medical attention given by Dr. Cruz enabled him to acquire a detailed knowledge of respondent's medical

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[34] G.R. No. 206285, February 4, 2015, 750 SCRA 104.

[35] *Id.* at 117-118.

condition. Under the supervision of Dr. Cruz, respondent underwent surgery and physical therapy. On the basis of the medical records and the results obtained from the medical treatments, Dr. Cruz arrived at a definite assessment of respondent's condition. Having extensively monitored and treated respondent's injury, the company-designated physician's diagnosis deserves more weight than respondent's own doctor.

Moreover, we further find without basis the pronouncement of the Labor Arbiter that petitioners' failure to rehire respondent is conclusive proof of his disability. There was no showing that respondent sought re-employment with petitioners or that it was a matter of course for petitioners to re-hire him. There was also no evidence or allegation that respondent sought employment elsewhere but was denied because of his condition.

In sum, respondent is not entitled to total and permanent disability compensation. The filing of his complaint is premature and in breach of his contractual obligation with the petitioners. Dr. Cruz's Grade 10 disability rating prevails for failure to properly dispute it in accordance with an agreed procedure. Respondent is thus entitled to the amount corresponding to Grade 10 based on the certification issued by Dr. Cruz.

Section 32 of the POEA-SEC provides for a schedule of disability compensation which is often ignored or overlooked in maritime compensation cases. Section 32 laid down a Schedule of Disability or Impediment for Injuries Suffered and Diseases including Occupational Diseases or Illness Contracted, in conjunction with Section 20 (B)(6) which provides that in case of a permanent total or partial disability, the seafarer shall be compensated in accordance with Section 32. Section 32 further declares that any item in the schedule classified under Grade 1 shall be considered or shall constitute total and permanent disability. Therefore, any other grading constitutes otherwise. We stressed in *Splash Philippines, Inc. v. Ruizo*[36] that it is about time that the schedule of disability compensation under Section 32 be seriously observed.

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[36] 730 Phil. 162 (2014).

WHEREFORE, the Petition is **GRANTED**. The July 25, 2013 Decision and November 28, 2013 Resolution of the Court of Appeals in CA-G.R. SP No. 128415 are **SET ASIDE**. Petitioners TSM Shipping Phils., Inc., Dampskibsselskabet Norden A/S, and Capt. Castillo are ordered to jointly and solidarily pay respondent Louie L. Patiño US$10,075.00 (US$50,000.00 x 20.15%) or its equivalent amount in Philippine currency at the time of payment.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 213020. March 20, 2017]

PUERTO AZUL LAND, INC. and TERNATE UTILITIES, INC., *petitioners, vs.* **EXPORT INDUSTRY BANK, INC., (formerly named Urban Bank, Inc.), through its TRUST DEPARTMENT (formerly named Urban Trust Department); PACIFIC WIDE HOLDINGS, INCORPORATED; PHILIPPINE BUSINESS BANK – TRUST and INVESTMENT CENTER; HON. RACQUELEN ABARY-VASQUEZ, in her capacity as Executive Judge, and ATTY. MARIVIC S. TIBAYAN, in her capacity as Clerk of Court and *Ex-Officio* Sheriff, both of the Regional Trial Court of Pasay City,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; COURTS; DOCTRINE OF HIERARCHY OF COURTS; EXCEPTIONS; THE SUPREME COURT HAS FULL DISCRETIONARY POWER TO 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 RAISED IN THE PETITION.— In *The Diocese of Bacolod v. Commission on Elections*, the Court stressed that the doctrine of hierarchy of courts is not an iron-clad rule, and that it 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. Recognized exceptions to the said doctrine are as follows: "(a) when there are genuine issues of constitutionality that must be addressed at the most immediate time; (b) when the issues involved are of transcendental importance; (c) cases of first impression where no jurisprudence yet exists that will guide the lower courts on the matter; (d) the constitutional issues raised are better decided by the Court; (e) where exigency in certain situations necessitate urgency in the resolution of the cases; (f) the filed petition reviews the act of a constitutional organ; (g) when petitioners rightly claim that they had no other plain, speedy, and adequate remedy in the ordinary course of law that could free them from the injurious effects of respondents' acts in violation of their right to freedom of expression; and (h) 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."

2. **ID.; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; *CERTIORARI*; A MOTION FOR RECONSIDERATION IS A CONDITION *SINE QUA NON* TO THE FILING OF A PETITION FOR *CERTIORARI*; EXCEPTIONS.—** Although the filing of a motion for reconsideration is a condition *sine qua non* to the filing of a petition for *certiorari*, the rule is subject to the following exceptions: "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* proceeding 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 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 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 where public interest is involved."

3. **ID.; ID.; FORUM SHOPPING; ELEMENTS.—** Settled is the rule that forum shopping is the act of a litigant who repetitively availed of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues, either pending in or already resolved adversely by some other court, to increase his chances of obtaining a favorable decision if not in one court, then in another. The elements of forum shopping are: (a) identity of parties or at least such parties that represent the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; (c) identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration.

4. **ID.; ID.; SPECIAL CIVIL ACTIONS; FORECLOSURE OF REAL ESTATE MORTGAGE; DISPOSITION OF PROCEEDS OF SALE; ORDER OF DISPOSITION.—** [P]ursuant to Section 4, Rule 68 of the Rules of Court, x x x the disposition of the proceeds of the foreclosure sale shall be in the following order: (a) pay the costs of sale; (b) pay off the mortgage debt to the person foreclosing the mortgage; (c) pay the junior encumbrancers, if any, in the order of priority; and (d) give the balance to the mortgagor, his agent or the person entitled to it. Contrary to private respondents' claim, it is not part of the Executive Judge's ministerial supervisory authority to order the release of proceeds of the entire bid price to a person other than the one foreclosing the mortgage, *i.e.*, EIB, which is already closed.

5. **ID.; LEGAL FEES; PETITION FOR EXTRAJUDICIAL FORECLOSURE OF REAL ESTATE MORTGAGE; THE EXECUTIVE JUDGE SHOULD ENSURE THAT THE CLERK OF COURT PERFORMS HER DUTY TO COLLECT THE CORRECT FILING FEES UPON RECEIPT OF THE APPLICATION FOR EXTRAJUDICIAL FORECLOSURE SALE OF MORTGAGE.—** Chapter X, Section 1 of Administrative Matter (*A.M.*) No. 03-8-02-SC provides that it shall be the duty of the Executive Judge to ensure strict compliance with the rules on extrajudicial foreclosure of mortgage. In line with her responsibility for the management of courts within her administrative area, the Executive Judge is also tasked to supervise directly the work of the Clerk of Court who is also the *Ex-Officio* Sheriff. Supervision is not a meaningless matter, but an active power which at least implies authority to inquire into facts and conditions in order to render the power real and effective. No less than Section 7 of A.M. No. 04-2-04-SC provides that matters relating to the propriety and correctness of the assessment and collection of docket fees are judicial in nature and should only be determined by the regular court. In OCA Circular No. 42-05, the Court Administrator emphasized that any question relating to the correct or proper assessment and collection of docket fees of a particular case should be submitted before the court having jurisdiction of said case, and that the question should be resolved by the judge concerned within a reasonable period of time. Thus, the Executive Judge should have ensured first that the Clerk of Court performed her duty to collect the correct filing fees pursuant to Rule 141, Section 7(c), as amended by A.M. No. 00-2-01-SC, upon receipt of the application for extrajudicial foreclosure sale of mortgage.

6. **ID.; ID.; ID.; UPON RECEIPT OF AN APPLICATION FOR EXTRAJUDICIAL FORECLOSURE OF MORTGAGE, IT SHALL BE THE DUTY OF THE CLERK OF COURT TO COLLECT THE FILING FEES THEREFOR AND ISSUE THE CORRESPONDING OFFICIAL RECEIPT.—** Supreme Court Administrative Circular No. 3-98 states, among other matters, that no written request/petition for extrajudicial foreclosure of real estate mortgages shall be acted upon by the Clerk of Court, as *Ex-Officio* Sheriff, without the corresponding fee having been paid and the receipt thereof attached to the request/petition as provided for in Section 7(c) of Rule 141 of

the Rules of Court. Corollarily, A.M. No. 99-10-05-0, as amended, provides that upon receipt of an application for extrajudicial foreclosure of mortgage, it shall be the duty of the Clerk of Court to, among other things, collect the filing fees therefor, and issue the corresponding official receipt, pursuant to Rule 141, Section 7 (c), as amended by A.M. No. 00-2-01-SC x x x. It is not amiss to stress the importance of filing fees, for they are intended to take care of court expenses in the handling of cases in terms of costs of supplies, use of equipment, salaries, and fringe benefits of personnel, and others. The payment of said fees, therefore, cannot be made dependent on the result of the action taken without entailing tremendous losses to the government and to the judiciary in particular.

APPEARANCES OF COUNSEL

Chavez Miranda Aseoche Law Offices for petitioners.

Gancayco Balasbas & Associates Law Offices for Pacific Wide Holdings, Inc.

Valenton Loseriaga Law Office for Phil. Business Bank-Trust & Investment Center.

D E C I S I O N

PERALTA, *J.*:

This is a Petition for *Certiorari* and Prohibition under Rule 65 of the Rules of Court, seeking to reverse and set aside the Order[1] dated June 30, 2014 of the public respondent Executive Judge[2] of the Regional Trial Court of Pasay City in File No. REM 04-025 for Extrajudicial Foreclosure of Real Estate Mortgage under Act No. 3135,[3] as amended, and to enjoin the

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[1] *Rollo*, pp. 41-A-45.

[2] Judge Racquelen Abary-Vasquez.

[3] As amended by Act No. 4118 – An Act to Amend Act Number Thirty-One Hundred and Thirty-Five, entitled “An Act to Regulate the Sale of Property under Special Powers Inserted in or Annexed to Real Estate Mortgages.”

public respondent Clerk of Court and *Ex-Officio* Sheriff[4] from implementing the said Order, the dispositive portion of which reads:

> **WHEREFORE**, foregoing considered, the Clerk of Court of the Regional Trial Court of Pasay City is hereby ordered to release in favor of PHILIPPINE BUSINESS BANK-TRUST and INVESTMENT CENTER, the successor trustee, the amount of PESOS: FIVE HUNDRED SEVENTY MILLION (Php570,000,000.00) representing the entire bid price paid by SMDC, after deducting the costs of the sale and other legal charges, if any.
>
> SO ORDERED.[5]

The factual and procedural antecedents are as follows:

Petitioner Puerto Azul Land, Inc. (*PALI*) is the owner and developer of the Puerto Azul Complex in Ternate, Cavite. To finance its operations and the development of Puerto Azul into a satellite city with residential areas, resort, tourism and retail commercial centers with recreational areas, PALI obtained loans from various creditors. As security for its obligations amounting to ₱627,000,000.00, PALI, as borrower, and its accommodation mortgagors, *i.e.*, Ternate Development Corporation (*TDC*), petitioner Ternate Utilities, Inc. (*TUI*), and Mrs. Trinidad Diaz-Enriquez, executed with Urban Bank Incorporated (*UBI*) a Mortgage Trust Indenture (*MTI*)[6] dated February 3, 1995 and the Supplemental Mortgage Trust Indenture (*SMTI*)[7] date March 21, 1995. Among the properties that served as security for the loans were TUI's two (2) parcels of land situated in Pasay City and covered by Transfer Certificate of Title (*TCT*) No. T-133164.

PALI's business problems started when the Philippine Stock Exchange rejected the listing of its shares in its initial public offering, which drove away potential investors and real estate

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[4] Atty. Marivic S. Tibayan.

[5] *Rollo*, p. 45.

[6] *Id*. at 46-99.

[7] *Id*. at 100-103.

buyers from the business venture. Due to the ensuing 1997 Asian financial crisis and the decline of the real estate market, PALI failed to keep up with the payments of its debts and obligations.

On July 29, 2004, Export and Industry Bank, Inc. (*EIB*), which was later merged with UBI, filed a petition for extrajudicial foreclosure of real estate mortgage[8] with the Office of the Clerk of Court and *Ex-Officio* Sheriff of the Regional Trial Court (*RTC*) of Pasay City. In its petition docketed as REM No. 04-025, EIB sought to foreclose the mortgage constituted on TUI's properties covered by TCT No. T-133164 to satisfy PALI's outstanding obligations as of June 30, 2004, namely: ₱311,000,000.00 exclusive of interest, penalty charges, attorney's fees and other incidental expenses. Attached to the petition is a demand letter[9] dated May 3, 2004, stating that PALI's outstanding account, inclusive of interest and penalties, as of March 31, 2004 is ₱1,386,279,000.00.

On September 14, 2004, PALI filed a Petition for suspension of payments and rehabilitation with the RTC of Manila entitled *"In the Matter of the Corporate Rehabilitation/Suspension of Payments of Puerto Azul Land, Inc.*," the case was docketed as Civil Case No. 04-110914 and raffled to Branch 24 of the said RTC (*rehabilitation court*).

On September 17, 2004, the rehabilitation court, after finding that the petition was sufficient in form and substance, issued a Stay Order pursuant to Section 6, Rule 4 of the Interim Rules on Corporate Rehabilitation,[10] (a) staying the enforcement of all claims against the debtor, its guarantors and sureties not solidarily liable with the debtor, (b) prohibiting PALI from making any payment of its liabilities outstanding as of the date of filing of the petition, (c) prohibiting PALI from selling, encumbering, transferring, or disposing any of its properties

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[8] *Id*. at 104-108.

[9] *Id*. at 348-349.

[10] A.M. No. 008-10-SC (2000).

except in the ordinary course of business, and (d) appointing Patrick V. Caoile as rehabilitation receiver.[11]

In the meantime, the properties covered by TCT No. T-133164 were levied upon by the Treasurer's Office of Pasay City for non-payment of realty taxes.

On March 3, 2005, EIB filed an Urgent Motion to order PALI and/or the mortgagor TUI/rehabilitation receiver to pay all the taxes due on TCT No. T-133164.

On March 31, 2005, the rehabilitation court modified the Stay Order by excluding from its coverage TCT No. T-133164, to wit:

> Accordingly, and as being invoked by the creditor movant, this Court hereby modifies the Stay Order of September 17, 2004, in such a manner that TCT No. 133164, which is mortgaged with creditor movant Export and Industry Bank, Inc. is now excluded from the Stay Order. As such, Export and Industry Bank, Inc., may settle the above-stated realty taxes of third party mortgagor with the local government of Pasay City. In return, and to adequately protect the creditor movant Export and Industry Bank, Inc., the latter may foreclose on TCT No. 133164.
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> SO ORDERED.

On April 12, 2005, PALI filed an Urgent Motion for a *status quo* order, praying that the Stay Order be maintained, and that the enforcement of the claim of Pasay City be held in abeyance pending the hearing of its motion.

On August 16, 2005, the rehabilitation court issued an Order, maintaining its March 31, 2005 Order, and reiterating that TCT No. T-133164 is excluded from the Stay Order and that EIB may foreclose it and settle the delinquency taxes of third-party mortgagor TUI with the local government of Pasay City.

Aggrieved by the Order dated August 16, 2005, PALI filed with the CA a petition for *certiorari* under Rule 65. The case

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[11] *Puerto Azul Land, Inc. v. Pacific Wide Realty and Development Corporation*, G.R. No. 184000, September 17, 2004, 735 SCRA 333, 335-336.

was docketed as CA-G.R. SP No. 91996 and entitled, "*Puerto Azul Land, Inc. v. The Regional Trial Court of Manila, Br. 24; Sheriff IV of Pasay City Virgilio F. Villar; and Pacific Wide Realty & Development Corporation (as substitute for Export and Industry Bank, Inc.*"

On December 13, 2005, the rehabilitation court rendered a Decision[12] approving PALI's petition for suspension of payments and rehabilitation, thus:

The rehabilitation of the petitioner, therefore, shall proceed as follows:

1. The creditors shall have, as first option, the right to be paid with real estate properties being offered by the petitioner in *dacion en pago,* which shall be implemented under the following terms and conditions:

a. The properties offered by the petitioner shall be appraised by three appraisers, one to be chosen by the petitioner, a second to be chosen by the bank creditors, and the third to be chosen by the Receiver. The average of the appraisals of the three (3) chosen appraisers shall be the value to be applied in arriving at the *dacion* value of the properties. In case the *dacion* amount is less than the total of the secured creditor's principal obligation, the balance shall be restructured in accordance with the schedule of payments under option 2, paragraph (a). In case of excess, the same shall [be] applied in full or partial payment of the accrued interest on the obligations. The balance of the accrued interest, if any, together with the penalties, shall [be] condoned.

2. Creditors who will not opt for *dacion* shall be paid in accordance with the restructuring of the obligations as recommended by the Receiver as follows:

a) The obligations to secured creditors will be subject to a 50% haircut of the principal, and repayment shall be semi-annually over a period of 10 years, with a 3-year grace period. Accrued interests and penalties shall be condoned. Interest shall be paid

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[12] Penned by Judge Antonio M. Eugenio, Jr., Regional Trial Court of Manila, Branch 24.

at the rate of 2% p.a. for the first 5 years and 5% p.a. thereafter until the obligations are fully paid. The petitioner shall allot 50% of its cash flow available for debt service for secured creditors. Upon completion of payments to government and employee accounts, the petitioner's cash flow available for debt service shall be used until the obligations are fully paid.

b) One-half (½) of the principal of the petitioner's unsecured loan obligations to other creditors shall be settled through non-cash offsetting arrangements, with the balance payable semi-annually over a period of 10 years, with a 3-year grace period, with interest at the rate of 2% p.a. for the first 5 years and 5% p.a. from the 6th year onwards until the obligations are settled in full. Accrued interest and penalties shall be condoned.

c) Similarly, one-half (½) of the petitioner's obligations to trade creditors shall be settled through non-cash offsetting arrangements. The cash payments shall be made semi-annually over a period of 10 years on a *pari passu* basis with the bank creditors, without interest, penalties and other charges of similar kind.

WHEREFORE, the rehabilitation of petitioner Puerto Azul Land, Inc. is hereby approved in accordance with the foregoing pronouncements by the Court. Subject to the following terms and conditions:

1. Immediately upon the implementation of the rehabilitation of the petitioner, the Rehabilitation Receiver shall inform the Court thereof;

2. The Rehabilitation Receiver, creditors, and the petitioner shall submit to the Court at the end of the first year of the petitioner's rehabilitation, and annually thereafter until the termination of the rehabilitation, their respective reports on the progress of the petitioner's rehabilitation, specially the petitioner's compliance with the provisions of the plan as modified by the Rehabilitation Receiver;

3. The Rehabilitation Receiver shall report to the Court any change in the assumptions used in the Rehabilitation Plan, its projections, and forecasts, that may be brought about by the settlement through *dacion en pago* of any of the obligations

and to recommend corresponding changes, if any, in such assumptions, projections, and forecasts;

4. The rehabilitation of the petitioner is binding upon the creditors and all persons who may be affected by it, including the creditors, whether or not they have participated in the proceedings or opposed the plan or whether or not their claims have been scheduled.

The petitioner is hereby strictly enjoined to abide by the terms and conditions set forth in this Order and the provisions of the Interim Rules on Corporate Rehabilitation.

The Rehabilitation Receiver is hereby directed to perform his functions and responsibilities pursuant to Section 14 of the Interim Rules, with particular emphasis on the following:

"u) To be notified of, and to attend all meetings of the board of directors and stockholders of the debtors";

"v) To recommend any modification of an approved rehabilitation plan as he may deem appropriate";

"w) To bring to the attention of the court any material change affecting the debtor's ability to meet the obligations under the rehabilitation plan";

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"y) To recommend the termination of the proceedings and the dissolution of the debtor if he determines that the continuance in business of such entity is no longer feasible or profitable or no longer works to the best interest of the stockholders, parties-litigants, creditors, or the general public."

SO ORDERED.[13]

Dissatisfied with the terms of the rehabilitation plan and the qualifications of the rehabilitation receiver, EIB filed with the Court of Appeals (*CA*) a petition for review under Rule 42. The case was docketed as CA-G.R. SP No. 92695 and entitled, "*Export Industry Bank v. Puerto Azul Land, Inc.*"

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[13] *Pacific Wide Realty and Dev't. Corp. v. Puerto Azul Land, Inc.*, 620 Phil. 520, 525-527 (2009).

Meanwhile, on December 11, 2006, a Loan Sale and Purchase Agreement[14] (*LSPA*) was executed between EIB and private respondent Pacific Wide Realty and Development Corporation (*PACWIDE*) whereby EIB sold to PACWIDE for only ₱150,000,000.00 the non-performing loans that it extended to PALI and Silahis International Hotel, Inc. in the total amount of ₱825,000,000.00, 44.58% of which, or ₱368,200,000.00, constituted PALI's loan.

On March 16, 2007, the CA rendered a Decision[15] in CA-G.R. SP No. 91996, declaring the properties covered by TCT No. T-133164 to be subject of the Stay Order of the rehabilitation court. The *fallo* of the Decision reads:

> **WHEREFORE**, above premises considered, the instant Petition is **GRANTED**. The October 19, 2005 *Order* of the Regional Trial Court of Manila, Br. 24, in Civil Case No. 04-110914 is hereby declared **NULL** and **VOID** and the properties covered by TCT No. 133164 are hereby **DECLARED** subject to and covered by the September 17, 2004 stay order. Accordingly, Public Respondent Sheriff Virgilio F. Villar, or his substitute or equivalent, is **ORDERED** to immediately cease and desist from enforcing the Amended Notice of Sheriff's Sale, dated February 8, 2007, and from conducting the sale at public auction of the parcels of land covered by TCT No. 133164 on March 20, 2007, or at anytime thereafter. No costs.
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> **SO ORDERED**.[16]

Dissatisfied with the CA Decision, EIB, later substituted by Pacific Wide Realty and Development Corporation (PWRDC), filed a petition for review on *certiorari* under Rule 45, which was docketed as G.R. No. 178768 and entitled "*Pacific Wide Realty and Development Corporation v. Puerto Azul Land, Inc.*"

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[14] *Rollo*, pp. 109-118.

[15] Penned by Associate Justice Normandie B. Pizarro, with Associate Justices Edgardo P. Cruz and Fernanda Lampas Peralta, concurring.

[16] *Pacific Wide Realty and Dev't. Corp. v. Puerto Azul Land, Inc, supra* note 13, at 530. (Emphasis in the original)

On May 17, 2007, the CA rendered a Decision[17] in CA-G.R. SP No. 92695, dismissing the petition for review, and affirming *in toto* the rehabilitation court Decision dated December 13, 2005. Aggrieved by the CA Decision, PWRDC also filed a petition for review on *certiorari* under Rule 45, which was docketed as G.R. No. 180893 and likewise entitled "*Pacific Wide Realty and Development Corporation v. Puerto Azul Land, Inc.*" Thereafter, the Court ordered the consolidation of G.R. No. 178768 and G.R. No. 180893.

On November 25, 2009, the Court rendered a Decision in the consolidated cases entitled "*Pacific Wide Realty and Dev't. Corp v. Puerto Azul Land, Inc.,*"[18] the *fallo* of which states:

WHEREFORE, in view of the foregoing, (1) the Decision dated May 17, 2007 and the Resolution dated October 30, 2007 of the Court of Appeals in CA-G.R. SP No. 92695 are hereby **AFFIRMED**; and (2) the Decision dated March 16, 2007 and the Resolution dated June 29, 2007 of the Court of Appeals in CA-G.R. SP No. 91996 are hereby **SET ASIDE.** The October 19, 2005 Order of the Regional Trial Court of Manila in Civil Case No. 04-110914 is hereby **AFFIRMED.** The property covered by TCT No. 133164 is hereby declared excluded from the coverage of the September 17, 2004 Stay Order.

No costs.

SO ORDERED.[19]

The Court resolved in the negative the two issues, namely: (1) whether the terms of the rehabilitation plan are unreasonable and in violation of the non-impairment clause; and (2) whether the rehabilitation court erred when it allowed the foreclosure

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[17] Penned by Associate Justice Lucenito N. Tagle, with Associate Justices Amelita G. Tolentino and Mariflor Punzalan-Castillo, concurring.

[18] 620 Phil. 529 (2009); Penned by Associate Justice Antonio Eduardo B. Nachura, with Associate Justices Renato C. Corona, Minita V. Chico-Nazario, Teresita J. Leonardo-de Castro and Diosdado M. Peralta, concurring.-

[19] *Pacific Wide Realty and Dev't. Corp. v. Puerto Azul Land, Inc., supra,* at 538. (Emphasis in the original)

of the accommodation mortgagee's property and excluded the same from the coverage of the Stay Order. Finding nothing onerous in the stipulations in PALI's rehabilitation plan, the Court held that the restructuring of PALI's debts is part and parcel of its rehabilitation, and is not prejudicial to the interest of PWRDC as secured creditor. It sustained the CA's affirmation of PALI's Rehabilitation Plan, including those terms which its creditors had found objectionable, *i.e.*, the 50% "haircut" reduction of the principal obligations and the condonation of accrued interest and penalty charges. It also found no reversible error when the rehabilitation court removed TCT No. T-133164 from the coverage of the Stay Order, since the Interim Rules on Corporate Rehabilitation only covers the suspension of the enforcement of all claims against the debtors, its guarantors, and sureties not solidarily liable with the mortgagor, and is silent on the enforcement of claims against accommodation mortgagors, such as TUI.

With the resignation of EIB as trustee of the MTI on November 4, 2011, however, private respondent Philippine Business Bank– Trust and Investment Center (*PBB-Trust*) was appointed as a new trustee to administer the MTI, pursuant to a Memorandum of Agreement dated December 29, 2011 entered into by and among the following parties: (1) EIB, as the outgoing trustee; (2) PBB-Trust, as the successor-trustee; (3) Pacific Wide Holdings Inc., as the majority lender; and (4) Philippine Deposit Insurance Corporation (*PDIC*), as the minority lender.

On August 30, 2013, an Entry of Judgment in *Pacific Wide Realty and Dev't. Corp. v. Puerto Azul Land, Inc.*[20] was issued.

In a letter[21] dated January 24, 2014, PBB-Trust requested (1) that a new notice of sale be issued setting the sale at public auction of the properties covered by TCT No. T-133164; (2) that said notice be served, published and posted; and (3) that the foreclosure sale be conducted in accordance with Act No. 3135,

[20] *Supra,* at 529.

[21] *Rollo*, pp. 180-189.

as amended. PBB-Trust, as successor-trustee, claimed that it was authorized by the majority lenders, namely, Pacific Wide and PDIC, in a meeting called for the purpose to effect such foreclosure.

On February 25, 2014, Sheriff Virgilio F. Villar, for the *Ex-Officio* Sheriff of Pasay City, issued a New Notice of Sheriff Sale,[22] setting the auction sale of TCT No. 133164 on April 10, 2014 to satisfy PALI's obligation in the amount of ₱311,000,000.00, plus interests, penalties, publication of the notice of sale and expenses of the foreclosure proceedings.

On April 3, 2014, PALI and TUI filed a Petition for Declaratory Relief[23] before the RTC of Pasay City, seeking a judicial declaration of the parties' respective rights and obligations under the MTI and the SMTI, in relation to the Financial Rehabilitation and Insolvency Act of 2010, the LSPA and the terms and conditions of the approved rehabilitation plan. They prayed for the following reliefs:[24]

1. Issuance of a 72-hour temporary restraining order and, eventually, a writ of preliminary injunction, restraining the Clerk of Court and *Ex-Officio* Sheriff and the Sheriff of the RTC Pasay City (a) from conducting an auction sale over the properties covered by TCT No. T-133164, and (b) from issuing a Certificate of Sale in the event that such an auction sale is held; and

2. Rendition of a decision declaring that (a) the September 17, 2004 Stay Order of the RTC of Manila, Branch 24, applies to the properties covered by TCT No. T-133164, considering that such properties are necessary for the corporate rehabilitation of PALI; and (b) EIB and PWRDC cannot foreclose on the mortgage constituted over the subject properties covered by TCT No. T-133164 based

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[22] *Id*. at 137-141.

[23] *Id*. at 151-179.

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

on the allegations set forth in the Petition for Extrajudicial Foreclosure dated July 27, 2004 filed before the Clerk of Court of the RTC of Pasay City

On April 10, 2014, with the denial of PALI's and TUI's application for temporary restraining order, and pursuant to the New Notice of Sheriff's Sale,[25] the mortgaged properties covered by TCT No. T-133164 were sold on auction to SM Development Corporation (*SMDC*) for having submitted the highest bid in the amount of ₱570,000,000.00. However, proceeds of the sale were deposited to the Regional Trial Court, Pasay City, pending determination of the actual payee of the bid price, considering that EIB, the mortgagee bank, is already closed.

In a letter[26] dated April 14, 2014, TUI requested for the release in its favor of the amount of ₱488,641,500.00 representing the alleged surplus amount after deducting the amount of its supposed indebtedness to EIB in the amount of ₱81,358,500.00. In a letter[27] of even date, PBB-Trust claimed that the total bid price of ₱570,000,000.00 should be remitted to them, being the successor-trustee of mortgagee bank EIB, pursuant to the Memorandum of Agreement executed on December 29, 2011.

In an Order[28] dated April 24, 2014, the Executive Judge advised the parties to avail of the appropriate legal remedies to protect their rights and interest. She also ruled that, in the meantime, the bid price of ₱570,000,000.00, which was deposited with the Land Bank of the Philippines, shall continue to be held in trust by the Regional Trial Court of Pasay City until the court of proper jurisdiction shall have finally determined the rightful recipient of the subject bid price, and/or the respective amount due the claimants. She held as follows:

In view of the conflicting claims of TUI and [PBB-Trust], which will need the presentation of evidence by both parties in a full-blown

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[25] *Id*. at 137-141.

[26] *Id*. at 146-149.

[27] *Id*. at 286-288.

[28] *Id*. at 293.

trial, the Office of the Executive Judge, which only exercises administrative functions, has no judicial discretion to determine which, between the two (2) claimants, has the better right to receive the proceeds of the bid price.

Moreover, this Office notes that there are two (2) related cases involving the same parties: a case for Declaratory Relief pending before Branch 231 of this Court, the resolution of which will affect the propriety of the auction sale of the TUI property conducted on April 10, 2014. The other is the Corporate Rehabilitation case pending before RTC, Branch 24, Manila (The "*Rehabilitation Court*"), which is in a better position to interpret and determine the amount corresponding to the fifty percent (50%) loan reduction of PALI pursuant to the approved Rehabilitation plan.[29]

In a letter[30] dated May 2, 2014, PBB-Trust sought a reconsideration of the Order dated April 24, 2014, and requested for the release in its favor of the amount of ₱570,000,000.00 representing the amount tendered and paid by SMDC as bid price relative to the properties covered by TCT No. T-133164, subject of the extrajudicial foreclosure sale.

In a Notice dated May 9, 2014, the Executive Judge set a conference among the parties to thresh out issues regarding the disposition of the bid price tendered by SMDC.

TUI argued as follows: (1) the obligation of the principal borrower, PALI, arising from the MTI dated February 3, 1995, the SMTI dated March 21, 1995 and related instruments is not ₱311,000,000.00 but only ₱81,358,500.00 as of April 2014; (2) pursuant to the Petition for Rehabilitation and Suspension of Payments, the RTC-Manila, Branch 24, approved the Rehabilitation Plan submitted by the Rehabilitation Receiver; (3) in the Decision of the Supreme Court dated November 25, 2009, the consolidated cases of "*PACWIDE REALTY AND DEVELOPMENT CORPORATION v. PUERTO AZUL LAND, INC.*" the rehabilitation plan called, among others, for a 50% reduction on PALI's obligation, the imposition of 2% annual

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[29] *Id.*

[30] *Id.* at 302-310.

interest for the first five years and 5% interest rate thereafter until the obligation is fully paid; (4) pursuant to a Loan Sale Purchase Agreement dated December 11, 2006, the loan obligations of PALI and another corporation, Silahis International Hotel (*SIH*), were sold by EIB to *PACWIDE* for ₱150,000,000.00 [44.58% represented PALI's obligation and 55.42% for SIH's obligation]; (5) the ₱150,000,000.00 purchase price equitably reduced PALI's loan obligation to ₱81,358,500.00 as of April 2014, or 44.58% of the total purchase price; and (6) that as purchaser-assignee of the PALI loan, PACWIDE cannot recover from PALI more than what it had paid EIB for the loan.

PBB-Trust countered that: (1) it was grave error for the manager's check representing the bid price to have been issued in the name of the "Regional Trial Court of Pasay City" as it should have been issued in the name of PBB-Trust, or at least, to the creditor it represents; (2) it is the ministerial duty of the Executive Judge to release the total bid price to the creditor; (3) to refuse to subsequently release the amount to PBB-Trust or to the creditors it represents is erroneous because the remittance of the full bid amount to the mortgagee merely creates a cause of action on the part of the debtor against the former for the collection of the alleged excess amount that the mortgagee received; and (4) PBB-Trust has authority to receive the proceeds of the foreclosure sale.

Meanwhile, on May 14, 2014, the Executive Judge approved the Certificate of Sheriff's Sale,[31] stating (1) that the properties covered by TCT No. T-133164 which were mortgaged to secure the outstanding obligation of ₱311,000,000.00 exclusive of interest, penalty charges, attorney's fees and other incidental expenses, were foreclosed and sold to SMDC, the highest bidder, in an auction sale on April 10, 2014, in the amount of ₱570,000,000.00; (2) that the bid price was deposited in the meantime to the RTC of Pasay City, pending determination of the actual payee of the bid price, considering that the mortgagee bank, EIB, is already closed; and (3) the Sheriff's Commission

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[31] *Id*. at 143-145.

under Sec. 21 (d) of Rule 141 of the Rules of Court, as amended, in the total amount of ₱25,650,800.00 was paid on April 15, 2014.

After hearing the parties' respective arguments and receiving their respective memoranda,[32] the Executive Judge issued the assailed Order dated June 30, 2014, ordering the Clerk of Court to release in favor of PBB-Trust the amount of ₱570,000,000.00, representing the entire bid price paid by SMDC, after deducting the costs of the sale and other legal charges. The Executive Judge ruled, thus:

At the outset, it must be emphasized that this Office only exercises administrative supervision over the Office of the Clerk of Court and *Ex-officio* Sheriff. It, likewise, wishes to clarify that it is not unreasonably withholding release of the bid price paid by SMDC. Simply, this Office is exercising the necessary care and due diligence in the performance of its functions in view of the peculiar circumstances in this case, *viz.*:

1. The *Petition for Extrajudicial Foreclosure* was originally filed by EIB as the foreclosing mortgagee, on 29 July 2004. In view of the legal intricacies and supervening events which delayed the proceedings for several years, the auction sale was finally conducted on 10 April 2014. Despite having been closed by the *Bangko Sentral ng Pilipinas* and placed under PDIC receivership, EIB remains, on record, as the formal applicant/foreclosing mortgagee as of the date of the auction sale.

2. After the Pasay Property fetched a high price during the 10 April 2014-auction sale, TUI now asserts that it is entitled to the amount in excess of PALI's obligation to EIB, citing the 50% haircut reduction which it claimed should benefit and reduce PALI's loan obligation with EIB.

3. As a general rule, the bid price shall be paid to the foreclosing mortgagee after deducting the costs of sale. Any balance shall be paid to the junior encumbrancer, and should there be an excess, to the mortgagor. However, in the instance case, there exists a genuine dispute on the amount due the foreclosing mortgagee-assignee as a consequence of the rehabilitation plan and the subsequent sale by EIB of its loan accounts to PACWIDE.

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[32] *Id*. at 311-340.

Confronted, therefore, with the foregoing issues, the most prudent, logical and legal recourse then was to have the check, representing the bid price of SMDC, issued in the name of the "Regional Trial Court of Pasay City", and deposited to its Fiduciary Fund with the Land Bank of the Philippines pending the determination of the issues.

At any rate, applying the relevant law and based on the records of the case, this Office hereby resolves to release the full amount of the bid price less the costs of sale and other charges to the foreclosing mortgagee-assignee, without prejudice to the right of the mortgagor TUI to claim the surplus, if any, in a proper proceeding.

Sec. 4 of Rule 68 of the Rules on Civil Procedure provides:

> Sec. 4. *Disposition of proceeds of sale*. The money realized from the sale of the mortgaged property under the regulations herein before prescribed shall, after deducting the costs of sale, be paid to the person foreclosing the mortgage, and when there shall be any balance or residue, after paying off such mortgage or other encumbrancers, the same shall be paid to the junior encumbrances, in the order of their priority, to be ascertained by the court". x x x

By the accessory nature of a real estate mortgage, the mortgagee has the right to foreclose the mortgaged property only to the extent of the loan secured by it. Any decision to the contrary abets unjust enrichment. By its very nature, the surplus arising from a foreclosure sale stands in the place of the collateral itself in respect to liens thereon or vested rights therein. The surplus is constructively, at least, real property and belongs to the mortgagor. The right of a mortgagor to the surplus is a substantial right that prevails over rules of technicality. Perforce, a mortgagee who exercises the power of sale contained in a mortgage is considered a custodian of the fund, and being bound to apply it properly, is liable to the persons entitled thereto if he fails to do so. Even though the mortgagee is not strictly considered a trustee in a purely equitable sense, but as far as it concerns the unconsumed balance, the mortgagee is deemed a trustee for the mortgagor or owner of the equity of redemption. Thus, it has been held that if the mortgagee is retaining more of the proceeds of the sale than he is entitled to, this fact alone will not affect the validity of the sale but will simply give the mortgagor a cause of action to recover such surplus.

Initially, this Office was inclined to release only the amount claimed as appearing in the *Petition for Extrajudicial Foreclosure* totalling

the sum of Php311,000,000.00 representing the principal amount of indebtedness appearing in the Petition. This Office, however, notes that the amount of outstanding claims was qualified by the phrase "exclusive of interests, penalty charges, attorney's fees, and other incidental expenses." That means that there is an imperative need to verify from the records the true and actual unpaid obligation subject of foreclosure proceedings, as well as to levy the proper fees and charges.

A closer review of the records reveals that there is a sound basis to release the entire amount of the bid price paid by SMDC to the foreclosing mortgagee-assignee:

First, despite the fact that on its face, the Petition is anchored on the principal loan obligation of Php311,000,000.00, as of 30 June 2004, Paragraph 9 of the Petition itself is clear that the amount claimed is exclusive of interest, penalty charges, attorney's fees, and other incidental expenses. This opens the door to a subsequent presentation of the true and actual financial obligation of PALI to the borrower.

Second, in a letter dated 24 January 2014, PBB-Trust submitted a Statement of Account as of December 2013 (Annex "U") reflecting the alleged current and actual unpaid obligation of the borrower, PALI, secured by the property of the accommodation mortgagor, TUI, amounting to Php2,105,735,800.00

Third, TUI is not without any legal remedy in the event that the current and actual amount of the obligation of PALI is finally determined, and it be shown that there is a balance in the bid price. As previously discussed, the foreclosing mortgagee, by law, is under obligation to return the excess amount to the owner of the property, TUI. If the mortgagee refuses, then, it will give rise to a cause of action for the recovery of the excess amount.

Unfortunately, this Office cannot exercise adjudicatory functions and is, therefore, not in a position to interpret the applicability of the "50% haircut reduction in the obligation", as well as to compute "the reduced interest rate" pursuant to the Rehabilitation Plan approved by the rehabilitation court. Neither is this Office authorized to determine the effects of the Loan Purchase Agreement on the actual computation of the obligation of PALI to PACWIDE. These issues should be resolved by, and left to the sole and exclusive jurisdiction of rehabilitation and/or courts of proper jurisdiction.[33]

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[33] *Id*. at 42-45. (Citations omitted.)

Aggrieved by the Executive Judge's Order dated June 30, 2014, petitioners filed this petition for *certiorari* under Rule 65.

Petitioners argue that the Executive Judge gravely abused her discretion when she ordered the release in favor of PBB-Trust the entire bid amount of ₱570,000,000.00, considering that:

i. [T]he approval of the Rehabilitation Plan by the Rehabilitation Court as sustained with finality by this Honorable Court, which plan called for a fifty percent (50%) reduction on PALI's obligation, and the sale by EIB to Pacwide for only ₱150,000,000.00 of the former's non-performing loans which it extended to PALI and Silahis in the amount of ₱825,900,000.00

ii. [T]he petition for extrajudicial foreclosure filed by EIB only sought to satisfy a loan in the principal total amount of ₱311,000,000.00 without specifying in the petition the amount of interest and other costs.

iii. EIB paid docket fees on its petition for extrajudicial foreclosure only for the amount of ₱311,000,000.00 and neither Pacwide nor PBB-Trust paid the requisite docket fees to foreclose the subject properties to satisfy a loan of more than ₱311,000,000.00, let alone for the amount of ₱2,105,735,800.00 as stated in the latter's statement of account.

iv. [T]he appointment of PBB-Trust as successor-trustee of EIB is irregular considering that the provisions under the MTI for the appointment of a successor-trustee were not complied with.[34]

The petition is meritorious.

The Court shall resolve first the procedural issues regarding the doctrine of hierarchy of courts, the necessity of a motion for reconsideration before the filing of a petition for *certiorari* under Rule 65, and the rule on forum shopping.

In *The Diocese of Bacolod v. Commission on Elections,*[35] the Court stressed that the doctrine of hierarchy of courts is not an iron-clad rule, and that it has full discretionary power

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[34] *Id.* at 17-18.

[35] G.R. No. 205728, January 21, 2015, 747 SCRA 1.

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. Recognized exceptions to the said doctrine are as follows:

(a) when there are genuine issues of constitutionality that must be addressed at the most immediate time;
(b) when the issues involved are of transcendental importance;
(c) cases of first impression where no jurisprudence yet exists that will guide the lower courts on the matter;
(d) the constitutional issues raised are better decided by the Court;
(e) where exigency in certain situations necessitate urgency in the resolution of the cases;
(f) the filed petition reviews the act of a constitutional organ;
(g) when petitioners rightly claim that they had no other plain, speedy, and adequate remedy in the ordinary course of law that could free them from the injurious effects of respondents' acts in violation of their right to freedom of expression; and
(h) 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.[36]

The Court shall directly resolve the petition for *certiorari* and prohibition because it includes novel questions that are dictated by public welfare and the advancement of public policy, in view of the peculiar circumstances in the case, as noted by the Executive Judge in the assailed Order dated June 30, 2014, to wit:

1. The *Petition for Extrajudicial Foreclosure* was originally filed by EIB as the foreclosing mortgagee, on 29 July 2004. In view of the legal intricacies and supervening events which delayed the proceedings for several years, the auction sale was finally conducted on 10 April 2014. Despite having been closed by the *Bangko Sentral ng Pilipinas* and placed under PDIC receivership, EIB remains, on record, as the formal applicant/foreclosing mortgagee as of the date of the auction sale.

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[36] *The Diocese of Bacolod v. Commission on Elections*, *supra* at 45-49.

2. After the Pasay Property fetched a high price during the 10 April 2014-auction sale, TUI now asserts that it is entitled to the amount in excess of PALI's obligation to EIB, citing the 50% haircut reduction which it claimed should benefit and reduce PALI's loan obligation with EIB.

3. As a general rule, the bid price shall be paid to the foreclosing mortgagee after deducting the costs of sale. Any balance shall be paid to the junior encumbrancer, and should there be an excess, to the mortgagor. However, in the instant case, there exists a genuine dispute on the amount due the foreclosing mortgagee-assignee as a consequence of the rehabilitation plan and the subsequent sale by EIB of its loan accounts to PACWIDE.[37]

Although the filing of a motion for reconsideration is a condition *sine qua non* to the filing of a petition for *certiorari*, the rule is subject to the following exceptions:

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 proceeding 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 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 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 where public interest is involved.[38]

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[37] *Rollo*, pp. 42-43.

[38] *Delos Reyes v. Flores,* 628 Phil. 170, 178-179 (2010), citing *Marawi Marantao General Hospital, Inc. v. Court of Appeals,* 402 Phil. 356, 370-371 (2001).

The main issue raised in this petition for *certiorari* and prohibition is one purely of law, *i.e.*, whether the Executive Judge gravely abused her discretion, amounting to lack or excess of jurisdiction, when she issued the June 30, 2014 Order, releasing in favor of PBB-Trust the entire bid amount of ₱570,000,000.00, despite the presence of a genuine dispute on the amount due the foreclosing mortgagee-assignee as a consequence of the approved rehabilitation plan and the subsequent sale by EIB to PACWIDE. Such issue is capable of being reviewed by determining what the relevant law and jurisprudence provide with respect to the facts stated in the assailed June 30, 2014 Order, without need of reviewing the probative value of the evidence on record.

Granted that petitioners also raised a factual issue on the computation of PALI's outstanding loan obligation,[39] along with other questions of law regarding the validity of the appointment of PBB-Trust as successor-trustee of EIB, and the effect of the approved rehabilitation plan and Article 1634[40] of the New Civil Code on PALI's obligation, these are mere peripheral issues raised in support of the incidental reliefs prayed for in the event that the assailed June 30, 2014 Order is annulled and set aside. In fact, the Court will only resolve the main issue of grave abuse of discretion, as it agrees with the Executive Judge that these incidental issues ought to be resolved in the courts of proper jurisdiction.

Settled is the rule that forum shopping is the act of a litigant who repetitively availed of several judicial remedies in different

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[39] *Rollo*, p. 173. See Petition for Declaratory Relief, p. 23.

[40] Art. 1634. When a credit or other incorporeal right in litigation is sold, the debtor shall have a right to extinguish it by reimbursing the assignee for the price the latter paid therefor, the judicial costs incurred by him, and the interest of the price from the day on which the same was paid.

A credit or other incorporeal right shall be considered in litigation from the time the complaint concerning the same is answered.

The debtor may exercise his right within thirty days from the date the assignee demands payment from him.

courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues, either pending in or already resolved adversely by some other court, to increase his chances of obtaining a favorable decision if not in one court, then in another.[41] The elements of forum shopping are: (a) identity of parties or at least such parties that represent the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; (c) identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration.[42]

Here, the second and third elements of forum shopping are absent. The rights asserted and the reliefs prayed for in the petition for declaratory relief are not identical with those raised in the present petition for *certiorari* and prohibition.

In the petition for declaratory relief, petitioners mainly seek (1) to enjoin the Clerk of Court and *Ex-officio* Sheriff of the RTC of Pasay City from conducting an auction sale and eventually issuing a certificate of sale over the properties covered by TCT No. T-133164; and (2) to declare pursuant to the Financial Rehabilitation and Insolvency Act of 2010[43] (*FRIA*) that EIB and PACWIDE cannot foreclose on the mortgage constituted on the properties covered by TCT No. T-133164, because they are covered by the September 17, 2004 Stay Order of the Rehabilitation Court, and are necessary for PALI's corporate rehabilitation. In sum, petitioners pray for a determination of their rights under the FRIA in relation to the MTI and SMTI they executed with EIB, which was later succeeded by PBB-Trust, and to prevent the conduct of the foreclosure sale.

On the other hand, the petition for *certiorari* and prohibition at bench imputes against the Executive Judge grave abuse of

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[41] *Villanueva v. Court of Appeals*, 671 Phil. 467, 480 (2011).

[42] *Id*.

[43] Republic Act No. 10142.

discretion, amounting to lack or excess of jurisdiction, in issuing the June 30, 2014 Order, releasing to PBB-Trust the amount of ₱570,000,000.00 representing the entire proceeds of the auction sale of the properties covered by TCT No. T-133164. In contrast to the petition for declaratory relief which merely calls for the interpretation of a law and a contract, the instant petition for *certiorari* and prohibition seeks to nullify the June 30, 2014 Order, and to prohibit the Clerk of Court and *Ex-Officio* Sheriff of RTC of Pasay City from implementing the same, for having been issued with grave abuse of discretion.

Resolving the substantive issue of whether the Executive Judge committed grave abuse of discretion, amounting to lack or excess of jurisdiction, when it ordered the release of the entire amount of the bid price paid by SMDC to PBB-Trust, the foreclosing mortgagee-assignee, despite the fact that there is a genuine dispute not only on the amount due, but also as to the validity of PBB-Trust's appointment as successor-trustee of EIB under the MTI, the Court rules in the affirmative.

The Executive Judge cited three (3) circumstances as the "sound basis" of her June 30, 2014 Order to release the entire bid price to PBB-Trust, namely: (1) despite the fact that the petition for extrajudicial foreclosure is anchored on the loan obligation of ₱311,000,000.00 as of June 30, 2004, it is also clear that the amount claimed is exclusive of interest, penalty, charges and other expenses; (2) PALI's alleged actual unpaid obligation as of December 2013 secured by TCT No. T-133164, amounts to ₱2,105,735,800.00; and (3) TUI has a legal remedy in the event that the actual amount of PALI's obligation is finally determined.

Despite having noted in the June 30, 2014 Order that there is still a "genuine dispute" on the amount due to the foreclosing mortgagee-assignee, PBB-Trust, as a result of the rehabilitation plan covering PALI and the sale of EIB's loan accounts to PACWIDE, the Executive Judge erroneously estimated that the interest, penalties and other expenses alone would far exceed PALI's ₱311,000,000.00 principal loan obligation, and authorized the release of the entire ₱570,000,000.00 auction

sale proceeds to PBB-Trust. In doing so, the Executive Judge exceeded her administrative supervision over extrajudicial foreclosure sales, as she virtually adjudicated the said dispute, and allowed one party to enjoy the subject proceeds even before the courts of proper jurisdiction could resolve the pending issues between the opposing parties.

Well-aware of the need to present the true and actual financial obligation of PALI under the MTI, the Executive Judge herself pointed out in the June 30, 2004 Order that she cannot exercise adjudicatory functions and is not, therefore, in the position (1) to interpret the applicability of the "50% haircut reduction in the obligation;" (2) to compute "the reduced interest rate" pursuant to the Rehabilitation Plan approved by the rehabilitation court; and (3) to determine the effect of the LSPA on the actual computation of PALI's obligation to PACWIDE.[44] In justifying its April 24, 2014 Order[45] that the ₱570,000,000.00 bid price deposited with the Land Bank of the Philippines shall continue to be held in trust by the RTC of Pasay City, the Executive Judge emphasized the need for the presentation of evidence on the conflicting claims of TUI and PBB-Trust in a full-blown trial to determine which between them has the better right to receive the proceeds of the bid price. As further noted by the Executive Judge, the resolution of the case for declaratory relief pending before Branch 231 of the RTC of Pasay City will affect the propriety of the auction sale of the TUI property conducted on April 10, 2014, whereas the rehabilitation court is in a better position to interpret and determine the amount corresponding to the 50% loan reduction of PALI pursuant to the approved rehabilitation plan.

Notwithstanding the conflicting claims between TUI and PBB-Trust which must be resolved first before the courts of proper jurisdiction, the Executive Judge reversed her April 24, 2014 Order and released the entire ₱570,000,000.00 bid price of SMDC in favor of PBB-Trust. Aside from inviting doubt, if not suspicion,

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[44] *Rollo*, p. 45.

[45] *Id*. at 293.

the assailed June 30, 2014 Order of the Executive Judge smacks of grave abuse of discretion, so patent and gross as to amount to an evasion of positive duty or virtual refusal to perform the duty enjoined by, or to act at all in contemplation of the law.[46]

The Executive Judge also gravely erred in relying on the jurisprudence[47] to the effect that if the mortgagee is retaining more of the proceeds of the sale than he is entitled to, such fact alone will not affect the validity of the sale, but will simply give the mortgagor a cause of action to recover such surplus. Contrary to the ruling of the Executive Judge, it is pointless to require petitioners to file another action to recover the surplus of extrajudicial foreclosure sale. To sustain private respondents' similar contention that the proper remedy to determine whether there is indeed a surplus from the extrajudicial foreclosure sale in the filing of a separate action for sum of money will only result in multiplicity of suits. Following private respondents' submission, the court where the intended action would be filed would still have to wait and rely on the ruling of the rehabilitation court as to the effect of an approved rehabilitation plan which requires a "50% haircut reduction" and condonation of interest and penalties on PALI's obligation. In the same vein, Branch 231 of the RTC of Pasay City would also have to decide first whether the LSPA executed by EIB in favor of PACWIDE would further equitably reduce PALI's obligation in accordance with Article 1634[48] of the New Civil Code on Assignment of Credits

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[46] *Ganaden, et al. v. The Hon. Court of Appeals, et al.,* 261, 665 Phil. 267 (2011).

[47] *Spouses Suico v. PNB*, 558 Phil. 265 (2007) and *Sulit v. Court of Appeals*, 335 Phil. 914, 931 (1997).

[48] Art. 1634. When a credit or other incorporeal right in litigation is sold, the debtor shall have a right to extinguish it by reimbursing the assignee for the price the latter paid therefor, the judicial costs incurred by him, and the interest of the price from the day on which the same was paid.

A credit or other incorporeal right shall be considered in litigation from the time the complaint concerning the same is answered.

The debtor may exercise his right within thirty days from the date the assignee demands payment from him.

and Other Incorporeal Rights. Suffice it to state that Section 6, Rule 63 provides that if before the final termination of the case, a breach or violation of an instrument or a statute should take place, the action for declaratory relief may thereupon be converted into an ordinary action, and the parties shall be allowed to file such pleadings as may be necessary or proper.

There is, likewise, no merit in private respondents' claim that it is the ministerial duty of the Executive Judge to release the proceeds of the extrajudicial foreclosure sale to PBB-Trust, pursuant to Section 4, Rule 68 of the Rules of Court, which provides:

> Section 4. *Disposition of proceeds of sale.* The money realized from the sale of the mortgaged property under the regulations herein before prescribed shall, after deducting the costs of sale, be paid to the person foreclosing the mortgage, and when there shall be any balance or residue, after paying off such mortgage or other encumbrancers, in the order of their priority, to be ascertained by the court.

Under the above rule, the disposition of the proceeds of the foreclosure sale shall be in the following order: (a) pay the costs of sale; (b) pay off the mortgage debt to the person foreclosing the mortgage; (c) pay the junior encumbrancers, if any, in the order of priority; and (d) give the balance to the mortgagor, his agent or the person entitled to it.[49]

Contrary to private respondents' claim, it is not part of the Executive Judge's ministerial supervisory authority to order the release of proceeds of the entire bid price to a person other than the one foreclosing the mortgage, *i.e.*, EIB, which is already closed.[50] More so, since petitioners have a pending petition for declaratory relief before Branch 231 of the RTC of Pasay City, questioning the appointment of PBB-Trust as the successor-trustee of EIB under the MTI, as well as the exact computation of PALI's outstanding obligation secured by TCT No. T-133164,

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[49] *Spouses Suico v. PNB*, *supra* note 47, at 279-280.

[50] *Rollo*, p. 144.

in light of the approved rehabilitation plan and the LSPA, which supposedly equitably reduced the mortgaged debt.

To recall, between July 29, 2004 when EIB initially sought to extrajudicially foreclose the properties covered by TCT No. T-133164 and January 24, 2014 when PBB-Trust resumed such foreclosure proceeding, EIB executed a LSPA on December 11, 2006, conveying to PACWIDE PALI's obligations under Promissory Note Nos. 994810-11 in the total amount of ₱311,000,000.00. EIB also resigned as trustee under the MTI on November 4, 2011, and was succeeded by PBB-Trust on December 29, 2011, pursuant to a Memorandum of Agreement between PACWIDE (the majority lender) and PDIC (the minority lender). Thus, when PBB-Trust sought to push through with the extrajudicial foreclosure sale of TCT No. T-133164 on January 24, 2014, petitioners filed a petition for declaratory relief before the RTC of Pasay City, questioning the authority of EIB to pursue such foreclosure sale. Petitioners likewise asserted that the loan obligation of PALI to EIB as of April 2014 was reduced to ₱81,358,500.00 on account of the 50% "haircut" reduction pursuant to the approved rehabilitation plan of PALI, and due to the supposed equitable reduction under the LSPA executed between EIB and PACWIDE.

In light of the issues pertaining to the effect of the rehabilitation plan and the LSPA on PALI's obligation for which TCT No. T-133164 was extrajudicially foreclosed, and the validity of the appointment of PBB-Trust as successor-trustee of EIB under the MTI, which must be both resolved with finality before the courts of proper jurisdiction, private respondents cannot insist that it is still part of the ministerial duty of the Executive Judge to order the release of the entire bid price in favor of PBB-Trust. The same pending and unresolved issues preclude the Court from granting petitioners' alternative relief in the instant petition to direct the Clerk of Court to release to TUI the amount of ₱488,641,500.00 out of the ₱570,000,000.00 proceeds of the auction sale of its properties and to hold the amount of ₱83,808,387.01 in trust for the lawful trustee under the MTI

and the SMTI upon the latter's due appointment by PALI and the majority lenders.[51]

A ministerial duty is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, without regard to or the exercise of his own judgment upon the propriety or impropriety of the act done.[52] Notably, in issuing the 30 June 2004 Order releasing of the entire bid price in favor of PBB-Trust, the Executive Judge had to set a conference for the parties to resolve their conflicting claims, hear and receive their respective arguments and memoranda thereon, before ultimately reversing her April 24, 2014 Order and directing them to avail of legal remedies to protect their rights and interest before the proper courts for lack of adjudicatory authority over the issues. Rather than the performance of a ministerial duty, the aforesaid conduct of the Executive Judge before issuing her assailed Order reveals an exercise of discretion.

Moreover, the Executive Judge gravely abused her discretion in releasing SMDC's entire bid price of ₱570,000,000.00 in favor of PBB-Trust, despite the fact that PBB-Trust failed to pay the correct filing fees for PALI's outstanding account, inclusive of interest, penalties and other incidental expenses, amounting to ₱1,778,609,000.00 as of December 3, 2013.

Chapter X, Section 1 of Administrative Matter (*A.M.*) No. 03-8-02-SC[53] provides that it shall be the duty of the Executive Judge to ensure strict compliance with the rules on extrajudicial foreclosure of mortgage. In line with her responsibility for the

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[51] *Id*. at 33.

[52] *Spouses Marquez v. Spouses Alindog*, 725 Phil. 237, 249 (2014).

[53] Chapter X. Miscellaneous Functions. Section 1. Extra-Judicial Foreclosure of Mortgage. – Executive Judges shall ensure strict compliance by the Clerk of Court with the provisions of the Resolution dated 14 December 1999 of the Supreme Court *En Banc* in A.M. No. 99-10-05-0 as amended by the Resolutions dated 30 January 2001 and 7 August 2001, subject to Circular No. 1-2000 dated 3 January 2000 and Circular No. 7-2002 dated 22 January 2002 prescribing procedures in extra-judicial foreclosure of mortgages.

management of courts within her administrative area, the Executive Judge is also tasked to supervise directly the work of the Clerk of Court who is also the *Ex-Officio* Sheriff.[54] Supervision is not a meaningless matter, but an active power which at least implies authority to inquire into facts and conditions in order to render the power real and effective.[55] No less than Section 7 of A.M. No. 04-2-04-SC[56] provides that matters relating to the propriety and correctness of the assessment and collection of docket fees are judicial in nature and should only be determined by the regular court. In OCA Circular No. 42-05, the Court Administrator[57] emphasized that any question relating to the correct or proper assessment and collection of docket fees of a particular case should be submitted before the court having jurisdiction of said case, and that the question should be resolved by the judge concerned within a reasonable period of time. Thus, the Executive Judge should have ensured first that the Clerk of Court performed her duty to collect the correct filing fees pursuant to Rule 141, Section 7(c), as amended by A.M. No. 00-2-01-SC, upon receipt of the application for extrajudicial foreclosure sale of mortgage.[58]

Supreme Court Administrative Circular No. 3-98[59] states, among other matters, that no written request/petition for

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[54] A.M. No. 99-10-05-0, as amended, Procedure in Extra-judicial Foreclosure of Mortgage, *En Banc* Resolution dated 30 January 2001.

[55] *Planas v. Gil*, 67 Phil. 62, 77 (1939).

[56] "Re: Revised Upgrading Schedule of the Legal Fees in the Supreme Court and the Lower Courts under Rule 141 of the Rules of Court." *En Banc* Resolution dated 28 August 2007 which adopted the Guidelines in the Implementation of Section 1 or Rule 141 of the Rules of Court, as amended, took effect on 3 September 2007.

[57] Now Supreme Court Associate Justice Presbitero J. Velasco, Jr.

[58] A.M. No. 99-10-05-0, as amended, Procedure in Extra-judicial Foreclosure of Mortgage, *En Banc* Resolution dated 30 January 2001.

[59] Subject: (A) Raffle of Extrajudicial Foreclosure of Mortgage Cases Among Sheriffs, and (B) Supplement to and Clarification of the Procedure in Extrajudicial Foreclosure of Mortgages in Different Locations Covering One Indebtedness. Dated 5 February 1998 and signed by Chief Justice Andres R. Narvasa.

extrajudicial foreclosure of real estate mortgages shall be acted upon by the Clerk of Court, as *Ex-Officio* Sheriff, without the corresponding fee having been paid and the receipt thereof attached to the request/petition as provided for in Section 7(c) of Rule 141 of the Rules of Court. Corollarily, A.M. No. 99-10-05-0, as amended,[60] provides that upon receipt of an application for extrajudicial foreclosure of mortgage, it shall be the duty of the Clerk of Court to, among other things, collect the filing fees therefor, and issue the corresponding official receipt, pursuant to Rule 141, Section 7 (c), as amended by A.M. No. 00-2-01-SC, to wit:

> Sec. 7. *Clerks of Regional Trial Courts.* —
>
> x x x x x x x x x
>
> (c) For filing requests for extrajudicial foreclosure of real estate or chattel mortgage, if the amount of indebtedness, or the mortgagee's claim is:
>
> x x x x x x x x x
>
> 9. .....₱500,000.00 or more but not more than ₱1,000,000.00 2,000.00
>
> 10. .... For each ₱1,000.00 in excess of ₱1,000,000.00 10.00

The Court notes that when EIB filed a Petition for Extrajudicial Foreclosure of Mortgage dated July 29, 2004, it paid the total legal fees of ₱3,133,095.00[61] only for the outstanding total principal obligation as secured by the MTI and the SMTI in the amount of ₱311,000,000.00. Attached to EIB's petition, however, is a demand letter stating that as of March 31, 2004, PALI's outstanding account, inclusive of interest and penalties and other incidental expenses, is ₱1,386,279,000.00.[62] Applying the aforecited Section 7 (c), Rule 141, EIB should have paid

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[60] A.M. No. 99-10-05-0, Procedure in Extra-Judicial Foreclosure of Mortgage, as amended by *En Banc* Resolution dated 1 March 2001.

[61] *Rollo*, p. 351.

[62] *Id*. at 348.

filing fees in the amount of ₱13,854,790.00,[63] failing which resulted in a huge deficit in the amount of ₱10,721,695.00.[64]

In the meantime, however, PALI was placed under rehabilitation, TCT No. T-133164 was excluded from the Stay Order of the rehabilitation court, and the foreclosure proceedings was suspended for almost a decade. It was only on August 30, 2013 that an Entry of Judgment was issued in *Pacific Wide Realty and Dev't. Corp. v. Puerto Azul*[65] where the Court finally upheld the validity of PALI's rehabilitation plan and the exclusion of TCT No. T-133164 from the Stay Order of the rehabilitation court. Per the Minutes of the Meeting[66] of the Creditors of PALI on September 26, 2013, Atty. Jord Jharoah B. Valenton, counsel of PBB-Trust, mentioned that the amount to be indicated in the petition for foreclosure will determine the filing fee to be paid. Ricky L. Ricardo, General Manager of Pacific Wide Holdings, Inc., also said that there is a possibility that the filing fee previously paid by EIB can be applied to the re-filing of the foreclosure proceedings inasmuch as the nullity of the earlier order (approving the foreclosure) was due to a technicality in the publication of the notice filed by the Sheriff. Ricardo added, however, that if a petition for a higher amount will be made, there will definitely be additional filing fee to be paid.

Despite knowing that the amount indicated in the petition for foreclosure determines the filing fee, PBB-Trust, through Atty. Valenton, merely wrote the Executive Judge a letter dated January 24, 2014, seeking the issuance of a new notice of sale of TCT No. T-133164, and the posting and publication of such notice, without paying the correct filing fee for extrajudicial foreclosure of real estate mortgage under Section 7 (c), Rule 141. PBB-Trust did not even bother to indicate in its letter dated

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[63] ₱1,386,279,000.00-1,000,000.00= ₱1,385,279,000.00 — ₱2,000.00

₱1,385,279,000/1,000.00 = ₱13,854,790.00 * ₱10 = ₱13,852,790.00 (+ ₱2000) = **₱13,854,790.00**

[64] ₱13,854,790.00-3,133,095.00= **₱10,721,695.00**

[65] *Supra* note13.

[66] *Rollo*, pp. 190-193.

January 24, 2014 the actual unpaid obligation of PALI secured by the MTI, but merely attached thereto a Statement of Account as of December 3, 2013, stating PALI's loan obligation, inclusive of the 12% interest rate and 24% penalty, in the total amount of ₱2,105,735,800.00.[67] Such omission misled the Executive Judge into believing that the EIB's petition for extrajudicial foreclosure also covers Promissory Note (*PN*) No. 994809 for ₱57,200,000.00, when in fact it pertains only to PN Nos. 994810 and 994811 for ₱155,500,000.00 each, or a total amount of ₱311,000,000.00. A careful review of the same statement of account, however, shows that as of December 3, 2013, PALI's total outstanding loan obligation, inclusive of interest and penalty, should only be ₱1,778,609,000.00 because the loan obligation covered by PN No. 994809 in the total amount of ₱327,126,800.00 should be deducted from the aforesaid total loan obligation of ₱2,105,735,800.00.

Private respondents cannot fault the Clerk of Court for failing to assess the correct filing fee because EIB's petition for extrajudicial foreclosure hardly indicated the full amount of PALI's indebtedness. EIB's petition only stated the principal obligation in the total amount of ₱311,000,000.00, without stating the exact amount of interests, penalty charges, attorney's fees and other incidental expenses, which would place the total outstanding obligation at ₱1,386,279,000.00 as of March 31, 2004. In view of the failure to assess the correct filing fees and considering the legal disputes which delayed the foreclosure sale of the properties covered by TCT No. T-133164 until January 24, 2014 when PBB-Trust requested to push through with the auction sale, the Clerk of Court of Pasay City should reassess and collect the proper filing fees for EIB's petition for extrajudicial foreclosure dated July 29, 2004, pursuant to Rule 141 of the Rules of Court, as amended by then A.M. No. 00-2-01-SC, based on PALI's outstanding account of ₱1,778,609,000.00 as of December 3, 2013. It is not amiss to stress the importance of filing fees, for they are intended to take care of court expenses in the handling of cases in terms of costs of supplies, use of

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[67] *Id*. at 350.

equipment, salaries, and fringe benefits of personnel, and others.[68] The payment of said fees, therefore, cannot be made dependent on the result of the action taken without entailing tremendous losses to the government and to the judiciary in particular.[69]

In light of the foregoing disquisitions, the Court no longer finds necessity to resolve the other issues raised by the parties.

WHEREFORE, the petition for *certiorari* is **GRANTED**. The assailed Order dated June 30, 2014 of the Pasay City Executive Judge in File No. REM 04-025 is **REVERSED** and **SET ASIDE**, and her Order dated April 24, 2014 is **REINSTATED.** Accordingly, Philippine Business Bank-Trust and Investment Center (*PBB-Trust*) is **ORDERED** to **DEPOSIT** in the Fiduciary Fund of the Regional Trial Court (*RTC*) of Pasay City with the Land Bank of the Philippines the amount of Five Hundred Seventy Million (₱570,000,000.00), representing the entire bid price paid by SM Development Corporation, which shall continue to be held in trust by the said RTC until the courts of proper jurisdiction shall have finally determined the rightful recipient of the subject bid price and/or the respective amounts due the claimants.

The Clerk of Court of the RTC of Pasay City is also **ORDERED** to **REASSESS** and determine the correct amount of filing fees for the Petition for Extrajudicial Foreclosure dated July 29, 2004, pursuant to Rule 141 of the Rules of Court, as amended by then A.M. No. 00-2-01-SC, based on PALI's outstanding account of ₱1,778,609,000.00 as of December 3, 2013, less the ₱3,133,095.00 that Export and Industry Bank had paid as legal fees. Further, the Executive Judge of the Regional Trial Court of Pasay City is **ORDERED** to **DIRECT** PBB-Trust to pay the said filing fees, as determined by the Clerk of Court.

SO ORDERED.

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

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[68] *Home Guaranty Corp. v. R-II Builders, Inc., et al.*, 660 Phil. 517, 543 (2011).

[69] *Id.* Citing *Suson v. Court of Appeals,* 343 Phil. 820, 825 (1997).

FIRST DIVISION

[G.R. No. 215820. March 20, 2017]

ERLINDA DINGLASAN DELOS SANTOS and her daughters, namely, VIRGINIA, AUREA, and BINGBING, all surnamed DELOS SANTOS, *petitioners, vs.* **ALBERTO ABEJON and the estate of TERESITA DINGLASAN ABEJON**, *respondents.*

SYLLABUS

1. **CIVIL LAW; LOANS; LOAN OBLIGATION OF SPOUSES MARRIED BEFORE THE EFFECTIVITY OF THE FAMILY CODE SHALL BE CHARGEABLE TO THEIR CONJUGAL PARTNERSHIP OF GAINS; HEIRS OF THE DECEASED SPOUSE COULD NOT BE HELD DIRECTLY ANSWERABLE TO THE SAME.—** While petitioners admitted the existence of the ₱100,000.00 loan obligation as well as respondents' right to collect on the same, it does not necessarily follow that respondents should collect the loan amount from petitioners, as concluded by both the RTC and the CA. It must be pointed out that such loan was contracted by Erlinda, who is only one (1) out of the four (4) herein petitioners, and her deceased husband, Pedro, during the latter's lifetime and while their marriage was still subsisting. As they were married before the effectivity of the Family Code of the Philippines and absent any showing of any pre-nuptial agreement between Erlinda and Pedro, it is safe to conclude that their property relations were governed by the system of conjugal partnership of gains. Hence, pursuant to Article 121 of the Family Code, the ₱100,000.00 loan obligation, including interest, if any, is chargeable to Erlinda and Pedro's conjugal partnership as it was a debt contracted by the both of them during their marriage; and should the conjugal partnership be insufficient to cover the same, then Erlinda and Pedro (more particularly, his estate as he is already deceased) shall be solidarily liable for the unpaid balance with their separate properties. While the portion attributable to Pedro was not considered extinguished by his death, it is merely passed on to his estate; and thus, his heirs, *i.e.*, herein petitioners, could not be held directly answerable for the same, contrary to the CA's

conclusion. In sum, both the RTC and the CA erred in holding petitioners liable to respondents for the loan obligation in the amount of ₱100,000.00.

2. **ID.; ID.; RESPONDENTS HAVE THE ALTERNATIVE REMEDIES TO FILE A PERSONAL ACTION FOR COLLECTION OF SUM OF MONEY OR A REAL ACTION TO FORECLOSE ON THE MORTGAGE SECURITY.—** Alternative to the collection of the said sum, respondents may also choose to foreclose the mortgage on the subject land as the same was duly constituted to secure the ₱100,000.00 loan obligation. In other words, respondents have the option to either file a personal action for collection of sum of money or institute a real action to foreclose on the mortgage security. The aforesaid remedies are alternative, meaning the choice of one will operate to preclude the other.

3. **ID.; SALE; THE DEED OF SALE INVOLVING THE SUBJECT LANDS STANDS TO BE NULLIFIED IN VIEW OF THE PARTIES' STIPULATION; EFFECTS OF DECLARATION OF NULLITY OF SUCH DEED.—** It is settled that "the declaration of nullity of a contract which is void *ab initio* operates to restore things to the state and condition in which they were found before the execution thereof." Pursuant to this rule, since the Deed of Sale involving the subject land stands to be nullified in view of the parties' stipulation to this effect, it is incumbent upon the parties to return what they have received from said sale. Accordingly, Erlinda and the rest of petitioners (as Pedro's heirs) are entitled to the return of the subject land as stipulated during the pre-trial. To effect the same, the Register of Deeds of Makati City should cancel TCT No. 180286 issued in the name of Teresita, and thereafter, reinstate TCT No. 131753 in the name of Pedro and Erlinda and, restore the same to its previous state before its cancellation, *i.e.*, with the mortgage executed by the parties annotated thereon. On the other hand, respondents, as Teresita's successors-in-interest, are entitled to the refund of the additional ₱50,000.00 consideration she paid for such sale. However, it should be clarified that the liability for the said amount will not fall on all petitioners, but only on Erlinda, as she was the only one among the petitioners who was involved in the said sale. Pursuant to *Nacar v. Gallery Frames*, the amount of ₱50,000.00 shall be subjected to legal interest of six percent (6%) per annum from the finality of this Decision until fully paid.

4. ID.; OWNERSHIP; RULES ON ACCESSION APPLICABLE IN CASE AT BAR; GOOD FAITH OR BAD FAITH OF THE LANDOWNERS AND BUILDERS, EXPLAINED.— As correctly argued by petitioners, it is more accurate to apply the rules on accession with respect to immovable property, specifically with regard to builders, planters, and sowers, as this case involves a situation where the landowner (petitioners) is different from the owner of the improvement built therein, *i.e.*, the three (3)-storey building (respondents). Thus, there is a need to determine whether petitioners as landowners on the one hand, and respondents on the other, are in good faith or bad faith. The terms builder, planter, or sower in good faith as used in reference to Article 448 of the Civil Code, refers to one who, not being the owner of the land, builds, plants, or sows on that land believing himself to be its owner and unaware of the defect in his title or mode of acquisition. "The essence of good faith lies in an honest belief in the validity of one's right, ignorance of a superior claim, and absence of intention to overreach another." On the other hand, bad faith may only be attributed to a landowner when the act of building, planting, or sowing was done with his knowledge and without opposition on his part.

5. ID.; ID.; ID.; WHERE BOTH BUILDERS AND LANDOWNERS ACTED IN BAD FAITH, THEY ARE TREATED AS IF BOTH OF THEM WERE IN GOOD FAITH; TWO OPTIONS OF THE LANDOWNER.— [I]t bears stressing that the execution of the Deed of Sale involving the subject land was done in 1992. However, and as keenly pointed out by Justice Alfredo Benjamin S. Caguioa during the deliberations of this case, Teresita was apprised of Pedro's death as early as 1990 when she went on a vacation in the Philippines. As such, she knew all along that the aforesaid Deed of Sale — which contained a signature purportedly belonging to Pedro, who died in 1989, or three (3) years prior to its execution — was void and would not have operated to transfer any rights over the subject land to her name. Despite such awareness of the defect in their title to the subject land, respondents still proceeded in constructing a three (3)-storey building thereon. Indubitably, they should be deemed as builders in bad faith. On the other hand, petitioners knew of the defect in the execution of the Deed of Sale from the start, but nonetheless, still acquiesced to the construction of the three (3)-storey building thereon.

Hence, they should likewise be considered as landowners in bad faith. In this relation, Article 453 of the Civil Code provides that where both the landowner and the builder, planter, or sower acted in bad faith, they shall be treated as if both of them were in good faith, x x x[.] Whenever both the landowner and the builder/planter/sower are in good faith (or in bad faith, pursuant to the afore-cited provision), the landowner is given two (2) options under Article 448 of the Civil Code, namely: (*a*) he may appropriate the improvements for himself after reimbursing the buyer (the builder in good faith) the necessary and useful expenses under Articles 546 and 548 of the Civil Code; or (*b*) he may sell the land to the buyer, unless its value is considerably more than that of the improvements, in which case, the buyer shall pay reasonable rent. Applying the aforesaid rule in this case, under the first option, petitioner may appropriate for themselves the three (3)-storey building on the subject land after payment of the indemnity provided for in Articles 546 and 548 of the Civil Code, as applied in existing jurisprudence. Under this option, respondents would have a right of retention over the three (3)-storey building as well as the subject land until petitioners complete the reimbursement. Under the second option, petitioners may sell the subject land to respondents at a price equivalent to the current market value thereof. However, if the value of the subject land is considerably more than the value of the three (3)-storey building, respondents cannot be compelled to purchase the subject land. Rather, they can only be obliged to pay petitioners reasonable rent.

6. **ID.; DAMAGES; THE COURT FINDS NO JUSTIFICATION FOR THE AWARD OF ATTORNEY'S FEES TO EITHER PARTY.—** [A]nent the issue on attorney's fees, the general rule is that the same cannot be recovered as part of damages because of the policy that no premium should be placed on the right to litigate. They are not to be awarded every time a party wins a suit. The power of the court to award attorney's fees under Article 2208 of the Civil Code demands factual, legal, and equitable justification. In this case, the Court finds no justification for the award of attorney's fees to either party. Accordingly, any award for attorney's fees made by the courts *a quo* must be deleted.

APPEARANCES OF COUNSEL

J.S Francisco Law Office for petitioners.
Exequiel Masangkay for respondents.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated March 19, 2014 and the Resolution[3] dated December 11, 2014 of the Court of Appeals (CA) in CA-G.R. CV No. 96884, which affirmed with modification the Decision[4] dated August 25, 2010 of the Regional Trial Court of Makati City, Branch 132 (RTC), and accordingly, ordered petitioners Erlinda Dinglasan-Delos Santos (Erlinda) and her daughters, Virginia, Aurea, and Bingbing, all surnamed Delos Santos (petitioners), to pay respondents Alberto Abejon and the estate of his spouse, Teresita Dinglasan-Abejon (Teresita; collectively, respondents) the aggregate amount of ₱2,200,000.00 plus legal interest, among others.

The Facts

The instant case arose from a Complaint for Cancellation of Title with collection of sum of money[5] filed by respondents against petitioners before the RTC. The complaint alleged that Erlinda and her late husband Pedro Delos Santos (Pedro) borrowed the amount of ₱100,000.00 from the former's sister, Teresita, as evidenced by a Promissory Note dated April 8, 1998. As security for the loan, Erlinda and Pedro mortgaged

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[1] *Rollo*, pp. 14-25.

[2] *Id*. at 26-40. Penned by Associate Justice Stephen C. Cruz with Associate Justices Magdangal M. De Leon and Eduardo B. Peralta, Jr. concurring.

[3] *Id*. at 41-42.

[4] *Id*. at 43-49. Penned by Judge Rommel O. Baybay.

[5] Not attached to the *rollo*.

their property consisting of 43.50 square meters situated at 2986 Gen. Del Pilar Street, Bangkal, Makati City covered by Transfer Certificate of Title (TCT) No. 131753 (subject land) which mortgage was annotated on the title. After Pedro died, Erlinda ended up being unable to pay the loan, and as such, agreed to sell the subject land to Teresita for ₱150,000.00, or for the amount of the loan plus an additional ₱50,000.00. On July 8, 1992, they executed a Deed of Sale and a Release of Mortgage, and eventually, TCT No. 131753 was cancelled and TCT No. 180286 was issued in the name of "Teresita, Abejon[,] married to Alberto S. Abejon." Thereafter, respondents constructed a three (3)-storey building worth ₱2,000,000.00 on the subject land. Despite the foregoing, petitioners refused to acknowledge the sale, pointing out that since Pedro died in 1989, his signature in the Deed of Sale executed in 1992 was definitely forged. As such, respondents demanded from petitioners the amounts of ₱150,000.00 representing the consideration for the sale of the subject land and ₱2,000,000.00 representing the construction cost of the three (3)-storey building, but to no avail. Thus, respondents filed the instant case.[6]

In defense, petitioners denied any participation relative to the spurious Deed of Sale, and instead, maintained that it was Teresita who fabricated the same and caused its registration before the Register of Deeds of Makati City. They likewise asserted that Erlinda and Pedro never sold the subject land to Teresita for ₱150,000.00 and that they did not receive any demand for the payment of ₱100,000.00 representing the loan, as well as the ₱2,000,000.00 representing the construction cost of the building. Finally, they claimed that the improvements introduced by Teresita on the subject land were all voluntary on her part.[7]

During the pre-trial proceedings, the parties admitted and/or stipulated that: (*a*) the subject land was previously covered by TCT No. 131753 in the name of Erlinda and Pedro, but such title was cancelled and replaced by TCT No. 180286 in the

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[6] *Rollo*, pp. 27-28.

[7] *Id*. at 29.

name of Teresita; (*b*) the Deed of Sale and Release of Mortgage executed on July 8, 1992 were forged, and thus, should be cancelled; (*c*) in view of said cancellations, TCT No. 180286 should likewise be cancelled and TCT No. 131753 should be reinstated; (*d*) from the time when the spurious Deed of Sale was executed until the present, petitioners have been the actual occupants of the subject land as well as all improvements therein, including the three (3)-storey building constructed by respondents; and (*e*) the ₱100,000.00 loan still subsists and that respondents paid for the improvements being currently occupied by petitioners, *i.e.*, the three (3)-storey building. **In view of the foregoing stipulations and admissions, the RTC limited the issue as to who among the parties should be held liable for damages and attorney's fees.**[8]

The RTC Ruling

In a Decision[9] dated August 25, 2010, the RTC: (*a*) declared the Deed of Sale null and void; (*b*) ordered the cancellation of TCT No. 180286 and the reinstatement of TCT No. 131753; and (*c*) ordered petitioners to pay respondents the following amounts: (1) ₱100,000.00 plus twelve percent (12%) per annum computed from July 8, 1992 until fully paid representing the loan obligation plus legal interest; (2) ₱2,000,000.00 representing the construction cost of the three (3)-storey building; and (3) another ₱100,000.00 as attorney's fees and litigation expenses.[10]

The RTC ruled that respondents should be reimbursed for the amount of the loan, as well as the expenses incurred for the construction of the three (3)-storey building in view of petitioners' categorical admission of their indebtedness to her, as well as the construction of the building from which they derived benefit being the actual occupants of the property.[11]

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[8] *Id*. at 29. See also *id*. at 45 and 48.

[9] *Id*. at 43-49.

[10] *Id*. at 49.

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

Finally, it found that respondents are entitled to attorney's fees for being forced to litigate.[12]

Aggrieved, petitioners appealed to the CA.[13]

The CA Ruling

In a Decision[14] dated March 19, 2014, the CA affirmed the RTC ruling with modifications: (*a*) cancelling the Release of Mortgage; (*b*) adjusting the twelve percent (12%) per annum interest imposed on the loan obligation, in that it should be computed from November 25, 1997, or from the filing of the instant complaint; and (*c*) imposing a six percent (6%) interest per annum on the construction cost of the three (3)-storey building from the finality of the decision until its full satisfaction.[15]

Anent the loan obligation, the CA ruled that since petitioners admitted their indebtedness to Teresita during the pre-trial proceedings, respondents should be allowed to recover the amount representing the same, including the appropriate interest. In this relation, the CA opined that while it is true that the loan obligation was contracted by Erlinda and Pedro and not by their children, the children (who joined Erlinda in this case as petitioners) may still be held liable for such obligation having inherited the same from Pedro upon the latter's death.[16]

As to the construction cost of the three (3)-storey building, the CA held that in view of petitioners' admission that they knew of and allowed said construction of the building, and thereafter, started occupying the same for more than two (2) decades up to the present, it is only proper that they reimburse respondents of the cost of such building.[17]

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[12] *Id*. at 49.

[13] Not attached to the *rollo*.

[14] *Rollo*, pp. 26-40.

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

[16] *Id*. at 32-38.

[17] *Id*.

Undaunted, petitioners moved for reconsideration,[18] which was, however, denied in a Resolution[19] dated December 11, 2014; hence, this petition.

The Issue Before the Court

The core issue for the Court's resolution is whether or not the CA correctly held that petitioners should be held liable to respondents in the aggregate amount of ₱2,200,000.00, consisting of the loan obligation of ₱100,000.00, the construction cost of the three (3)-storey building in the amount of ₱2,000,000.00, and attorney's fees and costs of suit amounting to ₱100,000.00.

The Court's Ruling

The petition is partly meritorious.

At the outset, it must be emphasized that a pre-trial is a procedural device intended to clarify and limit the basic issues raised by the parties and to take the trial of cases out of the realm of surprise and maneuvering. More significantly, a pre-trial has been institutionalized as the answer to the clarion call for the speedy disposition of cases. Hailed as the most important procedural innovation in Anglo-Saxon justice in the nineteenth century, it paves the way for a less cluttered trial and resolution of the case. It is, thus, mandatory for the trial court to conduct pre-trial in civil cases in order to realize the paramount objective of simplifying, abbreviating, and expediting trial.[20]

In the case at bar, it must be reiterated that during the pre-trial proceedings, the parties agreed/stipulated that: (*a*) the subject land was previously covered by TCT No. 131753 in the name of Erlinda and Pedro, but such title was cancelled and replaced by TCT No. 180286 in the name of Teresita; (*b*) the Deed of Sale and Release of Mortgage both executed on July 8, 1992 were forged, and thus, should be cancelled; (*c*) in view of said

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[18] *Id.* at 50-55.

[19] *Id.* at 41-42.

[20] *Parañaque Kings Enterprises, Inc. v. Santos*, G.R. No. 194638, July 2, 2014, 729 SCRA 35, 47; citations omitted.

cancellations, TCT No. 180286 should likewise be cancelled and TCT No. 131753 should be reinstated; (*d*) from the time when the spurious deed of sale was executed until the present, petitioners have been the actual occupants of the subject land as well as all improvements therein, including the three (3)-storey building constructed by respondents; and (*e*) the ₱100,000.00 loan still subsists and that respondents paid for the improvements being currently occupied by petitioners, *i.e.*, the three (3)-storey building.[21] As such, the parties in this case are bound to honor the admissions and/or stipulations they made during the pre-trial.[22]

Thus, in view of the foregoing admissions and/or stipulations, there is now a need to properly determine to whom the following liabilities should devolve: (*a*) the ₱100,000.00 loan obligation; (*b*) the ₱50,000.00 extra consideration Teresita paid for the sale of the subject land, which was already declared void — a matter which the RTC and the CA completely failed to resolve; and (*c*) the ₱2,000,000.00 construction cost of the three (3)-storey building that was built on the subject land.

I.

While petitioners admitted the existence of the ₱100,000.00 loan obligation as well as respondents' right to collect on the same, it does not necessarily follow that respondents should collect the loan amount from petitioners, as concluded by both the RTC and the CA. It must be pointed out that such loan was contracted by Erlinda, who is only one (1) out of the four (4) herein petitioners, and her deceased husband, Pedro, during the latter's lifetime and while their marriage was still subsisting.[23] As they were married before the effectivity of the Family Code

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[21] *Rollo*, p. 29. See also pp. 45 and 48.

[22] See *Interlining Corporation v. Philippine Trust Company*, 428 Phil. 584, 589 (2002).

[23] See *rollo*, p. 27. The Promissory Note reads:

Promissory Note

FOR VALUE RECEIVED, we, PEDRO DE LOS SANTOS and ERLINDA DINGLASAN DE LOS SANTOS, spouses, both Filipino,

of the Philippines[24] and absent any showing of any pre-nuptial agreement between Erlinda and Pedro, it is safe to conclude that their property relations were governed by the system of conjugal partnership of gains. Hence, pursuant to Article 121[25] of the Family Code, the ₱100,000.00 loan obligation, including interest, if any, is chargeable to Erlinda and Pedro's conjugal partnership as it was a debt contracted by the both of them during their marriage; and should the conjugal partnership be insufficient to cover the same, then Erlinda and Pedro (more particularly, his estate as he is already deceased) shall be solidarily liable for the unpaid balance with their separate properties. While the portion attributable to Pedro was not considered extinguished by his death, it is merely passed on to his estate; and thus, his heirs, *i.e.*, herein petitioners, could not be held directly answerable for the same, contrary to the CA's conclusion.[26] In sum, both

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of legal age, with address at [2986 Gen. Del Pilar] Street, Bangkal, Makati, Metro Manila, hereby promise to pay TERESITA DINGLASAN, Filipino, of legal age and with address at 7230 Alakoko St., Honolulu, Hawaii the amount of One Hundred Thousand Pesos (₱100,000.00) with interest at the rate of twelve percent (12%) per annum on or before 31 March 1989.

It is agreed that in case of default, we shall be liable to pay, aside from the principal amount and interest charges, penalty charges in an amount equivalent to two percent (2%) of the principal amount per month until the entire obligation is paid. x x x

[24] Executive Order No. 209 entitled "THE FAMILY CODE OF THE PHILIPPINES," which, according to the Supreme Court, took effect on August 3, 1988.

[25] Pertinent portions of Article 121of the Family Code reads:

Art. 121. The conjugal partnership shall be liable for:

x x x x x x x x x

(2) All debts and obligations contracted during the marriage by the designated administrator-spouse for the benefit of the conjugal partnership of gains, or by both spouses or by one of them with the consent of the other;

If the conjugal partnership is insufficient to cover the foregoing liabilities, the spouses shall be solidarily liable for the unpaid balance with their separate properties.

[26] See *Stronghold Insurance Company, Inc. v. Republic-Asahi Glass Corporation*, 525 Phil. 270, 277-281 (2006). See also *Genato v. Bayhon*, 613 Phil. 318, 325-328 (2009).

the RTC and the CA erred in holding petitioners liable to respondents for the loan obligation in the amount of ₱100,000.00.

Alternative to the collection of the said sum, respondents may also choose to foreclose the mortgage on the subject land as the same was duly constituted to secure the ₱100,000.00 loan obligation. In other words, respondents have the option to either file a personal action for collection of sum of money or institute a real action to foreclose on the mortgage security. The aforesaid remedies are alternative, meaning the choice of one will operate to preclude the other.[27]

II.

It is settled that "the declaration of nullity of a contract which is void *ab initio* operates to restore things to the state and condition in which they were found before the execution thereof."[28] Pursuant to this rule, since the Deed of Sale involving the subject land stands to be nullified in view of the parties' stipulation to this effect, it is incumbent upon the parties to return what they have received from said sale. Accordingly, Erlinda and the rest of petitioners (as Pedro's heirs) are entitled to the return of the subject land as stipulated during the pre-trial. To effect the same, the Register of Deeds of Makati City should cancel TCT No. 180286 issued in the name of Teresita, and thereafter, reinstate TCT No. 131753 in the name of Pedro and Erlinda and, restore the same to its previous state before its cancellation, *i.e.*, with the mortgage executed by the parties annotated thereon. On the other hand, respondents, as Teresita's successors-in-interest, are entitled to the refund of the additional ₱50,000.00 consideration she paid for such sale. However, it should be clarified that the liability for the said amount will not fall on all petitioners, but only on Erlinda, as she was the only one among the petitioners who was involved in the said sale. Pursuant to *Nacar v. Gallery Frames*,[29] the amount of

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[27] See *Flores v. Spouses Lindo, Jr.*, 664 Phil. 210, 216-217; citations omitted.

[28] *Development Bank of the Philippines v. CA*, 319 Phil. 447, 454-455 (1995).

[29] 716 Phil. 267 (2013).

₱50,000.00 shall be subjected to legal interest of six percent (6%) per annum from the finality of this Decision until fully paid.[30]

III.

As correctly argued by petitioners, it is more accurate to apply[31] the rules on accession with respect to immovable property, specifically with regard to builders, planters, and sowers,[32] as this case involves a situation where the landowner (petitioners) is different from the owner of the improvement built therein, *i.e.*, the three (3)-storey building (respondents). Thus, there is a need to determine whether petitioners as landowners on the one hand, and respondents on the other, are in good faith or bad faith.

The terms builder, planter, or sower in good faith as used in reference to Article 448 of the Civil Code, refers to one who, not being the owner of the land, builds, plants, or sows on that land believing himself to be its owner and unaware of the defect in his title or mode of acquisition. "The essence of good faith lies in an honest belief in the validity of one's right, ignorance of a superior claim, and absence of intention to overreach another."[33] On the other hand, bad faith may only be attributed to a landowner when the act of building, planting, or sowing was done with his knowledge and without opposition on his part.[34]

In this case, it bears stressing that the execution of the Deed of Sale involving the subject land was done in 1992. However, and as keenly pointed out by Justice Alfredo Benjamin S. Caguioa

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[30] *Id.* at 278-283.

[31] "Equity, which has been aptly described as 'justice outside legality,' is applied only in the absence of, and never against, statutory law or judicial rules of procedure. Positive rules prevail over all abstract arguments based on equity *contra legem*." (*Cheng v. Spouses Donini*, 608 Phil. 206, 216 (2009); citations omitted)

[32] See Articles 445-455 of the Civil Code.

[33] See *Aquino v. Aguilar*, G.R. No. 182754, June 29, 2015, 760 SCRA 444, 456.

[34] See Article 453 of the Civil Code.

during the deliberations of this case, Teresita was apprised of Pedro's death as early as 1990 when she went on a vacation in the Philippines.[35] As such, she knew all along that the aforesaid Deed of Sale — which contained a signature purportedly belonging to Pedro, who died in 1989, or three (3) years prior to its execution — was void and would not have operated to transfer any rights over the subject land to her name. Despite such awareness of the defect in their title to the subject land, respondents still proceeded in constructing a three (3)-storey building thereon. Indubitably, they should be deemed as builders in bad faith.

On the other hand, petitioners knew of the defect in the execution of the Deed of Sale from the start, but nonetheless, still acquiesced to the construction of the three (3)-storey building thereon. Hence, they should likewise be considered as landowners in bad faith.

In this relation, Article 453 of the Civil Code provides that where both the landowner and the builder, planter, or sower acted in bad faith, they shall be treated as if both of them were in good faith, *viz.*:

> Article 453. If there was bad faith, not only on the part of the person who built, planted or sowed on the land of another, but also on the part of the owner of such land, the rights of one and the other shall be the same as though both had acted in good faith.
>
> It is understood that there is bad faith on the part of the landowner whenever the act was done with his knowledge and without opposition on his part.

Whenever both the landowner and the builder/planter/sower are in good faith (or in bad faith, pursuant to the afore-cited provision), the landowner is given two (2) options under Article 448[36] of the Civil Code, namely: (*a*) he may appropriate

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[35] See *rollo*, p. 46.

[36] Article 448 of the Civil Code reads:

Article 448. The owner of the land on which anything has been built, sown or planted in good faith, shall have the right to appropriate as his own the works, sowing or planting, after payment of the indemnity

the improvements for himself after reimbursing the buyer (the builder in good faith) the necessary and useful expenses under Articles 546[37] and 548[38] of the Civil Code; or (*b*) he may sell the land to the buyer, unless its value is considerably more than that of the improvements, in which case, the buyer shall pay reasonable rent.[39]

Applying the aforesaid rule in this case, under the first option, petitioner may appropriate for themselves the three (3)-storey building on the subject land after payment of the indemnity provided for in Articles 546 and 548 of the Civil Code, as applied in existing jurisprudence. Under this option, respondents would have a right of retention over the three (3)-storey building as well as the subject land until petitioners complete the reimbursement. Under the second option, petitioners may sell the subject land

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provided for in Articles 546 and 548, or to oblige the one who built or planted to pay the price of the land, and the one who sowed, the proper rent. However, the builder or planter cannot be obliged to buy the land if its value is considerably more than that of the building or trees. In such case, he shall pay reasonable rent, if the owner of the land does not choose to appropriate the building or trees after proper indemnity. The parties shall agree upon the terms of the lease and in case of disagreement, the court shall fix the terms thereof.

[37] Article 546 of the Civil Code states:

Article 546. Necessary expenses shall be refunded to every possessor; but only the possessor in good faith may retain the thing until he has been reimbursed therefor.

Useful expenses shall be refunded only to the possessor in good faith with the same right of retention, the person who has defeated him in the possession having the option of refunding the amount of the expenses or of paying the increase in value which the thing may have acquired by reason thereof.

[38] Article 548 of the Civil Code states:

Article 548. Expenses for pure luxury or mere pleasure shall not be refunded to the possessor in good faith; but he may remove the ornaments with which he has embellished the principal thing if it suffers no injury thereby, and if his successor in the possession does not prefer to refund the amount expended.

[39] See *Communities Cagayan, Inc. v. Spouses Nanol*, 698 Phil. 648, 663-664 (2012), citing *Tuatis v. Escol*, 619 Phil. 465, 482-483 (2009).

to respondents at a price equivalent to the current market value thereof. However, if the value of the subject land is considerably more than the value of the three (3)-storey building, respondents cannot be compelled to purchase the subject land. Rather, they can only be obliged to pay petitioners reasonable rent.[40]

Thus, following prevailing jurisprudence, the instant case is remanded to the court *a quo* for the purpose of determining matters necessary for the proper application of Articles 448 and 453, in relation to Articles 546 and 548 of the Civil Code,[41] as applied in existing jurisprudence.

IV.

Finally, anent the issue on attorney's fees, the general rule is that the same cannot be recovered as part of damages because of the policy that no premium should be placed on the right to litigate. They are not to be awarded every time a party wins a suit.[42] The power of the court to award attorney's fees under Article 2208[43] of the Civil Code demands factual, legal, and

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[40] *Id*. at 665.

[41] *Id*. at 667.

[42] *Vergara v. Sonkin*, G.R. No. 193659, June 15, 2015, 757 SCRA 442, 457, citing *The President of the Church of Jesus Christ of Latter Day Saints v. BTL Construction Corporation*, G.R. No. 176439, January 15, 2014, 713 SCRA 455, 472-473.

[43] Article 2208 of the Civil Code reads:

> Article 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:
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> (1) When exemplary damages are awarded;
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> (2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;
>
> (3) In criminal cases of malicious prosecution against the plaintiff;
>
> (4) In case of a clearly unfounded civil action or proceeding against the plaintiff;
>
> (5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;
>
> (6) In actions for legal support;

equitable justification. In this case, the Court finds no justification for the award of attorney's fees to either party. Accordingly, any award for attorney's fees made by the courts *a quo* must be deleted.

WHEREFORE, the petition is **PARTIALLY GRANTED**. The Decision dated March 19, 2014 and the Resolution dated December 11, 2014 of the Court of Appeals in CA-G.R. CV No. 96884 are hereby **AFFIRMED** with **MODIFICATIONS** as follows:

(*a*) The Deed of Sale and the Release of Mortgage both dated July 8, 1992 are declared **NULL and VOID**;

(*b*) The Register of Deeds of Makati City is ordered to **CANCEL** Transfer Certificate of Title No. 180286 in the name of Teresita D. Abejon, married to Alberto S. Abejon, and **REINSTATE** Transfer Certificate of Title No. 131753 in the name of Pedro Delos Santos and Erlinda Dinglasan-Delos Santos, and restore the same to its previous state before its cancellation, *i.e.*, with the mortgage executed by the parties annotated thereon; and

(*c*) The entire fourth paragraph[44] of the dispositive portion of the Decision dated March 19, 2014 of the Court of Appeals is hereby **SET ASIDE**, and in lieu thereof:

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(7) In actions for the recovery of wages of household helpers, laborers and skilled workers;

(8) In actions for indemnity under workmen's compensation and employer's liability laws;

(9) In a separate civil action to recover civil liability arising from a crime;

(10) When at least double judicial costs are awarded;

(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable.

[44] See *rollo*, p. 39. Paragraph 4 of the dispositive portion of the CA Decision dated March 19, 2014 reads:

I. The ₱100,000.00 loan obligation is **DECLARED** to be the liability of the conjugal partnership of petitioner Erlinda Dinglasan Delos Santos and her deceased husband Pedro Delos Santos which may be recovered by herein respondents in accordance with this Decision;

II. Petitioner Erlinda Dinglasan Delos Santos is **ORDERED** to return to respondents the amount of ₱50,000.00 representing the additional consideration Teresita D. Abejon paid for in the sale, with legal interest of six percent (6%) per annum from the finality of this Decision until fully paid;

III. For the purpose of determining the proper indemnity for the 3-storey building, the case is **REMANDED** to the Regional Trial Court of Makati City, Branch 132 for further proceedings consistent with the proper application of Articles 448, 453, 546, and 548 of the Civil Code, as applied in existing jurisprudence; and

IV. The award of attorney's fees and litigation expenses in the amount of ₱100,000.00 is **DELETED**.

SO ORDERED.

Sereno, C.J., Leonardo-de Castro, del Castillo, and *Caguioa, JJ.,* concur.

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4. Defendants-appellants ([petitioners]) are liable to pay plaintiffs-appellees ([respondents]) the sum of:

a) ₱100,000.00 with interest at the rate of 12% per annum reckoned from November 25, 1997, when the case was filed before the trial court until its full satisfaction;

b) ₱2,000,000.00 representing the costs of the construction of the 3-storey building with interest computed at the rate of 6% per annum from the date of finality of this decision until its full satisfaction;

c) ₱100,000.00 as and for attorney's fees and litigation expenses.

FIRST DIVISION

[G.R. No. 220940. March 20, 2017]

JOY VANESSA M. SEBASTIAN, *petitioner, vs.* **SPOUSES NELSON C. CRUZ AND CRISTINA P. CRUZ and THE REGISTER OF DEEDS FOR THE PROVINCE OF PANGASINAN,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; JUDGMENTS; GROUNDS FOR ANNULMENT OF JUDGMENT; A DECISION RENDERED WITHOUT JURISDICTION IS NULL AND VOID; EFFECTS.—** Under Section 2, Rule 47 of the Rules of Court, the only grounds for annulment of judgment are extrinsic fraud and lack of jurisdiction. Lack of jurisdiction as a ground for annulment of judgment refers to either lack of jurisdiction over the person of the defending party or over the subject matter of the claim. In case of absence or lack of jurisdiction, a court should not take cognizance of the case. Thus, the prevailing rule is that where there is want of jurisdiction over a subject matter, the judgment is rendered null and void. A void judgment is in legal effect no judgment, by which no rights are divested, from which no right can be obtained, which neither binds nor bars any one, and under which all acts performed and all claims flowing out are void. It is not a decision in contemplation of law and, hence, it can never become executory. It also follows that such a void judgment cannot constitute a bar to another case by reason of *res judicata*.

2. **CIVIL LAW; REPUBLIC ACT NO. 26; JUDICIAL RECONSTITUTION OF TITLE; REQUISITES THAT MUST BE COMPLIED WITH FOR AN ORDER OF RECONSTITUTION TO BE ISSUED; PURPOSE OF RECONSTITUTION OF TITLE.—** [I]t appears that the following requisites must be complied with for an order for reconstitution to be issued: (*a*) that the certificate of title had been lost or destroyed; (*b*) that the documents presented by petitioner are sufficient and proper to warrant reconstitution of the lost or destroyed certificate of title; (*c*) that the petitioner is the registered owner of the property or had an interest therein;

(*d*) that the certificate of title was in force at the time it was lost and destroyed; and (*e*) that the description, area and boundaries of the property are substantially the same as those contained in the lost or destroyed certificate of title. Verily, the reconstitution of a certificate of title denotes restoration in the original form and condition of a lost or destroyed instrument attesting the title of a person to a piece of land. The purpose of the reconstitution of title is to have, after observing the procedures prescribed by law, the title reproduced in exactly the same way it has been when the loss or destruction occurred. RA 26 presupposes that the property whose title is sought to be reconstituted has already been brought under the provisions of the Torrens System.

3. **ID.; ID.; ID.; ID.; WHERE THE OWNER'S DUPLICATE CERTIFICATE OF TITLE WAS NOT ACTUALLY LOST BUT IS IN FACT IN THE POSSESSION OF ANOTHER, THE REGIONAL TRIAL COURT ACQUIRED NO JURISDICTION AND THE DECISION RENDERED THEREIN IS VOID; PRINCIPLE APPLIED.—** [T]he fact of loss or destruction of the owner's duplicate certificate of title is crucial in clothing the RTC with jurisdiction over the judicial reconstitution proceedings. In *Spouses Paulino v. CA*, the Court reiterated the rule that when the owner's duplicate certificate of title was not actually lost or destroyed, but is in fact in the possession of another person, the reconstituted title is void because the court that rendered the order of reconstitution had no jurisdiction over the subject matter of the case[.] x x x In this case, Sebastian's petition for annulment of judgment before the CA clearly alleged that, contrary to the claim of Spouses Cruz in LRC Case No. 421, the owner's duplicate copy of OCT No. P-41566 was not really lost, as the same was surrendered to her by Lamberto, Nelson's father and attorney-in-fact, and was in her possession all along. Should such allegation be proven following the conduct of further proceedings, then there would be no other conclusion than that the RTC had no jurisdiction over the subject matter of LRC Case No. 421. As a consequence, the Decision dated March 27, 2014 of the RTC in the said case would then be annulled on the ground of lack of jurisdiction.

APPEARANCES OF COUNSEL

Gina A. Antonio for petitioner.
Mel Mariano T. Ramos for respondents.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Resolutions dated March 13, 2015[2] and October 9, 2015[3] of the Court of Appeals (CA) in CA-G.R. SP No. 136564 dismissing the petition for annulment of judgment filed by petitioner Joy Vanessa M. Sebastian (Sebastian) before it.

The Facts

The instant case stemmed from a petition[4] for annulment of judgment filed by Sebastian before the CA, praying for the annulment of the Decision[5] dated March 27, 2014 of the Regional Trial Court of Lingayen, Pangasinan, Branch 69 (RTC) in LRC Case No. 421. Petitioner alleged that respondent Nelson C. Cruz (Nelson), married to Cristina P. Cruz (Cristina; collectively, Spouses Cruz), is the registered owner of a 40,835-square meter parcel of land located in Brgy. Bogtong-Bolo, Mangatarem, Pangasinan and covered by *Katibayan ng Orihinal na Titulo Blg*. (OCT No.) P-41566[6] (subject land). Sometime in November 2009, Nelson, through his father and attorney-in-fact, Lamberto P. Cruz (Lamberto), then sold the subject lot in favor of Sebastian,

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[1] *Rollo*, pp. 8-23.

[2] *Id*. at 25-28. Penned by Associate Justice Jane Aurora C. Lantion with Associate Justices Magdangal M. De Leon and Nina G. Antonio-Valenzuela concurring.

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

[4] Dated July 31, 2014. *Id*. at 70-78.

[5] *Id*. at 66-69. Penned by Presiding Judge Loreto S. Alog, Jr.

[6] *Id*. at 39-42.

as evidenced by a Deed of Absolute Sale[7] executed by the parties. Upon Sebastian's payment of the purchase price, Lamberto then surrendered to her the possession of the subject land, OCT No. P-41566, and his General Power of Attorney[8] together with a copy of Tax Declaration No. 9041 and Property Index No. 013-26-019-0322.[9] Sebastian then paid the corresponding capital gains tax, among others, to cause the transfer of title to her name.[10] However, upon her presentment of the aforesaid documents to the Register of Deeds of the Province of Pangasinan (RD-Pangasinan), the latter directed her to secure a Special Power of Attorney executed by Spouses Cruz authorizing Lamberto to sell the subject land to her. Accordingly, Sebastian requested the execution of such document to Lamberto, who promised to do so, but failed to comply. Thus, Sebastian was constrained to cause the annotation of an adverse claim in OCT No. P-41566 on August 2, 2011 in order to protect her rights over the subject land.[11]

According to Sebastian, it was only on July 14, 2014 upon her inquiry with RD-Pangasinan about the status of the aforesaid title when she discovered that: (*a*) Nelson executed an Affidavit of Loss dated September 23, 2013 attesting to the loss of owner's duplicate copy of OCT No. P-41566, which he registered with the RD-Pangasinan; (*b*) the Spouses Cruz filed before the RTC a petition for the issuance of a second owner's copy of OCT No. P-41566, docketed as LRC Case No. 421; and (*c*) on March 27, 2014, the RTC promulgated a Decision granting Spouses Cruz's petition and, consequently, ordered the issuance of a new owner's duplicate copy of OCT No. P-41566 in their names.[12]

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[7] Dated November 9, 2009. *Id.* at 38.

[8] *Id*. at 44-45.

[9] *Id*. at 46, including dorsal portion.

[10] As evidenced by Capital Gains Tax Return (*id*. at 47-48), Documentary Stamp Tax Declaration/Return (*id*. at 49), Tax Clearance Certificate (*id*. at 50-53), and Certificate Authorizing Registration (*id*. at 54-55).

[11] See *id*. at 72-73.

[12] See *id*. at 26, 71, and 74.

In view of the foregoing incidents, Sebastian filed the aforesaid petition for annulment of judgment before the CA on the ground of lack of jurisdiction. Essentially, she contended that the RTC had no jurisdiction to take cognizance of LRC Case No. 421 as the duplicate copy of OCT No. P-41566 – which was declared to have no further force in effect – was never lost, and in fact, is in her possession all along.[13]

The CA Ruling

In a Resolution[14] dated March 13, 2015, the CA did not give due course to Sebastian's petition and, consequently, dismissed the same outright.[15] It held that the compliance by Spouses Cruz with the jurisdictional requirements of publication and notice of hearing clothed the RTC with jurisdiction to take cognizance over the action *in rem*, and constituted a constructive notice to the whole world of its pendency. As such, personal notice to Sebastian of the action was no longer necessary.[16]

Aggrieved, petitioner moved for reconsideration,[17] which was, however, denied in a Resolution[18] dated October 9, 2015; hence, this petition.[19]

The Issue Before the Court

The core issue for the Court's resolution is whether or not the CA correctly denied due course to Sebastian's petition for annulment of judgment, resulting in its outright dismissal.

The Court's Ruling

The petition is meritorious.

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[13] See *id*. at 75-77.

[14] *Id*. at 25-28.

[15] *Id*. at 28.

[16] See *id*. at 26-28.

[17] See motion for reconsideration dated April 20, 2015; *id*. at 85-90.

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

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

Under Section 2, Rule 47 of the Rules of Court, the only grounds for annulment of judgment are extrinsic fraud and lack of jurisdiction. Lack of jurisdiction as a ground for annulment of judgment refers to either lack of jurisdiction over the person of the defending party or over the subject matter of the claim. In case of absence or lack of jurisdiction, a court should not take cognizance of the case. Thus, the prevailing rule is that where there is want of jurisdiction over a subject matter, the judgment is rendered null and void. A void judgment is in legal effect no judgment, by which no rights are divested, from which no right can be obtained, which neither binds nor bars any one, and under which all acts performed and all claims flowing out are void. It is not a decision in contemplation of law and, hence, it can never become executory. It also follows that such a void judgment cannot constitute a bar to another case by reason of *res judicata*.[20]

As will be explained hereunder, the CA erred in denying due course to Sebastian's petition for annulment of judgment and, resultantly, in dismissing the same outright.

The governing law for judicial reconstitution of title is Republic Act No. (RA) 26,[21] Section 15 of which provides when reconstitution of a title should be allowed:

> Section 15. If the court, after hearing, finds that the documents presented, as supported by parole evidence or otherwise, are sufficient and proper to warrant the reconstitution of the **lost or destroyed certificate of title,** and that petitioner is the **registered owner of the property or has an interest therein,** that the **said certificate of title was in force at the time it was lost or destroyed,** and that the **description, area and boundaries of the property are substantially the same as those contained in the lost or destroyed certificate of title**, an order of reconstitution shall be issued. The

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[20] *Spouses Paulino v. CA*, 735 Phil. 448, 459 (2014), citing *Hilado v. Chavez*, 482 Phil. 104, 133 (2004).

[21] Entitled "AN ACT PROVIDING A SPECIAL PROCEDURE FOR THE RECONSTITUTION OF TORRENS CERTIFICATES OF TITLE LOST OR DESTROYED" (September 25, 1946).

clerk of court shall forward to the register of deeds a certified copy of said order and all the documents which, pursuant to said order, are to be used as the basis of the reconstitution. If the court finds that there is no sufficient evidence or basis to justify the reconstitution, the petition shall be dismissed, but such dismissal shall not preclude the right of the party or parties entitled thereto to file an application for confirmation of his or their title under the provisions of the Land Registration Act. (Emphasis and underscoring supplied)

From the foregoing, it appears that the following requisites must be complied with for an order for reconstitution to be issued: (*a*) that the certificate of title had been lost or destroyed; (*b*) that the documents presented by petitioner are sufficient and proper to warrant reconstitution of the lost or destroyed certificate of title; (*c*) that the petitioner is the registered owner of the property or had an interest therein; (*d*) that the certificate of title was in force at the time it was lost and destroyed; and (*e*) that the description, area and boundaries of the property are substantially the same as those contained in the lost or destroyed certificate of title. Verily, the reconstitution of a certificate of title denotes restoration in the original form and condition of a lost or destroyed instrument attesting the title of a person to a piece of land. The purpose of the reconstitution of title is to have, after observing the procedures prescribed by law, the title reproduced in exactly the same way it has been when the loss or destruction occurred. RA 26 presupposes that the property whose title is sought to be reconstituted has already been brought under the provisions of the Torrens System.[22]

Indubitably, the fact of loss or destruction of the owner's duplicate certificate of title is crucial in clothing the RTC with jurisdiction over the judicial reconstitution proceedings. In *Spouses Paulino v. CA*,[23] the Court reiterated the rule that when the owner's duplicate certificate of title was not actually lost or destroyed, but is in fact in the possession of another person, the reconstituted title is void because the court that rendered

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[22] *Republic v. Tuastumban*, 604 Phil. 491, 504-505 (2009).

[23] *Supra* note 20.

the order of reconstitution had no jurisdiction over the subject matter of the case, *viz.*:

> As early as the case of *Strait Times, Inc. v. CA*, the Court has held that **when the owner's duplicate certificate of title has not been lost, but is, in fact, in the possession of another person, then the reconstituted certificate is void, because the court that rendered the decision had no jurisdiction**. Reconstitution can be validly made only in case of loss of the original certificate. This rule was reiterated in the cases of *Villamayor v. Arante, Rexlon Realty Group, Inc. v.* [*CA*]*, Eastworld Motor Industries Corporation v. Skunac Corporation, Rodriguez v. Lim, Villanueva v. Viloria*, and *Camitan v. Fidelity Investment Corporation*. Thus, with evidence that the original copy of the TCT was not lost during the conflagration that hit the Quezon City Hall and that the owner's duplicate copy of the title was actually in the possession of another, the RTC decision was null and void for lack of jurisdiction.
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> x x x x x x x x x
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> **In reconstitution proceedings, the Court has repeatedly ruled that before jurisdiction over the case can be validly acquired, it is a condition *sine qua non* that the certificate of title has not been issued to another person. If a certificate of title has not been lost but is in fact in the possession of another person, the reconstituted title is void and the court rendering the decision has not acquired jurisdiction over the petition for issuance of new title.** The courts simply have no jurisdiction over petitions by (such) third parties for reconstitution of allegedly lost or destroyed titles over lands that are already covered by duly issued subsisting titles in the names of their duly registered owners. **The existence of a prior title *ipso facto* nullifies the reconstitution proceedings.** The proper recourse is to assail directly in a proceeding before the regional trial court the validity of the Torrens title already issued to the other person.[24] (Emphases and underscoring supplied)

In this case, Sebastian's petition for annulment of judgment before the CA clearly alleged that, contrary to the claim of Spouses Cruz in LRC Case No. 421, the owner's duplicate copy of OCT No. P-41566 was not really lost, as the same was

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[24] *Id*. at 459-460 and 462; citations omitted.

surrendered to her by Lamberto, Nelson's father and attorney-in-fact, and was in her possession all along.[25] Should such allegation be proven following the conduct of further proceedings, then there would be no other conclusion than that the RTC had no jurisdiction over the subject matter of LRC Case No. 421. As a consequence, the Decision dated March 27, 2014 of the RTC in the said case would then be annulled on the ground of lack of jurisdiction.

Thus, the Court finds *prima facie* merit in Sebastian's petition for annulment of judgment before the CA. As such, the latter erred in denying it due course and in dismissing the same outright. In this light, the Court finds it more prudent to remand the case to the CA for further proceedings to first resolve the above-discussed jurisdictional issue, with a directive to: (*a*) grant due course to the petition; and (*b*) cause the service of summons on Spouses Cruz and the RD-Pangasinan, in accordance with Section 5, Rule 47[26] of the Rules of Court.

WHEREFORE, the petition is **GRANTED**. The Resolutions dated March 13, 2015 and October 9, 2015 of the Court of Appeals (CA) in CA-G.R. SP No. 136564 are hereby **REVERSED** and **SET ASIDE**. Accordingly, the instant case is **REMANDED** to the CA for further proceedings.

SO ORDERED.

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

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[25] See *rollo*, pp. 72 and 76.

[26] Section 5, Rule 47 of the Rules of Court reads:

Section 5. *Action by the court*. — Should the court find no substantial merit in the petition, the same may be dismissed outright with specific reasons for such dismissal.

Should *prima facie* merit be found in the petition, the same shall be given due course and summons shall be served on the respondent.

SECOND DIVISION

[G.R. No. 222980. March 20, 2017]

LOURDES C. RODRIGUEZ, *petitioner, vs.* **PARK N RIDE INC./VICEST (PHILS) INC./GRAND LEISURE CORP./SPS. VICENTE & ESTELITA B. JAVIER,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45 OF THE RULES OF COURT; LIMITED TO REVIEW OF QUESTIONS OF LAW.—** [O]nly questions of law may be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court. Factual findings of the Labor Arbiter and the National Labor Relations Commission, if supported by substantial evidence and when upheld by the Court of Appeals, are binding and conclusive upon this Court when there is no cogent reason to disturb the same. In the present case, due to lack of any palpable error, mistake, or misappreciation of facts, this Court discerns no compelling reason to reverse the consistent findings of the appellate court and the labor tribunals.

2. **LABOR AND SOCIAL LEGISLATION; LABOR CODE; TERMINATION OF EMPLOYMENT; CONSTRUCTIVE DISMISSAL; EXISTS WHEN THERE IS INVOLUNTARY RESIGNATION BECAUSE OF THE HARSH, HOSTILE AND UNFAVORABLE CONDITIONS SET BY THE EMPLOYER.—** There is constructive dismissal when an employer's act of clear discrimination, insensibility or disdain becomes so unbearable on the part of the employee so as to foreclose any choice on his part except to resign from such employment. It exists where there is involuntary resignation because of the harsh, hostile and unfavorable conditions set by the employer. We have held that the standard for constructive dismissal is "whether a reasonable person in the employee's position would have felt compelled to give up his employment under the circumstances." The unreasonably harsh conditions that compel resignation on the part of an employee must be way beyond the occasional discomforts brought about by the

misunderstandings between the employer and employee. Strong words may sometimes be exchanged as the employer describes her expectations or as the employee narrates the conditions of her work environment and the obstacles she encounters as she accomplishes her assigned tasks. As in every human relationship, there are bound to be disagreements. However, when these strong words from the employer happen without palpable reason or are expressed only for the purpose of degrading the dignity of the employee, then a hostile work environment will be created. In a sense, the doctrine of constructive dismissal has been a consistent vehicle by this Court to assert the dignity of labor.

3. **ID.; ID.; PRESCRIPTION OF MONEY CLAIMS; THE EMPLOYEE'S CLAIM FOR HER ENTIRE SERVICE INCENTIVE LEAVE PAY IN CASE AT BAR COMMENCED ONLY FROM THE TIME OF HER RESIGNATION OR SEPARATION FROM EMPLOYMENT.—** [W]ith respect to service incentive leave pay, the Court of Appeals limited the award thereof to three (3) years (2006 to 2009) only due to the prescriptive period under Article 291 of the Labor Code. x x x [T]he prescriptive period with respect to petitioner's claim for her entire service incentive leave pay commenced only from the time of her resignation or separation from employment. Since petitioner had filed her complaint on October 7, 2009, or a few days after her resignation in September 2009, her claim for service incentive leave pay has not prescribed. Accordingly, petitioner must be awarded service incentive leave pay for her entire 25 years of service—from 1984 to 2009—and not only three (3) years' worth (2006 to 2009) as determined by the Court of Appeals.

APPEARANCES OF COUNSEL

Celino Celino And Celino Law Office for petitioner.
De Leon Law Office for respondents.

D E C I S I O N

LEONEN, *J*.:

Natural expressions of an employer do not automatically make for a hostile work atmosphere. The totality of circumstances

in this case negates petitioner Lourdes C. Rodriguez's claim of constructive dismissal.

This resolves a Petition for Review[1] assailing the Court of Appeals' December 15, 2015 Decision[2] and February 17, 2016 Resolution.[3] The Court of Appeals held that there was no illegal dismissal, but ordered respondents Park N Ride Incorporated (Park N Ride), Vicest Philippines Incorporated (Vicest Phils.), Grand Leisure Corporation (Grand Leisure), and Spouses Vicente and Estelita B. Javier (Javier Spouses) to pay Lourdes C. Rodriguez (Rodriguez) service incentive leave pay and 13th month pay for 2006 to 2009, with legal interest of six percent (6%) per annum, from date of finality of the decision until full payment.[4]

On October 7, 2009, Rodriguez filed a Complaint[5] for constructive illegal dismissal, non-payment of service incentive leave pay and 13th month pay, including claims for moral and exemplary damages and attorney's fees against Park N Ride, Vicest Phils., Grand Leisure, and the Javier Spouses.

In her Position Paper,[6] Rodriguez alleged that she was employed on January 30, 1984 as Restaurant Supervisor at Vicest Phils.[7] Four (4) years later, the restaurant business closed.

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[1] *Rollo,* pp. 10-35. The Petition was filed under Rule 45 of the Rules of Court.

[2] *Id.* at 36-51. The Decision was penned by Associate Justice Nina G. Antonio-Valenzuela and concurred in by Associate Justices Fernanda Lampas Peralta and Jane Aurora C. Lantion of the Sixth Division, Court of Appeals, Manila.

[3] *Id.* at 50-51. The Resolution was penned by Associate Justice Nina G. Antonio-Valenzuela and concurred in by Associate Justices Fernanda Lampas Peralta and Jane Aurora C. Lantion of the Sixth Division, Court of Appeals, Manila.

[4] *Id.* at 49.

[5] *Id.* at 65-67.

[6] *Id.* at 68-84.

[7] *Id.* at 69.

Rodriguez was transferred to office work and became an Administrative and Finance Assistant to Estelita Javier (Estelita).[8] One of Rodriguez's duties was to open the office in Makati City at 8:00 a.m. daily.[9]

The Javier Spouses established other companies, namely: Buildmore Development and Construction Corporation, Asset Resources Development Corporation, and Grand Leisure.[10] Rodriguez was also required to handle the personnel and administrative matters of these companies without additional compensation.[11] She likewise took care of the household concerns of the Javier Spouses, such as preparing payrolls of drivers and helpers, shopping for household needs, and looking after the spouses' house whenever they travelled abroad.[12]

Sometime in 2000, the Javier Spouses established Park N Ride, a business that provided terminal parking and leasing.[13] Although the company's main business was in Lawton, Manila, its personnel and administrative department remained in Makati City.[14] Rodriguez handled the administrative, finance, and warehousing departments of Park N Ride.[15] Every Saturday, after opening the Makati office at 8:00 a.m., Rodriguez was required to report at the Lawton office at 11:00 a.m. to substitute the Head Cashier, who would be on day-off.[16]

She allegedly worked from 8:00 a.m. to 7:00 p.m., Mondays to Saturdays; was on call on Sundays; and worked during

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[8] *Id*.

[9] *Id*. at 70.

[10] *Id*. at 70.

[11] *Id*.

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

[13] *Id*. at 71.

[14] *Id*.

[15] *Id*.

[16] *Id*.

Christmas and other holidays.[17] She was deducted an equivalent of two (2) days' wage for every day of absence and was not paid any service incentive leave pay.[18] On one occasion, Rodriguez asked the Javier Spouses if she could go home by 10:00 a.m. to attend a family reunion, but her request was denied.[19]

The Javier Spouses' treatment of Rodriguez became unbearable; thus, on March 25, 2009, she filed her resignation letter effective April 25, 2009.[20] The Javier Spouses allegedly did not accept her resignation and convinced her to reconsider and stay on.[21] However, her experience became worse.[22] Rodriguez claimed that toward the end of her employment, Estelita was always unreasonable and hot-headed, and would belittle and embarrass her in the presence of co-workers.[23]

On September 22, 2009, Rodriguez went on her usual *"pamalengke"* for the Spouses.[24] Later, she proceeded to open the Makati office.[25] Estelita was mad at her when they finally talked over the phone, berating her for opening the office late.[26] She allegedly told her that if she did not want to continue with her work, the company could manage without her.[27]

Thus, Rodriguez did not report for work the next day, and on September 26, 2009, she wrote the Javier Spouses a letter[28]

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

[18] *Id*. at 70.

[19] *Id*. at 73.

[20] *Id*. at 85.

[21] *Id*. at 74.

[22] *Id*.

[23] *Id*.

[24] *Id*.

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

[26] *Id*. at 75.

[27] *Id*.

[28] *Id*. at 87.

expressing her gripes at them. She intimated that they were always finding fault with her to push her to resign.[29]

On October 6, 2009, the Javier Spouses replied to her letter, allegedly accepting her resignation.[30]

Rodriguez prayed for separation pay in lieu of reinstatement; full back wages; service incentive leave pay; proportional 13th month pay; moral damages of ₱100,000.00; exemplary damages of ₱100,000.00; and attorney's fees.[31]

In their Position Paper,[32] Javier Spouses stated that they were the directors and officers of Park N Ride, Vicest Phils., and Grand Leisure.[33] In 1984, they hired Rodriguez as a nutritionist in their fast food business.[34] Vicest (Phils) Inc., the spouses' construction business, hired Rodriguez as an employee when the fast food business closed.[35] When the construction business became slow, Park N Ride hired Rodriguez as Administrative Officer.[36]

Javier Spouses trusted Rodriguez with both their businesses and personal affairs, and this made her more senior than any of her colleagues at work.[37] She was the custodian of 201 employee files, representative to courts and agencies, and had access and information on the Javier Spouses' finances. She was given authority to transact with business and banking institutions and became a signatory to their bank accounts.[38]

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[29] *Id*.

[30] *Id*. at 76.

[31] *Id*. at 82-83.

[32] *Id*. at 88-96.

[33] *Id*. at 88.

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

[35] *Id*. at 89.

[36] *Id*.

[37] *Id*.

[38] *Id*.

She was also given custody over the deeds and titles of ownership over properties of the Javier Spouses.[39]

However, Rodriguez was allegedly emotionally sensitive and prone to occasional *"tampo"* when she would be reprimanded or cited for tasks unaccomplished.[40] She would then be absent after such reprimands and would eventually return after a few days.[41] For instance, in the second quarter of 2008, Rodriguez tendered her resignation letter.[42] Three (3) days later, however, she returned to work.[43] In the first quarter of 2009, she resigned again but did not push through with it.[44]

On September 22, 2009, the Javier Spouses inquired from Rodriguez about an overdue contract with a vendor.[45] Rodriguez offered no explanation for the delay, and other employees heard her say that she was going to resign.[46]

On September 23, 2009, Rodriguez did not report for work.[47] On September 26, 2009, when she still has not reported for work after three days, a letter[48] was sent to her citing her continued and unauthorized absence. "She was told that her resignation could not be processed because she had not completed her employment clearance and she was unable to properly turnover her tasks to her assistant."[49] She was asked to report on September 30, 2009 or, at the very least, to reply in writing on or before

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[39] *Id*.

[40] *Id*.

[41] *Id*. at 90.

[42] *Id*. at 97.

[43] *Id*.

[44] *Id*.

[45] *Id*.

[46] *Id*.

[47] *Id*.

[48] *Id*. at 98.

[49] *Id*.

October 7, 2009.[50] Rodriguez neither reported for work on September 30, 2009 nor submitted any reply to the letter sent to her.[51]

Rodriguez allegedly continued to ignore the requests for her to complete the turnover of her tasks and responsibilities and refused to cooperate in tracing the documents in her custody. Corollary to this, it was discovered that the company check books were missing; that Rodriguez had unliquidated cash advances of not less than ₱500,000.00; and that two (2) checks were deposited in her personal account amounting to ₱936,000.00.[52]

The Javier Spouses claimed that Rodriguez was not entitled to service incentive leave pay, moral and exemplary damages, attorney's fees and director's fee.[53] They averred that they were willing to pay Rodriguez the 13th month pay differentials, as soon as Rodriguez completed her clearance.[54]

On May 26, 2010, Labor Arbiter Antonio R. Macam (Labor Arbiter Macam) rendered a Decision[55] dismissing Rodriguez's Complaint for lack of merit. According to the Decision, the summary of evidence pointed to the voluntariness of Rodriguez's resignation rather than the existence of a hostile and frustrating working environment.[56] The Javier Spouses were ordered to pay Rodriguez her proportionate 13th month pay for 2009 in the amount of ₱19,892.55.[57]

Rodriguez appealed to the National Labor Relations Commission. The Commission, in its Decision[58] dated May 30, 2011, granted Rodriguez's appeal and modified Labor Arbiter Macam's Decision.

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[50] *Id*.

[51] *Id*. at 91.

[52] *Id*. at 94.

[53] *Id*. at 94.

[54] *Id*.

[55] *Id*. at 150-159.

[56] *Id*. at 157.

[57] *Id*. at 159.

[58] *Id*. at 213-227. The Decision was penned by Commissioner Perlita B. Velasco and concurred in by Presiding Commissioner Gerardo C. Nograles

The Commission ruled that Rodriguez was illegally dismissed and awarded her back wages, separation pay, 13th month pay differentials, moral and exemplary damages, and attorney's fees.

However, on the Javier Spouses' Motion for Reconsideration,[59] the Commission set aside its May 30, 2011 Decision and reinstated Labor Arbiter Macam's May 26, 2010 Decision.

Rodriguez filed a Motion for Reconsideration, which was denied by the Commission in its Resolution[60] dated April 20, 2012.

Rodriguez filed a Rule 65 Petition[61] before the Court of Appeals imputing grave abuse of discretion on the National Labor Relations Commission.

In the Decision dated December 15, 2015, the Court of Appeals held that there was no constructive dismissal, but rather Rodriguez voluntarily resigned from her employment. The Decision disposed as follows:

> We **SET ASIDE** the Resolution dated 15 December 2011 of the National Labor Relations Commission, and instead we rule that there was no illegal dismissal, and we ORDER private respondents to pay petitioner Rodriguez the following: 1) service incentive leave pay and 13th month pay for the years 2006 to 2009; and 2) attorney's fees equivalent to ten percent of the wages awarded. All amounts awarded shall be subject to interest of 6% per annum, from the date of finality of this Decision, until fully paid.[62] (Emphasis in the original).

Rodriguez sought reconsideration.[63] The Court of Appeals denied the motion in its Resolution dated February 17, 2016.[64]

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and Commissioner Romeo L. Go of the First Division, National Labor Relations Commission, Quezon City.

[59] *Id*. at 230-249.

[60] *Id*. at 284-285; The Resolution was penned by Commissioner Perlita B. Velasco and concurred in by Presiding Commissioner Gerardo C. Nograles.

[61] *Id*. at 286-315.

[62] *Id*. at 49.

[63] *Id*. at 52-64.

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

Hence, this Petition[65] was filed, revolving around the following issues:

First, whether petitioner was constructively dismissed;

And lastly, whether petitioner was entitled to full service incentive leave pay and damages.

Petitioner maintains that she has been constructively dismissed. She points to the Affidavits[66] of six (6) of her former co-workers allegedly supporting her claim of unbearable working conditions; and Estelita's statement on September 22, 2009, *"Kung ayaw mo na ng ginagawa mo, we can manage!"*[67] Petitioner further claims that she is entitled to service incentive leave pay for her entire 25 years of service, and not only up to three (3) years.[68] Finally, she adds that she should be awarded moral and exemplary damages because of the inhumane treatment of her employers.

We partly grant the Petition.

I

At the onset, we stress that only questions of law may be raised in a petition for review on certiorari under Rule 45 of the Rules of Court.[69] Factual findings of the Labor Arbiter and the National Labor Relations Commission, if supported by substantial evidence and when upheld by the Court of Appeals, are binding and conclusive upon this Court when there is no cogent reason to disturb the same.[70] In the present case, due to

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[65] *Id.* at 10-33.

[66] *Id.* at 116-118 (Affidavits of Benedicta dela Pacion, Jessie D. Mamorno, Julie M. Barcena); *rollo,* pp. 134-135 (Affidavits of Glenda R. Carreon and Heidi C. Lamoste); *rollo,* pp. 189-190 (Affidavit of Rhea Sienna L. Padrid).

[67] *Rollo*, p. 23.

[68] *Id.* at 29.

[69] *Uniwide Sales Warehouse Club v. National Labor Relations Commission,* 570 Phil. 535, 548 (2008) [Per *J.* Austria-Martinez, Third Division].

[70] *Duldulao v. Court of Appeals*, 546 Phil. 22, 30 (2007) [Per *J.* Tinga, Second Division]; *Dangan v. National Labor Relations Commission,* 212 Phil. 653, 658 (1984) [Per *J.* Gutierrez, Jr., First Division].

lack of any palpable error, mistake, or misappreciation of facts, this Court discerns no compelling reason to reverse the consistent findings of the appellate court and the labor tribunals.

There is constructive dismissal when an employer's act of clear discrimination, insensibility or disdain becomes so unbearable on the part of the employee so as to foreclose any choice on his part except to resign from such employment.[71] It exists where there is involuntary resignation because of the harsh, hostile and unfavorable conditions set by the employer. We have held that the standard for constructive dismissal is "whether a reasonable person in the employee's position would have felt compelled to give up his employment under the circumstances."[72]

The unreasonably harsh conditions that compel resignation on the part of an employee must be way beyond the occasional discomforts brought about by the misunderstandings between the employer and employee. Strong words may sometimes be exchanged as the employer describes her expectations or as the employee narrates the conditions of her work environment and the obstacles she encounters as she accomplishes her assigned tasks. As in every human relationship, there are bound to be disagreements.

However, when these strong words from the employer happen without palpable reason or are expressed only for the purpose of degrading the dignity of the employee, then a hostile work environment will be created. In a sense, the doctrine of constructive dismissal has been a consistent vehicle by this Court to assert the dignity of labor.

However, this is not the situation in this case.

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[71] *Gan v. Galderma Philippines, Inc.,* 701 Phil. 612, 638-639 (2013) [Per *J*. Peralta, Third Division]; *Portuguez v. GSIS Family Bank (Comsavings Bank*), 546 Phil. 140, 153 (2007) [Per *J*. Chico-Nazario, Third Division].

[72] *Gan v. Galderma Philippines, Inc*., 701 Phil. 612, 639 (2013) [Per *J*. Peralta, Third Division]; *Uniwide Sales Warehouse Club v. National Labor Relations Commission,* 570 Phil. 535, 548 (2008) [Per *J.* Austria-Martinez, Third Division].

The National Labor Relations Commission did not commit a grave abuse of discretion in finding that petitioner was not constructively dismissed but that she voluntarily resigned from employment.

The affidavits of petitioner's former co-workers were mere narrations of petitioner's various duties. Far from showing the alleged harsh treatment that petitioner suffered, the affidavits rather reveal the full trust and confidence reposed by respondents on petitioner. Petitioner was entrusted with respondents' assets, the care and safeguarding of their house during their trips abroad, custody of company files and papers, and delicate matters such as the release, deposit, and withdrawals of checks from their personal accounts as well as accounts of their companies. Indeed, it was alleged that petitioner was treated by the respondents as part of the family.

Petitioner's unequivocal intent to relinquish her position was manifest when she submitted her letters of resignation. The resignation letters dated May 1, 2008[73] and March 25, 2009[74] contained words of gratitude, which could hardly come from an employee forced to resign. These letters were reinforced by petitioner's very own act of not reporting for work despite respondents' directive.

As correctly appreciated by Labor Arbiter Macam:

Complainant was not pressured into resigning. It seems that the complainant was not comfortable anymore with the fact that she was always at the beck and call of the respondent Javier spouses. Her

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[73] *Rollo*, p. 249. The letter states:

"With regret, I am tendering my resignation effective 25 May 2008.

Thank you for the privilege of working with you and your companies for twenty four (24) years."

[74] *Id*. at 85. The letter states:

"With regret, I am tendering my resignation effective 25 April 2009.

Thank you for the privilege of working with you and your companies for twenty five (25) years.

GOD BLESS and more power to the management and the company."

supervisory and managerial functions appear to be impeding her time with her family to such extent that she was always complaining of her extended hours with the company. It is of no moment that respondent spouses in many occasions reprimanded complainant as long as it was reasonably connected and an offshoot of the work or business of respondents. . . Keeping in mind that she enjoyed the privilege of working closely with respondents and had their full trust and confidence, the summary of evidence points to the existence of voluntariness in complainant's resignation, more for personal reasons rather than the existence of a hostile and frustrating working environment.[75]

From the representation of petitioner, what triggered her resignation was the incident on September 22, 2009 when Estelita told her *"Kung ayaw mo na ng ginagawa mo, we can manage!"*[76] These words, however, are not sufficient to make the continued employment of petitioner impossible, unreasonable, or unlikely.

The Court of Appeals correctly observed that the utterance of Estelita was more a consequence of her spontaneous outburst of feelings resulting from petitioner's failure to perform a task that was long overdue, rather than an act to force petitioner to resign from work.[77] It appears that petitioner was asked to finish assigned tasks and liquidate cash advances. The affidavit of Estelita was unrebutted, and further corroborated by Rhea Sienna L. Padrid, Accounting Assistant II of Park N Ride, in her Affidavit with Cash Advances Report.[78] Estelita's affidavit read in part:

(2) During the middle part of December 2008, when the Accounting Division (Mrs. Rhea Padrin) audited the company books, report showed that the unliquidated Cash Advances of Lourdes Rodriguez had already ballooned to less than ₱7,000,000.00 some dating as early as year 2004. I repeatedly requested her to liquidate them even removing some of her daily duties so she could focus on her Cash Advances. Inspite

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[75] *Id*. at 156-157.

[76] *Id*. at 23.

[77] *Id*. at 45.

[78] *Id*. at 254-255.

of my repeated requests for her to focus on the liquidation of these Cash Advances, Lourdes Rodriguez failed to liquidate them before Christmas. Due to this, I requested her to go with us to Pansol after Christmas so I could help her in her liquidation. . . . I also wanted to get all the cash left and unused that I left with her when the family left for the United States. I also wanted to get my salary from her which I entrusted for her to claim. I could not find any reason why Lourdes Rodriguez could not liquidate her Cash Advances.

(3) Lourdes Rodriguez also had two checks in the amount of ₱936,000.00 which she deposited to her personal account contrary to company policy.

(4) Because of said actions of Lourdes Rodriguez, I had lost trust and confidence in her ability to perform her job faithfully, especially in her duties which would involve money matters, and had thus initiated an investigation in relation thereto.

(5) When year 2009 started and Lourdes Rodriguez could not liquidate her Cash Advances, I started getting the company passbooks and personal passbooks from her. I also started getting the certificates of time deposits and titles with her. I started having other staff do the deposits and withdrawals for the company and for me. I started handling the treasury functions of the company. I started talking to the officers of our banks.

(6) It was after I had commenced queries into her activities and stopped entrusting her with money, deposits and cash withdrawals that she had tendered her resignation last March 25, 2009.

(7) After Lourdes Rodriguez submitted her resignation, I talked to her and accepted her resignation and instructed her to transfer all the Admin files of the company under her custody to my house. Lourdes Rodriguez had all the important files of the company with her.

(8) Inspite of the acceptance of resignation which was to take effect 25 April 2009, Lourdes Rodriguez stayed on, slowly and reluctantly liquidating her Cash Advances. I allowed her to stay on because I wanted her to liquidate all her Cash Advances. Up to this date, Lourdes Rodriguez has

> failed to liquidate her Cash Advances amounting to Php6,314,641.24.[79]

Petitioner was neither terminated on September 22, 2009 nor was she constructively dismissed. There was no showing of bad faith or malicious design by the respondents that would make her work conditions unbearable.[80] On the other hand, it is a fact that petitioner enjoyed the privilege of working closely with the Javier Spouses and having their full trust and confidence. Spontaneous expressions of an employer do not automatically render a hostile work atmosphere. The circumstances in this case negate its presence.

II

On the monetary claims, petitioner is not entitled to moral and exemplary damages considering that she was not illegally dismissed.[81]

On the other hand, with respect to service incentive leave pay, the Court of Appeals limited the award thereof to three (3) years (2006 to 2009) only due to the prescriptive period under Article 291 of the Labor Code. It held:

> Article 95 of the Labor Code provides that every employee who has rendered at least one year of service shall be entitled to a yearly service incentive leave pay of five days with pay, subject to exceptions (i.e.: when the employee is already enjoying vacation leave with pay of at least five days; and when the employee is employed in an establishment regularly employing less than ten employees).
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> It was not shown here that petitioner Rodriguez was enjoying vacation leave with pay of at least five days while being employed by private respondents Spouses Javier; it was not shown that private

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[79] *Id*. at 261-263.

[80] *Id*. at 45.

[81] *Canadian Opportunities Unlimited, Inc. v. Dalangin, Jr.,* 681 Phil. 21, 38 (2012) [Per *J*. Brion, Second Division]; *Bilbao v. Saudi Arabian Airlines,* 678 Phil. 793, 805 [Per *J*. De Castro, First Division]; *Lopez v. National Labor Relations Commission,* 358 Phil. 141, 153 (1998) [Per *J*. Martinez, Second Division].

respondents Spouses Javier were merely employing less than 10 employees (on the contrary, private respondent spouses Javier stated that they were employing less than 15 employees). Hence, the award of service incentive leave pay to petitioner Rodriguez was proper.

Private respondents Spouses Javier employed petitioner Rodriguez for 25 years. Applying the prescriptive period for money claims under Article 291 of the Labor Code however, petitioner Rodriguez should only be entitled to the three years' worth of service incentive pay for the years 2006 to 2009.

However, *Auto Bus Transport System, Inc. v. Bautista*[82] clarified the correct reckoning of the prescriptive period for service incentive leave pay:

> It is essential at this point, however, to recognize that the service incentive leave is a curious animal in relation to other benefits granted by the law to every employee. In the case of service incentive leave, the employee may choose to either use his leave credits or commute it to its monetary equivalent if not exhausted at the end of the year. Furthermore, if the employee entitled to service incentive leave does not use or commute the same, he is entitled upon his resignation or separation from work to the commutation of his accrued service incentive leave. As enunciated by the Court in *Fernandez v. NLRC*:
>
> > The clear policy of the Labor Code is to grant service incentive leave pay to workers in all establishments, subject to a few exceptions. Section 2, Rule V, Book III of the Implementing Rules and Regulations provides that "[e]very employee who has rendered at least one year of service shall be entitled to a yearly service incentive leave of five days with pay." Service incentive leave is a right which accrues to every employee who has served "within 12 months, whether continuous or broken reckoned from the date the employee started working, including authorized absences and paid regular holidays unless the working days in the establishment as a matter of practice or policy, or that provided in the employment contracts, is less than 12 months, in which case said period shall be considered as one year." It is also "*commutable to its money equivalent if not used or exhausted at the end of the year*." *In other words, an employee*

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[82] 497 Phil. 863 (2005) [Per *J.* Chico-Nazario, Second Division].

> *who has served for one year is entitled to it. He may use it as leave days or he may collect its monetary value.* To limit the award to three years, as the solicitor general recommends, is to unduly restrict such right.

Correspondingly, it can be conscientiously deduced that the cause of action of an entitled employee to claim his service incentive leave pay accrues from the moment the employer refuses to remunerate its monetary equivalent if the employee did not make use of said leave credits but instead chose to avail of its commutation. Accordingly, if the employee wishes to accumulate his leave credits and opts for its commutation upon his resignation or separation from employment, his cause of action to claim the whole amount of his accumulated service incentive leave shall arise when the employer fails to pay such amount at the time of his resignation or separation from employment.

Applying Article 291 of the Labor Code in light of this peculiarity of the service incentive leave, we can conclude that **the three (3)-year prescriptive period commences,** not at the end of the year when the employee becomes entitled to the commutation of his service incentive leave, but **from the time when the employer refuses to pay its monetary equivalent after demand of commutation or upon termination of the employee's services,** as the case may be.

The above construal of Art. 291, *vis-à-vis* the rules on service incentive leave, is in keeping with the rudimentary principle that in the implementation and interpretation of the provisions of the Labor Code and its implementing regulations, the workingman's welfare should be the primordial and paramount consideration. The policy is to extend the applicability of the decree to a greater number of employees who can avail of the benefits under the law, which is in consonance with the avowed policy of the State to give maximum aid and protection to labor.[83] (Emphasis supplied).

Thus, the prescriptive period with respect to petitioner's claim for her entire service incentive leave pay commenced only from the time of her resignation or separation from employment. Since petitioner had filed her complaint on October 7, 2009,

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[83] *Id*. at 876-878, citing *Fernandez v. NLRC*, 349 Phil. 65, 94-95 (1998) [Per *J*. Panganiban, Third Division].

or a few days after her resignation in September 2009, her claim for service incentive leave pay has not prescribed. Accordingly, petitioner must be awarded service incentive leave pay for her entire 25 years of service—from 1984 to 2009—and not only three (3) years' worth (2006 to 2009) as determined by the Court of Appeals.

Finally, we modify the portion of the *fallo* pertaining to the award of the 13th month pay to conform to the body of the Court of Appeals' Decision.

WHEREFORE, the Petition is **PARTIALLY GRANTED.** The Court of Appeals Decision dated December 15, 2015 in CA-G.R. SP No. 125440 is **AFFIRMED with MODIFICATION** as to the amounts awarded. Respondents are **ORDERED** to pay Lourdes C. Rodriguez the following:

1) Service incentive leave pay for the years 1984 to 2009;

2) 13th month pay differential for the years 2006 to 2008;

3) Proportionate 13th month pay for the year 2009; and

4) Attorney's fees equivalent to ten percent (10%) of the wages awarded.

All amounts awarded shall be subject to interest of six percent (6%) per annum, from the date of finality of this Decision, until fully paid.

SO ORDERED.

Carpio (Chairperson), Velasco, Jr.,[*] *Mendoza,* and *Martires, JJ.,* concur.

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[*] Designated additional member per Raffle dated March 15, 2017.

FIRST DIVISION

[G.R. No. 224943. March 20, 2017]

JORGE B. NAVARRA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; VALIDITY OF THE INFORMATION; FAILURE TO OBJECT TO THE DEFECT IN THE INFORMATION BEFORE ENTERING A PLEA CONSTITUTES A WAIVER OF SUCH DEFECT. —** [T]he Court notes that petitioner assails the validity or regularity of the Information filed against him on the ground that it allegedly did not charge a criminal offense. However, as pointed out by the CA, petitioner never raised such issue prior to his arraignment. In fact, a reading of the records shows that petitioner only raised the same ***after*** he was convicted by the RTC and the case was already on appeal before the CA. Thus, the CA correctly ruled that his failure to object to the alleged defect in the Information before entering his plea amounted to a waiver of such defects, especially since objections as to matters of form or substance in the Information cannot be made for the first time on appeal. Hence, petitioner can no longer be allowed to raise this issue before the Court.

2. **CRIMINAL LAW; REPUBLIC ACT NO. (RA) 8282; PROPER REMITTANCE OF SOCIAL SECURITY SYSTEM (SSS) CONTRIBUTION IS MANDATORY; ACTS PUNISHABLE UNDER RA 8282 ARE *MALA PROHIBITA* AND, THUS, THE DEFENSES OF GOOD FAITH AND LACK OF CRIMINAL INTENT ARE IMMATERIAL.—** [P]rompt remittance of SSS contributions under the aforesaid provision is **mandatory**. Any divergence from this rule subjects the employer not only to monetary sanctions, *i.e.* the payment of penalty of three percent (3%) per month, but also to criminal prosecution if the employer fails to: (*a*) register its employees with the SSS; (*b*) deduct monthly contributions from the salaries/wages of its employees; or (*c*) remit to the SSS its employees' SSS contributions and/or loan payments after deducting the same from their respective salaries/wages. In this regard, Section

28 (f) of RA 8282 explicitly provides that "[i]f the act or omission penalized by this Act be committed by an association, partnership, corporation or any other institution, its managing head, directors or partners shall be liable to the penalties provided in this Act for the offense." Notably, the aforesaid punishable acts are considered *mala prohibita* and, thus, the defenses of good faith and lack of criminal intent are rendered immaterial.

3. **ID.; ID.; WHERE EMPLOYER'S FAILURE TO REMIT ITS EMPLOYEES' SSS CONTRIBUTIONS DESPITE WITHHOLDING SUCH AMOUNTS WAS ESTABLISHED, CONVICTION FOR THE CRIME OF VIOLATING RA 8282 IS PROPER; PENALTY.—** [A] judicious review of the records reveals that the prosecution — through a plethora of documentary evidence — had established by proof beyond reasonable doubt that during the period of July 1997 to June 2000, FENICS failed to remit its employees' SSS contributions despite withholding such amounts from their respective salaries. It is settled that "[f]actual findings of the RTC, when affirmed by the CA, are entitled to great weight and respect by this Court and are deemed final and conclusive when supported by the evidence on record," as in this case. In sum, the CA correctly affirmed petitioner's conviction for the crime of violation of Section 22 (a), in relation to Section 28 (h) and (f), of RA 8282.

APPEARANCES OF COUNSEL

Jephte S. Daliva for petitioner.
The Solicitor General for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated October 29, 2015 and the Resolution[3] dated

[1] *Rollo*, pp. 3-38.

[2] *Id.* at 45-59. Penned by Associate Justice Maria Elisa Sempio Diy with Associate Justices Ramon M. Bato, Jr. and Manuel M. Barrios concurring.

[3] *Id.* at 61-66.

May 19, 2016 of the Court of Appeals (CA) in CA-G.R. CR No. 35855, which affirmed the Decision[4] dated March 13, 2013 of the Regional Trial Court of Muntinlupa City, Branch 206 (RTC) in Crim. Case No. 01-303 finding petitioner Jorge B. Navarra (petitioner) guilty beyond reasonable doubt of the crime of violation of Section 22 (a), in relation to Section 28 (h) and (f), of Republic Act No. (RA) 8282.[5]

The Facts

The instant case stemmed from an Information[6] dated January 18, 2001 filed before the RTC charging, *inter alia*, petitioner of violation of Section 22 (a), in relation to Section 28 (h) and (f), of RA 8282, the accusatory portion of which states:

> The undersigned Assistant City Prosecutor accuses JORGE B. NAVARRA, x x x of the crime of violation of Section 22 (a), in relation to Section 28 (h) and (f)[,] of R.A. 1161, as amended, by R.A. 8282, committed as follows:
>
> That in or about and during the period comprised between July 1997 and June 2000, in the City of Muntinlupa, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being members of the board of directors of the Far East Network of Integrated Circuits Subcontractors (FENICS) Corporation, a covered member of the Social Security System (SSS), conspiring and confederating together and mutually helping and aiding one another, did then and there willfully, unlawfully and feloniously fail and refuse to remit and pay to the SSS the SS/Medicare/EC contributions withheld by them from the salaries of the FENICS employees, the counterpart SSS/Medicare/EC contributions of FENICS, as well as the salary/calamity loan

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[4] *Id*. at 251-262. Penned by Judge Patria A. Manalastas-de Leon.

[5] Entitled "AN ACT FURTHER STRENGTHENING THE SOCIAL SECURITY SYSTEM THEREBY AMENDING FOR THIS PURPOSE REPUBLIC ACT NO. 1161, AS AMENDED, OTHERWISE KNOWN AS THE SOCIAL SECURITY LAW," approved on May 1, 1997.

[6] *Rollo*, p. 245.

payments due to the SSS withheld by them, despite demands from them to remit and pay these obligations to the SSS.

Contrary to law.[7]

Upon motion,[8] the criminal case was dismissed as against petitioner's co-accused as it was found that they were no longer serving as members of FENICS's Board of Directors during the period when the aforesaid crime was allegedly committed.[9] On the other hand, the case pushed through against petitioner who pleaded "not guilty" to the charge.[10]

The prosecution alleged that from 1995 to 2000, petitioner served as the President and Chairman of the Board of Directors of Far East Network of Integrated Circuits Subcontractors Corporation (FENICS), an employer registered with the Social Security System (SSS) and with SSS ID No. 03-9020939-1.[11] Sometime in the years 1999 to 2002, a total of eleven (11) employees of FENICS filed separate complaints before the SSS, Alabang Branch against FENICS for the latter's non-remittance of their SSS contributions, prompting Account Officer Felicula B. Argamosa (Argamosa) to investigate the matter. Upon verification, Argamosa discovered that FENICS indeed failed to remit the SSS contributions of its employees from July 1997 to June 2000 and, thus, determined that FENICS's total unpaid obligations amounted to ₱10,077,656.24,[12] excluding the three percent (3%) monthly penalty mandated by law.[13] Despite numerous demands, FENICS failed to pay

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[7] *Id*.

[8] Not attached to the *rollo*.

[9] See Orders dated June 24, 2003 and May 2, 2012 both penned by Judge Patria A. Manalastas-De Leon; *rollo*, pp. 246-247 and 248, respectively.

[10] *Id*. at 46.

[11] *Id*.

[12] The total delinquency of ₱10,077,656.24 is broken down as follows: (*a*) ₱9,822,150.00 as contributions; (*b*) ₱120,612.24 as SL/CL amortizations; and (*c*) ₱134,894.00 as others. (See *id*. at 420.)

[13] See *id*. at 46-47.

its delinquencies, thus, constraining SSS to file an Affidavit-Complaint[14] against petitioner and his co-accused for the aforesaid crime before the Office of the City Prosecutor of Muntinlupa City (OCP).[15]

Meanwhile, pending preliminary investigation proceedings, petitioner sent a letter[16] dated October 25, 2000 to the SSS, offering to pay in installments FENICS' delinquent remittances from July 1997 to September 2000, attaching thereto two (2) postdated checks in the amount of ₱500,000.00 each and payable to SSS as payment, and promising to pay the remaining balance *via* 48 equal monthly installments.[17] While the first check was encashed, the second was dishonored for being drawn against a closed account. The SSS sent petitioner a notice of dishonor, but the latter ignored the same.[18] In addition, petitioner failed to follow through with the monthly installments.[19] Later on and while the case was pending trial, petitioner sent another letter[20] dated April 25, 2003 to the SSS, proposing a restructuring of FENICS's account, but the SSS rejected such proposal.[21]

In his defense, petitioner averred that while he is indeed the President and Chairman of the Board of Directors of FENICS, he never had custody of the employees' SSS contributions, as it was the Human Resources Department that was tasked to handle such matters. Further, he asserted that during the period when the alleged delinquencies were incurred, FENICS had already shut down. In this relation, petitioner narrated that: (*a*) from 1995-1996, FENICS diligently remitted the employees'

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[14] Dated September 19, 2000. *Id*. at 215-216.

[15] See *id*. at 47.

[16] See *id*. at 55 and 258-259.

[17] See *id*.

[18] See *id*. at 48 and 252.

[19] See *id*. at 56.

[20] See *id*. at 56 and 259-260.

[21] See *id*. at 48.

SSS contributions; (*b*) beginning 1997, its business started to decline due to the pull-out of one of its biggest customers eventually leading to its shut down; and (*c*) since FENICS was already non-operational, its employees were unable to work, and naturally, there could have been no wages/salaries from which the SSS contributions could be sourced.[22]

The RTC Ruling

In a Decision[23] dated March 13, 2013, the RTC found petitioner guilty beyond reasonable doubt of the crime charged and, accordingly, sentenced him to suffer the penalty of imprisonment for the indeterminate period of four (4) years and two (2) months of *prision correccional*, as minimum, to twenty (20) years of *reclusion temporal*, as maximum, and ordered him to pay the SSS the unpaid obligation of ₱9,577,656.2[24] plus three percent (3%) monthly interest reckoned from July 1997 until fully paid.[25]

In so ruling, the RTC did not give credence to petitioner's claim that the FENICS's operations had already shut down, considering that: (a) if this claim were indeed true, then it should have been raised from the moment the SSS sent its first demand letter to FENICS and before the filing of the case before the court; and (*b*) the same is inconsistent with the letters petitioner himself made in an attempt to amicably settle FENICS's SSS delinquencies. Further, the RTC took note of petitioner's letter dated April 25, 2003 wherein he proposed to settle FENICS's outstanding delinquencies with the SSS. In this regard, the RTC ratiocinated that since the said letter was made during the pendency of the instant criminal case, then

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[22] See *id*. at 48-50.

[23] *Id*. at 251-262.

[24] This figure was derived from the original delinquency of ₱10,077,656.24 less petitioner's check amounting to ₱500,000.00 encashed by the SSS (*i.e.*, ₱10,077,656.24 - ₱500,000.00 = ₱9,577,656.24)

[25] *Rollo*, p. 262.

the same should be considered as an implied admission of guilt on his part.[26]

Aggrieved, petitioner appealed[27] to the CA, arguing that: (*a*) the information against him was defective as it failed to properly charge him with a criminal offense; (*b*) he cannot be held liable for violation of Section 28 (h) of RA 8282 since under this provision, it is the employer, *i.e.*, FENICS, that should be charged with the same; (*c*) the prosecution failed to establish that the private complainants were indeed FENICS's employees; and (*d*) in any event, his criminal liability was already extinguished by his compromise agreement with the SSS.[28]

The CA Ruling

In a Decision[29] dated October 29, 2015, the CA affirmed petitioner's conviction *in toto*.[30] It held that: (*a*) petitioner's failure to raise the issue of the validity or regularity of the Information prior to entering his plea was deemed a waiver of any defect in the same; (*b*) since FENICS is a corporation, its failure to remit the SSS contributions of its employees subjects its officers, such as petitioner, to liability, especially since FENICS had already been dissolved; (*c*) the prosecution's documentary evidence clearly show that the private complainants were FENICS's employees; (*d*) petitioner's letters dated October 25, 2000 and April 25, 2003 proposing to settle FENICS's delinquencies should be viewed as an admission of guilt on his part; and (*e*) there was no compromise as SSS did not assent thereto, and even assuming there was one, such cannot extinguish petitioner's criminal liability.[31]

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[26] See *id*. at 256-261.

[27] See Appellant's Brief dated December 6, 2013; *id*. at 263-305.

[28] See *id*. at 51-52.

[29] *Id*. at 45-59.

[30] *Id*. at 59.

[31] See *id*. at 52-57.

Undaunted, petitioner moved for reconsideration,[32] which was, however, denied in a Resolution[33] dated May 19, 2016; hence, this petition.

The Issue Before the Court

The sole issue raised for the Court's resolution is whether or not the CA correctly upheld petitioner's conviction for violation of Section 22 (a), in relation to Section 28 (h) and (f), of RA 8282.

The Court's Ruling

The petition has no merit.

Preliminarily, the Court notes that petitioner assails the validity or regularity of the Information filed against him on the ground that it allegedly did not charge a criminal offense. However, as pointed out by the CA, petitioner never raised such issue prior to his arraignment. In fact, a reading of the records shows that petitioner only raised the same ***after*** he was convicted by the RTC and the case was already on appeal before the CA. Thus, the CA correctly ruled that his failure to object to the alleged defect in the Information before entering his plea amounted to a waiver of such defects, especially since objections as to matters of form or substance in the Information cannot be made for the first time on appeal.[34] Hence, petitioner can no longer be allowed to raise this issue before the Court.

Going now to the substantive issue of the instant case, a plain reading of the Information reveals that petitioner, as FENICS's President and Chairman of the Board of Directors at that time, is charged for violation of Section 22 (a), in relation to Section 28 (h)[35] and (f), of RA 8282 for FENICS's failure

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[32] See Motion for Reconsideration (Re: Decision Promulgated on 29 December 2015) dated November 16, 2015; *id*. at 67-87.

[33] *Id*. at 61-66.

[34] See *People v. Mamaruncas*, 680 Phil. 192, 209-210 (2012); citation omitted.

[35] Section 28 (h) of RA 8282 reads:

and/or refusal to remit its employees' SSS contributions to the SSS during the period from July 1997 to June 2000. Section 22 (a) of RA 8282 states:

Section 22. *Remittance of Contributions*. - (a) The contributions imposed in the preceding section shall be remitted to the SSS within the first ten (10) days of each calendar month following the month for which they are applicable or within such time as the Commission may prescribe. Every employer required to deduct and to remit such contributions shall be liable for their payment and if any contribution is not paid to the SSS as herein prescribed, he shall pay besides the contribution a penalty thereon of three percent (3%) per month from the date the contribution falls due until paid. If deemed expedient and advisable by the Commission, the collection and remittance of contributions shall be made quarterly or semi-annually in advance, the contributions payable by the employees to be advanced by their respective employers: *Provided*, That upon separation of an employee, any contribution so paid in advance but not due shall be credited or refunded to his employer.

x x x x x x x x x

Verily, prompt remittance of SSS contributions under the aforesaid provision is **mandatory**.[36] Any divergence from this rule subjects the employer not only to monetary sanctions, *i.e.* the payment of penalty of three percent (3%) per month, but also to criminal prosecution if the employer fails to: (*a*) register its employees with the SSS; (*b*) deduct monthly contributions from the salaries/wages of its employees; or (*c*) remit to the SSS its employees' SSS contributions and/or loan payments

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Section 28. *Penal Clause*. – x x x.

x x x x x x x x x

(h) Any employer who, after deducting the monthly contributions or loan amortizations from his employee's compensation, fails to remit the said deduction to the SSS within thirty (30) days from the date they became due, shall be presumed to have misappropriated such contributions or loan amortizations and shall suffer the penalties provided in Article Three hundred fifteen of the Revised Penal Code.

x x x x x x x x x

[36] *Mendoza v. People*, 640 Phil. 661, 666 (2010).

after deducting the same from their respective salaries/wages.[37] In this regard, Section 28 (f) of RA 8282 explicitly provides that "[i]f the act or omission penalized by this Act be committed by an association, partnership, corporation or any other institution, its managing head, directors or partners shall be liable to the penalties provided in this Act for the offense." Notably, the aforesaid punishable acts are considered *mala prohibita* and, thus, the defenses of good faith and lack of criminal intent are rendered immaterial.[38]

In this case, a judicious review of the records reveals that the prosecution — through a plethora of documentary evidence[39] — had established by proof beyond reasonable doubt that during the period of July 1997 to June 2000, FENICS failed to remit its employees' SSS contributions despite withholding such amounts from their respective salaries. It is settled that "[f]actual findings of the RTC, when affirmed by the CA, are entitled to great weight and respect by this Court and are deemed final and conclusive when supported by the evidence on record,"[40] as in this case.

In sum, the CA correctly affirmed petitioner's conviction for the crime of violation of Section 22 (a), in relation to Section 28 (h) and (f), of RA 8282.

WHEREFORE, the petition is **DENIED**. The Decision dated October 29, 2015 and the Resolution dated May 19, 2016 of the Court of Appeals in CA-G.R. CR No. 35855, which affirmed the Decision dated March 13, 2013 of the Regional Trial Court of Muntinlupa City, Branch 206 in Crim. Case No. 01-303 finding petitioner Jorge B. Navarra **GUILTY** beyond reasonable doubt of the crime of violation of Section 22 (a), in relation to Section 28 (h) and (f), of Republic Act No. 8282 is hereby **AFFIRMED**. Accordingly, petitioner Jorge B. Navarra is sentenced to suffer

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[37] See *Kua v. Sacupayo*, 744 Phil. 100, 109 (2014).

[38] See *Mendoza v. People*, *supra* note 36.

[39] See *rollo*, pp. 64-65.

[40] *Guevarra v. People*, 726 Phil. 186, 193 (2014).

the penalty of imprisonment for the indeterminate period of four (4) years and two (2) months of *prision correccional*, as minimum, to twenty (20) years of *reclusion temporal*, as maximum, and is ordered to pay the SSS the unpaid obligation of ₱9,577,656.24 plus three percent (3%) monthly interest reckoned from July 1997 until fully paid.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 225593. March 20, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **PALA TOUKYO *y* PADEP**, *accused-appellant.*

SYLLABUS

CRIMINAL LAW; REVISED PENAL CODE; CRIMINAL LIABILITY IS TOTALLY EXTINGUISHED BY THE DEATH OF THE ACCUSED PENDING APPEAL AS WELL AS CIVIL LIABILITY BASED SOLELY THEREON.— [I]t appears from the records that in a letter dated January 26, 2017, Director General Atty. Benjamin C. De Los Santos of the Bureau of Corrections informed the Court that Toukyo had already died on October 15, 2014, attaching thereto a Certification issued by Mr. Jose Ramon C. Padua, the Bureau's Officer-in-Charge for its Rehabilitation Operations Division, as well as the Death Report issued on even date by Dr. Ursicio D. Cenas, Medical Officer III of the same Bureau. x x x Thus, upon Toukyo's death pending appeal of his conviction, the criminal action is extinguished inasmuch as there is no longer a defendant to stand as the accused. Notably, there is no civil liability that

arose from this case, there being no private complainant to begin with.

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

Before the Court is an ordinary appeal[1] filed by accused-appellant Pala Toukyo *y* Padep (Toukyo) assailing the Decision[2] dated July 3, 2015 of the Court of Appeals (CA) in CA-G.R. CR HC No. 05510, which modified the Decision[3] dated March 6, 2012 of the Regional Trial Court of Baguio City, Branch 61 (RTC) in Criminal Case No. 31270-R, and accordingly, found him guilty beyond reasonable doubt of the crime of Illegal Possession of Dangerous Drugs, defined and penalized under Section 11 of Republic Act No. (RA) 9165,[4] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

On November 23, 2010, an Information[5] was filed before the RTC charging Toukyo of Illegal Sale of Dangerous Drugs, defined and penalized under Article 5 of RA 9165, *viz.*:

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[1] See Notice of Appeal dated August 18, 2015; *rollo*, pp. 18-19.

[2] *Id*. at 2-17. Penned by Associate Justice Noel G. Tijam (now a member of this Court) with Associate Justices Mario V. Lopez and Myra V. Garcia-Fernandez concurring.

[3] CA *rollo*, pp. 64-73. Penned by Presiding Judge Antonio C. Reyes.

[4] Entitled "AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES," approved on June 7, 2002.

[5] Records, pp. 1-2.

That on or about the 22nd day of November, 2010, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously deliver one (1) piece marijuana, a dangerous drug, in brick form wrapped in brown packaging tape weighing 1,000 grams, to Agent Ryan Peralta, a member of the PDEA-CAR who acted as poseur buyer, knowing the same to be a dangerous drug, in violation of the aforementioned provision of law.

CONTRARY TO LAW.[6]

The prosecution alleged that on November 22, 2010, Agent Ryan Peralta (Agent Peralta) of the Philippine Drug Enforcement Agency — Cordillera Administrative Region (PDEA-CAR) received information from a civilian informant regarding the illegal drug selling activities of Toukyo. After confirming *via* text message that Toukyo was indeed selling a brick of *marijuana* for ₱2,000.00, the PDEA-CAR sent a buy-bust team comprised of Agents Peralta, John Kay-an (Agent Kay-an), and Santino Awichen (Agent Awichen) to entrap Toukyo. In the afternoon of even date near a restaurant located at Burnham Park, Agent Peralta and the informant met with Toukyo. After Toukyo showed Agent Peralta the brick of *marijuana*, Agent Peralta executed the pre-arranged signal, leading to Toukyo's arrest. Agents Kay-an and Awichen immediately marked the seized *marijuana* at the place of arrest, and thereafter, Agent Peralta took the *marijuana* as well as the backpack where it is placed. Upon reaching the PDEA-CAR field office, Agent Peralta turned over the backpack containing the seized *marijuana* to Agent Dick Dayao (Agent Dayao), who in turn, executed the proper documentation and delivered the seized item to the Crime Laboratory.[7] A qualitative examination reveals that the backpack indeed contains one (1) kilogram/1,000 grams of *marijuana*.[8]

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[6] *Rollo*, p. 3.

[7] *Id*. at 3-5.

[8] *Id*. at 15. See also Initial Laboratory Report dated November 22, 2010 (Records, p. 12) and Chemistry Report No. D-83-2010 (Records, p. 36), both of which states that the *marijuana* examined had a net weight of "908.9 grams."

For his part, Toukyo invoked the defenses of denial and frame-up. He averred that on November 21, 2010, he was at the Igorot Garden when he overheard a certain Bonifacio and a companion regarding a possible work opportunity. After inquiring if he could join them in the said opportunity, Bonifacio replied in the affirmative and told him to wait for his text the next day. On the day he was arrested, Toukyo met with Bonifacio and they rode a jeepney together towards Burnham Park. Upon reaching Burnham Park, Bonifacio asked Toukyo to wait for him as he will just go to the restroom, with the former leaving his backpack to the latter. While holding Bonifacio's backpack, Toukyo was suddenly grabbed by police agents and asked where his companion is. Toukyo then pointed at the restroom but Bonifacio was no longer there, prompting the police to bring him to the PDEA-CAR office. Thereat, Toukyo was mauled to force him to admit ownership of the contents of the bag but he refused. After taking the cash from his wallet, Toukyo was fingerprinted, taken to the hospital for a "check-up," and returned to the PDEA-CAR office. After he again denied ownership of the contents of the backpack, he was brought to the detention cell and was told to wait for his transfer to the Baguio City Jail.[9]

The RTC Ruling

In a Decision[10] dated March 6, 2012, the RTC found Toukyo guilty beyond reasonable doubt of the crime charged, and accordingly, sentenced to suffer the penalty of life imprisonment and to pay a fine in the amount of ₱5,000,000.00.[11]

The RTC found that the PDEA-CAR agents successfully executed a buy-bust operation which resulted in Toukyo's arrest as the seller of the seized *marijuana*. In this regard, the RTC found untenable Toukyo's defenses of denial and frame-up in view of the clear and convincing evidence against him as well

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[9] *Id*. at 5-6.

[10] CA *rollo*, pp. 64-73.

[11] *Id*. at 73.

as the presumption of regularity in the official duties of the PDEA-CAR agents who arrested him.[12]

Aggrieved, Toukyo appealed to the CA.[13]

The CA Ruling

In a Decision[14] dated July 3, 2015, the CA modified Toukyo's conviction, finding him guilty beyond reasonable doubt of Illegal Possession of Dangerous Drugs defined and penalized under Section 11 of RA 9165, and accordingly, sentenced him to suffer the penalty of life imprisonment and to pay a fine in the amount of ₱500,000.00.[15]

Contrary to the RTC's findings**,** the CA ruled that there was no valid buy-bust operation that took place, especially in light of the fact that upon seeing the brick of *marijuana*, Agent Peralta prematurely executed the pre-arranged signal which led to Toukyo's arrest. Since no actual transaction took place before Toukyo's arrest, *i.e.*, the exchange of the *marijuana* and the marked money between the poseur-buyer and the seller, Toukyo cannot be convicted of the crime of Illegal Sale of Dangerous Drugs. This notwithstanding, the CA convicted Toukyo of the crime of Illegal Possession of Dangerous Drugs defined and penalized under Section 11 of RA 9165, as: (*a*) he clearly had no authority to possess the one (1) kilogram/1,000 grams worth of *marijuana* seized from him; and (*b*) case law has consistently ruled that the crime of Illegal Possession of Dangerous Drugs is necessarily included in the crime of Illegal Sale of Dangerous Drugs, the crime charged in the Information.[16]

In this relation, the CA held that the PDEA-CAR agents complied with the chain of custody rule, considering that: (*a*) the

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[12] *Id*. at 65-73.

[13] See Brief for the Accused-Appellant dated October 17, 2012; CA *rollo*, pp. 32-62.

[14] *Rollo*, pp. 2-17.

[15] *Id*. at 16.

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

marking of the seized items were immediately made at the scene of the arrest; (*b*) Agent Peralta took custody of the seized *marijuana* and handed it over to Agent Dayao; (*c*) Agent Dayao conducted an actual inventory of the seized item in the presence of and signed by the representatives of the DOJ, barangay, and the media; and (*d*) thereafter, Agent Dayao delivered the seized item to the Crime Laboratory where it was received by the Forensic Chemical Officer, Police Senior Inspector Alex Diwas Biadang, Jr.[17]

Hence, the instant appeal.

The Issue Before the Court

The core issue for the Court's resolution is whether or not Toukyo is guilty beyond reasonable doubt of the crime of Illegal Possession of Dangerous Drugs, defined and penalized under Section 11 of RA 9165.

The Court's Ruling

At the outset, it appears from the records that in a letter[18] dated January 26, 2017, Director General Atty. Benjamin C. De Los Santos of the Bureau of Corrections informed the Court that Toukyo had already died on October 15, 2014, attaching thereto a Certification[19] issued by Mr. Jose Ramon C. Padua, the Bureau's Officer-in-Charge for its Rehabilitation Operations Division, as well as the Death Report[20] issued on even date by Dr. Ursicio D. Cenas, Medical Officer III of the same Bureau.

Therefore, the criminal case against Toukyo, including the instant appeal, is hereby dismissed.

Under Paragraph 1, Article 89 of the Revised Penal Code, the consequences of Toukyo's death are as follows:

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[17] *Id*. at 7-12. See also records, pp. 12 and 36.

[18] *Id*. at 28.

[19] *Id*. at 29.

[20] *Id*. at 30.

Art. 89. *How criminal liability is totally extinguished*. — Criminal liability is totally extinguished:

1. By the death of the convict, as to the personal penalties; and as to pecuniary penalties, liability therefore is extinguished only when the death of the offender occurs before final judgment.

In *People v. Bayotas*,[21] the Court eloquently summed up the effects of the death of an accused pending appeal on his liabilities, as follows:

From this lengthy disquisition, we summarize our ruling herein:

1. Death of the accused pending appeal of his conviction extinguishes his criminal liability as well as the civil liability based solely thereon. As opined by Justice Regalado, in this regard, "the death of the accused prior to final judgment terminates his criminal liability and only the civil liability directly arising from and based solely on the offense committed, *i.e.*, civil liability *ex delicto* in *senso strictiore*."

2. Corollarily, the claim for civil liability survives notwithstanding the death of accused, if the same may also be predicated on a source of obligation other than delict. Article 1157 of the Civil Code enumerates these other sources of obligation from which the civil liability may arise as a result of the same act or omission:

a) Law

b) Contracts

c) Quasi-contracts

d) x x x

e) Quasi-delicts

3. Where the civil liability survives, as explained in Number 2 above, an action for recovery therefor may be pursued but only by way of filing a separate civil action and subject to Section 1, Rule 111 of the 1985 Rules on Criminal Procedure as amended. This separate civil action may be enforced either against the executor/administrator or the estate of the accused, depending on the source of obligation upon which the same is based as explained above.

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[21] 306 Phil. 266 (1994).

4. Finally, the private offended party need not fear a forfeiture of his right to file this separate civil action by prescription, in cases where during the prosecution of the criminal action and prior to its extinction, the private-offended party instituted together therewith the civil action. In such case, the statute of limitations on the civil liability is deemed interrupted during the pendency of the criminal case, conformably with provisions of Article 1155 of the Civil Code, that should thereby avoid any apprehension on a possible privation of right by prescription.[22]

Thus, upon Toukyo's death pending appeal of his conviction, the criminal action is extinguished inasmuch as there is no longer a defendant to stand as the accused.[23] Notably, there is no civil liability that arose from this case, there being no private complainant to begin with.

WHEREFORE, the Court **RESOLVES** to: (*a*) **SET ASIDE** the appealed Decision dated July 3, 2015 of the Court of Appeals (CA) in CA-G.R. CR HC No. 05510; (*b*) **DISMISS** Criminal Case No. 31270-R before the Regional Trial Court of Baguio City, Branch 61 by reason of the death of accused-appellant Pala Toukyo *y* Padep; and (*c*) **DECLARE** the instant case **CLOSED** and **TERMINATED**. No costs.

SO ORDERED.

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

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[22] *Id*. at 282-283, citations omitted.

[23] See *People v. Paras*, G.R. No. 192912, October 22, 2014, 739 SCRA 179, 184, citation omitted.

EN BANC

[G.R. No. 193719. March 21, 2017]

SAMSON R. PACASUM, SR., *petitioner, vs.* **Atty. MARIETTA D. ZAMORANOS,** *respondent.*

SYLLABUS

1. **CIVIL LAW; MUSLIM CODE (P.D. NO. 1083); SEVEN MODES OF EFFECTING DIVORCE; EFFECTS WHEN DIVORCE BECOMES IRREVOCABLE.—** There are seven modes of effecting divorce under the Muslim Code, namely: 1) repudiation of the wife by the husband (*talaq*); 2) vow of continence by the husband (*ila*); 3) injurious assimilation of the wife by the husband (*zihar*); 4) acts of imprecation (*lian*); 5) redemption by the wife (*khul'*); 6) exercise by the wife of the delegated right to repudiate (*tafwid*); or 7) judicial decree (*faskh*). The divorce becomes irrevocable after observance of a period of waiting called *idda*, the duration of which is three monthly courses after termination of the marriage by divorce. Once irrevocable, the divorce has the following effects: the severance of the marriage bond and, as a consequence, the spouses may contract another marriage; loss of the spouses' mutual rights of inheritance; adjudication of the custody of children in accordance with Article 78 of the Muslim Code; recovery of the dower by the wife from the husband; continuation of the husband's obligation to give support in accordance with Article 67; and the dissolution and liquidation of the conjugal partnership, if stipulated in the marriage settlements.

2. **ID.; ID.; P.D. NO. 1083 *VIS-À-VIS* SPECIAL RULES OF PROCEDURE IN *SHARI'A* COURTS AND RULES OF COURT; *SHARI'A* COURTS HAVE JURISDICTION OVER ACTIONS FOR DIVORCE; DECISIONS THEREOF ARE APPEALABLE TO *SHARI'A* DISTRICT COURTS WITHIN 15 DAYS FROM RECEIPT OF THE DECISION; DIVORCE DECREES ARE CONSIDERED JUDGMENTS *IN REM*.—** Jurisdiction over actions for divorce is vested upon the *Shari'a* Circuit Courts, whose decisions may be appealed to the *Shari'a* District Courts. Under the Special Rules of Procedure in *Shari'a* Courts, an appeal must be made within a

reglementary period of 15 days from receipt of judgment. The judgment shall become final and executory after the expiration of the period to appeal, or upon decision of the *Shari'a* District Courts on appeal from the *Shari'a* Circuit Court. The effect of a final judgment is stated under Section 47, Rule 39 of the Rules of Court, which applies suppletorily to civil proceedings in *Shari'a* Courts. x x x The provision embodies the principle of *res judicata* in judgments *in rem*. Suits that affect the personal status of a person are in the nature of proceedings *in rem*. Divorce suits fall under this category, and divorce decrees are considered judgments *in rem*. Final judgments *in rem* bar indifferently all who might be minded to make an objection of any sort against the right sought to be established, and anyone in the world who has a right to be heard on the strength of alleged facts which, if true, show an inconsistent interest. Simply put, a judgment *in rem* is binding upon the whole world.

3. **ID.; ID.; ID.; THE DIVORCE DECREE CANNOT BE THE SUBJECT OF A COLLATERAL ATTACK; AS THE DIVORCE DECREE AFFECTS THE CIVIL STATUS OF RESPONDENT, IT HAS BECOME *RES JUDICATA* WHICH PETITIONER CANNOT IMPUGN IN AN ADMINISTRATIVE CASE.—** [W]e agree with the CA that the Decree of Divorce cannot be the subject of a collateral attack. It is evident that Pacasum's persistence in pursuing the administrative case against Zamoranos on the sole ground of bigamy is premised on the supposition that the latter's marriage with De Guzman was still subsisting when she contracted marriage with Pacasum, which effectively challenges the *Shari'a* Circuit Court's divorce judgment. As we have noted, however, the judgment of the court is valid on its face; hence, a collateral attack in this case is not allowed. The collateral unassailability of the divorce is a necessary consequence of its finality. It "cannot now be changed in any proceeding; and much less is it subject to the collateral attack which is here made upon it." As no appeal was taken with respect to the divorce decree, it must be conceded to have full force and effect. The decree, insofar as it affects the civil status of Zamoranos, has therefore become *res judicata*, subject to no collateral attack. Furthermore, the proscription against collateral attacks similarly applies to matters involving the civil status of persons. Thus, we have held that collateral attacks against the legitimacy and filiation of children, adoption, and the validity of marriages (except void marriages) are not

allowed. Zamoranos' civil status as "divorced" belongs to the same category, and Pacasum cannot impugn it in an administrative case filed with the CSC, where the sole purpose of the proceedings is to determine the administrative liability, if any, of Zamoranos.

4. **REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; DOCTRINE OF CONCLUSIVENESS OF JUDGMENT, APPLIED; THE PARTIES ARE BOUND BY THE EARLIER RULING OF THE COURT UPHOLDING THE VALIDITY OF RESPONDENT'S DIVORCE.—** [W]e have already passed upon the same Decree of Divorce in the earlier consolidated cases also involving Pacasum and Zamoranos. In *Zamoranos v. People*, which involved a criminal charge for bigamy filed by Pacasum against Zamoranos based on her earlier marriage to De Guzman, we granted Zamoranos' motion to quash the criminal information for bigamy. We held that, based on the case records, "[i]t stands to reason therefore that Zamoranos' divorce from De Guzman, as confirmed by an *Ustadz* and Judge Jainul of the [*Shari'a*] Circuit Court, and attested to by Judge Usman, was valid, and, thus, entitled her to remarry Pacasum x x x." Following the doctrine of conclusiveness of judgment, the parties are now bound by this earlier finding. x x x Here, Pacasum's administrative complaint is wholly dependent on the continuing validity of the marriage between Zamoranos and De Guzman. However, we have already recognized that this marriage was dissolved in accordance with the Muslim Code in the case of *Zamoranos v. People*, which also involved the herein parties. Following the doctrine of conclusiveness of judgment, the parties are already bound by our previous ruling on that specific issue, that is, Zamoranos' divorce from De Guzman was valid which enabled her to contract the subsequent marriage with Pacasum. As a result, Pacasum's complaint for immorality based on Zamoranos' alleged bigamy has no leg to stand on.

APPEARANCES OF COUNSEL

Voltaire I. Rovira for petitioner.
Pizarras & Associates Law Offices for respondent.

DECISION

JARDELEZA, *J*.:

This petition for review on *certiorari*[1] challenges the Amended Decision[2] dated August 31, 2010 of the Court of Appeals (CA) in CA-G.R. SP No. 01945-MIN, which affirmed the resolutions of the Civil Service Commission (CSC) dismissing petitioner's administrative complaint against respondent.

I

Petitioner Samson R. Pacasum (Pacasum) and respondent Atty. Marietta D. Zamoranos (Zamoranos) were married on December 28, 1992.[3] However, Pacasum discovered that Zamoranos was previously married to one Jesus De Guzman (De Guzman) on July 30, 1982.[4] On December 14, 2004, Pacasum filed an administrative complaint for disgraceful and immoral conduct against Zamoranos on the ground that she had contracted a bigamous marriage.[5]

In her answer to the complaint, Zamoranos raised as a defense the dissolution of her previous marriage under the Code of Muslim Personal Laws of the Philippines (the Muslim Code).[6] Prior to her marriage with De Guzman, she had converted to Islam. In 1983, however, she and De Guzman divorced, as evidenced by the Decree of Divorce[7] issued by Presiding Judge Kaudri L. Jainul of the *Shari'a* Circuit Court of Isabela, Basilan in Case No. 407-92.[8]

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[1] *Rollo*, pp. 3-28.

[2] *Id*. at 117-124. Penned by Associate Justice Edgardo A. Camello with Associate Justices Romulo V. Borja and Angelita A. Gacutan, concurring.

[3] *Id*. at 156.

[4] *Id*. at 165.

[5] *Id*. at 162-163.

[6] Presidential Decree No. 1083.

[7] *Rollo*, pp. 342-343.

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

The CSC dismissed the complaint because Pacasum failed to assail the existence, much less validity, of the Decree of Divorce. The CSC ruled that since Zamoranos' supposedly subsisting marriage with De Guzman is the sole basis for Pacasum's charge of immorality, the existence of the Decree of Divorce is fatal to Pacasum's complaint.[9] Pacasum moved for reconsideration, but this was denied by the CSC.[10]

On appeal, the CA initially granted the petition.[11] The CA relied on the judicial admissions of Zamoranos in the various cases between her and Pacasum. In multiple pleadings, Zamoranos had stated that she was a Roman Catholic. On reconsideration, however, the CA corrected itself and admitted error in applying the admissions made in 1999 to the previous marriage contracted in 1982. The pleadings showed that the admissions were made "during and after [Zamoranos'] marriage to Pacasum."[12] It recognized as undisputed the fact that the previous marriage between Zamoranos and De Guzman was solemnized and entered into under Muslim rites. The CA held that "a collateral attack against [the Decree of Divorce], much less one embedded merely as an incident to an administrative complaint lodged before a mere quasi-judicial tribunal such as the [CSC], cannot be countenanced x x x."[13]

Pacasum then filed this petition for review on *certiorari* arguing that the *Shari'a* court had no jurisdiction to dissolve Zamoranos' first marriage. Consequently, her marriage to Pacasum was bigamous.

II

The Muslim Code recognizes divorce in marriages between Muslims, and mixed marriages wherein only the male party is

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[9] *Id*. at 142-149.

[10] *Id*. at 151-155.

[11] *Id*. at 29-48. Decision dated February 26, 2010, penned by Associate Justice Danton Q. Bueser with Associate Justices Edgardo A. Camello and Angelita A. Gacutan, concurring.

[12] *Id*. at 122.

[13] *Id*. at 121.

a Muslim and the marriage is solemnized in accordance with Muslim law or the Muslim Code in any part of the Philippines.[14] At present, this is the only law in the Philippines that allows domestic divorce.[15]

There are seven modes of effecting divorce under the Muslim Code, namely: 1) repudiation of the wife by the husband (*talaq*); 2) vow of continence by the husband (*ila*); 3) injurious assimilation of the wife by the husband (*zihar*); 4) acts of imprecation (*lian*); 5) redemption by the wife (*khul'*); 6) exercise by the wife of the delegated right to repudiate (*tafwid*); or 7) judicial decree (*faskh*).[16] The divorce becomes irrevocable after observance of a period of waiting called *idda*,[17] the duration of which is three monthly courses after termination of the marriage by divorce.[18] Once irrevocable, the divorce has the following effects: the severance of the marriage bond and, as a consequence, the spouses may contract another marriage; loss of the spouses' mutual rights of inheritance; adjudication of

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[14] Presidential Decree No. 1083, Art. 13(1).

[15] In 1917, the legislature passed Act No. 2710, which recognized divorce in the Philippine Islands. It was repealed by a new divorce law, Executive Order No. 141, during the Japanese occupation. Under Gen. Douglas MacArthur's Proclamation of October 23, 1944, which declared that "all laws, regulations and processes of any other government in the Philippines than that of the said Commonwealth are null and void and without legal effect in areas of the Philippines free of enemy occupation and control," Act No. 2710 was deemed revived [*Baptista v. Castañeda*, 76 Phil. 461 (1946)]. Act No. 2710 was finally repealed by the New Civil Code, which only allowed annulment and legal separation. Before the effectivity of the New Civil Code, however, the legislature passed Republic Act No. 394, which recognized divorce according to Muslim practices for a period of 20 years, or from 1949 to 1969. Muslim divorce was again allowed following the promulgation of Presidential Decree No. 1083, the Code of Muslim Personal Laws, in 1977. The Family Code of the Philippines, which took effect in 1988, retained the policy of the New Civil Code that allows only annulment and legal separation.

[16] Presidential Decree No. 1083, Art. 45.

[17] Presidential Decree No. 1083, Art. 56.

[18] Presidential Decree No. 1083, Art. 57(1)(b).

the custody of children in accordance with Article 78 of the Muslim Code; recovery of the dower by the wife from the husband; continuation of the husband's obligation to give support in accordance with Article 67; and the dissolution and liquidation of the conjugal partnership, if stipulated in the marriage settlements.[19]

Jurisdiction over actions for divorce is vested upon the *Shari'a* Circuit Courts,[20] whose decisions may be appealed to the *Shari'a* District Courts.[21] Under the Special Rules of Procedure in *Shari'a* Courts,[22] an appeal must be made within a reglementary period of 15 days from receipt of judgment.[23] The judgment shall become final and executory after the expiration of the period to appeal,[24] or upon decision of the *Shari'a* District Courts on appeal from the *Shari'a* Circuit Court.[25]

The effect of a final judgment is stated under Section 47, Rule 39 of the Rules of Court, which applies suppletorily to civil proceedings in *Shari'a* Courts.[26] Paragraph (a) thereof provides:

(a) In case of a judgment or final order against a specific thing, or in respect to the probate of a will, or the administration of the estate of a deceased person, or **in respect to the** personal, political, or legal condition or **status of a particular person or his relationship to another, the judgment or final order is *conclusive* upon** the title to the thing, the will or administration, or the condition, **status or relationship of the person**; however, the probate of a will or granting of letters of administration shall only be *prima facie* evidence of the death of the testator or intestate[.] (Emphasis supplied.)

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[19] Presidential Decree No. 1083, Arts. 54 & 55.

[20] Presidential Decree No. 1083, Art. 155.

[21] Presidential Decree No. 1083, Art. 144(1).

[22] *Ijra-At Al Mahakim Al Shari'a*.

[23] Special Rules of Procedure in *Shari'a* Courts, Sec. 9.

[24] Special Rules of Procedure in *Shari'a* Courts, Sec. 8(2).

[25] Presidential Decree No. 1083, Art. 145.

[26] Special Rules of Procedure in *Shari'a* Courts, Sec. 17.

The provision embodies the principle of *res judicata* in judgments *in rem*. Suits that affect the personal status of a person are in the nature of proceedings *in rem*. Divorce suits fall under this category, and divorce decrees are considered judgments *in rem*.[27] Final judgments *in rem* bar indifferently all who might be minded to make an objection of any sort against the right sought to be established, and anyone in the world who has a right to be heard on the strength of alleged facts which, if true, show an inconsistent interest.[28] Simply put, a judgment *in rem* is binding upon the whole world.

As a rule, a judgment could not be collaterally impeached or called in question if rendered in a court of competent jurisdiction, but must be properly attacked in a direct action.[29] A collateral attack is defined as an attack, made as an incident in another action, whose purpose is to obtain a different relief.[30] This is proper only when the judgment, on its face, is null and void, as where it is patent that the court which rendered said judgment has no jurisdiction.[31] But "[w]here a court has jurisdiction of the parties and the subject matter, its judgment, x x x is conclusive, as long as it remains unreversed and in force, and cannot be impeached collaterally."[32]

The reason for the general rule against a collateral attack on a judgment of a court having jurisdiction is that public policy

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[27] *Co y Quing Reyes v. Republic*, 104 Phil. 889 (1958); See also *Romualdez-Licaros v. Licaros*, G.R. No. 150656, April 29, 2003, 401 SCRA 762, where we authorized the service of summons applicable to proceedings *in rem* or *quasi in rem* to an action for declaration of nullity of his marriage under the Family Code.

[28] *Risos-Vidal v. Commission on Elections*, G.R. No. 206666, January 21, 2015, 747 SCRA 210, 356 (Concurring Opinion of *J*. Brion).

[29] *Zafra de Alviar and Alviar v. Ct. of 1st Inst. of La Union*, 64 Phil. 301, 310 (1937).

[30] *Go v. Echavez*, G.R. No. 174542, August 3, 2015, 764 SCRA 505, 518.

[31] *Co v. Court of Appeals*, G.R. No. 93687, May 6, 1991, 196 SCRA 705, 711.

[32] *Herrera v. Barretto and Joaquin*, 25 Phil. 245, 256 (1913).

forbids an indirect collateral contradiction or impeachment of such a judgment. It is not a mere technicality, but is a rule of fundamental and substantial justice which should be followed by all courts.[33]

With respect to the divorce between Zamoranos and De Guzman, the Decree of Divorce was issued on June 18, 1992 by Judge Kaudri L. Jainul, who was the presiding judge of the *Shari'a* Circuit Court, Third *Shari'a* District, Isabela, Basilan.[34] It states that both Zamoranos and De Guzman appeared when the case was called for hearing. It further recites that both parties converted to the faith of Islam prior to their Muslim wedding, and that it was Zamoranos who sought divorce by *tafwid*, with De Guzman having previously delegated his authority to exercise *talaq*.[35] Thus, on its face, the divorce appears valid, having been issued for a cause recognized under the applicable law by a competent court having jurisdiction over the parties. And, as neither party interposed an appeal, the divorce has attained finality.

Given the foregoing, we agree with the CA that the Decree of Divorce cannot be the subject of a collateral attack. It is evident that Pacasum's persistence in pursuing the administrative case against Zamoranos on the sole ground of bigamy is premised on the supposition that the latter's marriage with De Guzman was still subsisting when she contracted marriage with Pacasum, which effectively challenges the *Shari'a* Circuit Court's divorce judgment. As we have noted, however, the judgment of the court is valid on its face; hence, a collateral attack in this case is not allowed. The collateral unassailability of the divorce is a necessary consequence of its finality. It "cannot now be changed in any proceeding; and much less is it subject to the collateral attack which is here made upon it."[36] As no appeal was taken

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[33] *Ching v. San Pedro College of Business Administration*, G.R. No. 213197, October 21, 2015, 773 SCRA 570, 589.

[34] *Rollo*, p. 343.

[35] *Id*. at 342.

[36] *Chereau v. Fuentabella*, 43 Phil. 216, 220 (1922).

with respect to the divorce decree, it must be conceded to have full force and effect.[37] The decree, insofar as it affects the civil status of Zamoranos, has therefore become *res judicata*, subject to no collateral attack.

Furthermore, the proscription against collateral attacks similarly applies to matters involving the civil status of persons. Thus, we have held that collateral attacks against the legitimacy and filiation of children,[38] adoption,[39] and the validity of marriages (except void marriages)[40] are not allowed. Zamoranos' civil status as "divorced" belongs to the same category, and Pacasum cannot impugn it in an administrative case filed with the CSC, where the sole purpose of the proceedings is to determine the administrative liability, if any, of Zamoranos.

III

Finally, we have already passed upon the same Decree of Divorce in the earlier consolidated cases also involving Pacasum and Zamoranos. In *Zamoranos v. People*,[41] which involved a criminal charge for bigamy filed by Pacasum against Zamoranos based on her earlier marriage to De Guzman, we granted Zamoranos' motion to quash the criminal information for bigamy. We held that, based on the case records, "[i]t stands to reason therefore that Zamoranos' divorce from De Guzman, as confirmed by an *Ustadz* and Judge Jainul of the [*Shari'a*] Circuit Court,

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[37] *Imperial v. Muñoz*, G.R. No. L-30787, August 29, 1974, 58 SCRA 678, 683-684.

[38] *Geronimo v. Santos*, G.R. No. 197099, September 28, 2015, 771 SCRA 508; *Reyes v. Mauricio*, G.R. No. 175080, November 24, 2010, 636 SCRA 79; *Sayson v. Court of Appeals*, G.R. Nos. 89224-25, January 23, 1992, 205 SCRA 321.

[39] *Reyes v. Sotero*, G.R. No. 167405, February 16, 2006, 482 SCRA 520; *Austria v. Reyes*, G.R. No. L-23079, February 27, 1970, 31 SCRA 754.

[40] *Braza v. The City Civil Registrar of Himamaylan City, Negros Occidental*, G.R. No. 181174, December 4, 2009, 607 SCRA 638; *De Castro v. Assidao-De Castro*, G.R. No. 160172, February 13, 2008, 545 SCRA 162.

[41] G.R. Nos. 193902, 193908 and 194075, June 1, 2011, 650 SCRA 304.

and attested to by Judge Usman, was valid, and, thus, entitled her to remarry Pacasum x x x."[42] Following the doctrine of conclusiveness of judgment, the parties are now bound by this earlier finding.

In *Tala Realty Services Corp., Inc. v. Banco Filipino Savings and Mortgage Bank*,[43] we explained the doctrine of conclusiveness of judgment, otherwise known as "preclusion of issues" or "collateral estoppel":

> Conclusiveness of judgment is a species of *res judicata* and it applies where there is identity of parties in the first and second cases, but there is no identity of causes of action. **Any right, fact, or matter in issue directly adjudicated or necessarily involved in the determination of an action before a competent court in which judgment is rendered on the merits is conclusively settled by the judgment therein, and cannot again be litigated between the parties and their privies whether or not the claim, demand, purpose, or subject matter of the two actions is the same.** Thus, if a particular point or question is in issue in the second action, and the judgment will depend on the determination of that particular point or question, a former judgment between the same parties or their privies will be final and conclusive in the second if that same point or question was in issue and adjudicated in the first suit. Identity of cause of action is not required but merely identity of issue.
>
> In this case, the rule on conclusiveness of judgment is squarely applicable because Banco Filipino's action for reconveyance is solely based on a trust agreement which, it cannot be overemphasized, has long been declared void in a previous action that involved both Tala Realty and Banco Filipino, *i.e.*, G.R. No. 137533. In other words, the question on the validity of the trust agreement has been finally and conclusively settled. Hence, this question cannot be raised again even in a different proceeding involving the same parties. Although the action instituted in this case is one for reconveyance, which is technically different from the ejectment suit originally instituted by Tala Realty in G.R. No. 137533, "the concept of conclusiveness of judgment still applies because under this principle, the identity of

[42] *Id*. at 325.

[43] G.R. No. 181369, June 22, 2016.

causes of action is not required but merely identity of issues. Simply put, **conclusiveness of judgment bars the relitigation of particular facts or issues in another litigation between the same parties on a different claim or cause of action.**"[44] (Emphasis supplied; citations omitted.)

Here, Pacasum's administrative complaint is wholly dependent on the continuing validity of the marriage between Zamoranos and De Guzman. However, we have already recognized that this marriage was dissolved in accordance with the Muslim Code in the case of *Zamoranos v. People*, which also involved the herein parties. Following the doctrine of conclusiveness of judgment, the parties are already bound by our previous ruling on that specific issue, that is, Zamoranos' divorce from De Guzman was valid which enabled her to contract the subsequent marriage with Pacasum. As a result, Pacasum's complaint for immorality based on Zamoranos' alleged bigamy has no leg to stand on.

WHEREFORE, the petition is **DENIED**. The Amended Decision dated August 31, 2010 of the Court of Appeals in CA-G.R. SP No. 01945-MIN is **AFFIRMED**.

SO ORDERED.

Carpio, Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, del Castillo, Mendoza, Reyes, Perlas-Bernabe, Leonen, Caguioa, Martires, and *Tijam, JJ.,* concur.

Sereno, C.J., no part.

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[44] *Id.*

EN BANC

[G.R. No. 211937. March 21, 2017]

ROSEMARIE B. BINTUDAN, *petitioner, vs.* **THE COMMISSION ON AUDIT,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45; AVAILABLE ONLY AS A REMEDY FROM A DECISION OR FINAL ORDER OF A LOWER COURT.—** [T]he petitioner has filed a petition for review on *certiorari* under Rule 45 to assail the decision of the COA *en banc*. Such remedy is improper because her proper remedy is a petition for *certiorari* under Rule 64 of the *Rules of Court*. We emphasize that an appeal by petition for review on *certiorari* under Rule 45 is available only as a remedy from a decision or final order of a **lower court**. This limitation is imposed by Section 5 of Article VIII of the Constitution x x x.

2. **POLITICAL LAW; CONSTITUTIONAL COMMISSIONS; COMMISSION ON AUDIT (COA); THE COA's DECISIONS MAY BE BROUGHT TO THE SUPREME COURT ON *CERTIORARI* BY THE AGGRIEVED PARTY WITHIN THIRTY DAYS FROM RECEIPT OF A COPY THEREOF.—** Section 7, Article IX of the 1987 Constitution governs the review of the COA, in that the COA's decisions, final orders or rulings may be brought to the Supreme Court on *certiorari* by the aggrieved party within 30 days from receipt of a copy thereof. To differentiate this review from the special civil action for *certiorari* under Rule 65, the Court incorporated a new rule (Rule 64) in the 1997 revision of the *Rules of Court* under the title *Review of Judgments and Final Orders or Resolutions of the Commission on Elections and the Commission on Audit*. Except for the period for bringing the petition for review, Rule 64 is a replication of the provisions of Rule 65 on the special civil action for *certiorari.*

3. **REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; *CERTIORARI*; ONLY WHEN THE COA HAS**

ACTED WITHOUT OR IN EXCESS OF JURISDICTION, OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION, MAY THE SUPREME COURT ENTERTAIN AND GRANT A PETITION FOR *CERTIORARI* BROUGHT TO ASSAIL ITS ACTIONS.— The Constitution has made the COA "the guardian of public funds, vesting it with broad powers over all accounts pertaining to government revenue and expenditures and the uses of public funds and property, including the exclusive authority to define the scope of its audit and examination, establish the techniques and methods for such review, and promulgate accounting and auditing rules and regulations." Only when the COA has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, may this Court entertain and grant a petition for *certiorari* brought to assail its actions. Herein, however, the petition for review is premised on the supposed misappreciation of facts by the COA. A careful examination of the records indicates that the COA committed no grave abuse of discretion in issuing the assailed decision. The COA thereby simply served its constitutional mandate and justly applied the pertinent laws and rules. It relied on the findings of negligence against the petitioner based on the ATL's investigation and inspection report on her handling of the funds. Such findings are to be respected because they were supported by substantial evidence.

4. **POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; NEGLIGENCE; FAILURE OF A DISBURSING OFFICER TO PROPERLY DISCHARGE HER RESPONSIBILITY TO SAFEGUARD THE PUBLIC FUNDS ENTRUSTED TO HER, A CASE OF.—** Negligence is the omission to do something that a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or the doing of something which a prudent man and reasonable man could not do. Stated otherwise, negligence is want of care required by the circumstances. Negligence is, therefore, a relative or comparative concept. Its application depends upon the situation the parties are in, and the degree of care and vigilance which the prevailing circumstances reasonably require. Conformably with this understanding of negligence, the diligence the law requires of an individual to observe and exercise varies according

to the nature of the situation in which she happens to be, and the importance of the act that she has to perform. The findings show that the petitioner was severely negligent in the performance of her duties as the disbursing officer. She did not properly discharge her responsibility to safeguard the public funds entrusted to her.

APPEARANCES OF COUNSEL

Garcia and Partners Law Office for petitioner.
The Solicitor General for respondent.

D E C I S I O N

BERSAMIN, *J.*:

An accountable officer who tolerated the posting of the number combination of the safety vault where the funds of the office in her custody were kept is guilty of negligence, and cannot be relieved of her accountability.

The Case

Under challenge is Decision No. 2012-174 issued on October 29, 2012,[1] whereby the Commission on Audit (COA), Commission Proper, affirmed Decision No. 2009-170 rendered on March 31, 2009 by the COA Legal Services Sector (LSS) denying the petitioner's request for relief from accountability for the loss of cash pertaining to her office amounting to ₱114,907.30 due to robbery.[2]

Antecedents

The petitioner occupied the position of Disbursing Officer II at the Department of Interior and Local Government-Cordillera Administrative Region (DILG-CAR) Provincial Office in Lagawe, Ifugao at the time material to this case.[3]

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[1] *Rollo,* pp. 13-16.

[2] *Id.* at 18-21.

[3] *Id.* at 22.

On the night of March 16, 2005, unidentified suspects gained access inside and robbed the DILG-CAR Provincial Office after forcibly destroying the windows and the steel grills. They carted away the contents of the vault amounting to ₱114,907.30. By her letter dated March 17, 2005, the petitioner reported the robbery to the Provincial Office in Lagawe, Ifugao Police as well as to the Audit Team Leader (ATL) of DILG-CAR. On April 6, 2005, she requested the ATL to be relieved from liability over the stolen money.[4]

In its report dated May 5, 2005, the Lagawe Police Station confirmed the robbery and declared that efforts exerted to identify the suspects and recover the stolen funds had remained futile.[5]

In its own investigation and inspection report, the ATL similarly found the robbery to have occurred based on its ascertainment of the following:

a) While the outer door of the brown filing steel cabinet was forcibly opened, the safe/vault was opened with ease by the perpetrators, using the number combination that was posted on the door of the safe/vault;

b) The money inside the vault at the time of the robbery amounted to One Hundred Fourteen Thousand (and) Nine Hundred Seven Pesos and 30/100 (₱114,907.30), representing the salaries and wages of the DILG-Ifugao Provincial Personnel, which is composed of and broken down as follows:

Salaries/wages for March 16 to 31, 2005	....	₱82,777.49
Salaries/wages for March 1 to 15, 2005	....	27,527.13
Salaries/wages held for February 28, 2005	....	4,602.68
		114,907.30

c) There was early withdrawal of the salaries and wages for March 16 to 31, 2005 amounting to ₱82,777.49, considering that the distance from the bank to the DILG office is only a few meters away; and

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[4] *Id*.

[5] *Id*. at 14.

d) The ATL recommends that only ₱32,129.81 shall be granted and ₱82,777.49 be denied because there is no reason to withdraw the salaries for the period March 16-31 on the 11th day of the month, considering that the depository bank is just a few meters away from the DILG Provincial Office.[6]

In LAO-N Decision No. 2007-117 dated October 25, 2007, the Legal and Adjudication Office National (LAO-N) of the COA denied the request for relief of the petitioner because of her negligence.

The petitioner moved for reconsideration on December 14, 2007, stating in her motion, to wit:

a) That she was not the one who posted the number combination of the vault at its door;

b) That the early withdrawal of the salaries of the DILG-Ifugao personnel was not her own idea as she was just implementing what was previously agreed upon by the officers and personnel of the DILG-Ifugao Provincial Office; and

c) That it is the duty of the security personnel to protect the facilities and premises he is guarding regardless of the presence or absence of cash in the premises.[7]

In its Decision No. 2009-170, the COA LSS denied the petitioner's motion for reconsideration by observing that her acts of posting the number combination of the safety vault on its door, the early withdrawal of the funds for the salaries of the employees, and her failure to inform the security office of the large amount of money kept in the vault constituted contributory negligence on her part.[8]

The petitioner's appeal to the COA, Commission Proper, was later on denied. The COA, Commission Proper, also denied her motion for reconsideration.

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[6] *Id*. at 38.

[7] *Id*. at 14.

[8] *Id*. at 20.

Hence, the petitioner has filed her petition for review on *certiorari*, raising thereby the sole issue for our consideration that:

RESPONDENT ERRED IN FINDING PETITIONER GUILTY OF NEGLIGENCE, HENCE DENYING HER REQUEST FOR RELIEF FROM ACCOUNTABILITY.[9]

The petitioner maintains that she was not to blame for the loss of the funds during the robbery; that she had not personally posted the number combination of the safety vault on its door; that the practice of posting the number combination had started after the death in 1997 of Disbursing Officer Juan G. Tayaban of the DILG-Ifugao Field Office, when she was then requested to open the vault in the presence of other personnel; that the posting of the number combination relieved the office,[10] and that such posting benefitted the office because it ensured "that regular financial transactions concerning the office may carry on without any interruption" in case of sudden death, amnesia or memory lapse of the disbursing officer.[11]

Ruling of the Court

The petition for review is denied for lack of merit.

First of all, the petitioner has filed a petition for review on *certiorari* under Rule 45 to assail the decision of the COA *en banc*. Such remedy is improper because her proper remedy is a petition for *certiorari* under Rule 64 of the *Rules of Court.*

We emphasize that an appeal by petition for review on *certiorari* under Rule 45 is available only as a remedy from a decision or final order of a **lower court**. This limitation is imposed by Section 5 of Article VIII of the Constitution, which pertinently provides:

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[9] *Id*. at 6.

[10] *Id*.

[11] *Id*. at 39.

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

x x x x x x x x x

2. Review, revise, reverse, modify, or affirm on appeal or *certiorari*, as the law or the Rules of Court may provide, final judgments and orders of lower courts in:

x x x x x x x x x

Implementing the limitation is Section 1 of Rule 45, to wit:

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.

On the other hand, the review of the decisions, awards and final orders or resolutions of quasi-judicial offices or bodies is through the petition for review under Rule 43, whose Section 1 states:

Section 1. *Scope*. — This Rule shall apply to appeals from xxx awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions. Among these agencies are the Civil Service Commission, Central Board of Assessment Appeals, Securities and Exchange Commission, Office of the President, Land Registration Authority, Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration, Energy Regulatory Board, National Telecommunications Commission, Department of Agrarian Reform under Republic Act No. 6657, Government Service Insurance System, Employees Compensation Commission, Agricultural Inventions Board, Insurance Commission, Philippine Atomic Energy Commission, Board of Investments, Construction Industry Arbitration Commission, and voluntary arbitrators authorized by law. (n)

Section 7, Article IX of the 1987 Constitution governs the review of the COA, in that the COA's decisions, final orders or rulings may be brought to the Supreme Court on *certiorari* by the aggrieved party within 30 days from receipt of a copy thereof. To differentiate this review from the special civil action for *certiorari* under Rule 65, the Court incorporated a new rule (Rule 64) in the 1997 revision of the *Rules of Court* under the title *Review of Judgments and Final Orders or Resolutions of the Commission on Elections and the Commission on Audit*. Except for the period for bringing the petition for review, Rule 64 is a replication of the provisions of Rule 65 on the special civil action for *certiorari*.

Secondly, the recourse of the petitioner is also deficient in intrinsic merit.

The Constitution has made the COA "the guardian of public funds, vesting it with broad powers over all accounts pertaining to government revenue and expenditures and the uses of public funds and property, including the exclusive authority to define the scope of its audit and examination, establish the techniques and methods for such review, and promulgate accounting and auditing rules and regulations."[12] Only when the COA has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, may this Court entertain and grant a petition for *certiorari* brought to assail its actions.[13]

Herein, however, the petition for review is premised on the supposed misappreciation of facts by the COA. A careful examination of the records indicates that the COA committed no grave abuse of discretion in issuing the assailed decision. The COA thereby simply served its constitutional mandate and justly applied the pertinent laws and rules. It relied on the findings of negligence against the petitioner based on the ATL's

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[12] *Nazareth v. Villar,* G.R. No. 188635, January 29, 2013, 689 SCRA 385, 407.

[13] *Id*., citing *Reyes v. COA*, G.R. No. 125129, 29 March 1999, 305 SCRA 512, 517.

investigation and inspection report on her handling of the funds. Such findings are to be respected because they were supported by substantial evidence.

Negligence is the omission to do something that a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or the doing of something which a prudent man and reasonable man could not do. Stated otherwise, negligence is want of care required by the circumstances.[14] Negligence is, therefore, a relative or comparative concept. Its application depends upon the situation the parties are in, and the degree of care and vigilance which the prevailing circumstances reasonably require. Conformably with this understanding of negligence, the diligence the law requires of an individual to observe and exercise varies according to the nature of the situation in which she happens to be, and the importance of the act that she has to perform.[15]

The findings show that the petitioner was severely negligent in the performance of her duties as the disbursing officer. She did not properly discharge her responsibility to safeguard the public funds entrusted to her. The ATL found that she had withdrawn from a nearby bank the funds for salaries 13 days from the deadline for the submission of reports, and had placed the funds inside the safety vault despite the number combination having been left posted at safety vault's very door. She was further found to have even failed to inform the security guard on duty that she had kept a considerable amount of cash in the safety vault if only to ensure that the amount would be safe.

The following provisions of Presidential Decree No. 1445[16] are relevant herein:

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[14] *Bulilan v. Commission on Audit,* G.R. No. 130057, December 22, 1998, 300 SCRA 445, 452, 453.

[15] *Id*. at 453.

[16] *The Government Auditing Code of the Philippines* (signed on June 11, 1978).

Section 73. Credit for loss occurring in transit or due to casualty or force majeure.

(1) When a loss of government funds or property occurs while they are in transit or the loss is caused by fire, **theft,** or other casualty or force majeure, the officer accountable therefor or having custody thereof shall **immediately notify the Commission or the auditor concerned** and, within thirty days or such longer period as the Commission or auditor may in the particular case allow, shall present his application for relief, with the available supporting evidence. **Whenever warranted by the evidence credit for the loss shall be allowed**. An officer who fails to comply with this requirement shall not be relieved liability or allowed credit for any loss in the settlement of his accounts.

(2) The Commission shall promulgate rules and regulations to implement the provisions of this section.

Section 101. Accountable officers; bond requirements.

(1) Every officer of any government agency whose duties permit or require the possession or custody of government funds or property shall be accountable therefor and for the safekeeping thereof in conformity with law.

x x x x x x x x x

Section 105. Measure of liability of accountable officers.

(1) Every officer accountable for government property shall be liable for its money value in case of improper or unauthorized use or misapplication thereof, by himself or any person for whose acts he may be responsible. We shall likewisebe **liable for all losses**, damages, or deterioration **occasioned by negligence in the keeping or use of the property, whether or not it be at the time in his actual custody**.

(2) Every officer accountable for government funds shall be liable for all losses resulting from the unlawful deposit, use, or application thereof and for all losses **attributable to negligence in the keeping of the funds.** (Bold underscoring supplied for emphasis)

The conclusion that the COA correctly denied the petitioner's request for relief from accountability is thus inescapable. Being an officer of the Government having custody of public funds, she was fully accountable for the safekeeping of the funds under

her custody. Although she could be exonerated from liability in cases of theft and loss caused by *force majeure*, she must be able to establish that the loss was not by reason of her negligence. She could have locked the safety vault, the steel cabinet, and the doors and windows of the office where the safety vault was kept, but the fact that she had not denied having allowed the posting of the number combination on the vault's door manifested her negligence. Indeed, the robbers did not anymore have to employ force to open the vault and ransack the contents. That they had an easy time carting away the funds was due to her negligence. Her contention that the loss of funds through robbery would still have happened even if she had removed the number combination from the door of the vault is unworthy of consideration in the face of the obtrusive fact that her negligence had enabled the loss of the funds under her safekeeping.

Even if the posting of the number combination on the safety vault's door had not been at the instance of the petitioner herself, her exculpation from liability would still not be granted considering her failure to remove it therefrom. She should have easily anticipated that the posting of the number combination would leave the funds kept inside the vault prone to theft and robbery. Simple prudence on her part would have instructed her to remove the number combination from the safety vault's door; yet, she did not. Her leaving the number combination public in that manner defeated the purpose of having the vault to begin with. She thus was guilty of negligence.

WHEREFORE, we **AFFIRM** Decision No. 2012-174 dated October 29, 2012 of the Commission on Audit.

SO ORDERED.

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

Jardeleza, J., no part, prior OSG action.

SECOND DIVISION

[G.R. No. 175726. March 22, 2017]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **HEIRS of ANTONIO MARCOS, SR., namely: ANITA M. RUBIO, LOLITA M. PELINO, ANTONIO MARCOS, JR. and RAMIRO D. MARCOS,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; CONSTITUTION; BILL OF RIGHTS; NO PRIVATE PROPERTY SHALL BE TAKEN FOR PUBLIC USE WITHOUT JUST COMPENSATION; THE JUST COMPENSATION DUE TO AN OWNER SHOULD BE THE "FAIR AND FULL PRICE OF THE TAKEN PROPERTY" WHETHER FOR AGRARIAN REFORM PROGRAM OR FOR OTHER PURPOSES.—** In *Land Bank of the Philippines v. Honeycomb Farms Corporation*, this Court essentially pointed out that the "just compensation" guaranteed to a landowner under Section 4, Article XIII of the Constitution is precisely the same as the "just compensation" embodied in Section 9, Article III of the Constitution. The just compensation due to an owner should be the "fair and full price of the taken property," whether for land taken pursuant to the State's agrarian reform program or for property taken for purposes other than agrarian reform. It was further stressed in *Honeycomb* that just compensation paid for lands taken pursuant to the State's agrarian reform program refers to the "full and fair equivalent of the property taken from its owner by the expropriator x x x [the measure of which] is not the taker's gain but the owner's loss. The word 'just' is used to intensify the meaning of the word 'compensation' to convey the idea that the equivalent to be rendered for the property to be taken shall be real, substantial, full and ample."

2. **ID.; ID.; ID.; ID.; ID.; DETERMINATION OF JUST COMPENSATION; WHILE IT IS FUNDAMENTALLY A FUNCTION OF THE COURTS, THE FACTORS PROVIDED BY LAW AND THE FORMULA OUTLINED IN DAR AO NO. 5, SERIES OF 1998 SHOULD BE APPLIED; ANY DEVIATION THEREFROM MUST BE**

CLEARLY EXPLAINED.— The determination of just compensation is fundamentally a function of the courts. Section 57 of R.A. No. 6657 explicitly vests in the RTC-SAC the original and exclusive jurisdiction to determine just compensation for lands taken pursuant to the State's agrarian reform program. However, this Court, in *Land Bank of the Philippines v. Yatco Agricultural Enterprise*, underscored that, in the exercise of the essentially judicial function of determining just compensation, the RTC-SAC is not granted unlimited discretion. The factors under Section 17 of R.A. No. 6657 were already translated into a basic formula by the DAR pursuant to its rule-making power under Section 49 of R.A. No. 6657. The said factors and the DAR formula provide the uniform framework or structure by which just compensation for property subject to agrarian reform should be determined. Hence, aside from considering the factors provided by law, the courts should apply the formula outlined in DAR AO No. 5, series of 1998, in the computation of just compensation. x x x [W]hen acting within the parameters set by the law itself, the RTC-SACs 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.

3. **LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM LAW (RA NO. 6657); JUST COMPENSATION; THE VALUATION OF LANDS COVERED BY THE CARP LAW BY THE LAND BANK OF THE PHILIPPINES (LBP) IS AN INITIAL DETERMINATION THEREOF BUT IT IS THE REGIONAL TRIAL COURT-SPECIAL AGRARIAN COURT (RTC-SAC) THAT COULD MAKE ITS FINAL DETERMINATION.—** The implementation of R.A. No. 6657 is an exercise of the State's police power and power of eminent domain. It was also settled that the taking of private property by the Government in the exercise of its power of eminent domain does not give rise to a contractual obligation. Thus, acquisition of lands under the CARP is not governed by ordinary rules on obligations and contracts but by R.A. No. 6657 and its implementing rules. x x x The LBP's valuation of lands covered by the CARP Law is considered only as an initial determination,

which is not conclusive, as it is the RTC-SAC that could make the final determination of just compensation, taking into consideration the factors provided in R.A. No. 6657 and the applicable DAR regulations. The LBP's valuation has to be substantiated during an appropriate hearing before it could be considered sufficient in accordance with Section 17 of R.A. No. 6657 and the DAR regulations. Since it is the RTC-SAC that could make the final determination of just compensation, the supposed acceptance of the LBP's valuation cannot be considered as consummated contract.

APPEARANCES OF COUNSEL

LBP Legal Department for petitioner.
Ligun Solis Corpus Mejia Law Firm for respondents.

D E C I S I O N

PERALTA, *J.*:

For this Court's resolution is a petition for review on *certiorari*, dated January 24, 2007, of petitioner Land Bank of the Philippines (*LBP*), seeking to reverse and set aside the Decision[1] dated May 26, 2006 and Resolution[2] dated December 6, 2006 of the Court of Appeals (*CA*), affirming the Decision[3] and Order,[4] dated January 23, 2004 and March 30, 2004, respectively, of the Regional Trial Court (*RTC*), Sorsogon City, Branch 52.

The antecedents are as follows:

The deceased Antonio Marcos, Sr. (*Antonio*) was the owner of two parcels of agricultural land or landholdings located at

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[1] Penned by Associate Justice Edgardo P. Cruz, with Associate Justices Rosalinda Asuncion-Vicente and Sesinando E. Villon, concurring; *rollo*, pp. 55-64.

[2] *Id.* at 65.

[3] Penned by Judge Honesto A. Villamor, *id*. at 110-114.

[4] CA *rollo*, p. 34.

Malbog, Pilar, Sorsogon, consisting of 14.9274 hectares covered by Transfer Certificate of Title (*TCT*) No. 2552 and 9.4653 hectares covered by TCT No. 2562.[5]

On April 3, 1995, pursuant to Republic Act No. 6657,[6] Ramiro Marcos (*Ramiro*), authorized representative of the heirs of Antonio, namely: Anita Rubio, Lolita M. Pelino, Antonio Marcos, Jr. and Ramiro, offered to sell the landholdings to the Republic of the Philippines through its implementing arm, the Department of Agrarian Reform (*DAR*).[7]

On July 10, 1996, petitioner *LBP* valued the lands covered by TCT Nos. 2552 and 2562 at ₱195,603.70 and ₱79,096.26, respectively.[8]

On August 11, 1997, Ramiro filed with the DAR two (2) Landowner's Reply to Notice of Land Valuation and Acquisition forms pertaining to the landholdings. In the said forms, Ramiro indicated that the respondents were accepting LBP's valuation of the landholdings. On the same date, the DAR Regional Director sent a memorandum to the LBP requesting the preparation of a deed of transfer over the landholdings and payment of the purchase price to respondents based on petitioner's valuation.[9]

While the payment of the purchase price is pending, the DAR brought the matter of valuation to the Department of Agrarian Reform Adjudication Board (DARAB), Office of the Provincial Adjudicator, Sorsogon, Sorsogon, on June 15, 2000 requesting that summary administrative proceedings be conducted to determine the just compensation for the landholdings.[10]

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[5] *Rollo* p. 9.

[6] Comprehensive Agrarian Reform Law (CARL).

[7] *Rollo*, pp. 9-10.

[8] *Id.* at 10.

[9] *Id.*

[10] *Id.*

After proper proceedings, the Provincial Adjudicator rendered Decisions LV Cases Nos. 084'00[11] and 085'00,[12] both dated November 29, 2000, the dispositive portions of which read:

LV Case No. 084'00.–

Wherefore, in view of the foregoing, the prior valuation of the LBP is hereby set aside and a new valuation is fixed at FOUR HUNDRED FORTY-SIX THOUSAND SEVEN HUNDRED EIGHTY-SIX PESOS and .03 Centavos (₱446,786.03) for the acquired area of 14.9274 hectares at Twenty-Nine Thousand, Nine Hundred Thirty Pesos and .60 Centavos (₱29,930.60) per hectare is adopted. The Land Bank of the Philippines is hereby ordered to pay the same to the landowners in the manner provided for by law.

SO ORDERED.

LV Case No. 085'00.–

Wherefore, in view of the foregoing, the prior valuation of the LBP is hereby set aside and a new valuation is fixed at TWO HUNDRED EIGHTY-THREE THOUSAND THREE HUNDRED TWO PESOS and .10 Centavos (₱283,302.10) for the acquired area of 9.4653 hectares at Twenty-Nine Thousand, Nine Hundred Thirty Pesos and .60 Centavos (₱29,930.60) per hectare is adopted. The Land Bank of the Philippines is hereby ordered to pay the same to the landowners in the manner provided for by law.

SO ORDERED.

Disagreeing with the decision of the Provincial Adjudicator, the LBP filed a petition for judicial determination of just compensation for the landholdings with the RTC sitting as a Special Agrarian Court (*SAC*).[13]

After the joinder of issues, trial on the merits ensued.

LBP presented witnesses Mr. Jessie L. Basco and Mrs. Evelyn Vega and documentary exhibits such as the Field Investigation

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[11] CA *rollo*, p. 55.

[12] *Id.* at 57.

[13] *Rollo,* p. 11.

Reports for the landholdings of the respondents, the Field Investigation Report for Hacienda de Ares, Landowner's Reply to Notice of Land Valuation and Acquisition over the Property, Memo to the vice-president of the petitioner from the DAR Regional Director with a request to prepare Deed of Transfer and pay the landowner dated August 11, 1997 over the property covered, Payment Release Form, Disbursements Orders and Appearance with Motion for Reconsideration in DARAB cases.[14]

On January 23, 2004, the RTC rendered a Decision in favor of the respondents, the dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered:

1. Fixing the amount of FOUR HUNDRED FORTY-SIX THOUSAND SEVEN HUNDRED EIGHTY-SIX PESOS and .03 Centavos (₱446,786.03) for the acquired area of 14.9274 hectares at ₱30,507.68 per hectare and the amount of TWO HUNDRED EIGHTY-THREE THOUSAND THREE HUNDRED TWO PESOS and .10 Centavos (₱283,302.10) for the acquired area of 9.4653 hectares at ₱29,930.60 per hectare for the just compensation of that two (2) parcels of land situated at Malbog, Pilar, Sorsogon covered by TCT No. T-2552 and TCT No. T-2562 owned by the Heirs of Antonio Marcos, Sr. which property was taken by the government pursuant to R.A. No. 6657.

2. Ordering the Petitioner Land Bank of the Philippines to pay the Private Respondents the amount of Four Hundred Forty-Six Thousand, Seven Hundred Eighty-Six & .03 centavos (₱446,786.03) Pesos and, Two Hundred Eighty-Three Thousand Three Hundred Two and .10 centavos (₱283,302.10), or the total amount of Seven Hundred Thirty Thousand Eighty-Eight and .13 centavos (₱730,088.13) Pesos, in the manner provided by R.A. No. 6657 by way of full payment of the just compensation after deducting whatever amount previously received by the private respondents from the Petitioner Land Bank as part of just compensation.

3. Without pronouncement as to costs.

SO ORDERED.[15]

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[14] *Id.* at 111-112.

[15] *Id.* at 114.

LBP filed a motion for reconsideration of the decision, but was denied per Order[16] dated March 30, 2004.

LBP appealed to the CA. It argued that the RTC failed to consider the documentary evidence showing that a contract of sale over the landholdings was perfected[17] and that the RTC erred in adopting the valuation of the Hacienda de Ares properties for the purpose of fixing the value of the landholdings.[18]

The CA ruled in favor of the respondents. The dispositive portion of the decision reads:

> **WHEREFORE**, for lack of merit, the instant petition is DISMISSED, with the result that the appealed decision of the Regional Trial Court of Sorsogon City (Branch 52) is **AFFIRMED** *in toto*. No pronouncement as to costs.
>
> SO ORDERED.[19]

The CA denied the motion for reconsideration of the petitioner in a Resolution dated December 6, 2006.

Undaunted, petitioner elevated the matters before this Court and raised the following questions of law:

1. CAN THE COURT OF APPEALS OR THE SAC DISREGARD THE VALUATION FACTORS UNDER SECTION 17 OF R.A. 6657 WHICH ARE TRANSLATED INTO A BASIC FORMULA IN DAR ADMINISTRATIVE ORDER AND AFFIRMED BY THE SUPREME COURT IN THE CASES OF SPS. BANAL AND CELADA, IN FIXING THE JUST COMPENSATION FOR SUBJECT PROPERTIES?

2. CAN THE PROVINCIAL AGRARIAN REFORM ADJUDICATOR (PARAD) ABROGATE, VARY OR ALTER A CONSUMMATED CONTRACT BETWEEN THE

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[16] *Id.* at 13.

[17] *Id.*

[18] *Id.*

[19] *Id.* at 17. (Emphasis in the original)

GOVERNMENT AND RESPONDENTS IN REGARD TO SUBJECT PROPERTIES?[20]

This Court finds this petition partly meritorious.

The LBP averred that the subject property was acquired by the government pursuant to Republic Act No. (R.A. No.) 6657, thus, in determining the just compensation, Section 17 of the said law is applicable.[21]

In *Land Bank of the Philippines v. Honeycomb Farms Corporation*,[22] this Court essentially pointed out that the "just compensation" guaranteed to a landowner under Section 4, Article XIII of the Constitution is precisely the same as the "just compensation" embodied in Section 9, Article III of the Constitution. The just compensation due to an owner should be the "fair and full price of the taken property," whether for land taken pursuant to the State's agrarian reform program or for property taken for purposes other than agrarian reform.[23]

It was further stressed in *Honeycomb* that just compensation paid for lands taken pursuant to the State's agrarian reform program refers to the "full and fair equivalent of the property taken from its owner by the expropriator x x x [the measure of which] is not the taker's gain but the owner's loss. The word 'just' is used to intensify the meaning of the word 'compensation' to convey the idea that the equivalent to be rendered for the property to be taken shall be real, substantial, full and ample."[24]

The determination of just compensation is fundamentally a function of the courts. Section 57 of R.A. No. 6657 explicitly vests in the RTC-SAC the original and exclusive jurisdiction

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[20] *Id.* at 30-31. (Citation omitted)

[21] *Id.* at 32.

[22] 683 Phil. 247 (2012).

[23] *Land Bank of the Philippines v. Honeycomb Farms Corporation, supra,* at 256.

[24] *Id.* at 257, citing *Association of Small Landowners in the Philippines, Inc. v. Hon. Secretary of Agrarian Reform,* 256 Phil. 777, 812 (1989).

to determine just compensation for lands taken pursuant to the State's agrarian reform program.[25] However, this Court, in *Land Bank of the Philippines v. Yatco Agricultural Enterprise*,[26] underscored that, in the exercise of the essentially judicial function of determining just compensation, the RTC-SAC is not granted unlimited discretion. The factors under Section 17[27] of R.A. No. 6657 were already translated into a basic formula by the DAR pursuant to its rule-making power under Section 49 of R.A. No. 6657.[28] The said factors and the DAR formula provide the uniform framework or structure by which just compensation for property subject to agrarian reform should be determined.[29] Hence, aside from considering the factors provided by law, the courts should apply the formula outlined in DAR AO No. 5, series of 1998, in the computation of just compensation. Thus:

> A. There shall be one basic formula for the valuation of lands covered by VOS or CA:
> 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

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[25] *Land Bank of the Philippines v. Eusebio, Jr.*, G.R. No. 160143, July 2, 2014, 728 SCRA 447, 461.

[26] 724 Phil. 276 (2014).

[27] Section 17. *Determination of Just Compensation*. – In determining just compensation, the cost of acquisition of the land, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, and the assessment made by government assessors, shall be considered. The social and economic benefits contributed by the farmers and the farm workers 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.

[28] *Land Bank of the Philippines v. Celada*, 515 Phil. 467, 479-480 (2006).

[29] *Land Bank of the Philippines v. Yatco Agricultural Enterprise, supra* note 26*,* at 287.

The above formula shall be used if all three factors are present, relevant and applicable.

A1. When the CS factor is not present and CNI and MV are applicable, the formula shall be:

LV = (CNI x 0.9) + (MV x 0.1)
A2. When the CNI factor is not present, and CS and MV are applicable, the formula shall be:
LV = (CS x 0.9) + (MV x 0.1)
A3. When both the CS and CNI are not present and only MV is applicable, the formula shall be:

LV = MV x 2

In the recent case of *Alfonso v. Land Bank of the Philippines*,[30] this Court reiterated:

For the guidance of the bench, the bar, and the public, we reiterate the rule: Out of regard for the DAR's expertise as the concerned implementing agency, courts should henceforth consider the factors stated in Section 17 of RA 6657, as amended, as translated into the applicable DAR formulas in their determination of just compensation for the properties covered by the said law. If, in the exercise of their judicial discretion, courts find that a strict application of said formulas is not warranted under the specific circumstances of the case before them, they may deviate or depart therefrom, provided that this departure or deviation is supported by a reasoned explanation grounded on the evidence on record. In other words, courts of law possess the power to make a final determination of just compensation.

The fixing of just compensation that is based on the landowner's prayer falls within the exercise of the RTC-SAC's discretion and, therefore, should be upheld as a valid exercise of its jurisdiction.[31] Similarly, the fixing of just compensation based on the decision of the Provincial Adjudicator in this case is within the context of this judicial prerogative. However, a reading of the decisions of the PARAD would reveal that he did not apply or consider the formula in DAR AO No. 5, series

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

[31] *Land Bank of the Philippines v. Eusebio, supra* note 25, at 465.

of 1998. He based his decision with the rule on admissibility of evidence of *bona fide* sales transaction of nearby places in determining the market value of like properties and applied the valuation of LBP with the property of Norma Marcos Clemente and Hacienda de Ares after ruling that the properties of respondents are comparable with the said properties.[32] His decisions did not mention the consideration of the formula laid down by the DAR in the valuation of the properties of respondents.

Likewise, the RTC-SAC ruled that the sales transaction concluded by LBP and Norma Marcos Clemente and Hacienda de Ares can be used and be admissible in evidence in determining the market value of the properties of the respondents since the productivity of the coconut in the land of the respondents is comparable to that of the properties of Norma Marcos Clemente and Hacienda de Ares.[33] It did not conduct an independent assessment and computation using the considerations required by the law and the rules and merely relied upon the Provincial Adjudicator's decision. Although it took into consideration and mentioned some of the factors, it did not point to any particular consideration that impelled it to set the just compensation at ₱283,302.10 and ₱446,786.03.

To reiterate, when acting within the parameters set by the law itself, the RTC-SACs 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.[34]

In the case at bar, the RTC-SAC did not clearly explain why the formula was not applied although the factors enumerated

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[32] *Rollo,* p. 136.

[33] *Id*. at 113.

[34] *Land Bank of the Philippines v. Yatco Agricultural Enterprise, supra* note 26, at 287-288.

were considered in determining just compensation. There was no reasoned explanation grounded on evidence on record why the court did not comply with the established rules. Thus, this Court finds that the case does not warrant for deviation from the factors and formula set forth by the law and rules applicable.

The LBP averred that the PARAD cannot abrogate, vary or alter a consummated contract between the government and the respondents in regard to subject properties. It further alleged that the PARAD committed grave abuse of discretion when he conducted summary administrative proceedings despite the acceptance by the landowner of the preliminary valuation computed by the LBP and offered by the DAR.[35]

The implementation of R.A. No. 6657 is an exercise of the State's police power and power of eminent domain.[36] It was also settled that the taking of private property by the Government in the exercise of its power of eminent domain does not give rise to a contractual obligation.[37] Thus, acquisition of lands under the CARP is not governed by ordinary rules on obligations and contracts but by R.A. No. 6657 and its implementing rules.

Unlike in the ordinary sale of real property where the buyer and the seller are free to determine, by offer and acceptance, the consideration for the subject matter of the transaction, acquisition of lands under the CARP is governed by administrative rules intended to ensure that the rights of the landowners to just compensation are respected.[38]

The LBP's valuation of lands covered by the CARP Law is considered only as an initial determination, which is not conclusive, as it is the RTC-SAC that could make the final determination of just compensation, taking into consideration

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

[36] *Sta. Rosa Realty Development Corp. v. Court of Appeals,* 419 Phil. 457, 474 (2001).

[37] *Commissioner of Public Highways v. Burgos,* 185 Phil. 606, 610 (1980).

[38] *Rollo,* p. 15.

the factors provided in R.A. No. 6657 and the applicable DAR regulations. The LBP's valuation has to be substantiated during an appropriate hearing before it could be considered sufficient in accordance with Section 17 of R.A. No. 6657 and the DAR regulations.[39]

Since it is the RTC-SAC that could make the final determination of just compensation, the supposed acceptance of the LBP's valuation cannot be considered as consummated contract.

R.A. No. 6657 provided that the landowner, his administrator or representative shall inform the DAR of his acceptance or rejection of the offer within thirty (30) days from the date of receipt of written notice by personal delivery or registered mail.[40] It also further provided that the DAR shall conduct summary administrative proceedings to determine the compensation for the land in case of rejection or failure to reply.[41]

It is noted that on August 11, 1997, or more than a year since the valuation of the LBP, the respondents, through Ramiro, filed their acceptance of valuation of their landholdings. The lapse of more than a year before informing the DAR of their acceptance can be considered as failure to reply as contemplated by the law. Furthermore, it is noted that it is the DAR that brought the matter of valuation to the DARAB and requested that summary administrative proceedings be conducted to determine the just compensation for the landholdings.

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[39] *Heirs of Lorenzo and Carmen Vidad, et al. v. Land Bank of the Philippines*, 634 Phil. 9, 38 (2010).

[40] R.A. 6657, Sec. 16 (b).

[41] R.A. 6657, Sec. 16. *Procedure for Acquisition of Private Lands.* – x x x

x x x x x x x x x

(d) In case of rejection or failure to reply, the DAR shall conduct summary administrative proceedings to determine the compensation for the land requiring the landowner, the LBP and other interested parties to submit evidence as to the just compensation for the land, within fifteen (15) days from the receipt of the notice. After the expiration of the above period, the matter is deemed submitted for decision. The DAR shall decide the case within thirty (30) days after it is submitted for decision.

This Court deems it premature to determine with finality the matter in controversy, considering the lack of sufficient data to guide this Court in the proper determination of just compensation following the guidelines that was discussed at length. This Court is not a trier of facts and cannot receive any new evidence from the parties to aid the prompt resolution of this case.

Therefore, we are compelled to remand the case to the court of origin for the reception of evidence and the determination of just compensation with the cautionary reminder for the proper observance of the factors enumerated under Section 17 of R.A. No. 6657 and of the formula prescribed under the pertinent DAR administrative orders.

WHEREFORE, premises considered, the petition is hereby **GRANTED**. The assailed Decision and Resolution, dated May 26, 2006 and December 6, 2006, respectively, of the Court of Appeals in CA-G.R. SP No. 83711, are **REVERSED**. The Civil Case is **REMANDED** to the RTC, Sorsogon City, Branch 52, for trial on the merits with dispatch. The trial judge is **DIRECTED** to **OBSERVE** strictly the procedures in determining the proper valuation of the subject property.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 186088. March 22, 2017]

WILTON DY and/or PHILITES ELECTRONIC & LIGHTING PRODUCTS, *petitioners, vs.* **COURT OF APPEALS and KONINKLIJKE PHILIPS ELECTRONICS, N.V.,** *respondents.*

SYLLABUS

1. **COMMERCIAL LAW; INTELLECTUAL PROPERTY CODE; TRADEMARK; DEFINED.—** A trademark is "any distinctive word, name, symbol, emblem, sign, or device, or any combination thereof, adopted and used by a manufacturer or merchant on his goods to identify and distinguish them from those manufactured, sold, or dealt by others." It is "intellectual property deserving protection by law," and "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."

2. **ID.; ID.; ID.; TWO TESTS TO DETERMINE SIMILARITY AND LIKELIHOOD OF CONFUSION BETWEEN TWO TRADEMARKS; DOMINANCY TEST AND HOLISTIC OR TOTALITY TEST, DISTINGUISHED.—** In determining similarity and likelihood of confusion, jurisprudence has developed two tests: the dominancy test, and the holistic or totality test. On one hand, the dominancy test focuses on "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. Duplication or imitation is not necessary; neither is it required that the mark sought to be registered suggests an effort to imitate. Given more consideration are the aural and visual impressions created by the marks on the buyers of goods, giving little weight to factors like prices, quality, sales outlets, and market segments." On the other hand, the holistic or totality test necessitates a "consideration of the entirety of the marks as applied to the products, including the labels and packaging, in determining confusing similarity. The discerning eye of the observer must focus not only on the predominant words, but also on the other features appearing on both labels so that the observer may draw conclusion on whether one is confusingly similar to the other."

3. **ID.; ID.; ID.; ID.; PETITIONER'S MARK BEARS AN UNCANNY RESEMBLANCE OR CONFUSING SIMILARITY WITH RESPONDENT'S MARK IN CASE AT BAR.—** Applying the dominancy test to this case requires us to look only at the mark submitted by petitioner in its application, while we give importance to the aural and visual impressions the mark is likely to create in the minds of the

buyers. We agree with the findings of the CA that the mark "PHILITES" bears an uncanny resemblance or confusing similarity with respondent's mark "PHILIPS." x x x The confusing similarity becomes even more prominent when we examine the entirety of the marks used by petitioner and respondent, including the way the products are packaged. In using the holistic test, we find that there is a confusing similarity between the registered marks PHILIPS and PHILITES, and note that the mark petitioner seeks to register is vastly different from that which it actually uses in the packaging of its products.

APPEARANCES OF COUNSEL

Cordova & Associates for petitioners.
Federis & Associates for respondents.

D E C I S I O N

SERENO, *C.J.*:

This Petition for Review on Certiorari[1] filed by petitioner Wilton Dy and/or Philites Electronic & Lighting Products ("PHILITES") assails the Decision[2] and Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 103350. The appellate court reversed and set aside the Decision[4] of the IPP Office of the Director General (IPP-DG), which affirmed the Decision[5] of the Intellectual Property Philippines Bureau of Legal Affairs (IPP-BLA) upholding petitioner's trademark application.

THE ANTECEDENT FACTS

On 12 April 2000, petitioner PHILITES filed a trademark application (Application Serial Number 4-2000-002937) covering

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[1] *Rollo,* pp. 16-75.

[2] *Id*. at 77-103; dated 7 October 2008.

[3] *Id*. at 105-106; dated 18 December 2008.

[4] *Id*. at 107-118; dated 16 April 2008.

[5] *Id*. at 119-131; dated 9 November 2006.

its fluorescent bulb, incandescent light, starter and ballast. After publication, respondent Koninklijke Philips Electronics, N.V. ("PHILIPS") filed a Verified Notice of Opposition on 17 March 2006, alleging the following:

(a) The approval of Application Serial No. 4-2000-002937 is contrary to the following provisions of Republic Act No. [RA] 8293 or the Intellectual Property Code of the Philippines (IP Code): Sections 123.1(d), (i) and (iii), 123.1(e), 147, and 168.

(b) The approval of Application Serial No. 4-2000-002937 will cause grave and irreparable damage and injury to oppose.

(c) The use and registration of the applied for mark by [petitioner] will mislead the public as to the origin, nature, quality, and characteristic of the goods on which it is affixed;

(d) [Petitioner's] application for registration is tantamount to fraud as it seeks to register and obtain legal protection for an identical or confusingly similar mark that clearly infringes upon the established rights of the [respondent] over its registered and internationally well-known mark.

(e) The registration of the trademark PHILITES & LETTER P DEVICE in the name of the [petitioner] will violate the proprietary rights and interests, business reputation and goodwill of the [respondent] over its trademark, considering that the distinctiveness of the trademark PHILIPS will be diluted.

(f) The registration of the applied for mark will not only prejudice the Opposer, but will also cause [petitioner] to unfairly profit commercially from the goodwill, fame and notoriety of Opposer's trademark and reputation.

(g) [Petitioner's] registration and use of the applied for mark in connection with goods under Class 11 will weaken the unique and distinctive significance of mark PHILIPS and will tarnish, degrade or dilute the distinctive quality of Opposer's trademark and will result in the gradual attenuation or whittling away of the value of Opposer's trademark, in violation of Opposer's proprietary rights.[6]

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[6] *Id*. at 79.

On 8 August 2006, petitioner filed a Verified Answer, stating that its PHILITES & LETTER P DEVICE trademark and respondent's PHILIPS have vast dissimilarities in terms of spelling, sound and meaning.[7]

At the conclusion of the hearing, on 9 November 2006, IPP-BLA Director Estrellita Beltran-Abelardo rendered a Decision[8] denying the Opposition filed by respondent PHILIPS. The dispositive portion of the Decision reads:

WHEREFORE, premises considered the **OPPOSITION** filed by Koninklijke Philips Electronics, N.V. is hereby **DENIED**. Accordingly, Application Serial no. 4-2000-002937 filed by Respondent-Applicant, Wilton Dy and/or Philites Electronic & Lighting Products on 12 April 2000 for the mark "PHILITES & LETTER P DEVICE" used on fluorescent bulb, incandescent light, starter, ballast under class 11, is as it is, hereby **GRANTED**.

Let the filewrapper of "PHILITES & LETTER P DEVICE," subject matter of this case together with this Decision be forwarded to the Bureau of Trademarks (BOT) for appropriate action.

SO ORDERED.

In upholding petitioner's trademark application, the IPP-BLA stated that assuming respondent's mark was well-known in the Philippines, there should have been prior determination of whether or not the mark under application for registration was "identical with, or confusingly similar to, or constitutes a translation of such well-known mark in order that the owner of the well-known mark can prevent its registration."[9] From the

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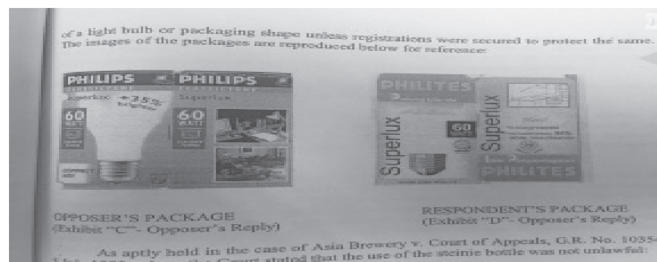
[7] *Id.* at 80.

[8] *Id*. at 119-131.

[9] *Id*.

evidence presented, the IPP-BLA concluded that the PHILIPS and PHILITES marks were so unlike, both visually and aurally. It held that no confusion was likely to occur, despite their contemporaneous use, based on the following observations:

> The Philips shield mark has four stars in different sizes located at the north east and south west portions inside a circle within the shield. There are three wavy lines dissecting the middle of the circle. None of these appear in the respondent's mark.
>
> [Respondent] declares that the word Philips is the surname of the brothers who founded the Philips company engaged in manufacturing and selling lighting products. [Petitioner] on the other hand has testified that the word Philites is coined from the word 'Philippines' and 'lights,' hence 'Philites.' This Bureau finds that there is no dictionary meaning to the [petitioner's] mark. It is a coined and arbitrary word capable of appropriation as a trademark. x x x
>
> Moreover, by mere pronouncing the two marks, the phonetic sounds produced when each mark is uttered are not the same. The last syllable of respondent's mark is uttered in a long vowel sound, while the last vowel of the opposer's mark is not.
>
> x x x. This Bureau believes that opposer has no monopoly over the color or diameter or shape of a light bulb or packaging shape unless registrations were secured to protect the same. The images of the packages are reproduced below for reference.



of a light bulb or packaging shape unless registrations were secured to protect the same.
The images of the packages are reproduced below for reference.

OPPOSER'S PACKAGE
(Exhibit "C"- Opposer's Reply)

RESPONDENT'S PACKAGE
(Exhibit "D"- Opposer's Reply)

As aptly held in the case of Asia Brewery v. Court of Appeals, G.R. No. 103543
5 July 1993, where the Court stated that the use of the steinie bottle was not unlawful:

> x x x x x x x x x
>
> x x x. For one, respondent adopts a yellow to light yellow dominant color while the oppose uses an orange yellow hue. The mark "Philites" is printed in yellow with light blue background as compared to the "Philips" mark typed in white against a black background.

It is fundamental in trademark jurisprudence that color alone, unless displayed in an arbitrary design does not function as a trademark.

Secondly, there appears to be other advertising slogans that appear in respondent's package such as the words, "new", "prolong lite life", "E-coat finished" and "with additional 35% more than ordinary". These phrases are absent in opposer's package. These phrases can be considered in the nature of descriptive terms that can be appropriated by anyone.[10]

Upon appeal, the IPP-DG rendered a Decision[11] on 16 April 2008, affirming the ruling of the IPP-BLA as follows:

WHEREFORE, premises considered, that instant appeal is hereby DISMISSED for lack of merit. Accordingly, Decision No. 2006-125 of the Director of the Bureau of Legal Affairs dated 09 November 2006, is hereby AFFIRMED.

Let a copy of this Decision as well as the trademark application and records be furnished and returned to the Director of Bureau of Legal Affairs for appropriate action. Further, let also the Directors of the Bureau of Trademarks, the Administrative, Financial and Human Resources Development Services Bureau, and the library of the Documentation, Information and Technology Transfer Bureau be furnished a copy of this Decision for information, guidance and records purposes.

SO ORDERED.

In so ruling, the IPP-DG noted that "[t]he dominant feature of the [respondent's] trademark is 'PHILIPS' while that of the [petitioner's] trademark is 'PHILITES.' While the first syllables of the marks are identical – 'PHI' – the second syllables are not. The differences in the last syllable accounted for the variance of the trademarks visually and aurally."[12] Moreover, there were "glaring differences and dissimilarities in the design and general appearance of the Philips shield emblem mark and the letter

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[10] *Id*. at 128-130.

[11] *Id*. at 117.

[12] *Id*. at 114.

'P' of Philites mark."[13] Thus, "even if the [petitioner's] products bearing the trademark PHILIPS are placed side by side with other brands, the purchaser would not be confused to pick up the [petitioner's] product if this is his choice or preference, unless the resemblance in the appearance of the trademarks is so glaring which [it] is not in this case."[14]

As regards the issue of petitioner submitting a trademark drawing different from that used in the packaging, the IPP-DG noted that this case involved an opposition to the registration of a mark, while labels and packaging were technically not a part thereof.[15] At best, respondent supposedly had the remedy of filing a case for trademark infringement and/or unfair competition.[16]

Upon intermediate appellate review, the CA rendered a Decision[17] on 7 October 2008. The dispositive portion herein reads:

> **WHEREFORE**, premises considered, the Petition for Review is **GRANTED**. The Decision dated 16 April 2008 of the Director General of the Intellectual Property Office in *Appeal No. 14-06-28; IPC No. 14-2006-00034* is **REVERSED** and **SET ASIDE**. The application for trademark registration (Application Serial Number 4-2000-002937) of respondent Wilton Dy and/or Philites Electronic & Lighting Products is **DISMISSED**. Costs against respondent.
>
> **SO ORDERED**.

In so ruling, the CA reasoned that the "drawing of the trademark submitted by [petitioner] has a different appearance from that of [petitioner's] actual wrapper or packaging that contain the light bulbs, which We find confusingly similar with that of [respondent's] registered trademark and packaging."[18]

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[13] *Id*. at 115.

[14] *Id*. at 116.

[15] *Id*.

[16] *Id*.

[17] *Id*. at 100.

[18] *Id*. at 97.

Moreover, it found to be "self-serving [petitioner's] asseveration that the mark 'PHILITES' is a coined or arbitrary mark from the words 'Philippines' and 'lights.' Of all the marks that [petitioner] could possibly think of for his light bulbs, it is odd that [petitioner] chose a mark with the letters 'PHILI,' which are the same prevalent or dominant five letters found in [respondent's] trademark 'PHILIPS' for the same products, light bulbs."[19] Hence, the appellate court concluded that petitioner had intended to ride on the long-established reputation and goodwill of respondent's trademark.[20]

On 25 October 2008, petitioner filed a Motion for Reconsideration, which was denied in a Resolution[21] issued by the CA on 18 December 2008.

Hence, this petition.

Respondent filed its Comment[22] on 23 June 2009, and petitioner filed its Reply[23] on 10 November 2009.

THE ISSUES

From the foregoing, we reduce the issues to the following:

1. Whether or not respondent's mark is a registered and well-known mark in the Philippines; and

2. Whether or not the mark applied for by petitioner is identical or confusingly similar with that of respondent.

OUR RULING

The Petition is bereft of merit.

A trademark is "any distinctive word, name, symbol, emblem, sign, or device, or any combination thereof, adopted and used

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[19] *Id*. at 99.

[20] *Id*.

[21] *Id*. at 105-106.

[22] *Id*. at 151-196.

[23] *Id*. at 205-218.

by a manufacturer or merchant on his goods to identify and distinguish them from those manufactured, sold, or dealt by others."[24] It is "intellectual property deserving protection by law,"[25] and "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."[26]

Section 122 of the Intellectual Property Code of the Philippines (IPC) provides that rights to a mark shall be acquired through registration validly done in accordance with the provisions of this law.[27] Corollary to that rule, Section 123 provides which marks **cannot** be registered.

Respondent opposes petitioner's application on the ground that PHILITES' registration will mislead the public over an identical or confusingly similar mark of PHILIPS, which is registered and internationally well-known mark. Specifically, respondent invokes the following provisions of Section 123:

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

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[24] *Dermaline Inc. v. Myra Pharmaceuticals*, 642 Phil. 503 (2010).

[25] *UFC Philippines v. Fiesta Barrio Manufacturing Corp.*, G.R. No. 198889, January 20, 2016.

[26] *Great White Shark Enterprises v. Danilo M. Caralde Jr.,* 699 Phil. 196 (2012).

[27] Republic Act No. 8293 (1997), Sec. 122

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.[28]

Respondent's mark is a registered and well-known mark in the Philippines.

There is no question that respondent's mark PHILIPS is already a registered and well-known mark in the Philippines.

As we have said in *Fredco Manufacturing Corporation v. Harvard University*,[29] "[i]ndeed, Section 123.1(e) of R.A. No. 8293 now categorically states that '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,' cannot be registered by another in the Philippines."[30]

Rule 100(a) of the Rules and Regulations on Trademarks, Service Marks, Tradenames and Marked or Stamped Containers defines "competent authority" in the following manner:

(c) "Competent authority" for purposes of determining whether a mark is well-known, means the Court, the Director General, the Director of the Bureau of Legal Affairs, or any administrative agency or office vested with quasi-judicial or judicial jurisdiction to hear and adjudicate any action to enforce the rights to a mark.

We thus affirm the following findings of the CA, inasmuch as the trademark of PHILIPS is a registered and well-known mark, as held in the Supreme Court Decision in *Philips Export B.V., v. CA:*[31]

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[28] *Id*. at Sec. 123.

[29] 665 Phil. 374 (2011).

[30] *Id*.

[31] G.R. No. 96161, February 21, 1992, 206 SCRA 457.

Petitioner (PHILIPS) is the registered owner in the Philippines of the "PHILIPS" and "PHILIPS SHIELD EMBLEM" trademarks, as shown by Certificates of Registration Nos. 42271 and 42270. The Philippine trademark registrations of petitioner's "PHILIPS" and "PHILIPS SHIELD EMBLEM" are also evidenced by Certificates of Registration Nos. R-1651, R-29134, R-1674, and R-28981. The said registered trademarks "PHILIPS" and "PHILIPS SHIELD EMBLEM" cover classes 7, 8, 9, 10, 11, 14, and 16. The assailed Decision itself states that "(T)he Appellant's trademark is already registered and in use in the Philippines". It also appears that worldwide, petitioner has thousands of trademark registrations x x x in various countries. As found by the High Court in *Philips Export B.V. vs Court of Appeals*, PHILIPS is a trademark or trade name which was registered as far back as 1922, and has acquired the status of a well-known mark in the Philippines and internationally as well.[32]

Petitioner seeks to register a mark nearly resembling that of respondent, which may likely to deceive or cause confusion among consumers.

Despite respondent's diversification to numerous and varied industries,[33] the records show that both parties are engaged in the same line of business: selling identical or similar goods such as fluorescent bulbs, incandescent lights, starters and ballasts.

In determining similarity and likelihood of confusion, jurisprudence has developed two tests: the dominancy test, and the holistic or totality test.[34]

On one hand, the dominancy test focuses on "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. Duplication or imitation is not necessary; neither is it required that the mark sought to be

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[32] *Rollo,* p. 96.

[33] *Id*., pp. 83-84.

[34] *Skechers USA v. Inter Pacific Industrial Trading Corp*., 662 Phil. 11 (2011).

registered suggests an effort to imitate. Given more consideration are the aural and visual impressions created by the marks on the buyers of goods, giving little weight to factors like prices, quality, sales outlets, and market segments."[35]

On the other hand, the holistic or totality test necessitates a "consideration of the entirety of the marks as applied to the products, including the labels and packaging, in determining confusing similarity. The discerning eye of the observer must focus not only on the predominant words, but also on the other features appearing on both labels so that the observer may draw conclusion on whether one is confusingly similar to the other."[36]

Applying the dominancy test to this case requires us to look only at the mark submitted by petitioner in its application, while we give importance to the aural and visual impressions the mark is likely to create in the minds of the buyers. We agree with the findings of the CA that the mark "PHILITES" bears an uncanny resemblance or confusing similarity with respondent's mark "PHILIPS," to wit:

> Applying the dominancy test in the instant case, it shows the uncanny resemblance or confusing similarity between the trademark applied for by respondent with that of petitioner's registered trademark. An examination of the trademarks shows that their dominant or prevalent feature is the five-letter "PHILI", "PHILIPS" for petitioner, and "PHILITES" for respondent. The marks are confusingly similar with each other such that an ordinary purchaser can conclude an association or relation between the marks. The consuming public does not have the luxury of time to ruminate the phonetic sounds of the trademarks, to find out which one has a short or long vowel sound. At bottom, the letters "PHILI" visually catch the attention of the consuming public and the use of respondent's trademark will likely deceive or cause confusion. Most importantly, both trademarks are used in the sale of the same goods, which are light bulbs.[37]

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[35] *Id.*, see also *Prosource International Inc. v. Horphag Research Management*, 620 Phil. 539 (2009).

[36] *Id.*, see also *Philip Morris Inc. v. Fortune Tobacco Corporation*, 526 Phil. 300 (2006).

[37] *Rollo,* p. 98.

The confusing similarity becomes even more prominent when we examine the entirety of the marks used by petitioner and respondent, including the way the products are packaged. In using the holistic test, we find that there is a confusing similarity between the registered marks PHILIPS and PHILITES, and note that the mark petitioner seeks to register is vastly different from that which it actually uses in the packaging of its products. We quote with approval the findings of the CA as follows:

> Applying the holistic test, entails a consideration of the entirety of the marks as applied to the products, including the labels and packaging, in determining confusing similarity. A comparison between petitioner's registered trademark "PHILIPS" as used in the wrapper or packaging of its light bulbs and that of respondent's applied for trademark "PHILITES" as depicted in the container or actual wrapper/ packaging of the latter's light bulbs will readily show that there is a strong similitude and likeness between the two trademarks that will likely cause deception or confusion to the purchasing public. The fact that the parties' wrapper or packaging reflects negligible differences considering the use of a slightly different font and hue of the yellow is of no moment because taken in their entirety, respondent's trademark "PHILITES" will likely cause confusion or deception to the ordinary purchaser with a modicum of intelligence.[38]

WHEREFORE, in view of the foregoing, the Petition for Review on Certiorari is hereby **DENIED**. The 7 October 2008 Decision and 18 December 2008 Resolution of the Court of Appeals in CA-G.R. SP No. 103350 are hereby **AFFIRMED.**

SO ORDERED.

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

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[38] *Id*. at 98-99.

FIRST DIVISION

[G.R. No. 189218. March 22, 2017]

OUR LADY OF LOURDES HOSPITAL, *petitioner, vs.* **SPOUSES ROMEO AND REGINA CAPANZANA,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; RULE 45 PETITION; ONLY QUESTIONS OF LAW MAY BE RAISED; THE COURT AFFIRMS THE FINDINGS OF BOTH THE TRIAL AND APPELLATE COURTS WHICH FOUND NEGLIGENCE ON THE PART OF THE NURSES.—** We reiterate the elementary rule that only questions of law are entertained in a Rule 45 petition. Findings of fact of the lower courts are generally conclusive and binding on this Court whose function is not to analyze or weigh the evidence all over again. While there are exceptional cases in which this Court may review findings of fact of the CA, none of these exceptions is present in the case at bar. We see no compelling reason to deviate from this general rule now. We therefore defer to the pertinent factual findings of the lower courts, especially because these are well-supported by the records. It is in this light that we affirm the findings of both the trial and the appellate courts which found negligence on the part of the nurses.
2. **CIVIL LAW; DAMAGES; ELEMENTS THAT MUST BE ESTABLISHED FOR A MEDICAL NEGLIGENCE CASE TO PROSPER.—** In order to successfully pursue a claim in a medical negligence case, the plaintiff must prove that a health professional either failed to do something which a reasonably prudent health professional would have or have not done; and that the action or omission caused injury to the patient. Proceeding from this guideline, the plaintiff must show the following elements by a preponderance of evidence: duty of the health professional, breach of that duty, injury of the patient, and proximate causation between the breach and the injury. Meanwhile, in fixing a standard by which a court may determine whether the physician properly performed the requisite duty toward the patient, expert medical testimonies from both plaintiff and defense are resorted to.

3. **ID.; ID.; ID.; DELAY IN THE ADMINISTRATION OF OXYGEN TO THE PATIENT CAUSED BY THE DELAYED RESPONSE CONSTITUTES A BREACH OF DUTY ON THE PART OF HOSPITAL NURSES.—** [T]he records, including petitioner's Nurses' Notes, indisputably show that Regina complained of difficulty in breathing before eventually showing signs of cyanosis. We agree with the courts below in their finding that when she was gasping for breath and turning cyanotic, it was the duty of the nurses to intervene immediately by informing the resident doctor. Had they done so, proper oxygenation could have been restored and other interventions performed without wasting valuable time. That such high degree of care and responsiveness was needed cannot be overemphasized – considering that according to expert medical evidence in the records, it takes only five minutes of oxygen deprivation for irreversible brain damage to set in. Indeed, the Court has emphasized that a higher degree of caution and an exacting standard of diligence in patient management and health care are required of a hospital's staff, as they deal with the lives of patients who seek urgent medical assistance. It is incumbent upon nurses to take precautions or undertake steps to safeguard patients under their care from any possible injury that may arise in the course of the latter's treatment and care. The Court further notes that the immediate response of the nurses was especially imperative, since Regina herself had asked for oxygen. They should have been prompted to respond immediately when Regina herself expressed her needs, especially in that emergency situation when it was not easy to determine with certainty the cause of her breathing difficulty. Indeed, even if the patient had not asked for oxygen, the mere fact that her breathing was labored to an abnormal degree should have impelled the nurses to immediately call the doctor and to administer oxygen. In this regard, both courts found that there was a delay in the administration of oxygen to the patient, caused by the delayed response of the nurses of petitioner hospital. They committed a breach of their duty to respond immediately to the needs of Regina, considering her precarious situation and her physical manifestations of oxygen deprivation.

4. **ID.; ID.; ID.; ID.; NEGLIGENT DELAY ON THE PART OF THE NURSES WAS THE PROXIMATE CAUSE OF THE BRAIN DAMAGE SUFFERED BY THE PATIENT.—** [A] failure to act may be the proximate cause if it plays a substantial

part in bringing about an injury. Note also that the omission to perform a duty may also constitute the proximate cause of an injury, but only where the omission would have prevented the injury. The Court also emphasizes that the injury need only be a reasonably probable consequence of the failure to act. In other words, there is no need for absolute certainty that the injury is a consequence of the omission. Applying the above definition to the facts in the present case, the omission of the nurses – their failure to check on Regina and to refer her to the resident doctor and, thereafter, to immediately provide oxygen – was clearly the proximate cause that led to the brain damage suffered by the patient. As the trial court and the CA both held, had the nurses promptly responded, oxygen would have been immediately administered to her and the risk of brain damage lessened, if not avoided.

5. **ID.; QUASI-DELICTS; EMPLOYER'S LIABILITY FOR THE NEGLIGENCE OF ITS EMPLOYEES, EXPLAINED.—** Under Article 2180, an employer like petitioner hospital may be held liable for the negligence of its employees based on its responsibility under a relationship of *patria potestas*. The liability of the employer under this provision is "direct and immediate; it is not conditioned upon a prior recourse against the negligent employee or a prior showing of the insolvency of that employee." The employer may only be relieved of responsibility upon a showing that it exercised the diligence of a good father of a family in the selection and supervision of its employees. The rule is that once negligence of the employee is shown, the burden is on the employer to overcome the presumption of negligence on the latter's part by proving observance of the required diligence.

6. **ID.; ID.; ID.; PETITIONER HOSPITAL FAILED TO DISCHARGE ITS BURDEN OF PROVING DUE DILIGENCE IN THE SUPERVISION OF ITS NURSES AND IS THEREFORE LIABLE FOR THEIR NEGLIGENCE; FORMULATION OF COMPANY RULES, REGULATIONS AND DISCIPLINARY MEASURES UPON EMPLOYEES IN CASE OF BREACH IS NOT ENOUGH, THERE MUST BE PROOF OF DILIGENCE IN THE ACTUAL SUPERVISION OF THE EMPLOYEES' WORK.—** After a careful review of the records, we find that the preponderance of evidence supports the finding of the CA

that the hospital failed to discharge its burden of proving due diligence in the supervision of its nurses and is therefore liable for their negligence. It must be emphasized that even though it proved due diligence in the selection of its nurses, the hospital was able to dispose of only half the burden it must overcome. x x x [T]he formulation of a supervisory hierarchy, company rules and regulations, and disciplinary measures upon employees in case of breach, is indispensable. However, to prove due diligence in the supervision of employees, it is not enough for an employer such as petitioner to emptily invoke the existence of such a formulation. What is more important is the actual implementation and monitoring of consistent compliance with the rules. Understandably, this actual implementation and monitoring should be the constant concern of the employer, acting through dependable supervisors who should regularly report on their supervisory functions. Thus, there must be proof of diligence in the actual supervision of the employees' work. In the present case, there is no proof of actual supervision of the employees' work or actual implementation and monitoring of consistent compliance with the rules. The testimony of petitioner's Assistant Nursing Service Director, Lourdes H. Nicolas is belied by the actual records of petitioner. These show that Nurses David and Padolina had been observed to be latecomers and absentees; yet they were never sanctioned by those supposedly supervising them. While the question of diligent supervision depends on the circumstances of employment, we find that by the very nature of a hospital, the proper supervision of the attendance of its nurses, who are its frontline health professionals, is crucial considering that patients' conditions can change drastically in a matter of minutes. Petitioner's Employee Handbook recognized exactly this as it decreed the proper procedure in availing of unavoidable absences and the commensurate penalties of verbal reprimand, written warning, suspension from work, and dismissal in instances of unexcused absence or tardiness. Petitioner's failure to sanction the tardiness of the defendant nurses shows an utter lack of actual implementation and monitoring of compliance with the rules and ultimately of supervision over its nurses.

APPEARANCES OF COUNSEL

Zamora Poblador Vasquez & Bretaña for petitioner.
Padilla Asuncion Bote-Veguillas Matta Cariño Law Offices for respondents.

D E C I S I O N

SERENO, *C.J.*:

We resolve the instant Petition for Review on Certiorari[1] assailing the Decision[2] and Resolution[3] rendered by the Court of Appeals (CA), Second Division, in CA-G.R. CV No. 89030.

The Antecedent Facts

Regina Capanzana (Regina), a 40-year-old nurse and clinical instructor pregnant with her third child, was scheduled for her third caesarean section (C-section) on 2 January 1998. However, a week earlier, on 26 December 1997, she went into active labor and was brought to petitioner hospital for an emergency C-section. She first underwent a pre-operative physical examination by Dr. Miriam Ramos[4] (Dr. Ramos) and Dr. Milagros Joyce Santos,[5] (Dr. Santos) the same attending physicians in her prior childbirths. She was found fit for anesthesia after she responded negatively to questions about tuberculosis, rheumatic fever, and cardiac diseases. On that same

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[1] *Rollo*, pp. 127-205.

[2] *Id*. at 10-40; dated 24 October 2008; penned by Associate Justice Portia Aliño-Hormachuelos and concurred in by Associate Justices Hakim S. Abdulwahid and Teresita Dy-Liacco Flores.

[3] *Id*. at 42-43; dated 12 August 2009; penned by Associate Justice Portia Aliño-Hormachuelos and concurred in by Associate Justices Hakim S. Abdulwahid and Fernanda Lampas-Peralta.

[4] There are references to her as Dr. Mirriam Ramos but the pleadings she submitted in this case indicate the name Dr. Miriam Ramos.

[5] The complaint referred to her as Dr. Jocelyn Santos but she filed her Answer clarifying that she should be referred to as Dr. Milagros Joyce Santos.

day, she gave birth to a baby boy. When her condition stabilized, she was discharged from the recovery room and transferred to a regular hospital room.[6]

At 2:30 a.m. the following day, or 13 hours after her operation, Regina who was then under watch by her niece, Katherine L. Balad (Balad), complained of a headache, a chilly sensation, restlessness, and shortness of breath. She asked for oxygen and later became cyanotic. After undergoing an x-ray, she was found to be suffering from pulmonary edema. She was eventually transferred to the Intensive Care Unit, where she was hooked to a mechanical ventilator. The impression then was that she was showing signs of amniotic fluid embolism. [7]

On 2 January 1998, when her condition still showed no improvement, Regina was transferred to the Cardinal Santos Hospital. The doctors thereat found that she was suffering from rheumatic heart disease mitral stenosis with mild pulmonary hypertension, which contributed to the onset of fluid in her lung tissue (pulmonary edema). This development resulted in cardio-pulmonary arrest and, subsequently, brain damage. Regina lost the use of her speech, eyesight, hearing and limbs. She was discharged, still in a vegetative state, on 19 January 1998.[8]

Respondent spouses Capanzana filed a complaint for damages[9] against petitioner hospital, along with co-defendants: Dr. Miriam Ramos, an obstetrician/gynecologist; Dr. Milagros Joyce Santos, an anesthesiologist; and Jane Does, the nurses on duty stationed on the second floor of petitioner hospital on 26-27 December 1997.[10]

Respondents imputed negligence to Drs. Ramos and Santos for the latter's failure to detect the heart disease of Regina,

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[6] *Rollo*, p. 838.

[7] *Id*.

[8] *Id*.

[9] Records, Vol. 1, pp. 22-29; dated 24 February 1998 and docketed as Civil Case No. MC-98-149.

[10] *Rollo*, pp. 838-839.

resulting in failure not only to refer her to a cardiologist for cardiac clearance, but also to provide the appropriate medical management before, during, and after the operation. They further stated that the nurses were negligent for not having promptly given oxygen, and that the hospital was equally negligent for not making available and accessible the oxygen unit on that same hospital floor at the time.[11]

They prayed for actual damages amounting to ₱814,645.80; compensatory damages, ₱3,416,278.40; moral damages, ₱5,000,000; exemplary damages, ₱2,000,000; attorney's fees, ₱500,000 as well as ₱5,000 per hearing and the costs of suit. They likewise prayed for other just and equitable reliefs.[12]

Petitioner hospital, defendants Dr. Ramos and Dr. Santos filed their respective Answers.[13] On the other hand, the service of summons on the nurses was unsuccessful, as they were no longer connected with the hospital. Thus, only defendant Florita Ballano (Ballano), who was later proven to be a midwife and not a nurse, filed her Answer.[14]

Petitioner hospital and defendant Ballano claimed that there was no instruction to the hospital or the staff to place Regina in a room with a standby oxygen tank. They also claimed that the nurses on duty had promptly attended to her needs. They prayed that the complaint be dismissed and respondents ordered to pay unpaid medical bills.[15]

Meanwhile, defendant Dr. Ramos claimed that in all of the consultations and prenatal check-ups of Regina in the latter's three pregnancies, she never complained nor informed the doctor of any symptom or sign of a heart problem. Before the last

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[11] *Id.*

[12] *Id.* at 293; 839.

[13] Records, Vol. 1, pp. 88-93 (for Dr. Ramos), pp. 131-143 (for Dr. Santos), and pp. 156-166 (for petitioner hospital).

[14] Records, Vol. 6, pp. 1624-1634.

[15] *Rollo*, pp. 839-840.

C-section of Regina, Dr. Ramos examined her and found no abnormal cardiac sound, murmur or sign of rheumatic heart ailment. The doctor further claimed that since the operation was an emergency, she had no time or chance to have Regina undergo any cardiac examination and secure a cardiac clearance. Moreover, Dr. Ramos claimed that the cardio-pulmonary arrest took place 14 hours after the operation, long after she had performed the operation. She prayed that judgment be rendered ordering spouses Capanzana to pay her moral damages amounting to ₱500,000; exemplary damages, ₱200,000; and attorney's fees, ₱100,000.[16]

On the other hand, defendant Dr. Santos claimed that she was the anesthesiologist in Regina's first and second childbirths via C-section. The doctor further stated that prior to the third emergency C-section, she conducted a pre-operative evaluation, and Regina showed no sign or symptom of any heart problem or abnormality in the latter's cardiovascular, respiratory, or central nervous systems. She then administered the anesthesia to Regina. She also stated that Regina's condition before, during, and after the operation was stable. Dr. Santos prayed that the complaint against her be dismissed.[17]

Trial ensued. Plaintiffs presented Dr. Erwin Dizon, a cardiologist; Dr. Godfrey Robeniol, a neurologist; Mrs. Elizabeth Tayag; Dr. Eleonor Lopez, a cardiologist; Kathleen Lucero Balad; Romeo Capanzana; and Dr. Asuncion Ranezes, a physician.[18]

After the plaintiffs rested their case, an amended complaint was filed, this time identifying and impleading as defendants the nurses on duty who included Czarina Ocampo, H.R. Bolatete, Evelyn S. David, and Angelica Concepcion.[19] After conducting a deposition of the person in charge of the nurses' schedule, spouses Capanzana further amended their complaint to implead

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[16] *Id*. at 840-841.

[17] *Id*. at 840.

[18] *Id*. at 842.

[19] Records, Vol. 3, pp. 811-819.

nurses Rochelle Padolina and Florita Ballano, while dropping defendants Czarina Ocampo, H.R. Bolatete, and Angelica Concepcion.[20]

The trial continued with the presentation of defense evidence. The defense presented Dr. Santos; Dr. Ramos; Atty. Nicolas Lutero III, director of the Bureau of Licensing and Facilities of the Department of Health; Lourdes H. Nicolas, the assistant nursing service director; Dr. Grace de los Angeles; Ma. Selerina Cuvin, the account receivable clerk; and Milagros de Vera, the administrative supervisor of the hospital.[21]

On 11 May 2005, and pending the resolution of the case before the trial court, Regina died and was substituted by her heirs represented by Romeo Capanzana.[22]

THE RULING OF THE RTC

On 29 December 2006, the RTC rendered judgment, finding no negligence on the part of Dr. Ramos or Dr. Santos. It found that the medical community's recognized standard practices in attending to a patient in connection with a C-section had been duly observed by the doctors.[23]

The RTC also found that the primary cause of Regina's vegetative state was amniotic fluid embolism, an unfortunate condition that was not within the control of any doctor to anticipate or prevent. This condition was the root cause of the pulmonary edema that led to hypoxic encephalopathy, brain damage and, ultimately, Regina's vegetative state. On the other hand, the trial court noted that hypoxic encephalopathy was manageable. It could have been prevented, or at least minimized, had there been a timely administration of oxygen.[24]

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[20] Records, Vol. 5, pp. 1508-1516.

[21] *Rollo*, pp. 847-851.

[22] *Id*. at 838.

[23] *Id*. at 852-856.

[24] *Id*. at 859.

On the strength of the testimony of Balad, the RTC found that negligence on the part of the nurses contributed to the injury of Regina. It found that they failed to respond immediately when Regina was experiencing shortness of breath. It took the nurses more or less 10 minutes after being informed of the condition of Regina before they checked on her, called for the resident doctor, and requested oxygen. While the trial court acknowledged that the immediate administration of oxygen was not a guarantee that Regina's condition would improve, it gave credence to the testimony of the expert witness. The latter opined that the delay contributed to the onset of hypoxic encephalopathy or diffuse brain damage due to lack of oxygen in Regina's brain. The expert witness also said that had there been a timely administration of oxygen the risk of brain damage would have been lessened, if not avoided, and the onset of hypoxic encephalopathy reduced. The RTC therefore found the nurses liable for contributory negligence.[25]

On the issue of whether petitioner hospital could be held liable for the negligence of its nurses, the RTC ruled that the hospital was able to discharge the burden of proof that it had exercised the diligence of a good father of a family in the selection and supervision of its employees. The trial court arrived at this finding on the basis of the testimony of the assistant nursing director, Lourdes Nicolas. She stated that the selection and hiring of their nurses was a rigorous process, whereby the applicants underwent a series of procedures — examination, orientation, training, on-the-job observation, and evaluation — before they were hired as regular employees. The nurses were supervised by their head nurses and the charge nurse. The nurses were also inspected by their clinical supervisor and nursing director. Consequently, only the nurses were held liable to pay damages. However, since the trial court acquired jurisdiction only over Ballano among those on duty on that day, she was the only one held liable.[26] The dispositive portion of the RTC decision states:

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[25] *Id.* at 856-857.

[26] *Id.* at 857-858.

WHEREFORE, all foregoing considered, judgment is rendered as follows:

A. Ordering the defendant FLORITA BALLANO to pay the plaintiff Romeo R. Capanzana and the children of the spouses Capanzana, namely: Roxanne, Rizelle, and Reginald (all minors) who are represented by plaintiff Romeo R. Capanzana in respect to the children's right to the interest of their deceased mother Regina in this case:

1. The amount of Pesos: Two Hundred Ninety Nine Thousand One Hundred Two and 04/100 (₱299,102.04), as and by way of actual damages;
2. The amount of Pesos: One Hundred Thousand (₱100,000.00), as and by way of moral damages;
3. The amount of Pesos: One Million Nine Hundred Fifty Thousand Two Hundred Sixty Nine and 80/100 (₱1,950,269.80), as and by way of compensatory damages;
4. The amount of Pesos: One Hundred Thousand (₱100,000.00), as and by way of attorney's fees;
5. The cost of suit.

B. Ordering the DISMISSAL of the case as against defendants Our Lady of Lourdes Hospital, Inc., Dr. Mirriam Ramos and Dr. Milagros Joyce (Jocelyn) Santos; and

C. DISMISSING the counterclaims of the defendants.

SO ORDERED.[27]

Respondents Capanzana filed their appeal[28] before the CA, arguing that the RTC committed error in holding that amniotic fluid embolism, which could not have been foreseen or prevented by the exercise of any degree of diligence and care by defendants, caused the cardio-pulmonary arrest, brain damage, and death of the patient (instead of rheumatic heart mitral valve stenosis which could have been detected and managed). Respondents further argued that it was error for the trial court to hold that defendants Dr. Ramos and Dr. Santos and petitioner hospital exercised due diligence and to absolve them from liability for the untimely death of Regina.[29]

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[27] *Id.* at 860-861.

[28] CA *rollo*, p. 44.

[29] *Rollo*, pp. 945-1017.

Petitioner hospital also filed its notice of appeal.[30] It imputed error to the trial court for holding that the nurses had not exercised due diligence in attending to the needs of Regina, particularly because (1) respondent spouses failed to prove any breach of duty on the part of the nurses, particularly Ballano; (2) there was no delay in the delivery of oxygen to Regina; and (3) Regina was afflicted with amniotic fluid embolism, a condition that could not have been foreseen or prevented by any degree of care by defendants.[31] Also, petitioner hospital decried the dismissal of its counterclaims and the exclusion of the material testimony of one of the hospital nurses.[32]

THE RULING OF THE CA

The CA rendered the assailed decision affirming the RTC ruling with modification. The appellate court upheld the finding of the trial court that the proximate cause of Regina's condition was hypoxic encelopathy, a diffuse brain damage secondary to lack of oxygen in the brain. Specifically, the cause was hypoxic encelopathy secondary to pulmonary cardiac arrest on the background of pulmonary edema. The CA decreed that the failure of Dr. Ramos to diagnose the rheumatic heart disease of Regina was not the proximate cause that brought about the latter's vegetative condition as a probable or natural effect thereof. Even if the appellate court were to concede that Regina indeed suffered from rheumatic heart mitral valve stenosis, it was not established that Dr. Ramos ignored standard medical procedure and exhibited an absence of the competence and skill expected of practitioners similarly situated.[33]

The CA especially took note of the fact that when Regina was operated on for the third time, albeit in an emergency

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[30] CA *rollo*, pp. 45-46.

[31] *Rollo*, p. 889.

[32] *Id*. at 757-767. A Motion for Leave dated 20 December 2004 was filed by petitioner hospital to take the deposition of a witness, nurse-on-duty defendant Evelyn David, but the Motion was denied by the trial court in an Order dated 12 April 2005.

[33] *Id*. at 22-25.

situation, she had the benefit of her complete medical history. Also, even the expert witness presented by the plaintiffs, Dr. Dizon, testified that most patients suffering from mild mitral valve stenosis are asymptomatic, so the disease cannot be detected on physical examination. He further testified that a request for cardio-pulmonary clearance is discretionary, and that a referral to a pulmonologist can be done away with if the attending physician finds the patient's heart normal. Thus, the appellate court upheld the ruling of the trial court absolving Dr. Ramos.[34]

On the issue of the liability of Dr. Santos, the CA discredited the theory of Dr. Dizon that the normal post-operation dosage of 3 liters of intravenous fluid for 24 hours, or 1 liter every 8 hours, could be fatal to a patient with a heart problem. It ruled that Dr. Dizon was presented as an expert witness on cardiology, and not on anesthesiology. Upholding the RTC, the appellate court gave more credence to the testimony of Dr. Santos, who was accepted as an expert witness in the fields of anesthesiology and obstetric anesthesiology. She had testified that even if the dosage was beyond the recommended amount, no harmful effect would have ensued if the patient's kidney were functioning properly. She examined Regina before the operation and found no edema – an indication that the latter's kidney was functioning well. The testimony of Dr. Santos remained uncontroverted. The CA also upheld the ruling that respondents similarly failed to prove that Dr. Santos had ignored standard medical procedure and exhibited an absence of the competence and skill expected of practitioners similarly situated. Consequently, the appellate court also upheld the ruling of the trial court absolving Dr. Santos.[35]

Meanwhile, the CA absolved Ballano. Like the RTC, the appellate court found evidence that the nurses were negligent. But contrary to the trial court, the CA held that there was no showing whether Ballano, who was later identified as a midwife, was negligent in attending to the needs of Regina. Further, it was not shown whether Ballano was even one of the nurses on

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[34] *Id.* at 25.

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

duty who had attended to Regina. The appellate court also noted that the execution of health care procedures and essential primary health care is a nurse's (not a midwife's) duty.[36]

Finally, the CA ruled that petitioner hospital should be held liable based on the doctrine of corporate responsibility. It was found that while there was evidence to prove that petitioner hospital showed diligence in its selection and hiring processes, there was no evidence to prove that it exercised the required diligence in the supervision of its nurses. Also, the appellate court ruled that the non-availability of an oxygen unit on the hospital floor, a fact that was admitted, constituted gross negligence on the part of petitioner hospital. The CA stressed that, as borne out by the records, there was only one tank in the ward section of 27 beds. It said that petitioner hospital should have devised an effective way for the staff to properly and timely respond to a need for an oxygen tank in a situation of acute distress.[37]

Accordingly, the CA awarded to respondents exactly the same amounts decreed by the RTC. This time, however, instead of Ballano, petitioner hospital was deemed directly liable to pay for those amounts.[38]

Only petitioner hospital filed a Motion for Reconsideration,[39] which the CA denied. The denial came after a finding that the errors raised in support of the motion were substantially a mere reiteration of those already passed upon and considered in the assailed decision.[40]

Hence, this petition.

Petitioner hospital is now before this Court assailing the rulings. First, it argues that the CA ruled contrary to law and

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

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

[38] *Id*. at 39.

[39] *Id*. at 243-283.

[40] *Id*. at 241-242.

evidence, because there was no proof of any breach of duty on the part of the nurses. Petitioner argues that even if there was a failure to provide oxygen, it did not cause the injury sustained by Regina. It emphasizes that she suffered from amniotic fluid embolism, a condition that could not be detected or prevented by any degree of care on the part of the hospital or its nurses. Second, it argues that it was an error for the CA to hold the former liable on the basis of the doctrine of corporate responsibility. Third, it alleges that the appellate court erroneously neglected to find respondents liable for the unpaid hospital bill. Fourth, it claims that the CA supposedly erred in upholding the exclusion of the testimony of defendant David.[41] Petitioner ultimately prays that the present petition be granted, the assailed rulings of the CA reversed and set aside, the second amended complaint dismissed, and petitioner's counterclaims granted.[42]

Respondents filed their Comment,[43] saying that the CA committed no error in finding petitioner liable for the negligence of the nurses to timely administer oxygen to Regina. Neither did the appellate court, they claim, err in applying the doctrine of *res ipsa loquitur* or in decreeing that petitioner hospital had failed to exercise due diligence in the selection and supervision of the latter's nurses. They further claim that the CA was correct in holding petitioner liable under the doctrines of vicarious liability and corporate negligence. Respondents also insist that Regina did not die of amniotic fluid embolism.[44] Hence, they pray that the instant petition be denied and that the assailed ruling of the CA, which affirmed that of the RTC, be upheld.[45]

Petitioner filed its Reply.[46] It vehemently protests the idea that Regina died at its hands. It reiterates that respondents failed

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[41] *Id*. at 153-154.

[42] *Id*. at 203.

[43] *Id*. at 1461-1526.

[44] *Id*. at 1463-1525.

[45] *Id*. at 1525.

[46] *Id*. at 1544-1575.

to prove that its purported negligent act caused the injury she sustained, and that the administration of oxygen would have prevented the brain damage she later suffered. Petitioner also disputes the ruling that the nurses were negligent in attending to her needs. It bewails the exclusion of the testimony of one of the defendant nurses who could have debunked the testimony of Balad. It restates its prayer that the present petition be granted and the assailed rulings of the CA reversed and set aside. Further, it prays that the second amended complaint be dismissed and its counterclaims granted. Additionally, albeit belatedly, it asks that the case be remanded to the trial court for the reception of the testimony of defendant nurse David.

OUR RULING

We find the petition partially meritorious.

We reiterate the elementary rule that only questions of law are entertained in a Rule 45 petition.[47] Findings of fact of the lower courts are generally conclusive and binding on this Court whose function is not to analyze or weigh the evidence all over again. While there are exceptional cases in which this Court may review findings of fact of the CA, none of these exceptions is present in the case at bar.[48] We see no compelling reason to deviate from this general rule now. We therefore defer to the pertinent factual findings of the lower courts, especially because these are well-supported by the records. It is in this light that we affirm the findings of both the trial and the appellate courts which found negligence on the part of the nurses.

In order to successfully pursue a claim in a medical negligence case, the plaintiff must prove that a health professional either failed to do something which a reasonably prudent health

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[47] Rules of Court, Rule 45. See *Pascual v. Burgos,* G.R. No. 171722, 11 January 2016*; Lynvil Fishing Enterprises, Inc. v. Ariola*, 680 Phil. 696 (2012); *Abad v. Guimba,* 503 Phil. 321 (2005); *Collector of Customs v. CA,* 242 Phil. 26 (1988).

[48] *Rosales v. People,* G.R. No. 173988, 8 October 2014; *Castillo v. CA*, 329 Phil. 150 (1996).

professional would have or have not done; and that the action or omission caused injury to the patient. Proceeding from this guideline, the plaintiff must show the following elements by a preponderance of evidence: duty of the health professional, breach of that duty, injury of the patient, and proximate causation between the breach and the injury.[49] Meanwhile, in fixing a standard by which a court may determine whether the physician properly performed the requisite duty toward the patient, expert medical testimonies from both plaintiff and defense are resorted to.[50]

In this case, the expert testimony of witness for the respondent Dr. Godfrey Robeniol, a neurosurgeon, provided that the best time to treat hypoxic encephalopathy is at the time of its occurrence; i.e., when the patient is experiencing difficulty in breathing and showing signs of cardiac arrest.[51]

To recall, the records, including petitioner's Nurses' Notes, indisputably show that Regina complained of difficulty in breathing before eventually showing signs of cyanosis.[52] We agree with the courts below in their finding that when she was gasping for breath and turning cyanotic, it was the duty of the nurses to intervene immediately by informing the resident doctor. Had they done so, proper oxygenation could have been restored and other interventions performed without wasting valuable time. That such high degree of care and responsiveness was needed cannot be overemphasized – considering that according to expert medical evidence in the records, it takes only five minutes of oxygen deprivation for irreversible brain damage to set in.[53] Indeed, the Court has emphasized that a higher

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[49] *Solidum v. People,* G.R. 192123, 10 March 2014; *Flores v. Pineda,* 591 Phil. 699 (2008); *Reyes v. Sisters of Mercy Hospital*, 396 Phil. 87 (2000).

[50] *Casumpang v. Cortejo,* 752 Phil. 379 (2015); *Solidum v. People,* G.R. 192123, 10 March 2014; *Dr. Li v. Spouses Soliman,* 66 Phil. 29 (2011).

[51] *Rollo,* p. 999.

[52] *Id*. at 159.

[53] *Id*. at 856-857.

degree of caution and an exacting standard of diligence in patient management and health care are required of a hospital's staff, as they deal with the lives of patients who seek urgent medical assistance.[54] It is incumbent upon nurses to take precautions or undertake steps to safeguard patients under their care from any possible injury that may arise in the course of the latter's treatment and care.[55]

The Court further notes that the immediate response of the nurses was especially imperative, since Regina herself had asked for oxygen. They should have been prompted to respond immediately when Regina herself expressed her needs, especially in that emergency situation when it was not easy to determine with certainty the cause of her breathing difficulty. Indeed, even if the patient had not asked for oxygen, the mere fact that her breathing was labored to an abnormal degree should have impelled the nurses to immediately call the doctor and to administer oxygen.

In this regard, both courts found that there was a delay in the administration of oxygen to the patient, caused by the delayed response of the nurses of petitioner hospital. They committed a breach of their duty to respond immediately to the needs of Regina, considering her precarious situation and her physical manifestations of oxygen deprivation. We quote below the crucial finding of the trial court:

> [W]hen Kathleen [Balad] went to the nurse station to inform the nurses thereat that her aunt was experiencing shortness of breathing and needed oxygen nobody rushed to answer her urgent call. <u>It took more or less 10 minutes for these nurses to go inside the room to</u>

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[54] *Hospital Management Services, Inc.-Medical Center Manila v. Hospital Management Services, Inc.-Medical Center Manila Employees Association-AFW*, 656 Phil. 57 (2011).

[55] Sec. 27 of Article V of Republic Act No. (R.A.) 7164 or an "Act Regulating the Practice of Nursing in the Philippines" effective on 21 November 1991 although this was later repealed by R.A. 9173 or an "Act Providing for a More Responsive Nursing Profession, Repealing for the Purpose Republic Act No. 7164" effective 21 October 2002.

attend and to check the condition of their patient. When the nurse came in she saw the patient was having chilly sensation with difficulty in breathing [and was] at the same time asking for oxygen. The nurse learned from Kathleen that the patient was having an asthma attack. The nurse immediately called resident physician Dr. De Los Angeles to proceed to room 328 and the hospital aide to bring in the oxygen tank in the said room. Thereafter, resident doctors Gonzalez and de Los Angeles arrived and followed by the hospital aide with the oxygen tank. It was clear that the oxygen tank came late because the request for it from the nurses also came late. Had the nurses exercised certain degree of promptness and diligence in responding to the patient[']s call for help[,] the occurrence of "hypoxic encephalopathy" could have been avoided since lack or inadequate supply of oxygen to the brain for 5 minutes will cause damage to it. (Underscoring supplied)[56]

The CA agreed with the trial court's factual finding of delay in the administration of oxygen as competently testified to by Balad. Her testimony, which is uncontroverted in the records, proceeded as follows:

Q [Atty. Diokno]: During this time from about 1:30 in the morning up to approximately 2:00 in the morning, did any nurse enter the room that you were in?
A [Balad]: None, sir.

Q: After that conversation between your aunt when she's asking you to [turn] off the aircon and turning on [sic] again and then turned it off, do you have any occasion to talk with her?
A: None, sir.

Q: How did you describe her physical appearance when she was telling you that "hinihika yata ako"?
A: She feels [sic] very cold even if several blankets were placed in [sic] her body and she is [sic] coughing at the same time.

Q: What about during the time that you dropped some pillows at her back?
A: She was running her breath sir, "at inaalala niya ang operasyon niya."

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[56] *Rollo*, pp. 20-21; 856-857.

Q: Seeing her condition like that what did you do if anything to get any help for her?
A: I buzzered, sir.

Q: About how many time[s] did you buzz for help?
A: Several times, sir, because I saw Tita Regie [Regina] as if she doesn't [sic] take it anymore, sir.

Q: How long did it take before any nurse come [sic] to the room?
A: <u>Ten (10) to fifteen (15 minutes) because they were not in the nurse's station, sir</u>.

x x x x x x x x x

Q: What did the nurse do when she entered the room?
A: She asked me if we have an [sic] history of asthma, sir, in the family.

Q: What was your answer.
A: We have, sir, then she hold [sic] the hand of Tita Regie.

Q: What, if anything, did Tita Regie saying [sic] at that time when the nurse was inside the room?
A: She was running her breath and she was mentioning "oxygen, oxygen," sir.

Q: What happened after that?
A: The nurse went out, sir, I was holding Tita Regie at the same time I called up Tito Romy, sir.

x x x x x x x x x

Q: Going back to the time when the nurse came in and asked you if your family has an [sic] history of asthma. After that and after touching the hands of Regina, what did the nurse do?
A: She went out because Tita Regie was asking for an oxygen, sir.

Q: Did the nurse say anything or give any instruction before leaving the room?
A: I cannot recall, sir, because <u>I was already afraid of the color [cyanosis] of Tita Regie, sir.</u>

Q:	How long did it take before any oxygen arrived if ever?
A:	About 20 minutes, sir.[57] (Emphases supplied)

The appellate court also correctly noted that even the witness for petitioner, resident physician Dr. Grace de los Angeles, noticed that it took some time before the oxygen arrived as shown in her testimony:

Q [Atty. Tanada]:	But do you know how much time elapsed from the time oxygen was first requested since you were not yet there?
x x x	x x x x x x
A [Dr. Delos Angeles]:	The one who first orders not considering the nurse's order, it was me who first ordered for the oxygen.
Q:	A nurse made an earlier order also?
A:	Yes, sir.
x x x	x x x x x x
Q:	Do you recall having heard a statement made by any doctor to the effect why did the oxygen tank just arrive[d] at that moment?
x x x	x x x x x x
A:	When the nurse, said 'nagpakuha na ng oxygen,' I could not recall if it is [sic] me or Dra. Gonzales, we asked her **'**Bakit wala pa?**'**
Q:	So your answer is there was somebody who made that comment?
A:	Yes, Your Honor.[58] (Underscoring supplied)

[57] TSN, 25 February 1999, pp. 31-36.

[58] TSN, 26 September 2003, pp. 29-30.

The CA also found that there was negligent delay in referring Regina to the physicians.[59] In fact, a member of the medical staff chided the nurses for not immediately referring the patient's condition to the physicians as the following excerpt shows:

Q [Atty. Diokno]: Without mentioning anymore whom you believed to be the speaker. Could you just relay what were the things that you heard, said at that time.

x x x x x x x x x

A [Balad]: "Why is it that the dextrose is only now, <u>why did you not ask for assistance immediately</u>," sir.[60] (Underscoring supplied)

The records also show another instance of negligence, such as the delay in the removal of Regina's consumed dextrose, a condition that was already causing her discomfort. In fact, Balad had to inform the nurses and the patient had to instruct one of them, on what to do as can be seen in this part of Balad's testimony:

Q [Atty. Diokno]: Would you try to recall what were the words that were used by your aunt in telling you about the dextrose?

A [Balad]: According to her you call [the] nurse at the nurse station for her to remove the dextrose from my hand, sir.

x x x x x x x x x

Q: When you saw that [sic] two (2) nurses there at the nurse station, what were they doing?

A: The other one is sitting eating pansit, sir, and the other one is standing holding a bottle, sir.

Q: What did you tell them, if anything, when you arrived at the nurse station?

A: I told them that the dextrose at Room 238 was already finished, sir.

x x x x x x x x x

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[59] *Rollo*, p. 34.

[60] TSN, 25 February 1999, pp. 38-40.

Q: How long did it take before any nurse arrived inside Room 238?
A: I went back to the nurse station because no one responded from [sic] my call, sir.

Q: About how many minutes had elapsed from the time you went to the nurse station for the first time and from the time you went for the second time?
A: About three (3) to five (5) minutes, sir. "*Yung pangalawang tawag ko na sa kanya ay nakasunod na siya sa akin*," sir.

Q: The second time when the nurse was already following you back to the room. What happened there when you go [sic] inside the room?
A: The nurse approached my Tita Regie and according to my Tita Regie, "Nurse, please remove it because my hand was already bulging," sir.

Q: What is the response of the nurse to that comment of your auntie?
A: She was following the instruction of my Tita Regie and then she told me to get a towel, sir, to be placed on her hand, "namaga na", sir.[61] (Underscoring supplied)

Taken together, the above instances of delay convinced the courts below, as well as this Court, that there was a breach of duty on the part of the hospital's nurses. The CA therefore correctly affirmed the finding of the trial court that the nurses responded late, and that Regina was already cyanotic when she was referred to the resident doctor.

Regina suffered from brain damage, particularly *hypoxic encephalopathy*, which is caused by lack of oxygen in the brain. The testimonies of Dr. Dizon and Dr. Robeniol proved this fact. And the proximate cause of the brain damage was the delay in responding to Regina's call for help and for oxygen. The trial court said:

Had the nurses exercised certain degree of promptness and diligence in responding to the patient[']s call for help[,] the occurrence of "hypoxic encephalopathy" could have been avoided since lack or

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[61] *Id*. at 22-26.

inadequate supply of oxygen to the brain for 5 minutes will cause damage to it.[62]

The CA affirmed the above ruling of the RTC, that whatever the cause of the oxygen deprivation was, its timely and efficient management would have stopped the chain of events that led to Regina's condition.

We affirm the findings of the courts below that the negligent delay on the part of the nurses was the proximate cause of the brain damage suffered by Regina. In *Ramos*, the Court defines proximate cause as follows:

> Proximate cause has been defined as that which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces injury, and without which the result would not have occurred. An injury or damage is proximately caused by an act or a failure to act, whenever it appears from the evidence in the case, that the act or omission played a substantial part in bringing about or actually causing the injury or damage; and that the injury or damage was either a direct result or a reasonably probable consequence of the act or omission. It is the dominant, moving or producing cause. (Underscoring supplied; citations omitted).[63]

Thus, a failure to act may be the proximate cause if it plays a substantial part in bringing about an injury. Note also that the omission to perform a duty may also constitute the proximate cause of an injury, but only where the omission would have prevented the injury.[64] The Court also emphasizes that the injury need only be a reasonably probable consequence of the failure to act. In other words, there is no need for absolute certainty that the injury is a consequence of the omission.[65]

Applying the above definition to the facts in the present case, the omission of the nurses — their failure to check on Regina

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[62] *Rollo*, pp. 856-857.

[63] *Ramos v. CA,* 378 Phil. 1198 (1999).

[64] Cesar J. Sangco, *Philippine Law on Torts and Damages,* 263 (1984 rev. ed.).

[65] *Ramos v. CA,* 378 Phil 1198 (1999).

and to refer her to the resident doctor and, thereafter, to immediately provide oxygen — was clearly the proximate cause that led to the brain damage suffered by the patient. As the trial court and the CA both held, had the nurses promptly responded, oxygen would have been immediately administered to her and the risk of brain damage lessened, if not avoided.

For the negligence of its nurses, petitioner is thus liable under Article 2180[66] in relation to Article 2176[67] of the Civil Code. Under Article 2180, an employer like petitioner hospital may be held liable for the negligence of its employees based on its responsibility under a relationship of *patria potestas*.[68] The liability of the employer under this provision is "direct and immediate; it is not conditioned upon a prior recourse against the negligent employee or a prior showing of the insolvency of that employee."[69] The employer may only be relieved of responsibility upon a showing that it exercised the diligence of a good father of a family in the selection and supervision of

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[66] Art. 2180. The obligation imposed by Article 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible.

x x x x x x x x x

The owners and managers of an establishment or enterprise are likewise responsible for damages caused by their employees in the service of the branches in which the latter are employed or on the occasion of their functions.

Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry.

x x x x x x x x x

The responsibility treated of in this article shall cease when the persons herein mentioned prove that they observed all the diligence of a good father of a family to prevent damage.

[67] Art. 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter.

[68] *Ramos v. CA,* 378 Phil. 1198 (1999).

[69] *Manliclic v. Calaunan*, 541 Phil. 617 (2007).

its employees. The rule is that once negligence of the employee is shown, the burden is on the employer to overcome the presumption of negligence on the latter's part by proving observance of the required diligence.[70]

In the instant case, there is no dispute that petitioner was the employer of the nurses who have been found to be negligent in the performance of their duties. This fact has never been in issue. Hence, petitioner had the burden of showing that it exercised the diligence of a good father of a family not only in the selection of the negligent nurses, but also in their supervision.

On this point, the rulings of the RTC and the CA diverge. While the trial court found due diligence in both the selection and the supervision of the nurses, the appellate court found that petitioner proved due diligence only in the selection, but not in the supervision, of the nurses.

After a careful review of the records, we find that the preponderance of evidence supports the finding of the CA that the hospital failed to discharge its burden of proving due diligence in the supervision of its nurses and is therefore liable for their negligence. It must be emphasized that even though it proved due diligence in the selection of its nurses, the hospital was able to dispose of only half the burden it must overcome.[71]

We therefore note with approval this finding of the CA:

> While Lourdes Hospital adduced evidence in the selection and hiring processes of its employees, it failed to adduce evidence showing the degree of supervision it exercised over its nurses. In neglecting to offer such proof, or proof of similar nature, respondent [herein petitioner] hospital failed to discharge its burden under the last paragraph of Article 2180. Consequently, it should be held liable for the negligence of its nurses which caused damage to Regina.[72]

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[70] *OMC Carriers v. Spouses Nabua*, 636 Phil. 634 (2010); *Syki v. Begasa,* 460 Phil. 381 (2003); *Metro Manila Transit Corporation v. CA*, G.R. No. 104408, 21 June 1993.

[71] *Valenzuela v. CA*, 323 Phil. 374 (1996).

[72] *Rollo*, p. 37.

Indeed, whether or not the diligence of a good father of a family has been exercised by petitioner is a matter of proof,[73] which under the circumstances in the case at bar has not been clearly established. The Court finds that there is not enough evidence on record that would overturn the presumption of negligence. In explaining its basis for saying that petitioner proved due diligence in the supervision of the nurses, the trial court merely said:

> As testified to by Ms. Lourdes Nicolas, the assistant nursing director, the process of selection and hiring of their nurses was a rigorous process whereby the applicants undergo series of examination, orientation, training, on the job observation and evaluation before they are hired as regular employees. The nurses are supervised by their head nurses and the charge nurse and inspected by their clinical supervisor and nursing director. Based from this evidence the court believes that defendant hospital had exercised prudence and diligence required of it. The nurses it employed were equipped with sufficient knowledge and instructions and are able to perform their work and familiar with the duties and responsibilities assigned to them.[74]

Indeed, the formulation of a supervisory hierarchy, company rules and regulations, and disciplinary measures upon employees in case of breach, is indispensable. However, to prove due diligence in the supervision of employees, it is not enough for an employer such as petitioner to emptily invoke the existence of such a formulation. What is more important is the actual implementation and monitoring of consistent compliance with the rules. Understandably, this actual implementation and monitoring should be the constant concern of the employer, acting through dependable supervisors who should regularly report on their supervisory functions. Thus, there must be proof of diligence in the actual supervision of the employees' work.[75]

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[73] *Metro Manila Transit Corporation v. CA*, G.R. No. 104408, 21 June 1993.

[74] *Rollo*, p. 857.

[75] *Pleyto v. Lomboy*, 476 Phil. 373 (2004). See also *Metro Manila Transit Corporation v. CA*, G.R. No. 104408, 21 June 1993.

In the present case, there is no proof of actual supervision of the employees' work or actual implementation and monitoring of consistent compliance with the rules. The testimony of petitioner's Assistant Nursing Service Director, Lourdes H. Nicolas is belied by the actual records[76] of petitioner. These show that Nurses David and Padolina had been observed to be latecomers and absentees; yet they were never sanctioned by those supposedly supervising them. While the question of diligent supervision depends on the circumstances of employment,[77] we find that by the very nature of a hospital, the proper supervision of the attendance of its nurses, who are its frontline health professionals, is crucial considering that patients' conditions can change drastically in a matter of minutes. Petitioner's Employee Handbook[78] recognized exactly this as it decreed the proper procedure in availing of unavoidable absences and the commensurate penalties of verbal reprimand, written warning, suspension from work, and dismissal in instances of unexcused absence or tardiness.[79] Petitioner's failure to sanction the tardiness of the defendant nurses shows an utter lack of actual implementation and monitoring of compliance with the rules and ultimately of supervision over its nurses.

More important, on that fatal night, it was not shown who were the actual nurses on duty and who was supervising these nurses. Although Lourdes H. Nicolas explained in her testimony that two nurses are assigned at the nurses' station for each shift and that they are supervised by the head nurses or the charge nurses, the documents of petitioner show conflicting accounts of what happened on the fateful days of 26 and 27 of December 1997.

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[76] The Terminating Employee Appraisal signed by the nursing supervisor, Sister Vicencia, and noted by Sister Estrella showed defendant David as an occasional latecomer and absentee and as dishonest and insincere (Records, vol. 7, p. 2024) while the Terminating Employee Appraisal signed by the supervisor, Sister Hirene, showed defendant Padolina as a habitual latecomer and absentee (Records, Vol. 7, p. 2045).

[77] *Valenzuela v. CA*, 323 Phil. 374 (1996).

[78] Records, Vol. 7, p. 2022.

[79] *Rollo*, p. 646.

The schedule of nurses initially submitted by the director of the nursing service of petitioner hospital, Sister Estrella Crisologo, indicated that David was on duty from 2 p.m. to 11 p.m. on 26 December 1997 and that Padolina and Ballano were on duty from 10 p.m. of 26 December 1997 to 6 a.m. of 27 December 1997. Ballano, however, was employed as a midwife and not a nurse.[80] Also, the oral deposition of Sister Estrella Crisologo indicated that a certain Molina, a nurse, did not report for work from 10 p.m. of 26 December 1997 to 6 a.m. of 27 December 1997 leaving only Padolina as the nurse on duty during the said period while Evelyn David was on duty only from 2 p.m. to 11 p.m. on 26 December 1997.[81] However, in a Manifestation[82] dated 15 July 1999, petitioner submitted a revised and more accurate schedule of nurses prepared by the nurse supervisor, Charina G. Ocampo, which curiously contained erasures on the portion pertaining to Evelyn David in that David was now shown to be on duty from 10 p.m. on 26 December 1997 to 6 a.m. on 27 December 1997.[83]

Another piece of documentary evidence, the Nurses' Notes, was also not without inconsistencies. In a Manifestation and Motion[84] dated 3 June 2003, petitioner admitted to having inadvertently failed to include an entry or page in the Nurses' Notes initially submitted to the trial court.[85] That entry was the Nurse's Observation and Report on Capanzana from 8 p.m. of 26 December 1997 to 3:20 a.m. of 27 December 1997 signed by David.[86] Moreover, in the testimony of witness for petitioner,

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[80] In a Manifestation dated 15 May 2001, petitioner stated that Ballano was a midwife and not a nurse. (Records, Vol. 6, pp. 1521-1522). In her Answer with Compulsory Counterclaims dated 11 September 2001, Ballano claimed that she was employed as a midwife. (Records, Vol. 6, p. 1625)

[81] TSN, 11 December 2000, pp. 15-17.

[82] Records, Vol. 2, pp. 542-543.

[83] *Id*. at 545-547.

[84] Records, Vol. 6, pp. 1847-1849.

[85] Records, Vol. 3, pp. 821-842.

[86] Records, Vol. 6, p. 1851.

Milagros de Vera, the administrative supervisor of the hospital, it was revealed that entries in the Nurses' Notes were made in different colors of ink depending on the shift of the nurse: blue ink for the morning shift, black for afternoon, and red for night. Interestingly, as manifested by the counsel for respondents, the entries made from 2:45 to 2:50 a.m. of 27 December 1997 were in both blue and red.[87]

All these negate the due diligence on the part of the nurses, their supervisors, and ultimately, the hospital.

We therefore affirm the appellate court in finding petitioner directly liable for the negligence of its nurses under Article 2180 in relation to Article 2176 of the Civil Code.

We are left with two minor issues that need to be addressed in order to completely resolve the petition. To recall, petitioner questioned before the CA not only the trial court's denial of petitioner's Motion for Leave to take the deposition of a witness but also the denial of its counterclaims. In the assailed Decision and Resolution, the appellate court failed to make a pronouncement expressly addressing the issues. Petitioner now prays that we remand the case to the trial court for the reception of the testimony of its witness and that we grant its counterclaims.

In support of the first issue, petitioner invokes our pronouncements in *Hyatt Manufacturing Corp. v. Ley Construction Development Corp.*,[88] in which this Court affirmed the appellate court's ruling to remand the case to the trial court and to order the deposition-taking to proceed. To bring this issue to a close, we see the need to present a nuanced parsing of the difference between the circumstances in *Hyatt* and in the present petition. *First*, in the cited case, the party opposing the deposition made unwarranted claims of delay. This Court found that it was not the request for deposition, but the voluminous pleadings filed by the opposing party, that caused the delay in the court proceedings. In this case, however, there

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[87] TSN, 12 November 2004, pp. 20-21.

[88] 519 Phil. 272 (2006).

is reason to suspect that the request was indeed meant to delay because the intended deposition in 2004 was meant to be an additional sur-rebuttal evidence to Balad's testimony which, we characteristically take note, was given in 1999, a long five years before. Moreover, the trial court reasoned that the case had been tried for many years and was about to be decided:

> The timeliness of the motion for leave of court to take deposition through written interrogatories cast doubt whether or not it was intended to further delay the proceedings of this case. The instant case has obtained considerable length in its adjudication and to allow movant-defendants to take deposition of Ms. David [the witness-deponent] would only further delay its disposition and would certainly defeat the purpose of a disposition which is to expedite proceedings.[89]

Second, in *Hyatt*, the trial court arbitrarily cancelled the taking of depositions, which had been scheduled previously. In other words, everything had been set, and the deponents were available for deposition. Delay, if any, would have been minimal. In the present case, no deposition was ever scheduled, and the availability of the supposed deponent was not even ascertained. In fact, the uncertainty in the taking of the deposition was one of the reasons cited by the trial court when it denied the Motion for Leave.[90]

Third, the RTC in this case noted that petitioner had agreed to a self-imposed deadline for the submission of its sur-rebuttal evidence. When the scheduled hearing came, petitioner's counsel failed to attend purportedly because he was indisposed. But as curiously observed by the trial court, the reception of sur-rebuttal evidence on that date could not have proceeded anyway since petitioner had no witnesses.[91] The trial court likewise noted that petitioner failed to state any solid ground to justify the grant of the taking of that deposition, except for the latter's naked assertion that the witness to be deposed was out of the

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[89] *Rollo*, p. 769.

[90] *Id*. at 768.

[91] *Id*. at 768-769.

country.[92] The Court finds that these considerations, taken together, provided one of the reasons for the RTC to properly deny the Motion for Leave to take the deposition of a witness. In *Hyatt*, the movant was completely faultless; in the present case, petitioner failed not only to be present at the scheduled hearing for the submission of its sur-rebuttal evidence, but also to show good faith in its request.

Fourth, the movant in *Hyatt* was clearly prejudiced by the denial of its request, which it had promptly made before pretrial. The same cannot be said in the present case because petitioner filed the motion to take deposition six years after trial had started. In fact, petitioner was confident enough to agree to a deadline for the submission of its sur-rebuttal evidence, a deadline that had long passed when it filed a Motion for Leave. Petitioner is, therefore, estopped from claiming that it was ever prejudiced.

All in all, petitioner's argument regarding the trial court's denial of petitioner's Motion for Leave to take the deposition fails to impress us.

This notwithstanding, we find merit in another argument successively raised by petitioner before the Court of Appeals and before this Court with respect to the unpaid hospital bill of respondents — an issue not addressed again by the CA in the assailed ruling. The unpaid hospital bill at petitioner hospital amounted to ₱20,141.60 as of 30 October 1998.[93] This fact was uncontroverted by respondents. Since the amount for actual damages as listed by respondents in their complaint was already inclusive of the hospital bills incurred at petitioner hospital and at Cardinal Santos Hospital, we deem it proper to deduct the unpaid hospital bill from the actual damages decreed by the lower court and affirmed by the appellate court. However, we additionally impose the payment of interest on the resulting amount to conform with prevailing jurisprudence.[94]

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[92] *Id*. at 769.

[93] *Id*. at 922.

[94] *Nacar v. Gallery Frames,* G.R. No. 189871, 13 August 2013, 703 SCRA 439, 456-459.

WHEREFORE, premises considered, we **AFFIRM WITH MODIFICATION** the Decision and Resolution rendered by the Court of Appeals in CA-G.R. CV No. 89030 in that petitioner is hereby declared liable for the payment to respondents of the total amount of ₱299,102.04 as actual damages minus ₱20,141.60 representing the unpaid hospital bill as of 30 October 1998; ₱1,950,269.80 as compensatory damages; ₱100,000.00 as moral damages; ₱100,000.00 as and by way of attorney's fees; and the costs of suit, as well as interest at the rate of six percent (6%) *per annum* on the resulting amount from the finality of this judgment until full payment.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 194199. March 22, 2017]

PROVINCE OF CAMARINES SUR, represented by GOVERNOR LUIS RAYMUND F. VILLAFUERTE, JR., *petitioner, vs.* **BODEGA GLASSWARE, represented by its owner JOSEPH D. CABRAL,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; FORCIBLE ENTRY AND DETAINER; A SUMMARY PROCEEDING TO RECOVER POSSESSION.—** Rule 70 of the Rules of Court covers the ejectment cases of forcible entry and unlawful detainer. x x x The essence of an ejectment suit is for the rightful possessor to lawfully recover the property through lawful means instead of unlawfully wresting possession of the property from its current occupant. Thus, an action for unlawful detainer or forcible entry

is a summary proceeding and is an expeditious means to recover possession. If the parties raise the issue of ownership, courts may only pass upon that issue for the purpose of ascertaining who has the better right of possession. Any ruling involving ownership is not final and binding. It is merely provisional and does not bar an action between the same parties regarding the title of the property.

2. **ID.; ID.; UNLAWFUL DETAINER; WHERE THE SUBJECT PROPERTY IS OCCUPIED BY MERE TOLERANCE, THIS MUST BE ALLEGED AND ESTABLISHED, AND THE PARTY SEEKING POSSESSION MUST IDENTIFY THE SOURCE OF HIS OR HER CLAIM AND ESTABLISH IT.—** An action for unlawful detainer, as in this case, pertains to specific circumstances of dispossession. It refers to a situation where the current occupant of the property initially obtained possession lawfully. This possession only became unlawful due to the expiration of the right to possess which may be a contract, express or implied, or by mere tolerance. x x x When in an unlawful detainer action, the party seeking recovery of possession alleges that the opposing party occupied the subject property by mere tolerance, this must be alleged clearly and the acts of tolerance established. Further, the party seeking possession must identify the source of his or her claim as well as satisfactorily present evidence establishing it.

3. **CIVIL LAW; DIFFERENT MODES OF ACQUIRING OWNERSHIP; DONATION; AUTOMATIC REVOCATION CLAUSE; AS THE PROPERTY DONATED EFFECTIVELY REVERTED BACK AUTOMATICALLY AND IMMEDIATELY TO ITS OWNER, BY RIGHT OF POSSESSION THE OWNER MAY DEMAND ITS RETURN; RIGHT OF POSSESSION PREVAILS OVER THAT CONTRACT OF LEASE THAT BREACHED THE CONDITIONS OF DONATION CAUSING ITS AUTOMATIC REVOCATION.—** In this case, the Deed of Donation contains a clear automatic revocation clause. x x x The provision identifies three conditions for the donation: x x x The last clause of this paragraph states that "otherwise, this donation shall be deemed automatically revoked x x x." We read the final clause of this provision as an automatic revocation clause which pertains to all three conditions of the donation. When CASTEA leased the property to Bodega, it

breached the first and second conditions. Accordingly, petitioner takes the position that when CASTEA leased the property to Bodega, it violated the conditions in the Deed of Donation and as such, the property automatically reverted to it. It even executed a Deed of Revocation. The records show that CASTEA never contested this revocation. Hence, applying the ruling in *De Luna*, [and other pertinent cases,] petitioner validly considered the donation revoked and by virtue of the automatic revocation clause, this revocation was automatic and immediate, without need of judicial intervention. x x x Thus, as petitioner validly considered the donation revoked and CASTEA never contested it, the property donated effectively reverted back to it as owner. In demanding the return of the property, petitioner sources its right of possession on its ownership. Under Article 428 of the Civil Code, the owner has a right of action against the holder and possessor of the thing in order to recover it. This right of possession prevails over Bodega's claim which is anchored on its Contract of Lease with CASTEA. CASTEA's act of leasing the property to Bodega, in breach of the conditions stated in the Deed of Donation, is the very same act which caused the automatic revocation of the donation. Thus, it had no right, either as an owner or as an authorized administrator of the property to lease it to Bodega. While a lessor need not be the owner of the property leased, he or she must, at the very least, have the authority to lease it out. None exists in this case. Bodega finds no basis for its continued possession of the property.

4. ID.; ID.; ID.; ID.; PRESCRIPTION OF ACTIONS FOR REVOCATION OF DONATION, NOT APPLICABLE.— As to the question of prescription, we rule that the petitioner's right to file this ejectment suit against Bodega has not prescribed. First, we reiterate that jurisprudence has definitively declared that Article 764 on the prescription of actions for the revocation of a donation does not apply in cases where the donation has an automatic revocation clause. This is necessarily so because Article 764 speaks of a judicial action for the revocation of a donation. It cannot govern cases where a breach of a condition automatically, and without need of judicial intervention, revokes the donation. x x x [Second,] the breach of the condition in the donation causes the automatic revocation. All the donor has to do is to formally inform the donee of the revocation. Judicial intervention only becomes necessary if the donee questions the propriety of the revocation. Even then, judicial intervention

is required to merely confirm and not order the revocation. Hence, there can be no 10-year prescriptive period to file an action to speak of. When the donee does not contest the revocation, no court action is necessary. Third, as owner of the property in this case, the petitioner is entitled to its possession. The petitioner's action for ejectment is anchored on this right to possess. Under the Civil Code and the Rules of Court, a party seeking to eject another from a property for unlawful detainer must file the action for ejectment within one year from the last demand to vacate. This is the prescriptive period that the petitioner is bound to comply with in this case.

5. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; FORCIBLE ENTRY AND DETAINER; DAMAGES; RIGHTFUL POSSESSOR IN UNLAWFUL DETAINER CASE IS ENTITLED TO RECOVER DAMAGES WHICH REFER TO REASONABLE COMPENSATION FOR THE USE AND OCCUPATION OF THE PREMISES.—** We also affirm the grant of damages in favor of the petitioner. Section 17 of Rule 70 of the Rules of Court provides: Sec. 17. *Judgment*. - If after trial the court finds that the allegations of the complaint are true, it shall render judgment in favor of the plaintiff for the restitution of the premises, the sum justly due as arrears of rent or as **reasonable compensation for the use and occupation of the premises, attorney's fees and costs**. x x x Thus, the rightful possessor in an unlawful detainer case is entitled to recover damages, which refer to "rents" or "the reasonable compensation for the use and occupation of the premises," or "fair rental value of the property" and attorney's fees and costs. More specifically, recoverable damages are "those which the plaintiff could have sustained as a mere possessor, or those caused by the loss of the use and occupation of the property."

APPEARANCES OF COUNSEL

Office of the Provincial Legal Officer for petitioner.
Guzman & Associates for respondent.

D E C I S I O N

JARDELEZA, *J.*:

The Case

This is a verified petition for review on *certiorari*[1] under Rule 45 of the Rules of Court filed by petitioner Province of Camarines Sur (petitioner) challenging the Decision[2] of the Court of Appeals (CA) promulgated on May 31, 2010 (assailed Decision) and its Resolution[3] dated October 12, 2010 (assailed Resolution). The assailed Decision affirmed the Decision[4] of the Regional Trial Court of Naga City, Branch 26 (RTC Naga City), which in turn, reversed the ruling[5] of the Municipal Trial Court of Naga City, Branch 2 (MTC Naga City) in the action for ejectment filed by the petitioner against respondent Bodega Glassware (Bodega).

The Facts

Petitioner is the registered owner of a parcel of land in Peñafrancia, Naga City under Original Certificate of Title (OCT) No. 22.[6] On September 28, 1966, through then Provincial Governor Apolonio G. Maleniza, petitioner donated around 600 square meters of this parcel of land to the Camarines Sur Teachers' Association, Inc. (CASTEA) through a Deed of Donation *Inter Vivos* (Deed of Donation).[7] The Deed of Donation included an automatic revocation clause which states:

> That the condition of this donation is that the DONEE shall use the above-described portion of land subject of the present donation

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[1] *Rollo*, pp. 12-26.

[2] *Id*. at 28-41, penned by Associate Justice Ramon R. Garcia with Associate Justices Romeo F. Barza, and Manuel M. Barrios, concurring.

[3] *Id*. at 62-63.

[4] *Id*. at 82-88.

[5] *Id*. at 109-111.

[6] *Id*. at 29.

[7] *Id*. at 29; 107-108.

for no other purpose except the construction of its building to be owned and to be constructed by the above-named DONEE to house its offices to be used by the said Camarines Sur Teachers' Association, Inc., in connection with its functions under its charter and by-laws and the Naga City Teachers' Association as well as the Camarines Sur High School Alumni Association, PROVIDED FURTHERMORE, that the DONEE shall not sell, mortgage or incumber the property herein donated including any and all improvements thereon in favor of any party and provided, lastly, that the construction of the building or buildings referred to above shall be commenced within a period of one (1) year from and after the execution of this donation, otherwise, this donation shall be deemed automatically revoked and voided and of no further force and effect.[8]

CASTEA accepted the donation in accordance with the formalities of law and complied with the conditions stated in the deed. However, on August 15, 1995, CASTEA entered into a Contract of Lease with Bodega over the donated property.[9] Under the Contract of Lease, CASTEA leased the property to Bodega for a period of 20 years commencing on September 1, 1995 and ending on September 15, 2015. Bodega took actual possession of the property on September 1, 1995.[10]

Sometime in July 2005, the Office of the Provincial Legal Officer of the Province of Camarines Sur wrote Bodega regarding the building it built on the property. The Provincial Legal Officer requested Bodega to show proof of ownership or any other legal document as legal basis for his possession. Bodega failed to present any proof. Nevertheless, petitioner left Bodega undisturbed and merely tolerated its possession of the property.[11]

On November 11, 2007, petitioner sent a letter to Bodega dated October 4, 2007.[12] In this letter, petitioner stated that

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[8] *Id*. at 107.

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

[10] *Id*. at 31.

[11] *Id*. at 16-17.

[12] *Id*. at 31.

Bodega's occupation of the property was by mere tolerance of the petitioner.[13] As it now intended to use the property for its developmental projects, petitioner demanded that Bodega vacate the property and surrender its peaceful possession. Bodega refused to comply with the demand.[14]

Petitioner, through its then Provincial Governor Luis Raymund F. Villafuerte, Jr., revoked its donation through a Deed of Revocation of Donation[15] (Deed of Revocation) dated October 14, 2007. It asserted that CASTEA violated the conditions in the Deed of Donation when it leased the property to Bodega. Thus, invoking the automatic revocation clause in the Deed of Donation, petitioner revoked, annulled and declared void the Deed of Donation.[16] It appears from the record that CASTEA never challenged this revocation.

On March 13, 2008, petitioner filed an action for unlawful detainer against Bodega before the MTC Naga City. It prayed that Bodega be ordered to vacate the property and surrender to petitioner its peaceful possession. Petitioner also prayed for the payment of ₱15,000 a month from October 2007 until Bodega vacates the land.[17]

In a Decision[18] dated December 11, 2008, the MTC Naga City ruled in favor of the petitioner. It ordered Bodega to vacate the property and to pay ₱15,000 a month as reasonable compensation.[19] The dispositive portion of this Decision states:

> Wherefore, the foregoing premises considered, plaintiff having established by preponderance of evidence its cause of action against the defendant, the latter is ordered:

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[13] *Id.*

[14] *Id.*

[15] *Rollo*, pp. 112-113.

[16] *Id*. at 112.

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

[18] *Supra* note 5.

[19] *Rollo*, p. 111.

1) To immediately vacate and surrender to plaintiff, Province of Camarines Sur, the peaceful possession of the portion of the land covered by Original Certificate of Title No. 22 registered in the name of the plaintiff with an area of Six Hundred (600) square meters subject of the lease contract executed by CASTEA in favor of the herein defendant dated 7 September 1995 where the defendants (*sic*) building is constructed, and,

2) [T]o pay plaintiff the amount of Php15,000.00 a month from date of judicial demand until it vacates the subject properties as reasonable compensation for the use of the same.

Defendant's counterclaim is hereby ordered DISMISSED with costs against defendant.[20]

Bodega appealed this Decision to the RTC Naga City which reversed it in a Decision[21] dated May 13, 2009. The dispositive portion states:

WHEREFORE premises considered, the decision of the court a quo is hereby reversed and set aside and a new one entered DISMISSING the above case for failure of the plaintiff to present evidence to sustain its cause of action[.][22]

The petitioner then went up on appeal to the CA which rendered the now assailed Decision. The CA disposed of the appeal thus:

WHEREFORE, premises considered, the appeal is hereby **DENIED**. The Decision dated May 13, 2009 of the Regional Trial Court, Branch 26, Naga City is hereby **AFFIRMED**.[23]

In its assailed Decision, the CA affirmed the ruling of the RTC Naga City that the petitioner cannot demand that Bodega vacate the property. The CA explained that Bodega's possession

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[20] *Id.*

[21] *Supra* note 4.

[22] *Rollo*, p. 88.

[23] *Id.* at 40.

of the property is based on its Contract of Lease with CASTEA. CASTEA, in turn, claims ownership of the property by virtue of the Deed of Donation. According to the CA, while petitioner alleges that CASTEA violated the conditions of the donation and thus, the automatic revocation clause applies, it should have first filed an action for reconveyance of the property against CASTEA. The CA theorized that judicial intervention is necessary to ascertain if the automatic revocation clause suffices to declare the donation revoked. In support of its argument, the CA cited the ruling of this Court in *Roman Catholic Archbishop of Manila v. Court of Appeals*.[24]

The CA also found that petitioner's action has already prescribed. According to it, Article 1144(1) of the Civil Code applies in this case. Thus, petitioner had 10 years to file an action for reconveyance from the time the Deed of Donation was violated. As the Contract of Lease was entered into on September 1, 1995, petitioner, thus, had 10 years from this date to file the action. Unfortunately, the action for unlawful detainer was filed more than 12 years later. Further, the CA added that even the revocation of the donation was done beyond the 10-year prescriptive period. The CA also denied petitioner's motion for reconsideration.[25]

Petitioner filed this verified petition for review on *certiorari* challenging the assailed Decision. It argues that the CA wrongly applied the doctrine in *Roman Catholic Archbishop of Manila*. It asserts that the assailed Decision in fact categorically stated that in donations containing an automatic revocation clause, judicial intervention is not necessary for the purpose of effectively revoking the donation. Such a revocation is valid subject to judicial intervention only when its propriety is challenged in court.[26]

In its comment, Bodega anchors its right of possession on its Contract of Lease with CASTEA. It insists that the Contract

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[24] G.R. No. 77425, June 19, 1991, 198 SCRA 300; *Rollo*, pp. 37-39.

[25] *Rollo*, p. 63.

[26] *Id*. at 18-19.

of Lease is valid because CASTEA is the owner of the property. The automatic revocation clause did not immediately revoke the donation in the absence of a judicial declaration. It also agrees with the CA that the petitioner's action has already prescribed.[27]

The Issues

The core issue in this case is who between petitioner and Bodega has the right to the actual physical possession of the property. The resolution of this issue requires us to look into the basis of their claims of possession. Essential to this is the determination of the effect of the automatic revocation clause in the Deed of Donation. We note, however, that an action for unlawful detainer pertains only to the issue of *possession de facto* or actual possession. Thus, while we may rule on the basis of the parties' claims of possession — which, in the case of the petitioner, involves an assertion of ownership — this determination is only provisional and done solely to settle the question of possession.

The Ruling of the Court

Rule 70 of the Rules of Court covers the ejectment cases of forcible entry and unlawful detainer. These actions are summary proceedings and are devised to provide for a particular remedy for a very specific issue. Actions for unlawful detainer and forcible entry involve only the question of actual possession.[28] In these actions, courts are asked to ascertain which between the parties has the right to the *possession de facto* or physical possession of the property in question.[29] Its purpose is to restore the aggrieved party to possession if he or she successfully establishes his or her right to possess the property. The essence of an ejectment suit is for the rightful possessor to lawfully recover the property through lawful means instead of unlawfully

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[27] *Id.* at 316-322.

[28] *Go, Jr. v. Court of Appeals*, G.R. No. 142276, August 14, 2001, 362 SCRA 755, 766.

[29] *University Physicians Services, Inc. v. Court of Appeals*, G.R. No. 100424, June 13, 1994, 233 SCRA 86, 89.

wresting possession of the property from its current occupant.[30] Thus, an action for unlawful detainer or forcible entry is a summary proceeding and is an expeditious means to recover possession. If the parties raise the issue of ownership, courts may only pass upon that issue for the purpose of ascertaining who has the better right of possession.[31] Any ruling involving ownership is not final and binding. It is merely provisional and does not bar an action between the same parties regarding the title of the property.[32]

An action for unlawful detainer, as in this case, pertains to specific circumstances of dispossession. It refers to a situation where the current occupant of the property initially obtained possession lawfully.[33] This possession only became unlawful due to the expiration of the right to possess which may be a contract, express or implied, or by mere tolerance.[34]

An action for unlawful detainer must allege and establish the following key jurisdictional facts:

(1) initially, possession of property by the defendant was by contract with or by tolerance of the plaintiff;
(2) eventually, such possession became illegal upon notice by plaintiff to defendant of the termination of the latter's right of possession;
(3) thereafter, the defendant remained in possession of the property and deprived the plaintiff of the enjoyment thereof; and
(4) within one year from the last demand on defendant to vacate the property, the plaintiff instituted the complaint for ejectment.[35]

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[30] *Carbonilla v. Abiera*, G.R. No. 177637, July 26, 2010, 625 SCRA 461.

[31] *Corpuz v. Agustin*, G.R. No. 183822, January 18, 2012, 663 SCRA 350, 358.

[32] Rules of Court, Rule 70, Sec.18.

[33] *Macasaet v. Macasaet*, G.R. Nos. 154391-92, September 30, 2004, 439 SCRA 625.

[34] *Republic v. Luriz*, G.R. No. 158992, January 26, 2007, 513 SCRA 140, 152-153.

[35] *Suarez v. Emboy, Jr.,* G.R. No. 187944, March 12, 2014, 718 SCRA 677, 692.

When in an unlawful detainer action, the party seeking recovery of possession alleges that the opposing party occupied the subject property by mere tolerance, this must be alleged clearly and the acts of tolerance established.[36] Further, the party seeking possession must identify the source of his or her claim as well as satisfactorily present evidence establishing it.

In this case, petitioner alleged that as early as 2005, it had asked Bodega to present proof of its legal basis for occupying the property. Bodega, however, failed to heed this demand. For several years, petitioner merely tolerated Bodega's possession by allowing it to continue using its building and conducting business on the property. Petitioner demanded that Bodega vacate the property in November 2007. This presents a clear case of unlawful detainer based on mere tolerance.

Petitioner proceeds to argue that its right of possession is based on its ownership. This, in turn, is hinged on its position that the property reverted back to the petitioner when the donation was revoked as provided in the automatic revocation clause in the Deed of Donation.

We shall rule on the effect of the automatic revocation clause for the purpose of ascertaining who between petitioner and Bodega has the right to possess the property.

This Court has affirmed the validity of an automatic revocation clause in donations in the case of *De Luna v. Abrigo*[37] promulgated in 1990. We explained the nature of automatic revocation clauses by first identifying the three categories of donation. In *De Luna*, we said that a donation may be simple, remuneratory or onerous. A donation is simple when the cause is the donor's pure liberality. It is remuneratory when the donor "gives something to reward past or future services or because of future charges or burdens, when the value of said services, burdens or charges is less than the value of the donation."[38] A

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[36] *Quijano v. Amante*, G.R. No. 164277, October 8, 2014, 737 SCRA 552, 564-565.

[37] G.R. No. 57455, January 18, 1990, 181 SCRA 150.

[38] *Id*. at 155.

donation is onerous when it is "subject to burdens, charges, or future services equal (or more) in value than that of the thing donated x x x."[39] This Court found that the donation in *De Luna* was onerous as it required the donee to build a chapel, a nursery, and a kindergarten. We then went on to explain that an onerous donation is governed by the law on contracts and not by the law on donations. It is within this context that this Court found an automatic revocation clause as valid.

We explained in *De Luna* that Article 1306 of the Civil Code allows the parties "to 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."[40] In contracts law, parties may agree to give one or both of them the right to rescind a contract unilaterally. This is akin to an automatic revocation clause in an onerous donation. The jurisprudence on automatic rescission in the field of contracts law therefore applies in an automatic revocation clause.

Hence, in *De Luna*, we applied our rulings in *University of the Philippines v. De los Angeles*[41] and *Angeles v. Calasanz*[42] where we held that an automatic rescission clause effectively rescinds the contract upon breach without need of any judicial declaration.

In *University of the Philippines,* this Court held that a party to a contract with an automatic rescission clause, who believes that there has been a breach warranting rescission, may consider the contract rescinded without previous court action. Speaking through Justice J.B.L. Reyes, we said:

> x x x [T]he law definitely does not require that the contracting party who believes itself injured must first file suit and wait for a

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[39] *Id*. at 156. Citation omitted.

[40] *Id*. at 156-157.

[41] G.R. No. L-28602, September 29, 1970, 35 SCRA 102.

[42] G.R. No. L-42283, March 18, 1985, 135 SCRA 323.

judgment before taking extrajudicial steps to protect its interest. Otherwise, the party injured by the other's breach will have to passively sit and watch its damages accumulate during the pendency of the suit until the final judgment of rescission is rendered when the law itself requires that he should exercise due diligence to minimize its own damages x x x.[43]

We, however, clarified that the other party may contest the extrajudicial rescission in court in case of abuse or error by the rescinder. It is only in this case where a judicial resolution of the issue becomes necessary.

Applying this to the automatic revocation clause, we ruled in *De Luna* that:

It is clear, however, that judicial intervention is necessary not for purposes of obtaining a judicial declaration rescinding a contract already deemed rescinded by virtue of an agreement providing for rescission even without judicial intervention, but in order to determine whether or not the rescission was proper.[44]

While the ruling in *De Luna* applied specifically to onerous donations with an automatic revocation clause, we extended this doctrine to apply to donations *inter vivos* in general in *Roman Catholic Archbishop of Manila*. We explained in this case that Article 732 of the Civil Code states that the general provisions on obligations and contracts shall govern donations *inter vivos* in all matters not determined in Title III, Book III on donations. Title III has no explicit provisions for instances where a donation has an automatic revocation clause. Thus, the rules in contracts law regarding automatic rescission of contracts as well as the jurisprudence explaining it find suppletory application. We then reiterated in *Roman Catholic Archbishop of Manila* that where a donation has an automatic revocation clause, the occurrence of the condition agreed to by the parties as to cause the revocation, is sufficient for a party to consider

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[43] *University of the Philippines v. De los Angeles*, *supra* note 41 at 107. Citations omitted.

[44] *De Luna v. Abrigo, supra* note 37 at 158.

the donation revoked without need of any judicial action. A judicial finding that the revocation is proper is only necessary when the other party actually goes to court for the specific purpose of challenging the propriety of the revocation. Nevertheless, even in such a case, "x x x the decision of the court will be merely declaratory of the revocation, but it is not in itself the revocatory act."[45] We also explained in this case that in ascertaining the prescription of actions arising from an automatic revocation clause in donations, the general provisions on prescription under the Civil Code apply. Article 764 — which provides for a four-year prescriptive period to file an action to revoke the donation in case of breach of a condition — governs an instance where the deed of donation does not contain an automatic revocation clause.[46]

We repeated this ruling in *Dolar v. Barangay Lublub (Now P.D. Monfort North) Municipality of Dumangas*.[47] We once again held that if a contract of donation provides for automatic rescission or reversion in case of a breach of a condition and the donee violates it or fails to comply with it, the property donated automatically reverts back to the donor without need of any judicial declaration. It is only when the donee denies the rescission or challenges its propriety that the court can intervene to conclusively settle whether the resolution was proper. This was also the import of our ruling in *Zamboanga Barter Traders Kilusang Bayan, Inc. v. Plagata.*[48]

In this case, the Deed of Donation contains a clear automatic revocation clause. The clause states:

> That the condition of this donation is that the DONEE shall use the above-described portion of land subject of the present donation for no other purpose except the construction of its building to be

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[45] *Roman Catholic Archbishop of Manila v. Court of Appeals, supra* note 24 at 308-309.

[46] *Id*. at 306.

[47] G.R. No. 152663, November 18, 2005, 475 SCRA 458.

[48] G.R. No. 148433, September 30, 2008, 567 SCRA 163.

owned and to be constructed by the above-named DONEE to house its offices to be used by the said Camarines Sur Teachers' Association, Inc., in connection with its functions under its charter and by-laws and the Naga City Teachers' Association as well as the Camarines Sur High School Alumni Association, PROVIDED FURTHERMORE, that the DONEE shall not sell, mortgage or incumber the property herein donated including any and all improvements thereon in favor of any party and provided, lastly, that the construction of the building or buildings referred to above shall be commenced within a period of one (1) year from and after the execution of this donation, otherwise, this donation shall be deemed automatically revoked and voided and of no further force and effect.[49]

The provision identifies three conditions for the donation: (1) that the property shall be used for "no other purpose except the construction of its building to be owned and to be constructed by the above-named DONEE to house its offices to be used by the said Camarines Sur Teachers' Association, Inc., in connection with its functions under its charter and by-laws and the Naga City Teachers' Association as well as the Camarines Sur High School Alumni Association," (2) CASTEA shall "not sell, mortgage or incumber the property herein donated including any and all improvements thereon in favor of any party," and (3) "the construction of the building or buildings referred to above shall be commenced within a period of one (1) year from and after the execution." The last clause of this paragraph states that "otherwise, this donation shall be deemed automatically revoked x x x."[50] We read the final clause of this provision as an automatic revocation clause which pertains to all three conditions of the donation. When CASTEA leased the property to Bodega, it breached the first and second conditions.

Accordingly, petitioner takes the position that when CASTEA leased the property to Bodega, it violated the conditions in the Deed of Donation and as such, the property automatically reverted to it. It even executed a Deed of Revocation. The records show that CASTEA never contested this revocation. Hence, applying

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[49] *Rollo,* p. 107.

[50] *Id.*

the ruling in *De Luna*, *Roman Catholic Archbishop of Manila*, *Dolor* and *Zamboanga Barter Traders Kilusang Bayan, Inc.,* petitioner validly considered the donation revoked and by virtue of the automatic revocation clause, this revocation was automatic and immediate, without need of judicial intervention. Thus, the CA clearly erred in its finding that petitioner should have first filed an action for reconveyance. This contradicts the doctrine stated in the aforementioned cases and renders nugatory the very essence of an automatic revocation clause.

Thus, as petitioner validly considered the donation revoked and CASTEA never contested it, the property donated effectively reverted back to it as owner. In demanding the return of the property, petitioner sources its right of possession on its ownership. Under Article 428 of the Civil Code, the owner has a right of action against the holder and possessor of the thing in order to recover it.

This right of possession prevails over Bodega's claim which is anchored on its Contract of Lease with CASTEA. CASTEA's act of leasing the property to Bodega, in breach of the conditions stated in the Deed of Donation, is the very same act which caused the automatic revocation of the donation. Thus, it had no right, either as an owner or as an authorized administrator of the property to lease it to Bodega. While a lessor need not be the owner of the property leased, he or she must, at the very least, have the authority to lease it out.[51] None exists in this case. Bodega finds no basis for its continued possession of the property.

As to the question of prescription, we rule that the petitioner's right to file this ejectment suit against Bodega has not prescribed.

First, we reiterate that jurisprudence has definitively declared that Article 764 on the prescription of actions for the revocation of a donation does not apply in cases where the donation has an automatic revocation clause.[52] This is necessarily so because

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[51] *Ballesteros v. Abion*, G.R. No. 143361, February 9, 2006, 482 SCRA 23, 33.

[52] *Zamboanga Barter Traders Kilusang Bayan, Inc. v. Plagata*, G.R. No. 148433, September 30, 2008, 567 SCRA 163, 181-182; *Roman Catholic*

Article 764 speaks of a judicial action for the revocation of a donation. It cannot govern cases where a breach of a condition automatically, and without need of judicial intervention, revokes the donation.

Second, we cannot agree with the ruling of the CA that the petitioner should have first filed an action for reconveyance of the property, and that petitioner's action has prescribed since it did not file the action within 10 years. This reveals a failure to understand the nature of a donation with an automatic revocation clause. At the risk of repetition, the breach of the condition in the donation causes the automatic revocation. All the donor has to do is to formally inform the donee of the revocation. Judicial intervention only becomes necessary if the donee questions the propriety of the revocation. Even then, judicial intervention is required to merely confirm and not order the revocation. Hence, there can be no 10-year prescriptive period to file an action to speak of. When the donee does not contest the revocation, no court action is necessary.

Third, as owner of the property in this case, the petitioner is entitled to its possession. The petitioner's action for ejectment is anchored on this right to possess. Under the Civil Code and the Rules of Court, a party seeking to eject another from a property for unlawful detainer must file the action for ejectment within one year from the last demand to vacate.[53] This is the prescriptive period that the petitioner is bound to comply with in this case. The records show that the petitioner served its last demand letter on November 11, 2007. It filed the action for ejectment on March 13, 2008 or around four months from the last demand. The action is clearly within the prescriptive period.

We also affirm the grant of damages in favor of the petitioner.

Section 17 of Rule 70 of the Rules of Court provides:

Archbishop of Manila v. Court of Appeals, G.R. No. 77425, June 19, 1991, 198 SCRA 300, 306-307.

[53] CIVIL CODE, Art. 1147; Rules of Court, Rule 70, Sec. 1.

Sec. 17. *Judgment*. — If after trial the court finds that the allegations of the complaint are true, it shall render judgment in favor of the plaintiff for the restitution of the premises, the sum justly due as arrears of rent or as **reasonable compensation for the use and occupation of the premises, attorney's fees and costs**. x x x (Emphasis supplied.)

Thus, the rightful possessor in an unlawful detainer case is entitled to recover damages, which refer to "rents" or "the reasonable compensation for the use and occupation of the premises," or "fair rental value of the property"[54] and attorney's fees and costs. More specifically, recoverable damages are "those which the plaintiff could have sustained as a mere possessor, or those caused by the loss of the use and occupation of the property."[55]

In this case, the petitioner prayed for the award of ₱15,000 monthly as damages. Petitioner argued that considering that the Contract of Lease between CASTEA and Bodega shows that the monthly rent for the property is ₱30,000, the amount of ₱15,000 which it prays for is fair and reasonable.[56] We agree with the petitioner's position. The amount of rent in the Contract of Lease is evidence of the fair rental value of the property. That the petitioner asked for half of this amount as damages is reasonable given the circumstances.

WHEREFORE, the petition is **PARTIALLY GRANTED**. The Decision of the Court of Appeals dated May 31, 2010 which **AFFIRMED** the Decision of the RTC of Naga City Branch 26 dated May 13, 2009 is **REVERSED** and **SET ASIDE.** The Decision of the MTC Naga City is **REINSTATED.**

SO ORDERED.

Velasco, Jr. (Chairperson), Bersamin, Reyes, and *Tijam, JJ.,* concur.

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[54] *Herrera v. Bollos*, G.R. No. 138258, January 18, 2002, 374 SCRA 107, 112.

[55] *Dumo v. Espinas,* G.R. No. 141962, January 25, 2006, 480 SCRA 53, 70.

[56] *Rollo*, p. 133.

FIRST DIVISION

[G.R. No. 198209. March 22, 2017]

ALEXIS C. ALMENDRAS, *petitioner, vs.* **SOUTH DAVAO DEVELOPMENT COMPANY, INC., (SODACO), ROLANDO SANCHEZ, LEONARDO DALWAMPO and CARIDAD C. ALMENDRAS,** *respondents.*

SYLLABUS

REMEDIAL LAW; APPEAL FROM REGIONAL TRIAL COURTS; DIFFERENT MODES OF APPEALING RTC DECISIONS, DISTINGUISHED IN THE CASE OF *FIVE STAR MARKETING COMPANY, INC. v. BOOC*.— In *Five Star Marketing Company, Inc. v. Booc*, this Court distinguished the different modes of appealing RTC decisions, to wit: The Court, in *Murillo v. Consul, Suarez v. Villarama, Jr.* and *Velayo-Fong v. Velayo*, had the occasion to clarify the three modes of appeal from decisions of the RTC, namely: a) ordinary appeal or appeal by writ of error, where judgment was rendered in a civil or criminal action by the RTC in the exercise of its original jurisdiction; b) petition for review, where judgment was rendered by the RTC in the exercise of its appellate jurisdiction; and c) petition for review to this Court. The first mode of appeal is governed by Rule 41, and is taken to the CA on questions of fact or mixed questions of fact and law. The second mode, covered by Rule 42, is brought to the CA on questions of fact, of law, or mixed questions of fact and law. The third mode, provided for by Rule 45, is elevated to this Court only on questions of law. x x x Section 4 of Circular 2-90 in effect provides that an appeal taken either to this Court or to the CA by the wrong mode or inappropriate mode shall be dismissed. This rule is now incorporated in Section 5, Rule 56 of the Rules of Court. Moreover, the filing of the case directly with this Court departs from the hierarchy of courts. Normally, direct resort from the lower courts to this Court will not be entertained unless the appropriate remedy cannot be obtained in the lower tribunals.

APPEARANCES OF COUNSEL

Javines Al-Ag Bañez Group Of Lawyers for petitioner.
Edgar Y. Torres, Jr., R.E.B., collaborating counsel for petitioner.
Torreña Law Office for respondent SODACO.
Jet Anton Pascua for respondent Rolando Sanchez.

R E S O L U T I O N

DEL CASTILLO, *J.*:

This Petition for Review on *Certiorari*[1] filed by petitioner Alexis C. Almendras (petitioner) assails the Orders dated March 28, 2011[2] and August 9, 2011[3] of the Regional Trial Court (RTC), Digos, Davao del Sur, Branch 20. The abovementioned Orders respectively dismissed petitioner's Amended Complaint for Annulment of Deed of Sale, Damages and Attorney's fees and the reconsideration sought.

Antecedent Facts

On September 13, 2004, petitioner filed an Amended Complaint[4] seeking to annul the Deed of Sale (DOS) executed by and among respondents Caridad C. Almendras (Caridad), Rolando C. Sanchez (Rolando) and Leonardo Dalwampo over a parcel of unregistered land located at Inawayan, Sta. Cruz, Davao del Sur containing approximately 6.3087 hectares. Petitioner alleged that he owned and had occupied said parcel of land since September 21, 1978 until he was forcibly dispossessed by respondent South Davao Development Company, Inc. (SODACO) on April 23, 1994. Petitioner claimed that Caridad sold the property to Rolando, a purported dummy of SODACO.

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[1] *Rollo*, pp. 3-22.

[2] Records, pp. 415-422; penned by Judge Albert S. Axalan.

[3] *Id*. at 447-448.

[4] *Id*. at 206-210.

During the proceedings on March 16, 2010, Rolando filed a Request for Admission[5] addressed to petitioner. The said Request for Admission reads in parts:

I. That the following Resolutions/Orders of the Regional Trial Court, Branch 18, Digos City, acting as a Guardianship Court in Special Proceeding No. 830, are genuine, which copies thereof are furnished or served to your counsel, Atty. Rodolfo B. Ta-asan, Jr. and Atty. Lorenzo B. Ta-asan III, to wit:

(a) The Resolution dated January 8, 1993, approving the Petition for Guardianship over the person and properties of Alejandro D. Almendras, Sr., filed by petitioners Caridad C. Almendras, Alexis C. Almendras, Manuel. C. Almendras, Elizabeth Almendras-Alba, Rosalinda Almendras-Unson, Alejandro C. Almendras, Jr., Chuchi Almendras-Aguinaldo, and Paul C. Almendras, and appointing Rosalinda Almendras-Unson as the Guardian over the person of Alejandro D. Almendras, Sr., and Paul C. Almendras and Elizabeth Almendras-Alba as Guardians over the properties of said Alejandro D. Almendras, Sr.;

(b) The Order dated October 14, 1993, granting authority to the Judicial Guardians Paul C. Almendras and Elizabeth Almendras-Alba to sell the agricultural properties indicated in the said Order;

(c) The Order dated October 29, 1993, approving the sale made by the Judicial Guardians Paul C. Almendras and Elizabeth Almendras-Alba under the authority of the Guardianship Court over the following agricultural properties in favor of the individual vendees, to wit:

Lot No. 59, Pcs-5021 in favor of Jose C. Gahuman;
Lot Nos. 48, 49 and 60, Pcs-5021 in favor of Ruel D. Sevilla;
Lot No. 50, Pcs-5021 in favor of Leonardo M. Dalwampo;
Lot No. 53, Pcs-5021 in favor of Rolando C. Sanchez;
Lot No. 47, Pcs-5021 in favor of Magno B. Villaflores;

II. That the following documents are genuine, which copies are likewise furnished or served to your counsels Atty. Rodolfo B. Ta-asan, Jr. and Lorenzo B. Ta-asan III, to wit:

(d) The Deed of Sale dated October 15, 1993, between the vendors: Caridad C. Almendras, Judicial Guardians Paul C. Almendras and

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[5] *Id*. at 360-363.

Elizabeth Almendras-Alba and the vendee: Rolando C. Sanchez, over the parcel of agricultural land denominated as Lot No. 53, Pcs-5021, situated at Quinocol, Inawayan, Sta. Cruz, Davao del Sur, and duly acknowledged before notary public Raul O. Tolentino, as Doc. No. 257, Page No. 52; Book No. XXIX; Series of 1993;

III. That each of the following matters of fact are true.

x x x x x x x x x

(c) That sometime in November, 1992, the late Alejandro D. Almendras, Sr. then suffered a 'cerebrovascular accident' or a 'stroke' which left him physically and mentally incapacitated;

(d) That when Alejandro D. Almendras, Sr. was then recuperating at the Cebu Doctor's Hospital, the plaintiff, together with his mother, brothers and sisters, held a family conference and decided to institute a guardianship proceeding and nominated Rosalinda Almendras-Unson to be the guardian over the person of Alejandro D. Almendras, Sr. and Paul C. Almendras and Elizabeth Almendras-Alba as the guardians over the properties and Alejandro D. Almendras, Sr.;

(e) That the plaintiff, together with his mother and brothers and sisters did, in fact, institute a guardianship proceeding over the person and properties of Alejandro D. Almendras, Sr., sometime in December, 1992, then pending before the Regional Trial Court, Branch 18, Digos, Davao del Sur, and docketed as Special Proceeding No. 830;

(f) That the Almendras coconut plantation situated at Upper Quinocol, Inawayan, Sta. Cruz, Davao del Sur, comprising seven (7) adjoining cadastral lots, was among the properties belonging to Alejandro D. Almendras, Sr. and placed under the jurisdiction of the Guardianship Court in Special Proceeding No. 830, to wit:

Lot No. 50, Pcs-5021 with an area of 5.1403 has.
Lot No. 59, Pcs-5021 with an area of 3.4710 has.
Lot Nos. 48, 49, 60, Pcs-5021, with an area of 5.1664 has.
Lot No. 53, Pcs-5021, with an area of 6.3080 has.
Lot No. 47, Pcs-5021, with an area of 3.4461 has.

(g) That plaintiff ALEXIS C. ALMENDRAS did not oppose the inclusion of the subject property denominated as Lot. No. 53, Pcs-5021, under the Guardianship Court in Special Proceeding No. 830;

(h) That plaintiff ALEXIS C. ALMENDRAS did not oppose the grant of authority to the judicial guardians Paul C. Almendras and Elizabeth Almendras-Alba to sell the individual lots comprising the Almendras coconut plantation to different vendees, particularly, the subject property denominated as Lot No. 53, Pcs-5021 in favor of defendant ROLANDO C. SANCHEZ;

(i) That plaintiff ALEXIS C. ALMENDRAS did not seek a reconsideration nor appeal the Order of the Guardianship Court dated October 29, 1993, approving the sale of the individual lots comprising the Almendras coconut plantation to different vendees;[6] (Emphasis supplied)

Petitioner, however, failed to file a sworn statement specifically denying the matters therein or setting forth in detail the reasons why he cannot either deny or admit said matters. Thus, Rolando filed a Motion for Summary Judgment.[7] He alleged that there being no genuine issue as to any material fact, and the issue of ownership raised by petitioner being sham or fictitious, except as to the issue of damages, he is entitled to a summary judgment. Rolando prayed that the complaint be dismissed, that the validity of the DOS as well as his ownership and possession of the subject property be upheld, and that a hearing be conducted solely for the purpose of determining the propriety of his counterclaim for damages.

Petitioner opposed the Motion for Summary Judgment claiming that he was not personally served a copy of the Request for Admission. Moreover, he averred that the same was fatally defective for failure to comply with Section 5, Rule 15 of the Rules of Court on notice of hearing.[8]

In the assailed March 28, 2011 Order, the RTC held that contrary to petitioner's claim, he was in fact served a copy of the Motion for Summary Judgment via registered mail and that

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[6] *Id*. at 360-362.

[7] *Id*. at 376-385.

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

he received a copy thereof on March 24, 2010[9] while his counsel was furnished a copy thereof on March 17, 2010.[10] The RTC also held that there was a faithful compliance on the notice of hearing requirement. It noted that the motion was filed on June 29, 2010 while the hearing was scheduled on July 9, 2010. Thus, it cannot be said that there was violation of Section 5, Rule 15 of the Rules of Court.

The RTC then concluded that by petitioner's failure to respond to the Request for Admission, he was deemed to have admitted or impliedly admitted the matters specified therein. In particular, petitioner is deemed to have admitted the fact that the property in question had been validly sold to Rolando thereby rendering the complaint without any cause of action.[11]

The dispositive portion of the March 28, 2011 Order reads:

> WHEREFORE, partial summary judgment is hereby rendered in favour of defendant Sanchez decreeing the dismissal of the complaint against him. The issue on damages will be heard on July 18, 2011 at 8:30 in the morning.
>
> With regard to defendants Caridad Almendras and SODACO, set this case for initial presentation of plaintiff's evidence on July 18, 2011 at 8:30 in the morning.
>
> SO ORDERED.[12]

Petitioner filed a Motion for Reconsideration[13] insisting that he cannot be considered to have admitted the matters specified in the Request for Admission. SODACO also sought reconsideration of the March 28, 2011 Order claiming that the complaint filed against it should likewise be dismissed considering that petitioner could not maintain a suit against him after the dropping of the suit against Rolando.

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[9] *Id*. at 420.

[10] *Id*.

[11] *Id*. at 421-422.

[12] *Id*. at 422.

[13] *Id*. at 423-427.

In an Order[14] dated August 9, 2011, the RTC denied petitioner's Motion for Reconsideration but granted that of SODACO, *viz.*:

WHEREFORE, the motion for reconsideration filed by the plaintiff is DENIED. The motion for reconsideration filed by SODACO is GRANTED. Consequently, the Order dated March 28, 2011 is hereby modified in the sense that the complaint against all defendants including the counterclaims, are Ordered DISMISSED.

SO ORDERED.[15]

Aggrieved by the RTC's Orders, petitioner sought recourse directly to this Court via the instant Petition for Review.

We **DENY** the Petition for Review.

The instant Petition denominated as a petition for review, wrongfully alleged grave abuse of discretion on the part of the RTC. A petition for review on *certiorari* under Rule 45 of the Rules of Court is glaringly different from a petition for *certiorari* under Rule 65 of the Rules of Court. "A petition for review under Rule 45 of the x x x Rules of Court is generally limited only to questions of law or errors of judgment. On the other hand, a petition for *certiorari* under Rule 65 may be availed of to correct errors of jurisdiction including the commission of grave abuse of discretion amounting to lack or excess of jurisdiction."[16]

Here, petitioner ascribed grave abuse of discretion to the RTC claiming that contrary to the lower court's ruling, he could not have received the motion on March 24, 2010 (as stated in the postmaster's certification) given that the motion was filed only on June 26, 2010.

It must be stressed that only questions of law may be properly raised in a petition for review. Whether or not petitioner received

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[14] *Id*. at 447-448.

[15] *Id*. at 448.

[16] *Nazareno v. City of Dumaguete*, 607 Phil. 768, 792 (2009), citing *Bacelonia v. Court of Appeals,* 445 Phil. 300 (2003).

a copy of the motion on March 24, 2010 is a factual issue and such is not within the ambit of a petition for review.

In any case, it may be well to remind petitioner that he never raised the issue of lack of service of the **Motion for Summary of Judgment** to him. His petition mainly rests on the failure to serve him a copy of the **Request for Admission**. Given that the Request for Admission was dated March 11, 2010, it would be logical to think that the registry return card was for the said Request.

A perusal of the March 28, 2011 Order would readily show that the RTC meant to refer to the Request for Admission *vis-à-vis* the applicability of the registry return card and the letter-certification of the postmaster:

> Plaintiff through counsel opposed the motion on the grounds that the motion is fatally defective for failure to comply with Section 5 of Rule 15 and that the request for admission was not directly served on him but copy furnished only upon his counsel.[17] (Underscoring supplied)

Despite this being beyond the ambit of a petition for review, we find that such error does not constitute grave abuse of discretion. Petitioner should read the March 28, 2011 Order in its entirety to see that the said "absurdity" would not have caused him great damage and prejudice. If he were really keen on protecting his rights after noting the flaw in the March 28, 2011 Order, it would have been prudent for him to file a Motion for Correction of Judgment or to seek a different mode of appeal (*i.e.* Petition for *Certiorari*) but he did not.

The determination of whether an issue involves a question of law or a question of fact has been discussed in *Republic v. Malabanan*[18] where this Court explained:

> x x x A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when

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[17] Records, p. 420.

[18] 646 Phil. 631 (2010).

the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact. Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine 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.[19]

Petitioner raises three issues in his Petition, namely:

I.

WHETHER OR NOT AFTER THE FILING OF A MOTION FOR SUMMARY JUDGMENT AND DENYING PETITIONER'S MOTION FOR RECONSIDERATION, THE TRIAL COURT COULD DISMISS THE PETITIONER'S COMPLAINT MOTU PROPRIO FOR PETITIONER'S FAILURE TO FILE HIS OBJECTIONS TO REQUEST FOR ADMISSION WHICH WAS ONLY FURNISHED TO HIS COUNSEL?

II.

WHETHER OR NOT THE TRIAL COURT COULD INTERPRETE [sic] THAT FOR [sic] PETITIONER'S FAILURE TO FILE HIS OBJECTIONS TO [THE] REQUEST FOR ADMISSION WHICH WAS ONLY FURNISHED TO HIS COUNSEL IS AN IMPLIED ADMISSION OF THE MATTERS SPECIFIED IN THE REQUEST?

III.

WHETHER OR NOT SUMMARY JUDGMENT IS APPLICABLE?[20]

At first blush, the first two issues would seem to be purely questions of law. However, the alleged failure to serve the Request for Admission to petitioner is disputed. Addressing the first two issues would require this Court to examine the

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[19] *Id.* at 637-638 citing *Leoncio v. Vera*, 569 Phil. 512, 516 (2008).

[20] *Rollo,* p. 10.

veracity of petitioner's claim that the Request for Admission was unserved, given the supposed ambiguity of the March 28, 2011 Order. Such would go beyond this Court's jurisdiction in a petition for review on *certiorari*. In any case, we have already explained that the RTC already ruled that petitioner was already served a copy of the Request for Admission.

As to the third issue, determining the applicability of a summary judgment would require a review of the issues of fact involved which is likewise beyond the ambit of this Petition and which we find unnecessary to discuss given our previous disquisition.

Finally, as if the abovementioned procedural flaws were not enough, petitioner went straight to this Court when he had the more appropriate remedy of appealing before the CA. Hence, it would be proper to conclude that petitioner had forgone his right to open the entire case for review on any matter concerning a question of fact.

In *Five Star Marketing Company, Inc. v. Booc,*[21] this Court distinguished the different modes of appealing RTC decisions, to wit:

The Court, in *Murillo v. Consul, Suarez v. Villarama, Jr.* and *Velayo-Fong v. Velayo*, had the occasion to clarify the three modes of appeal from decisions of the RTC, namely: a) ordinary appeal or appeal by writ of error, where judgment was rendered in a civil or criminal action by the RTC in the exercise of its original jurisdiction; b) petition for review, where judgment was rendered by the RTC in the exercise of its appellate jurisdiction; and c) petition for review to this Court. The first mode of appeal is governed by Rule 41, and is taken to the CA on questions of fact or mixed questions of fact and law. The second mode, covered by Rule 42, is brought to the CA on questions of fact, of law, or mixed questions of fact and law. The third mode, provided for by Rule 45, is elevated to this Court only on questions of law.

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[21] 561 Phil. 167, 180-181 (2007).

Section 4 of Circular 2-90 in effect provides that an appeal taken either to this Court or to the CA by the wrong mode or inappropriate mode shall be dismissed. This rule is now incorporated in Section 5, Rule 56 of the Rules of Court. Moreover, the filing of the case directly with this Court departs from the hierarchy of courts. Normally, direct resort from the lower courts to this Court will not be entertained unless the appropriate remedy cannot be obtained in the lower tribunals.

As the instant Petition was filed without resorting to a more appropriate remedy before the CA, the same should be dismissed following our ruling above.

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

The Resolution dated August 27, 2014 directing petitioner to file a Consolidated Reply is **RECALLED** and **SET ASIDE.**

The Motion for Leave to Enter Appearance as Collaborating Counsel with Manifestation filed by Atty. Edgar Y. Torres, Jr. which did not bear the conformity of petitioner is **NOTED WITHOUT ACTION.**

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 200396. March 22, 2017]

MARTIN VILLAMOR *y* TAYSON, and VICTOR BONAOBRA *y* GIANAN, *petitioners, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT AGAINST UNREASONABLE SEARCHES AND SEIZURES; WITHOUT A WARRANT, A SEARCH OR SEIZURE BECOMES UNREASONABLE AND ANY EVIDENCE OBTAINED ON THE OCCASION OF SUCH UNREASONABLE SEARCH AND SEIZURE SHALL BE INADMISSIBLE IN EVIDENCE FOR ANY PURPOSE IN ANY PROCEEDING.—** Section 2, Article III of the 1987 Constitution requires a judicial warrant based on the existence of probable cause before a search and an arrest may be effected by law enforcement agents. Without the said warrant, a search or seizure becomes unreasonable within the context of the Constitution and any evidence obtained on the occasion of such unreasonable search and seizure shall be inadmissible in evidence for any purpose in any proceeding. "Evidence obtained and confiscated on the occasion of such an unreasonable search and seizure is tainted and should be excluded for being the proverbial fruit of the poisonous tree."

2. **REMEDIAL LAW; CRIMINAL PROCEDURE; ARREST; WARRANTLESS ARREST; ELEMENTS.—** In warrantless arrests made pursuant to Section 5(a), Rule 113, two elements must concur, namely "(a) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (b) such overt act is done in the presence or within the view of the arresting officer." After a judicious review of the records of the case, the Court finds that there was no valid warrantless arrest on petitioners. It was not properly established that petitioners had just committed, or were actually committing, or attempting to commit a crime and that said act or acts were done in the presence of the arresting officers.

3. **ID.; ID.; ID.; ID.; FAILURE TO QUESTION THE LEGALITY OF A WARRANTLESS ARREST BEFORE ARRAIGNMENT CONSTITUTES A WAIVER OF THE RIGHT TO QUESTION THE LEGALITY OF THE ARREST BUT SUCH WAIVER IS ONLY CONFINED TO THE DEFECTS OF THE ARREST AND NOT ON THE INADMISSIBILITY OF THE EVIDENCE SEIZED DURING AN ILLEGAL ARREST.—** [T]he warrantless arrest conducted by PD Peñaflor and his team was unlawful as the same does not satisfy the requirements of

an *in flagrante delicto* arrest. Consequently, the search and seizure of the effects found inside the house of Bonaobra are likewise illegal since there could be no valid search incident to an illegal warrantless arrest. Thus, evidence seized from Bonaobra's house is inadmissible for being a fruit of the poisonous tree. The Court is aware that any question regarding the legality of a warrantless arrest must be raised before arraignment. Failure to do so constitutes a waiver of the right to question the legality of the arrest especially when the accused actively participated during trial as in this case. However, we have clarified that such waiver is only confined to the defects of the arrest and not on the inadmissibility of the evidence seized during an illegal arrest.

APPEARANCES OF COUNSEL

Sinforoso M. Sarmiento, Jr. for petitioners.
The Solicitor General for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

The Constitution guarantees 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.[1] A mere tip from an unnamed informant does not vest police officers with the authority to barge into private homes without first securing a valid warrant of arrest or search warrant. While there are instances where arrests and searches may be made without a warrant, the Court finds that the constitutionally-protected right against unreasonable searches and seizures was violated in the case at bar.

This Petition for Review under Rule 45 of the Rules of Court seeks to set aside the June 13, 2011 Decision[2] of the Court of

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[1] The 1987 CONSTITUTION, Article III, Section 2.

[2] CA *rollo,* pp. 162-170; penned by Associate Justice Mario L. Guariña III and concurred in by Associate Justices Apolinario D. Bruselas, Jr. and Manuel M. Barrios.

Appeals (CA) in CA-G.R. CR No. 30457 which affirmed the October 25, 2006 Judgment[3] of the Regional Trial Court (RTC), Branch 43 of Virac, Catanduanes in Criminal Case Nos. 3463 and 3464, convicting both petitioners for Violation of Presidential Decree (PD) No. 1602 as amended by Republic Act (RA) No. 9287, otherwise known as "An Act Increasing the Penalties for Illegal Numbers Games Amending Certain Provisions of PD 1602 and for Other Purposes." Petitioner Martin T. Villamor (Villamor) was convicted as a collector of bets in the illegal numbers game of *"lotteng"* under Section 3(c) of RA 9287, while petitioner Victor G. Bonaobra (Bonaobra) was convicted as a coordinator, controller, or supervisor under Section 3(d) of the said law. The RTC sentenced Villamor to suffer the penalty of imprisonment from eight (8) years and one (1) day as minimum to nine (9) years as maximum, while Bonaobra was sentenced to suffer the penalty of imprisonment of ten (10) years and one (1) day as minimum to eleven (11) years as maximum.

Factual Antecedents

Villamor was charged with violation of Section 3(c) of RA 9287 for collecting and soliciting bets for an illegal numbers game locally known as "*lotteng*" and possessing a list of various numbers, a calculator, a cellphone, and cash. The charge stemmed from the following Information:[4]

> That on or about the 17th day of June 2005 in the morning, in barangay Francia, municipality of Virac, province of Catanduanes, Philippines, within the jurisdiction of this Honorable Court the said accused with intent [to] gain thru illegal means did then and there, [willfully], unlawfully and feloniously engage, collect [and] solicit x x x bets for illegal numbers game locally known as "Lotteng" by having in his possession [a] calculator, cellphone, [list] of various numbers and money and lotteng paraphernalias.
>
> CONTRARY TO LAW.

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[3] Records (Crim. Case No. 3463), pp. 205-215; penned by Presiding Judge Lelu P. Contreras.

[4] *Id*. at 1-2.

Another Information[5] was filed in the same court charging Bonaobra with violation of the same law, committed as follows:

> That on or about the 17th day of June 2005 in the morning, in barangay Francia, municipality of Virac, province of Catanduanes, Philippines, within the jurisdiction of this Honorable Court the said accused with intent [to] gain thru illegal means did then and there, [willfully], unlawfully and feloniously maintain and operate illegal numbers game locally known as "lotteng" while in possession of gambling paraphernalias, such as [a] calculator, cellphone, list of various numbers and cash in the amount of ₱1,500.00 representing collection of bets.
>
> CONTRARY TO LAW.

Petitioners filed their respective Motions for Reinvestigation, which were both granted by the RTC. Subsequently, the Office of the Provincial Prosecutor issued separate Resolutions both dated September 13, 2005 amending the Informations in both cases.

In the Amended Information, the phrase "acting as a collector" was included to charge Villamor as a collector in an illegal numbers game. The Amended Information[6] provides:

> That on or about the 17th day of June 2005 in the morning, in barangay Francia, municipality of Virac, province of Catanduanes, Philippines, within the jurisdiction of this Honorable Court the said accused acting as a collector with intent [to] gain thru illegal means[,] did then and there, willfully, unlawfully and feloniously engage, collect and solicit bets for illegal numbers game locally known as "Lotteng" by having in his possession [a] calculator, cellphone, [list] of various numbers and money and lotteng paraphernalias.
>
> CONTRARY TO LAW.

On the other hand, Bonaobra was charged as a manager or operator in the Amended Information,[7] the incriminatory paragraph of which states:

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[5] Records (Crim. Case No. 3464), pp. 1-2.

[6] Records (Crim. Case No. 3463), p. 37.

[7] Records (Crim. Case No. 3464), p. 28.

That on or about the 17th day of June 2005 in the morning, in barangay Francia, municipality of Virac, province of Catanduanes, Philippines, within the jurisdiction of this Honorable Court the said accused acting as manager and operator with intent [to] gain thru illegal means did then and there, [willfully], unlawfully and feloniously maintain and operate illegal numbers game locally known as "lotteng" while in possession of gambling paraphernalia, such as [a] calculator, cellphone, lists of various numbers and cash in the amount of ₱1,500.00 representing collection of bets.

CONTRARY TO LAW.

When separately arraigned, Villamor, on October 4, 2005 and Bonaobra, on November 29, 2005, both pleaded not guilty to the respective charges filed against them. After the pre-trial conference, a joint trial on the merits followed.

Version of the Prosecution

The prosecution presented four witnesses, namely: Domingo Tejerero (Tejerero), Provincial Director, Police Superintendent Francisco Peñaflor (PD Peñaflor), SPO4 Severino Malasa, Jr., and PO1 David Adrian Saraspi (PO1 Saraspi). Culled from the records were the following facts:

On June 17, 2005, at around 9:00 a.m., PD Peñaflor received a call from an informant regarding an ongoing illegal numbers game at *Barangay* Francia, Virac, Catanduanes, specifically at the residence of Bonaobra. A team composed of PD Peñaflor, Saraspi, PO1 Rolando Ami, a driver, and a civilian asset proceeded to Bonaobra's residence to confirm the report.

Upon arrival at the target area, the team parked their service vehicle outside the compound fenced by bamboo slats installed two inches apart which allowed them to see the goings on inside. According to the police officers, they saw petitioners in the act of counting bets, described by the Bicol term "*revisar*," which means collating and examining numbers placed in "*papelitos*," which are slips of paper containing bet numbers, and counting money bets.

When they entered the gate of the compound, they introduced themselves as police officers and confiscated the items found

on the table consisting of cash amounting to ₱1,500.00 in different denominations, the "*papelitos*," a calculator, a cellular phone, and a pen. Petitioners were then brought to Camp Francisco Camacho where they were investigated for illegal gambling. Subsequently, a case was filed against the petitioners before the Office of the Provincial Prosecutor.

Version of the Defense

The defense presented six witnesses, namely Villamor, Bonaobra, Demetrio Bonaobra, the brother of Bonaobra, Florencio Bonaobra (Florencio), the father of Bonaobra, Juan Vargas, and Jonah Bonaobra (Jonah), the wife of Bonaobra. Their testimonies are summarized below.

On June 17, 2005, at around 8:30 a.m., Villamor went to Bonaobra's house to pay a debt he owed to the latter's wife, Jonah. At that time, Bonaobra was having coffee with his father Florencio inside their house. Villamor gave Bonaobra ₱2,000.00 which the latter placed on top of the table. Bonaobra then went outside the house to answer his cellphone. When Bonaobra was at the door, a man later identified as PD Peñaflor kicked the fence of Bonaobra's house, grabbed Bonaobra's right arm, and said, "*Caught in the act ka*!" Florencio went outside and asked PD Peñaflor if he had a search warrant. Two more men entered the house and took the money from the table. Petitioners were then made to board the service vehicle and brought in for investigation at the police headquarters.

Ruling of the Regional Trial Court

On October 25, 2006, the RTC of Virac, Catanduanes, Branch 43 rendered its Judgment finding petitioners guilty beyond reasonable doubt of committing illegal numbers game locally known as "*lotteng*," a variant of the game *Last Two*,[8] respectively as a collector or agent under Section 3(c), and as a coordinator, controller, or supervisor under Section 3(d), of RA 9287.

[8] An illegal numbers game where the winning combination is derived from the last two (2) numbers of the first prize of the winning Sweepstakes ticket which comes out during the weekly draw of the Philippine Charity Sweepstakes Office, and its variants.

The RTC gave credence to the testimonies of the arresting officers and held that petitioners were caught *in flagrante delicto* committing an illegal numbers game locally known as "*lotteng*," a variant of *Last Two*. The RTC held that petitioners were seen by the arresting officers in the act of counting bets before the arrest was made inside Bonaobra's compound. The petitioners were also caught holding "*papelitos*," which contained the three rows of two-number combinations. Since the winning combination in "*lotteng*" is taken from the first two numbers of the winning combinations in the daily draw of the lotto in the Philippine Charity Sweepstakes, the RTC held that the number combinations shown in the "*papelitos*" were meant to correspond to the lotto results.

The RTC further held that Villamor's participation in the illegal numbers game was that of a collector since he brought bet money to Bonaobra while the latter was that of a coordinator, controller, or supervisor after it was shown that he received the money from Villamor.

The dispositive part of the Judgment of the RTC reads:

WHEREFORE, applying the Indeterminate Sentence Law, this Court hereby SENTENCES Martin Villamor to suffer a penalty of imprisonment from eight (8) years and one (1) day as minimum to nine (9) years as maximum, and Victor Bonaobra to suffer a penalty of ten (10) years and one (1) day as minimum to eleven (11) years as maximum. Likewise, the money amounting to ₱1,500.00 and the other personal properties used as gambling paraphernalia, like the calculator, ballpen and cellular phone are confiscated in favor of the state.

SO ORDERED.[9]

Ruling of the Court of Appeals

On June 13, 2011, the CA affirmed the RTC's Decision. The CA brushed aside Bonaobra's argument that his right to due process was violated when he was convicted of a crime different from that with which he was charged. The CA held that the

[9] Records (Crim. Case No. 3463), p. 215.

classification of a maintainer, manager, or operator includes a coordinator, controller, or supervisor.[10] The CA ratiocinated that to hold a maintainer guilty of the lesser offense of acting as a coordinator will not be violative of his right to be informed of the nature and cause of his accusation since the graver offense of acting as a maintainer necessarily includes being a coordinator.

With respect to Villamor, the CA gave more weight and credence to the testimonies of the arresting officers who were presumed to have acted regularly in the performance of their official functions. The CA held that Villamor's denials cannot prevail over the positive assertions of the police officers who caught him in the act of revising and counting bets.

The CA disposed the case as follows:

> IN VIEW OF THE FOREGOING, the decision appealed from is affirmed.
>
> SO ORDERED.[11]

Hence, this Petition.

Issue

The main issue in this case is whether the petitioners' conviction for violation of RA 9287 as collector or agent under Section 3(c) for Villamor, and as coordinator, controller, or supervisor under Section 3(d) for Bonaobra, should be upheld.

Our Ruling

We find the Petition meritorious.

In criminal cases, an appeal throws the entire "case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision [based on] x x x grounds other than those that the parties raised as errors."[12]

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[10] CA *rollo,* p. 168.

[11] *Id*. at 169-170.

[12] *People v. Saludes*, 451 Phil. 719, 728 (2003).

The Court finds that the right of the petitioners against unreasonable searches and seizures was violated by the arresting officers when they barged into Bonaobra's compound without a valid warrant of arrest or a search warrant. While there are exceptions to the rule requiring a warrant for a valid search and seizure, none applies in the case at bar. Consequently, the evidence obtained by the police officers is inadmissible against the petitioners, the same having been obtained in violation of the said right.

Section 2, Article III of the 1987 Constitution requires a judicial warrant based on the existence of probable cause before a search and an arrest may be effected by law enforcement agents. Without the said warrant, a search or seizure becomes unreasonable within the context of the Constitution and any evidence obtained on the occasion of such unreasonable search and seizure shall be inadmissible in evidence for any purpose in any proceeding.[13] "Evidence obtained and confiscated on the occasion of such an unreasonable search and seizure is tainted and should be excluded for being the proverbial fruit of the poisonous tree."[14]

In this case, the apprehending officers claim that petitioners were caught *in flagrante delicto*, or caught in the act of committing an offense. PD Peñaflor and his team of police officers claim that petitioners were committing the offense of illegal numbers game when they were arrested without a warrant.

We are not persuaded.

Under Section 5 of Rule 113 of the Rules of Court, a lawful arrest may be effected even without a warrant of arrest in the following instances:

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[13] The 1987 CONSTITUTION, Article III, Section 3(2) states:

Sec. 3 x x x

(2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.

[14] *Ambre v. People*, 692 Phil. 681, 693 (2012).

Sec. 5. *Arrest without warrant; when lawful.* – A peace officer or a private person may, without a warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

(b) When an offense has in fact just been committed, and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and

(c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

In cases falling under paragraphs (a) and (b) above, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail and shall be proceeded against in accordance with Section 7 of Rule 112.

In warrantless arrests made pursuant to Section 5(a), Rule 113, two elements must concur, namely "(a) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (b) such overt act is done in the presence or within the view of the arresting officer."[15]

After a judicious review of the records of the case, the Court finds that there was no valid warrantless arrest on petitioners. It was not properly established that petitioners had just committed, or were actually committing, or attempting to commit a crime and that said act or acts were done in the presence of the arresting officers. Based on the testimonies of PO1 Saraspi and PD Peñaflor, they were positioned some 15 to 20 meters away from petitioners. PO1 Saraspi's testimony during cross examination reveals the following:

ATTY. SAMONTE:

Q While you were outside the compound of Bonaobra, what was your distance to accused Martin Villamor and Victor Bonaobra?

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[15] *People v. Villareal*, 706 Phil. 511, 517-518 (2013).

A More or less fifteen (15) to twenty (20) meters.

Q Is it not that the compound of Bonaobra is surrounded with fence?
A Yes, sir.

Q Bamboo fence, right?
A Yes, sir, without a gate.

Q Are you sure it's without a gate?
A Probably it was open.

Q Can you determine the height of the fence?
A Between 5'7" to 5'9".

Q More than your height?
A Yes, sir.

Q Can you tell us whether you can see what the person is doing inside the compound while you are outside?
A The fence is made up [sic] of bamboo and there were gaps as far as the fence is concerned that is why when we alighted from the Frontier we saw what was inside the compound.

Q And the space of each bamboo, can you determine [sic]?
A One and half to two inches apart.

Q When you were already outside the compound what were the accused doing?
A They were sitting and they were revising.

Q Were they seated with [sic] a table?
A They were sitting and Victor Bonaobra was without a shirt.

Q What were they holding?
A 'Papelitos'.

Q What else?
A While they were holding 'papelitos' the monies were just on the table.

Q At the distance of 15 to 10 meters can you determine the contents of the 'papelitos'?
A No, sir.

Q So you are not sure whether those are gambling paraphelnalia?
A No, sir.

Q Because you do not know the contents of that and you are not sure whether those are gambling paraphernalia you went inside, is that right?
A After we introduced ourselves that we are [sic] police officers we entered the compound.

Q Meaning to say you were outside the compound and saying you are policemen?
A We entered first and we introduced ourselves.

Q Which is first, going inside or introducing yourselves?
A While entering we were also introducing ourselves simultaneously.

Q When you reached inside, what did you determine?
A We determined that there were lotteng paraphernalia on the table.

Q That is the only time that you determined that those were gambling paraphernalia?
A No, even on the [sic] outside we identified it already.

Q A while ago you said at a distance of 15 to 10 meters you can determine whether they were in possession of the illegal gambling paraphernalia?
A What I am trying to say is that I cannot identify those that are written on the 'papelitos' at the distance and I saw the calculator, the money bets.

Q So what you saw within a distance of 15 to 10 meters are calculators, money and cellphone?
A Yes, sir.

Q Do you consider money gambling paraphernalia?
A Yes, sir.

Q So every time you see money you will consider that a gambling paraphernalia?
A In other situations.

Q How about calculator, do you consider calculator gambling paraphernalia?
A Yes, sir.

Q When you go to a department store there are calculators, do you consider those calculators gambling paraphernalia?
A If you are going to consolidate all these items in a table all of these are gambling paraphernalia.

Q So when you consolidate these items and papers and calculators, if you see those items at Century Trading, will you consider those as gambling paraphernalia?[16]

Considering that 15 to 20 meters is a significant distance between the police officers and the petitioners, the Court finds it doubtful that the police officers were able to determine that a criminal activity was ongoing to allow them to validly effect an *in flagrante delicto* warrantless arrest and a search incidental to a warrantless arrest thereafter. The police officers even admitted that the compound was surrounded by a bamboo fence 5'7" to 5'9" in height, which made it harder to see what was happening inside the compound. It appears that the police officers acted based solely on the information received from PD Peñaflor's informant and not on personal knowledge that a crime had just been committed, was actually being committed, or was about to be committed in their presence. The Court finds it doubtful that the police officers witnessed any overt act before entering the private home of Bonaobra immediately preceding the arrest. PO1 Saraspi even admitted that from his position outside the compound, he could not read the contents of the so-called "papelitos;" yet, upon seeing the calculator, phone, papers and money on the table, he readily concluded the same to be gambling paraphernalias.

On the part of PD Peñaflor, he likewise admitted that from his position outside the compound, he could not determine the activities of the persons inside. It was only after he had illegally entered the compound, since he was not armed with a warrant, that he supposedly saw the gambling paraphernalia. PD Peñaflor's testimony in this regard is as follows:

Q Can you tell the Honorable Court, Mr. Witness, the distance of the house of Victor Bonaobra to that place where you parked your vehicle when you arrived in the vicinity?

A When I parked my vehicle in front of the compound because that is a street, the distance from the street to that place where there is an on-going 'revisar' of 'lotteng', more or less 15 to 20 meters, I believe, from the gate.

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[16] TSN, March 8, 2006, pp. 27-31. Emphasis supplied.

Q So, you did not immediately go inside the compound of Victor Bonaobra?
A Yes, sir. I verified first if there is really [sic] persons in the compound.

Q So, at that distance of 15 to 20 meters, you were able to verify what they were doing on the particular time, Mt. Witness?
A No, sir.[17]

During his direct examination, Bonaobra testified that he was only answering his cellphone when PD Peñaflor barged into his compound and arrested him. The relevant portions of his testimony reveals the following:

ATTY SAMONTE:

Q At around 9:00 a.m. of June 17, 2005, what were you doing if you still remember?
A I stood up and I went out and made [sic] three steps from the door to answer the cellphone and later on I was surprised when the police whom I could not identify, kicked the door.

Q Mr. Witness, which door [are you] referring to [that] was kicked by the police?
A The gate outside of our fence.

x x x x x x x x x

Q You said a while ago that the policeman kicked the door of your fence x x x who was that policeman, if you know him?
A: Provincial Director Peñaflor.

Q: Who was with PD Peñaflor on [sic] that particular time, if any, Mr. Witness?
A Two (2) persons in civilian clothes.

x x x x x x x x x

Q After PD Peñaflor kicked the door of your fence, what happened next, Mr. Witness?
A He held my hand and he seized my cellphone.

x x x x x x x x x

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[17] TSN, March 6, 2006, pp. 11-12.

Q After PD Peñaflor seized your cellphone, what else did he do?
A He said, "caught in the act."

Q Which comes first, Mr. Witness, the utterance made by PD Peñaflor that you were caught in the act or the utterance made by your father whether they had a warrant?
A When my father asked them whether they have a warrant.

Q And what was the answer of PD Peñaflor when your father asked that question?
A He said, "caught in the act."

Q And what was the reply of your father?
A My father said that what you are doing is wrong, that is prohibited.

Q And what did PD Peñaflor answered [sic] to your father?
A He shouted at my father, "Di na kailangan yan" (That is not needed).[18]

From the circumstances above, it is highly suspect that PD Peñaflor had witnessed any overt act indicating that the petitioners were actually committing a crime. While PD Peñaflor claims that he caught the petitioners in the act of collecting bets and counting bet money, this observation was highly improbable given the distance of the police from the petitioners and the fact that the compound was surrounded by a bamboo fence.

For his part, Villamor claimed that he was at the Bonaobra compound to repay his loan to Jonah. The prosecution, through Prosecutor Tañon, even admitted this fact during Jonah's direct examination. The following exchange between the prosecution and the defense was quite revealing:

ATTY. SAMONTE:

Your Honor, please, [may] I respectfully offer the testimony of Jona[h] Bonaobra to show that she is the wife of Victor Bonaobra; that at around 8:30 a.m. of June 17, 2005 she was inside their residence at Bonaobra's compound, Francia,

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[18] TSN, September 22, 2006, pp. 4-5.

Virac, Catanduances and on that particular time and date, Martin Villamor arrived to pay his debt and she personally witnessed the unlawful act committed by the policemen who entered their dwelling on that particular time and date and such other matters relative thereto, Your Honor.

COURT:

Any comment from the prosecution?

PROS. TAÑON:

We will admit that she is the wife of Victor Bonaobra; that on June 17, 2005 at 8:30 in the morning she was inside the residence of Bonaobra's compound; **that accused Martin Villamor arrived to pay his debt.** We are to contest on that she personally witnessed the unlawful act.

ATTY. SAMONTE:

To clarify that, the prosecution is admitting the fact that Martin arrived to pay the loan on that particular day?

PROS. TAÑON:

Yes, Your Honor.

COURT:

Okay, so that we can proceed to the other matters.[19] (Emphasis supplied)

From the exchange above, it is clear that the prosecution admitted that Villamor went to Bonaobra's house to pay his loan to Jonah. Thus, at the exact moment of the arrest, neither Bonaobra, who was answering his cellphone, nor Villamor, who was paying his loan, was performing any overt act constitutive of a crime.

Verily, the warrantless arrest conducted by PD Peñaflor and his team was unlawful as the same does not satisfy the requirements of an *in flagrante delicto* arrest. Consequently, the search and seizure of the effects found inside the house of Bonaobra are likewise illegal since there could be no valid search incident to an illegal warrantless arrest. Thus, evidence seized from Bonaobra's house is inadmissible for being a fruit of the poisonous tree.

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[19] TSN, September 29, 2006, pp. 12-13. Emphasis supplied.

The Court is aware that any question regarding the legality of a warrantless arrest must be raised before arraignment. Failure to do so constitutes a waiver of the right to question the legality of the arrest especially when the accused actively participated during trial as in this case. However, we have clarified that such waiver is only confined to the defects of the arrest and not on the inadmissibility of the evidence seized during an illegal arrest. In *People v. Racho*,[20] the Court held that:

Obviously, this is an instance of seizure of the 'fruit of the poisonous tree', hence, the confiscated item is inadmissible in evidence consonant with Article III, Section 3(2) of the 1987 Constitution, 'any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding'.

Without the confiscated *shabu*, appellant's conviction cannot be sustained based on the remaining evidence. Thus, an acquittal is warranted, despite the waiver of appellant of his right to question the illegality of his arrest by entering a plea and his active participation in the trial of the case. As earlier mentioned, the legality of an arrest affects only the jurisdiction of the court over the person of the accused. **A waiver of an illegal, warrantless arrest does not carry with it a waiver of the inadmissibility of evidence seized during an illegal warrantless arrest.** (Emphasis supplied)

In this case, the prosecution failed to clearly establish the acts that constitute the offense of illegal gambling as a collector or an agent under Section 3(c), and as a coordinator, controller, or supervisor under Section 3(d), of RA 9287. Under the said law, a collector or agent is "any person who collects, solicits or produces bets in behalf of his/her principal for any illegal numbers game who is usually in possession of gambling paraphernalia."[21] On the other hand, a coordinator, controller, or supervisor is defined as, "any person who exercises control and supervision over the collector or agent."[22] The prosecution merely relied on the alleged illegal gambling paraphernalia found

[20] 640 Phil. 669, 681 (2010).

[21] REPUBLIC ACT NO. 9287, Section 2(g).

[22] REPUBLIC ACT NO. 9287, Section 2(h).

and confiscated inside the house of Bonaobra and not on the specific overt acts that constitute the offense.

All told, the evidence purportedly seized from the Bonaobra compound is inadmissible in evidence since it was obtained in violation of Section 3(2), Article III of the 1987 Constitution. Since the alleged illegal gambling paraphernalia is the very *corpus delicti* of the crime charged, the Court acquits petitioners.

WHEREFORE, the June 13, 2011 Decision of the Court of Appeals in CA-G.R. CR No. 30457 which affirmed the Judgment of the Regional Trial Court of Virac, Catanduanes, Branch 43 in Criminal Case Nos. 3463 and 3464 is hereby **REVERSED and SET ASIDE**. Petitioners Martin Villamor *y* Tayson and Victor Bonaobra *y* Gianan are **ACQUITTED** and are ordered to be immediately **RELEASED** from detention, unless they are confined for any other lawful cause.

The Director of the Bureau of Corrections is **DIRECTED** to **IMPLEMENT** this Decision and to report to this Court the action taken hereon within five days from receipt.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Reyes,[*] and *Caguioa, JJ.,* concur.

SECOND DIVISION

[G.R. No. 213943. March 22, 2017]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **PHILIPPINE DAILY INQUIRER, INC.,** *respondent.*

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[*] Per Raffle dated March 20, 2017.

SYLLABUS

1. **TAXATION; RECONCILIATION OF LISTING FOR ENFORCEMENT (RELIEF) SYSTEM; AN INFORMATION TECHNOLOGY TOOL USED BY THE BUREAU OF INTERNAL REVENUE (BIR) TO IMPROVE TAX ADMINISTRATION.—** Reconciliation of Listing for Enforcement (RELIEF) System is an information technology tool used by the BIR to improve tax administration. The system was created — x x x to support third party information program and voluntary assessment program of the Bureau through the cross-referencing of third party information from the taxpayers' Summary Lists of Sales and Purchases prescribed to be submitted on a quarterly basis pursuant to Revenue Regulations Nos. 7-95, as amended by RR 13-97, RR 7-99 and RR 8-2002. In addition - [RELIEF] can detect tax leaks by matching the data available under the Bureau's Integrated Tax System (ITS) with data gathered from third party sources (i.e. Schedules of Sales and Domestic Purchases, and Schedule of Importations submitted by VAT taxpayers pursuant to RR No. 7-95, as amended by RR Nos. 13-97, 7-99 and 8-2002). Through the consolidation and cross-referencing of third party information, discrepancy reports on sales and purchases can be generated to uncover under declared income and over claimed purchases (goods and services). Timely recognition and accurate reporting of unregistered taxpayers and non-filers can be made possible.

2. **ID.; COURT OF TAX APPEALS; EXPERTISE TO RESOLVE TAX ISSUES, RESPECTED.—** The general rule is that findings of fact of the CTA are not to be disturbed by this Court unless clearly shown to be unsupported by substantial evidence. Since by the very nature of its functions, the CTA has developed an expertise to resolve tax issues, the Court will not set aside lightly the conclusions reached by them, unless there has been an abuse or improvident exercise of authority.

3. **ID.; NATIONAL INTERNAL REVENUE CODE (NIRC); PERIOD OF LIMITATION UPON ASSESSMENT AND COLLECTION OF TAXES; PRESCRIPTIVE PERIOD IS SET AT THREE YEARS; EXCEPTIONS; IN CASE OF FRAUD WITH INTENT TO EVADE TAX.—** Under Section 203 of the NIRC, the prescriptive period to assess is set at three years. This rule is subject to the exceptions provided under

Section 222 of the NIRC. The CIR invokes Section 222(a) which provides: SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes*. — (a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: *Provided*, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.

4. **ID.; ID.; ID.; ID.; ID.; ID.; FRAUD WILL NOT BE SUSTAINED WHEN BASED ON MERE SUSPICION IN THE UNDERSTATEMENT OF A TAX OR ENTRY OF WRONG INFORMATION, FOR THE PURPOSE OF TAX EVASION.—** In *Commissioner of Internal Revenue v. Javier*, this Court ruled that fraud is never imputed. The Court stated that it will not sustain findings of fraud upon circumstances which, at most, create only suspicion. The Court added that the mere understatement of a tax is not itself proof of fraud for the purpose of tax evasion. x x x [W]hile the filing of a fraudulent return necessarily implies that the act of the taxpayer was intentional and done with intent to evade the taxes due, the filing of a false return can be intentional or due to honest mistake. In *CIR v. B.F. Goodrich Phils., Inc.*, the Court stated that the entry of wrong information due to mistake, carelessness, or ignorance, without intent to evade tax, does not constitute a false return.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Gerodias Suchianco Estrella for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court is a petition for review[1] assailing the 4 November 2013 Decision[2] and the 1 August 2014 Resolution[3] of the Court of Tax Appeals (CTA) *En Banc* in CTA EB Case No. 905. The CTA *En Banc* affirmed the 16 February 2012 Decision[4] and the 8 May 2012 Resolution[5] of the CTA First Division in CTA Case No. 7853 which granted the petition for review filed by Philippine Daily Inquirer, Inc. (PDI) and cancelled the Formal Letter of Demand dated 11 March 2008 and Assessment No. LN # 116-AS-04-00-00038-000526 issued by the Bureau of Internal Revenue (BIR) for deficiency Value Added Tax (VAT) and income tax for the taxable year 2004.

The Antecedent Facts

The facts of this case, as presented by the CTA, are as follows:

PDI is a corporation engaged in the business of newspaper publication. On 15 April 2005, it filed its Annual Income Tax Return for taxable year 2004. Its Quarterly VAT Returns for the same year showed the following:

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

[2] *Rollo*, pp. 98-128. Penned by Associate Justice Lovell R. Bautista, with Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, Amelia R. Cotangco-Manalastas, and Ma. Belen M. Ringpis-Liban concurring.

[3] *Id*. at 133-135.

[4] *Id.* at 137-164. Penned by Associate Justice Erlinda P. Uy, with Presiding Justice Ernesto D. Acosta and Associate Justice Esperanza R. Fabon-Victorino concurring.

[5] *Id*. at 166-172.

	Date of Filing
For the First Quarter	20 April 2004
For the Second Quarter	16 July 2004
For the Third Quarter	18 October 2004
For the Fourth Quarter	21 January 2005[6]

On 10 August 2006, PDI received a letter dated 30 June 2006 from Region 020 Large Taxpayers' Service of BIR under LN No. 116-AS-04-00-00038. BIR alleged that based on the computerized matching it conducted on the information and data provided by third party sources against PDI's declaration on its VAT Returns for taxable year 2004, there was an underdeclaration of domestic purchases from its suppliers amounting to ₱317,705,610.52. The BIR invited PDI to reconcile the deficiencies with BIR's Large Taxpayers Audit & Investigation Division I (BIR-LTAID). In response, PDI submitted reconciliation reports, attached to its letters dated 22 August 2006 and 19 December 2006, to BIR-LTAID. On 21 March 2007, PDI executed a Waiver of the Statute of Limitation (First Waiver) consenting to the assessment and/or collection of taxes for the year 2004 which may be found due after the investigation, at any time before or after the lapse of the period of limitations fixed by Sections 203 and 222 of the National Internal Revenue Code (NIRC) but not later than 30 June 2007. The First Waiver was received on 23 March 2007 by Nestor Valeroso (Valeroso), OIC-ACIR of the Large Taxpayer Service. In a letter dated 7 May 2007, PDI submitted additional partial reconciliation and explanations on the discrepancies found by the BIR. On 30 May 2007, PDI received a letter dated 28 May 2007 from Mr. Gerardo Florendo, Chief of the BIR-LTAID, informing it that the results of the evaluation relative to the matching of sales of its suppliers against its purchases for the taxable year 2004 had been submitted by Revenue Officer Narciso Laguerta under Group Supervisor Fe Caling. In the same letter,

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[6] *Id*. at 138.

BIR invited PDI to an informal conference to present any objections that it might have on the BIR's findings. On 5 June 2007, PDI executed a Waiver of the Statute of Limitation (Second Waiver), which Valeroso accepted on 8 June 2007.

In a Preliminary Assessment Notice (PAN) dated 15 October 2007 issued by the BIR-LTAID, PDI was assessed for alleged deficiency income tax and VAT for taxable year 2004 on the basis of LN No. 116-AS-04-00-00038. The PAN states:

COMPUTATION OF DEFICIENCY VAT

Undeclared Income		₱ 1,007,565.03
Add: Overdeclared input VAT		1,601,652.43
Total undeclared income per Investigation		₱ 2,609,217.46
Less: Attributable input tax		715,371.17
VAT still payable per investigation		₱ 1,893,846.29
Add: Increments -		
Interest from 1/26/05 to 11/15/07	₱1,062,629.37	
Compromise penalty	25,000.00	1,087,629.37
Amount Due and Collectible		₱ 2,981,475.66

COMPUTATION OF DEFICIENCY INCOME TAX

Undeclared Gross Income		₱ 10,075,650.28
Less: Cost of Sales		7,153,711.70
Undeclared Net Income		₱ 2,921,938.58
Multiply by income tax rate		32%
Income tax still due per investigation		₱ 935,020.35
Add: Increments -		
Interest from 4/16/05 to 11/15/07	₱ 483,648.88	
Compromise penalty	20,000.00	503,648.88
Amount Due and Collectible		₱ 1,438,669.23[7]

PDI received the PAN on 4 December 2007. In a letter dated 12 December 2007, PDI sought reconsideration of the PAN and expressed its willingness to execute another Waiver (Third Waiver), which it did on the same date, thus extending BIR's right to assess and/or collect from it until 30 April 2008. Romulo L. Aguila, Jr. (Aguila), OIC-Head Revenue Executive Assistant

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[7] *Id.* at 101.

for the Large Taxpayers Service-Regular, accepted the Third Waiver on 20 December 2007.

On 17 April 2008, PDI received a Formal Letter of Demand dated 11 March 2008 and an Audit Result/Assessment Notice from the BIR, demanding for the payment of alleged deficiency VAT and income tax, respectively, computed as follows:

1. COMPUTATION OF (DEFICIENCY) VAT

Undeclared Income		₱ 1,007,565.03
Add: Overdeclared input VAT		1,601,652.43
Total Undeclared Income per Investigation		₱ 2,609,217.46
Less: Attributable input tax		715,371.17
VAT still payable per investigation		₱ 1,893,846.29
Add: Increments -		
Interest from 1/26/05 to 11/15/07	₱1,235,929.28	
Compromise penalty	25,000.00	1,260,929.28
Amount Due and Collectible		₱ 3,154,775.56

2. COMPUTATION OF [DEFICIENCY INCOME TAX]

Undeclared Gross Income		₱ 10,075,650.28
Less: Cost of Sales		7,153,711.70
Undeclared Net Income		2,921,938.58
Multiply by income tax rate		32%
Income tax still due per investigation		₱ 935,020.35
Add: Increments -		
Interest from 4/16/05 to 11/15/07	₱ 569,209.65	
Compromise penalty	20,000.00	589,209.65
Amount Due and Collectible		₱ 1,524,229.99[8]

On 16 May 2008, PDI filed its protest. On 12 December 2008, PDI filed a Petition for Review against the Commissioner of Internal Revenue (CIR) alleging that the 180-day period within which the BIR should act on its protest had already lapsed.

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[8] *Id*. at 102. The records show that there are discrepancies in the total amounts due from PDI as computed by the CTA and the amounts in the Formal Letter of Demand and Audit Result/Assessment Notice because of erroneous computation by the BIR. The amounts should be ₱3,154,775.57 and ₱1,525,230.00.

The CTA First Division, quoting at length the CIR's Answer, presented the following facts:

Petitioner Philippine Daily Inquirer is liable to pay the amount of Three Million One Hundred Fifty Four Thousand Seven Hundred Seventy Five Pesos and 56/100 (₱3,154,775.56) and One Million Five Hundred Twenty Four Thousand Two Hundred Twenty Nine Pesos and 99/100 (₱1,524,299.99) representing deficiency Value-Added Tax (VAT and Income Tax, respectively, for the taxable year 2004.

1. The VAT and income tax liabilities of petitioner in the aggregate amount of Four Million Six Hundred Seventy Nine Thousand and Five Pesos and 55/100 (₱4,679,005.55) arose on account of the issuance to petitioner of Letter Notice No. 116-AS-04-00-00038 dated June 30, 2006. Computerized matching conducted by respondent on information/data provided by third party sources against its declaration per VAT returns revealed the aforesaid discrepancies for taxable year 2004. The income and value-added tax liabilities were generated through the Reconciliation of Listing for Enforcement (RELIEF) system-Summary List of Sales and Purchases (SLSP) and Third Party Matching. Through the system, respondent was able to detect tax leaks through the matching of data available in the Integrated Tax Systems (ITS) with the information gathered from third party sources.

On the basis of the consolidation and cross-referencing of third party information, discrepancy reports on sales and purchases were generated to uncover under-declared income and over-claimed purchases (goods and services).

As explicitly provided under Revenue Memorandum Order (RMO) No. 42-2003:

II. POLICIES

[x x x]

2. In order to intensify enforcement, the power of the Commissioner to authorize the examination of the taxpayer and the assessment of the correct amount of tax is hereby ordered done through the so called '*no contact-audit-approach'*.

3. The '*no contact-audit-approach'* includes the process of computerized matching of sales and purchases data contained

> in the Schedules of Sales and Domestic Purchases, and Schedule of Importation submitted by VAT taxpayer under the RELIEF system pursuant to RR No. 7-95 as amended by RR Nos. 13-97, 7-99 and 8-2002. This may also include the matching of data from other information or returns filed by the taxpayers with the BIR such as Alphalist of Payees subject to Final or Creditable Withholding Taxes.
>
> 4. Even without conducting a detailed examination of taxpayer's books and records, the computerized/manual matching of sales and purchases/expenses will reveal discrepancies which shall be communicated to the concerned taxpayer through the issuance of a Letter Notice (LN) by the Commissioner.
>
> 5. LNs being served by the Bureau upon the taxpayer found to have understated their sales or over claimed their purchases/ expenses <u>can be considered notice of audit or investigation</u> in so far as the amendment of any return is concerned which is the subject of such LN. A taxpayer is therefore disqualified from amending his return once an LN is served upon him.
>
> III. GUIDELINES
>
> x x x x x x x x x
>
> 5. The LN shall serve as a discrepancy notice to taxpayer similar to a Notice of Informal Conference, thus, the procedures defined in RR 12-99 should likewise be observed.

Furthermore, in CTA Case No. 7092 entitled '*BIG AA Corporation represented by Erlinda L. Stohner vs. Bureau of Internal Revenue'* dated February 22, 2006, the Honorable Court had the opportunity to say:

> 'Letter Notices issued against a taxpayer in connection with the information of under declaration of sales and purchases gathered through Third Party Information Program may be considered as a '**<u>notice of audit or investigation</u>**' in the absence of evident error or clear abuse of discretion.'

2. On the basis of the abovementioned LN and after a careful and extensive scrutiny of petitioner's documents, resulting deficiency in income and Value-added taxes led to the issuance of the Preliminary Assessment Notice (PAN) dated October 15, 2007 together with the Details of Discrepancies and subsequently, a Formal Letter of Demand (FLD) dated March 11, 2008.

Relative thereto, Section 203 of the National Internal Revenue Code (NIRC) explicitly provides:

> '**Section 203. Period of Limitation Upon Assessment and Collection of Taxes.**
>
> **Except as provided in Section 222**, internal revenue taxes shall be assessed **within three (3) years after the last day prescribed by law for filing of the return**, and no proceeding in court without assessment, for the collection of such taxes shall be begun after the expiration of such period: Provided, That in a case where a return i[s] filed beyond the period prescribed by law, the three (3) year period shall be counted from the day [t]he return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered filed on such day.'

However, Section 222 of the NIRC provides the exceptions as regards to the provisions laid down under Section 203. In particular, as shown under Section (1) thereof, the three (3) [year] period of limitation in making assessment shall **not** apply in cases where it involves **false or fraudulent return** or in cases where there is failure to file a return [by] the person obliged to file such return. Section 222(a) of the National Internal Revenue Code provides:

> '**Section 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes.**
>
> (a) In the case of a **false or fraudulent return** with intent to evade tax or **failure to file a return**, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time **within ten (10) years** after the discovery of the falsity, fraud or omission; Provided, That in a fraud assessment which has become final and executor[y], [t]he fact of fraud shall be judicially taken cognizance of in the civil and criminal action for the collection thereof.'

Such being the case, the three (3) [year] period of limitation for the assessment of internal revenue tax liabilities reckoned from the last day prescribed by law for the filing of the return shall not apply in the case at hand for the simple reason that petitioner ***falsely*** filed the return for taxable year 2004. Such being the case, the applicable provision shall be Section 222(a) where the period of limitation provides that the assessment may be made within ten (10) years after

the discovery of falsity, fraud or omission. In the case at hand, the reckoning period was from the time during which the LN dated June 30, 2006 was issued to petitioner. Indubitably, the Formal Letter of Demand dated March 11, 2008 was issued within the prescriptive period provided by law. Such being the case, the FLD is considered valid and has the force and effect of law.

3. On the basis of the investigation conducted by respondent through the RELIEF system, respondent though the FLD, outlined how the tax liabilities in the aggregate amount of ₱4,679,005.55 representing income and VAT liabilities were arrived at. Upon matching the data gathered from respondent's Integrated Tax System (ITS) against the Summary of List of Purchases (SLP) attached to the Quarterly VAT returns filed with respondent, the following discrepancies remain unsettled despite petitioner's submission of supporting documents:

(a) An excess of SLP over the Letter Notices (LN) in the amount of ₱1,601,652.43 from the following suppliers:

	Per SLP	**Per LN**	**Discrepancy**
Alliance Media Printing Corp.	109,073,375.58	107,640,812.95	1,432,562.63
Citimotors Inc.	70,454.55	70,056.65	397.90
Diamond Motors Corp.	288,181.82	142,363.64	145,818.18
Western Marketing Corp.	30,830.99	7,957.27	22,873.72
Total	**109,462,842.94**	**107,861,190.51**	**1,601,652.43**

(b) On the other hand, it is likewise evident than an excess of LN over the SLP also occurred in the total amount of Seven Hundred Fifteen Thousand Three Hundred Seventy One Pesos and 17/100 (₱715,371.17). The details of which are shown hereunder:

	Per SLP	**Per LN**	**Discrepancy**
Grasco Industries Inc.		202.55	(202.55)
Harrison Communications Inc.	18,157.89	398,331.12	(380,173.23)
Makati Property Ventures		64.55	(64.55)
Mc[C]an[n] Erikson Phils. Inc.		204,769.38	(204,769.38)
Millennium Cars Inc.		89,545.45	(89,545.45)
WPP Marketing Communications Inc.		40,616.01	(40,616.01)
Total	**18,157.89**	**733,529.06**	**(715,371.17)**

On the basis of the aforesaid investigation, it can be observed that the SLP which petitioner attached as supporting documents upon filing the quarterly VAT return revealed the declared amount of

₱109,462,842.94 as its input VAT for purchases incurred. However, on the basis of the LN, its suppliers recorded in its books of account the aggregate amount of ₱107,861,190.51 as its corresponding VAT. Suffice it to say, the over-declared VAT input tax on the part of petitioner led to the under declaration of VAT payable in the amount of ₱1,601,652.43 for the taxable year 2004. Therefore, petitioner is liable to pay said outstanding VAT. In addition, the amount of ₱10,075,650.28 which resulted from the excess of the LN over the SLP amounting to ₱715,371.17 must be likewise added to arrive at the total VAT liability of ₱3,154,775.56 *(including increments up to April 30, 2008)*. Details of the computation are shown in the FLD.

As stated earlier, the excess of LN over the SLP in the amount of ₱715,371.17 resulted to under-declared input tax on the part of petitioner which led to an under[-]declared purchases of ₱7,153,711.70, arrived at by dividing ₱715,371.17 by the VAT rate of 10%. As can be gleaned from the LN, suppliers declared in its books of accounts output VAT for sales made to petitioner. However, in petitioner's SLP, no declaration of such amount incurred for the taxable year 2004 was shown. Such being the case, petitioner under-declared its purchases that resulted to the under-declared amount of Input VAT. If petitioner has under[-]declared its purchases, it would likewise have under-declared its Gross Income which will be worked back by using the ratio of Cost of Sales against its Gross Income per Income Tax Return. In the case at hand, the ratio of Cost of Sales against its Gross Income per Income Tax Return filed for taxable year 2004 is 71%. If petitioner divides the amount of ₱7,153,711.70 by the cost ratio of 71%, the under-declared Gross Income of ₱10,075,650.28 will be arrived at. Such being the case, petitioner would then be liable to pay the corresponding income tax for the under-declared Net [I]ncome at the rate of 32%. Net Income was arrived at by deducting from the Gross Income of ₱10,075,650.28 the corresponding Cost of Sales of ₱7,153,711.70. Hence, the amount of income tax still to be paid is ₱1,524,229.99 *(including additional increments until April 30, 2008)*. For ready reference of this Honorable Court, the full details of the aforesaid computation are shown in the Formal Letter of Demand issued to petitioner.

4. Petitioner emphasized that it is a service company deriving its main source of income from newspaper and ***advertising sales***, thus any understatement of expenses or purchases (also mostly from services) does not mean it understated its sales. It goes further by saying that its transactions pertaining mostly to services and goods

must be reflected as Operating Expenses and not as part of the Cost of Sales. It revealed that Harrison Communications Inc., McCann Erikson Inc., WPP Marketing Corporation are some of the advertising agencies which rendered direct professional services to petitioner in the form of marketing or promotional purposes. To bolster its claim, it likewise stated that the transactions with aforesaid three (3) main entities should not be treated as cost of sales since what these entities provided were '*not materials'* in order for petitioner to gain income that can be both taxable under the income tax and VAT provisions.

Corollary thereto, Section 27 E(4) of the NIRC specifically provides:

> '(4) **Gross Income Defined**. For purposes of applying the minimum corporate income tax provided under Section (E) hereof, the term '**gross income**' shall mean gross sales less sales returns, discounts and allowances and cost of goods sold. '**Cost of goods sold**' shall include business expenses **directly incurred** to produce the merchandise to bring them to their present location and use.
>
> x x x x x x x x x
>
> In the case of taxpayers engaged in the sale of service, '**gross income**' means gross receipts less sales returns, allowances, discounts and cost of services. '**Cost of services**' shall mean **direct costs and expenses necessarily incurred to provide the services required by the customers and clients** including (a) salaries and employee benefits of personnel, consultants and specialists directly rendering the service and (b) cost of facilities directly utilized in providing the service such as depreciation or rental of equipment used and cost of supplies.'

Petitioner, by its own admission, is a service-oriented company which derives its income from sale of newspaper and advertisement. It is without doubt that in selling newspapers to the public, it necessarily incurs direct costs to bring about the merchandise it sells to its present state and/or condition. In the same vein, in selling advertisements to clients/customers, it likewise incurs direct costs for the rendition of services in the process. On the basis of the aforesaid provision of the NIRC, 'cost of services' include[s] **direct costs and expenses** necessarily incurred to provide the services required by its customers or clients. Applying the same at hand, in order for petitioner to boost its sales on advertisement, it would actually employ services of companies which would handle the promotion and marketing of the

services it is offering. The direct and professional services rendered by the three (3) advertising companies namely Harrison Communications Inc., McCann Erikson Inc. and WPP Marketing Corporation should be considered as part of the cost of advertisement sales/services by petitioner.

In view of the foregoing, the amount of discrepancy that resulted on account of the under-declared input tax of ₱715,371.17 should be treated as Cost of Sales of services and not just an ordinary operating expenses because the services provided by the aforementioned three (3) advertising agencies are direct costs and expenses necessary to bring about the advertisement sales of petitioner."[9]

After the presentation of oral and documentary evidence and submission of the parties' respective Memoranda, the case was submitted for resolution.

<u>The Decision of the CTA First Division</u>

The CTA First Division resolved the following issues raised by the parties:

1. Whether or not respondent's authority to issue an assessment against petitioner for deficiency value-added and income taxes has prescribed;

2. Whether or not respondent erred in assessing petitioner deficiency value-added tax and income tax for calendar year 2004;

3. Whether petitioner is liable to pay the aggregate amount of Four Million Six Hundred Seventy Nine Thousand Five Pesos and 55/100 (Php 4,679,005.55) representing alleged deficiency income and value-added tax for taxable year 2004, including interest and compromise penalty from 30 April 2008 until fully paid pursuant to Sections 248 and 249 of the Tax Code, arising from discrepancies which were generated through the Reconciliation of Listing for Enforcement (RELIEF) System-Summary List of Sales and Purchases and Third Party Matching of Data available in the Integrated Tax System (ITS) of respondent against information gathered from third party sources;

4. Whether the fees paid to the three (3) advertising agencies, namely Harrison Communications Inc., McCann Erikson Inc., and WPP

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[9] *Id*. at 142-147. Citations omitted. Boldfacing and underscoring in the original.

Marketing Corporation are considered part of the cost of sales made by petitioner for taxable year 2004;

5. Whether Section 222 of the Tax Code is applicable in the case at hand;

6. Whether the Formal Letter of Demand dated 11 March 2008 was issued within the prescriptive period provided by law; and

7. Whether or not petitioner should be assessed a compromise penalty.[10]

In its 16 February 2012 Decision, the CTA First Division ruled in favor of PDI.

The CTA First Division ruled that the period of limitation in the assessment and collection of taxes is governed by Section 203 of the NIRC which provides:

> Sec. 203. *Period of Limitation Upon Assessment and Collection*. – Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided*, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.

The CTA First Division ruled that internal revenue taxes must be assessed on time. It added that the period of assessment must not extend indefinitely because doing so will deprive the taxpayer of the assurance that it will not be subjected to further investigation after the expiration of a reasonable period of time. Nevertheless, the CTA First Division noted that the three-year prescriptive period under Section 203 of the NIRC applies only when the returns are filed pursuant to legal requirements. The CTA First Division explained that for false or fraudulent tax returns, or for failure to file returns, the prescriptive period is 10 years after the discovery of the falsity or fraud, or from

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

failure to file tax returns. It also added that in the absence of a false or fraudulent return, or where a return has been filed, the period of limitation may still be extended in cases where the taxpayer and the CIR have agreed in writing, prior to the expiration of the period prescribed under Section 203 of the NIRC, to an assessment within the time agreed upon.

In ruling on the prescriptive period, the CTA First Division had to determine whether PDI's tax returns were false or fraudulent. The CTA First Division ruled that in ascertaining the correctness of any return, or in determining the tax liability of any person, the CIR is authorized to obtain information, on a regular basis, from any person other than the taxpayer subject of the audit or investigation. It further ruled that the CIR may rely on the information obtained from third parties in issuing assessments to taxpayers, and that the CIR enjoys the presumption of regularity in obtaining such information. Further, the CTA First Division stated that the determinations and assessments of the CIR are presumed correct and made in good faith, and it is the duty of the taxpayer to prove otherwise. The CTA First Division then ruled that in this case, PDI introduced proof that the determination made by the CIR on the supposed overdeclared input tax of ₱1,601,652.43 is not correct. The CTA First Division ruled that the CIR failed to disprove the findings submitted by the Independent Certified Public Accountant (ICPA) that supported PDI's assertions.

The CTA First Division rejected the CIR's theory that since there was an underdeclaration of the input tax and of purchases, it translates to taxable income for tax purposes and taxable gross receipts for VAT purposes. According to the CTA First Division, the following elements must be present in the imposition of income tax: (1) there must be gain or profit; (2) the gain or profit is realized or received, actually or constructively; and (3) it is not exempted by law or treaty from income tax. In this case, the CTA First Division ruled that in the imposition or assessment of income tax, it must be clear that there was an income and the income was received by the taxpayer. The basis could not be merely an underdeclaration of purchases. The CTA First Division added that for income tax purposes, a taxpayer may

either deduct from its gross income a lesser amount, or not claim any deduction at all. It stated that what is prohibited is to claim a deduction beyond the amount authorized by law. According to the CTA First Division, even when there was underdeclaration of input tax, which means there was an underdeclaration of purchases and expenses, the same is not prohibited by law.

As regards the VAT assessment, the CTA First Division ruled that the 10% VAT is assessed on "gross receipts derived from the sale or exchange of services." As such, it is critical to show that the taxpayer received an amount of money or its equivalent, and not only that there was underdeclared input taxes or purchases. The CTA First Division ruled that it was an error for the CIR to impose a deficiency income tax based on the underdeclared input tax, and the income tax return cannot be treated as false. Thus, the CTA First Division ruled that the prescriptive period applicable to the case is the three-year period, and the deficiency income tax assessment issued by the BIR beyond the three-year prescriptive period is void.

The CTA First Division further ruled that Section 222(b) of the NIRC authorizes the extension of the original three-year prescriptive period by the execution of a valid waiver upon the agreement in writing between the taxpayer and the BIR, provided: (1) the agreement was made before the expiration of the three-year period and (2) the guidelines in the proper execution of the waiver are strictly followed. The CTA First Division found that while the First and Second Waivers were executed in three copies, the BIR failed to provide the office accepting the waivers with their respective third copies. The CTA First Division found that the third copies were still attached to the docket of the case. The CTA First Division also found that the BIR failed to prove that the Third Waiver was executed in three copies. Further, the revenue official who accepted the Third Waiver was not authorized to do so. The CTA First Division also noted that the Second Waiver would have expired on 31 December 2007 but the Third Waiver was already executed on 20 December 2007, meaning there was enough time to have it signed by the ACIR of the Large Taxpayers Service. The CTA First Division concluded that due to the defects in the Waivers, the three-

year period within which to assess PDI was not extended. The CTA First Division further ruled that the compromise penalties should likewise be cancelled. The dispositive portion of the CTA First Division's Decision reads:

> WHEREFORE, premises considered, the instant Petition for Review is hereby GRANTED. The Formal Letter of Demand dated March 11, 2008 and Assessment No. LN # 116-AS-04-00-00038-[000526] for calendar year 2004 issued by the BIR against petitioner are hereby CANCELLED and SET ASIDE.
>
> SO ORDERED.[11]

The CIR filed a motion for reconsideration. In its 8 May 2012 Resolution, the CTA First Division denied the motion for lack of merit.

The CIR filed a petition for review before the CTA *En Banc*.

<u>The Decision of the CTA *En Banc*</u>

In its 4 November 2013 Decision, the CTA *En Banc* cited the CTA First Division's Decision extensively. The CTA *En Banc* ruled that it found no reason to depart from the CTA First Division's findings. The CTA *En Banc* held that PDI sufficiently discharged its burden of proving that the VAT assessment and the Income Tax assessment made by the CIR were not correct. The CTA *En Banc* ruled that the presumptions of correctness and regularity cited by the CIR were overturned by the evidence presented by PDI particularly, the final report of the ICPA, accounts payable, check vouchers, invoices, official receipts, and credit memoranda. The CTA *En Banc* noted that the CIR did not present any evidence to the contrary. The CTA *En Banc* rejected the CIR's allegation that PDI made a false return and held that the three-year prescriptive period based on Section 203, in relation to Section 222(a) of the NIRC, as amended, should apply in this case. The CTA *En Banc* likewise sustained the CTA First Division's ruling that the Waivers issued by PDI were defective and could not extend the three-year

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[11] *Id*. at 163.

prescriptive period. The CTA *En Banc* also sustained the CTA First Division's ruling that it can resolve the issue of prescription because the CIR did not contest it when it was raised by PDI.

The dispositive portion of the CTA *En Banc*'s Decision reads:

> WHEREFORE, premises considered, the Petition for Review is hereby DENIED for lack of merit. Accordingly, the Decision and Resolution dated February 16, 2012 and May 8, 2012, respectively, are hereby AFFIRMED *in toto*.
>
> SO ORDERED.[12]

The CIR filed a motion for reconsideration. In its 1 August 2014 Resolution, the CTA *En Banc* denied the motion for lack of merit.

Hence, the CIR filed a petition for review on certiorari before this Court.

The Issues

The CIR raised the following issues in her petition:

> (1) The CTA *En Banc* erred in ruling that petitioner's assessment for deficiency VAT and income tax was adequately controverted by respondent;
>
> (2) The CTA *En Banc* erred in ruling that the petitioner's right to assess respondent for deficiency VAT and income tax has prescribed; and
>
> (3) The CTA *En Banc* erred in ruling that respondent is not estopped from raising the defense of prescription.[13]

The Ruling of this Court

BIR's assessment was not adequately controverted by PDI

Reconciliation of Listing for Enforcement (RELIEF) System is an information technology tool used by the BIR to improve tax administration.[14] The system was created —

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[12] *Id*. at 127.

[13] *Id*. at 58.

[14] See Revenue Memorandum Order No. 4-2003, 20 February 2003.

x x x to support third party information program and voluntary assessment program of the Bureau through the cross-referencing of third party information from the taxpayers' Summary Lists of Sales and Purchases prescribed to be submitted on a quarterly basis pursuant to Revenue Regulations Nos. 7-95, as amended by RR 13-97, RR 7-99 and RR 8-2002.[15]

In addition —

[RELIEF] can detect tax leaks by matching the data available under the Bureau's Integrated Tax System (ITS) with data gathered from third party sources (i.e. Schedules of Sales and Domestic Purchases, and Schedule of Importations submitted by VAT taxpayers pursuant to RR No. 7-95, as amended by RR Nos. 13-97, 7-99 and 8-2002).

Through the consolidation and cross-referencing of third party information, discrepancy reports on sales and purchases can be generated to uncover under declared income and over claimed purchases (goods and services). Timely recognition and accurate reporting of unregistered taxpayers and non-filers can be made possible.[16]

Using the RELIEF system, the BIR assessed PDI for deficiency VAT and income tax amounting to ₱3,154,775.57 and ₱1,525,230.00, respectively. According to the BIR, the computerized matching conducted by its office, using information and data from third party sources against PDI's VAT returns for 2004 showed an underdeclaration of domestic purchases from its suppliers amounting to ₱317,705,610.52. PDI denied the allegation.

In ruling on the case, the CTA recognized that the BIR may obtain information from third party sources in assessing taxpayers. The CTA also stated that the BIR enjoyed a presumption of regularity in obtaining the information, and its assessments are presumed correct and made in good faith. Indeed, the burden to controvert the assessments made by the BIR lies with the taxpayer. In this case, the CTA rejected BIR's finding that PDI underdeclared its input tax and purchases. According to the CTA, PDI was able to disprove BIR's assessments.

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[15] *Id.*

[16] BIR Revenue Memorandum Order No. 30-2003, 18 September 2003.

The general rule is that findings of fact of the CTA are not to be disturbed by this Court unless clearly shown to be unsupported by substantial evidence.[17] Since by the very nature of its functions, the CTA has developed an expertise to resolve tax issues, the Court will not set aside lightly the conclusions reached by them, unless there has been an abuse or improvident exercise of authority.[18]

In reaching their conclusions, the CTA First Division and *En Banc* relied on the report submitted by the ICPA. According to the CTA, the BIR failed to rebut the ICPA report. After going over the ICPA report, as well as the affidavit summarizing the examination submitted by Jerome Antonio B. Constantino (Constantino), a Certified Public Accountant and the Managing Partner of the firm that conducted the examination, this Court notes that:

(1) Purchases made from Harrison Communications, Inc. were recorded as general and administrative expenses and selling expenses in the 2004 General Ledger and 2004 Audited Financial Statements and not as cost of sales;[19]

(2) The 2004 purchases from Harrison Communications, Inc. and McCann Erickson, Inc. were recorded in PDI's book in 2005 and 2006 as "Summary List of Purchases." There was a discrepancy between the purchases from Harrison Communications, Inc. and McCann Erickson, Inc. and the BIR's Letter Notice amounting to ₱150,203.29 and ₱191,406.02, respectively, but the ICPA was not able to account for the difference because according to PDI, the details were not provided in the BIR's Letter Notice;[20]

(3) Promotional services purchased from Harrison Communications, Inc. and McCann Erickson, Inc. in 2004

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[17] *Commissioner of Internal Revenue v. Team Sual Corporation*, 739 Phil. 215 (2014).

[18] *Id*.

[19] CTA *rollo*, p. 147.

[20] *Id*. at 147-148.

were recorded in PDI's books in 2005 and 2006. According to Constantino, the VAT input on purchases from Harrison Communications, Inc. and McCann Erickson, Inc. recorded in 2005 and 2006, amounting to ₱206,713.63 and ₱13,363.36, respectively, were supported only by photocopies of sales invoices because PDI claimed that it could not find the original documents despite diligent efforts to locate them;[21]

(4) Constantino reported that no input taxes were recorded in 2004 from McCann Erickson, Inc., Millennium Cars, Inc., WPP Marketing Communications, Inc., Grasco Industries, Inc., and Makati Property Ventures. Constantino was not able to vouch for supporting documents for purchase transactions from WPP Marketing Communications, Inc., Grasco Industries, Inc., and Makati Property Ventures. He established that the purchase from Millennium Cars, Inc. was for a car loan account for an employee and was recorded to Advances to Officers and Employees;[22]

(5) Alliance Media Printing, Inc.'s erroneous posting of data in the BIR RELIEF caused the discrepancies in the analysis of suppliers' sales and purchases made by PDI.[23]

The foregoing showed that there were discrepancies that PDI were able to explain. In particular, the ICPA report showed that the purchase from Millennium Cars, Inc. was made on behalf of an employee as a loan. In addition, the underdeclared input tax insofar as Alliance Printing, Inc. is concerned was due to the latter's erroneous posting of data, a fact that the corporation admitted. However, there are still issues that need to be resolved. In particular, PDI failed to justify its erroneous listing of purchases from Harrison Communications, Inc., McCann Erickson, Inc., and WPP Marketing Corporation as general and administrative expenses.

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[21] *Id*. at 148.

[22] *Id.* at 148, 150.

[23] *Id*. at 149-150.

The CIR pointed out that PDI could not treat purchases from Harrison Communications, Inc. and McCann Erickson, Inc. as general and administrative expenses. Indeed, Section 27(E)(4) of the NIRC provides:

x x x x x x x x x

(4) Gross Income Defined. For purposes of applying the minimum corporate income tax provided under Subsection (E) hereof, the term "gross income" shall mean gross sales less sales returns, discounts and allowances and cost of goods sold. "Cost of goods sold" shall include business expenses directly incurred to produce the merchandise to bring them to their present location and use.

x x x x x x x x x

In the case of taxpayers engaged in the sale of service, "gross income" means gross receipts less sales returns, allowances, discounts and cost of services. "Cost of services" shall mean direct costs and expenses necessarily incurred to provide the services required by the customers and clients including (a) salaries and employee benefits of personnel, consultants and specialists directly rendering the service and (b) cost of facilities directly utilized in providing the service such as depreciation or rental of equipment used and cost of supplies: *Provided*, however, That in the case of banks, "cost of services" shall include interest expense.

The ICPA report found nothing wrong in the entries. However, as pointed out by the Office of the Solicitor General, PDI is a service-oriented company that derives its income from the sale of newspapers and advertisements. The services rendered by Harrison Communications, Inc., McCann Erickson, Inc., and WPP Marketing Corporation were meant to promote and market the advertising services offered by PDI. As such, their services should be considered part of cost of services instead of general and administrative expenses and operating expenses.

Such finding would ordinarily call for a recomputation. However, we need to resolve first whether the BIR's assessment was made within the prescriptive period.

Prescription and Estoppel

We will discuss the second and third issues jointly.

The CIR alleges that PDI filed a false or fraudulent return. As such, Section 222 of the NIRC should apply to this case and the applicable prescriptive period is 10 years from the discovery of the falsity of the return. The CIR argues that the ten-year period starts from the time of the issuance of its Letter Notice on 10 August 2006. As such, the assessment made through the Formal Letter of Demand dated 11 March 2008 is within the prescriptive period.

We do not agree.

Under Section 203 of the NIRC, the prescriptive period to assess is set at three years. This rule is subject to the exceptions provided under Section 222 of the NIRC. The CIR invokes Section 222(a) which provides:

SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes. –*

(a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: *Provided*, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.

In *Commissioner of Internal Revenue v. Javier*,[24] this Court ruled that fraud is never imputed. The Court stated that it will not sustain findings of fraud upon circumstances which, at most, create only suspicion.[25] The Court added that the mere understatement of a tax is not itself proof of fraud for the purpose of tax evasion.[26] The Court explained:

x x x. The fraud contemplated by law is actual and not constructive. It must be intentional fraud, consisting of deception willfully and

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[24] See *Commissioner of Internal Revenue v. Javier, Jr.*, 276 Phil. 914 (1991).

[25] *Id.*

[26] *Id.*

deliberately done or resorted to in order to induce another to give up some legal right. Negligence, whether slight or gross, is not equivalent to fraud with intent to evade the tax contemplated by law. It must amount to intentional wrong-doing with the sole object of avoiding the tax. x x x.[27]

In *Samar-I Electric Cooperative v. Commissioner of Internal Revenue*,[28] the Court differentiated between false and fraudulent returns. Quoting *Aznar v. Court of Tax Appeals*,[29] the Court explained in *Samar-I* the acts or omissions that may constitute falsity, thus:

Petitioner argues that Sec. 332 of the NIRC does not apply because the taxpayer did not file false and fraudulent returns with intent to evade tax, while respondent Commissioner of Internal Revenue insists contrariwise, with respondent Court of Tax Appeals concluding that the very "substantial underdeclarations of income for six consecutive years eloquently demonstrate the falsity or fraudulence of the income tax returns with an intent to evade the payment of tax."

To our minds we can dispense with these controversial arguments on facts, although we do not deny that the findings of facts by the Court of Tax Appeals, supported as they are by very substantial evidence, carry great weight, by resorting to a proper interpretation of Section 332 of the NIRC. We believe that the proper and reasonable interpretation of said provision should be that in the three different cases of (1) false return, (2) fraudulent return with intent to evade tax, (3) failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within ten years after the discovery of the (1) falsity, (2) fraud, (3) omission. Our stand that the law should be interpreted to mean a separation of the three different situations of false return, fraudulent return with intent to evade tax, and failure to file a return is strengthened immeasurably by the last portion of the provision which segregates the situation into three different classes, namely "falsity," "fraud," and "omission." That there is a difference between "false return" and "fraudulent return" cannot be denied. While the

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[27] *Id*. at 921-922, citing *Aznar v. Court of Tax Appeals*, 157 Phil. 510 (1974).

[28] G.R. No. 193100, 10 December 2014, 744 SCRA 459.

[29] 157 Phil. 510 (1974).

first implies deviation from the truth, whether intentional or not, the second implies intentional or deceitful entry with intent to evade the taxes due.

The ordinary period of prescription of 5 years within which to assess tax liabilities under Sec. 331 of the NIRC should be applicable to normal circumstances, but whenever the government is placed at a disadvantage so as to prevent its lawful agents from proper assessment of tax liabilities due to false returns, fraudulent return intended to evade payment of tax or failure to file returns, the period of ten years provided for in Sec. 332(a) NIRC, from the time of discovery of the falsity, fraud or omission even seems to be inadequate and should be the one enforced.[30]

Thus, while the filing of a fraudulent return necessarily implies that the act of the taxpayer was intentional and done with intent to evade the taxes due, the filing of a false return can be intentional or due to honest mistake. In *CIR v. B.F. Goodrich Phils., Inc.*,[31] the Court stated that the entry of wrong information due to mistake, carelessness, or ignorance, without intent to evade tax, does not constitute a false return. In this case, we do not find enough evidence to prove fraud or intentional falsity on the part of PDI.

Since the case does not fall under the exceptions, Section 203 of the NIRC should apply. It provides:

SEC. 203. *Period of Limitation Upon Assessment and Collection.* — Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period. *Provided,* That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.

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[30] *Samar-I Electric Cooperative v. Commissioner of Internal Revenue, supra* note 28 at 470-471.

[31] 363 Phil. 169 (1999).

Indeed, the Waivers executed by the BIR and PDI were meant to extend the three-year prescriptive period, and would have extended such period were it not for the defects found by the CTA. This further shows that at the outset, the BIR did not find any ground that would make the assessment fall under the exceptions.

In *Commissioner of Internal Revenue v. Kudos Metal Corporation*,[32] the Court ruled:

> Section 222(b) of the NIRC provides that the period to assess and collect taxes may only be extended upon a written agreement between the CIR and the taxpayer executed before the expiration of the three-year period. RMO 20-90 issued on April 4, 1990 and RDAO 05-01 issued on August 2, 2001 lay down the procedure for the proper execution of the waiver, to wit:
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> 1. The waiver must be in the proper form prescribed by RMO 20-90. The phrase "but not after ____ 19__", which indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription, should be filled up.
>
> 2. The waiver must be signed by the taxpayer himself or his duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials. In case the authority is delegated by the taxpayer to a representative, such delegation should be in writing and duly notarized.
>
> 3. The waiver should be duly notarized.
>
> 4. The CIR or the revenue official authorized by him must sign the waiver indicating that the BIR has accepted and agreed to the waiver. The date of such acceptance by the BIR should be indicated. However, before signing the waiver, the CIR or the revenue official authorized by him must make sure that the waiver is in the prescribed form, duly notarized, and executed by the taxpayer or his duly authorized representative.
>
> 5. Both the date of execution by the taxpayer and date of acceptance by the Bureau should be before the expiration of

[32] 634 Phil. 314 (2010).

the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.

6. The waiver must be executed in three copies, the original copy to be attached to the docket of the case, the second copy for the taxpayer and the third copy for the Office accepting the waiver. The fact of receipt by the taxpayer of his/her file copy must be indicated in the original copy to show that the taxpayer was notified of the acceptance of the BIR and the perfection of the agreement.[33]

In this case, the CTA found that contrary to PDI's allegations, the First and Second Waivers were executed in three copies. However, the CTA also found that the CIR failed to provide the office accepting the First and Second Waivers with their respective third copies, as the CTA found them still attached to the docket of the case. In addition, the CTA found that the Third Waiver was not executed in three copies.

The failure to provide the office accepting the waiver with the third copy violates RMO 20-90 and RDAO 05-01. Therefore, the First Waiver was not properly executed on 21 March 2007 and thus, could not have extended the three-year prescriptive period to assess and collect taxes for the year 2004. To make matters worse, the CIR committed the same error in the execution of the Second Waiver on 5 June 2007. Even if we consider that the First Waiver was validly executed, the Second Waiver failed to extend the prescriptive period because its execution was contrary to the procedure set forth in RMO 20-90 and RDAO 05-01. Granting further that the First and Second Waivers were validly executed, the Third Waiver executed on 12 December 2007 still failed to extend the three-year prescriptive period because it was not executed in three copies. In short, the records of the case showed that the CIR's three-year prescriptive period to assess deficiency tax had already prescribed due to the defects of all the Waivers.

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[33] *Id*. at 323-326.

In *Commissioner of Internal Revenue v. The Stanley Works Sales (Phils.), Incorporated*,[34] the Court explained the nature of a waiver of assessment. The Court said:

> In *Philippine Journalist, Inc. v. Commissioner of Internal Revenue,* the Court categorically stated that a Waiver must strictly conform to RMO No. 20-90. The mandatory nature of the requirements set forth in RMO No. 20-90, as ruled upon by this Court, was recognized by the BIR itself in the latter's subsequent issuances, namely, Revenue Memorandum Circular (RMC) Nos. 6-2005 and 29-2012. Thus, the BIR cannot claim the benefits of extending the period to collect the deficiency tax as a consequence of the Waiver when, in truth it was the BIR's inaction which is the proximate cause of the defects of the Waiver. The BIR has the burden of ensuring compliance with the requirements of RMO No. 20-90 as they have the burden of securing the right of the government to assess and collect tax deficiencies. This right would prescribe absent any showing of a valid extension of the period set by the law.
>
> To emphasize, the Waiver was not a unilateral act of the taxpayer; hence, the BIR must act on it, either by conforming to or by disagreeing with the extension. A waiver of the statute of limitations, whether on assessment or collection, should not be construed as a waiver of the right to invoke the defense of prescription but, rather, an agreement between the taxpayer and the BIR to extend the period to a date certain, within which the latter could still assess or collect taxes due. The waiver does not imply that the taxpayer relinquishes the right to invoke prescription unequivocally.
>
> Although we recognize that the power of taxation is deemed inherent in order to support the government, tax provisions are not all about raising revenue. Our legislature has provided safeguards and remedies beneficial to both the taxpayer, to protect against abuse; and the government, to promptly act for the availability and recovery of revenues. A statute of limitations on the assessment and collection of internal revenue taxes was adopted to serve a purpose that would benefit both the taxpayer and the government.[35]

Clearly, the defects in the Waivers resulted to the non-extension of the period to assess or collect taxes, and made the

[34] G.R. No. 187589, 3 December 2014, 743 SCRA 642.

[35] *Id*. at 653-654. Citations omitted.

assessments issued by the BIR beyond the three-year prescriptive period void.[36]

The CIR also argues that PDI is estopped from questioning the validity of the Waivers. We do not agree. As stated by the CTA, the BIR cannot shift the blame to the taxpayer for issuing defective waivers.[37] The Court has ruled that the BIR cannot hide behind the doctrine of estoppel to cover its failure to comply with RMO 20-90 and RDAO 05-01 which were issued by the BIR itself.[38] A waiver of the statute of limitations is a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations and thus, it must be carefully and strictly construed.[39]

Since the three Waivers in this case are defective, they do not produce any effect and did not suspend the three-year prescriptive period under Section 203 of the NIRC. As such, we sustain the cancellation of the Formal Letter of Demand dated 11 March 2008 and Assessment No. LN # 116-AS-04-00-00038-000526 for taxable year 2004 issued by the BIR against PDI.

WHEREFORE, we **DENY** the petition.

SO ORDERED.

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

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[36] *Commissioner of Internal Revenue v. Kudos Metal Corporation*, *supra* note 32.

[37] *Rollo*, p. 126.

[38] *Commissioner of Internal Revenue v. Kudos Metal Corporation*, *supra* note 32.

[39] *Id*.

FIRST DIVISION

[G.R. No. 214864. March 22, 2017]

PHILIPPINE PORTS AUTHORITY (PPA), represented by Oscar M. Sevilla, General Manager, Benjamin B. Cecilio, Assistant Manager for Operations, and Sisali B. Arap, Port Manager, *petitioner, vs.* **NASIPIT INTEGRATED ARRASTRE AND STEVEDORING SERVICES, INC. (NIASSI), represented by Ramon Calo,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; DOCTRINE OF THE LAW OF THE CASE; PRECLUDES THE DEPARTURE FROM A RULE PREVIOUSLY MADE BY AN APPELLATE COURT IN A SUBSEQUENT PROCEEDING ESSENTIALLY INVOLVING THE SAME CASE.—** In its decision in CA-G.R. SP No. 00214, the CA held that (i) the 10-year cargo-handling contract had already been perfected, and (ii) the HOA and its subsequent extensions constituted partial fulfillment thereof. x x x This decision was affirmed by the Court *in toto* in G.R. No. 174136 x x x. In turn, the Court's decision became final and executory after the lapse of 15 days from notice thereof to the parties. From such time, the Court's decision became immutable and unalterable. The Court notes that CA-G.R. SP No. 00214 and the instant Petition both stem from the Amended Petition, and seek the same relief — the execution of a written contract in accordance with the Notice of Award. Moreover, both cases involve the same facts, parties and arguments. For these reasons, the Court believes that the doctrine of the law of the case is applicable. The doctrine of the law of the case precludes departure from a rule previously made by an appellate court in a subsequent proceeding essentially involving the same case.

2. **ID.; ID.; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; NATURE; FINDINGS MADE IN INJUNCTION PROCEEDINGS ARE SUBJECT TO THE OUTCOME OF THE MAIN CASE WHICH IS USUALLY TRIED SUBSEQUENT TO THE INJUNCTION**

PROCEEDINGS.— A preliminary injunction is in the nature of an ancillary remedy to preserve the *status quo* during the pendency of the main case. As a necessary consequence, matters resolved in injunction proceedings do not, as a general rule, conclusively determine the merits of the main case or decide controverted facts therein. Generally, findings made in injunction proceedings are subject to the outcome of the main case which is usually tried subsequent to the injunction proceedings.

PERLAS-BERNABE, *J.*, *separate concurring opinion*:

1. **REMEDIAL LAW; CIVIL PROCEDURE; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; THE EVIDENCE TO BE SUBMITTED TO PROVE THE EXISTENCE OF A CLEAR LEGAL RIGHT NEED NOT BE CONCLUSIVE OR COMPLETE BUT NEED ONLY BE A SAMPLING TO CONVINCE THE COURT TO ISSUE THE PRELIMINARY INJUNCTION PENDING THE DECISION ON THE MERITS OF THE CASE.—** The existence of a clear legal right is one of the requisites for the issuance of a writ of preliminary injunction. x x x Jurisprudence provides that in a proceeding to determine whether to issue a writ of preliminary injunction, the applicant must show that it has a **clear legal right** to be protected and that the other party's act against which the writ is to be directed violates that right. The Court, however, clarified that **although a clear right is necessary, its existence need <u>not be conclusively established</u>**. In fact, **<u>the evidence to be submitted need not be conclusive or complete but need only be a sampling</u>** to convince the court to issue the preliminary injunction pending the decision on the merits of the case. In more explicit terms, **the applicant only needs to show that it has the <u>ostensible right</u> to the final relief prayed for in the petition**. Therefore, the issuance of a preliminary injunction does not conclusively determine the merits of the main case or decide controverted facts therein. This is because a **preliminary injunction is merely <u>an ancillary remedy to preserve the status quo</u> and prevent irreparable harm until the merits of the main case resolving the rights of the parties are heard and decided**.
2. **ID.; ID.; JUDGMENTS; LAW OF THE CASE DOCTRINE; INAPPLICABLE IN CASE AT BAR; A COURT CANNOT TAKE AS CONCLUSIVE ON THE ACTUAL MAIN CASE**

A MERE INCIDENTAL ADJUDICATION ON A PROVISIONAL RELIEF.— [T]he law of the case doctrine means that **whatever is once irrevocably established as the controlling legal rule or decision between the same parties in the same case continues to be the law of the case**, whether correct on general principles or not, so long as the facts on which such decision was predicated continue to be the facts of the case before the court. In other words, when an appellate court passes on a question and remands the case to the lower court for further proceedings, the question settled therein becomes the law of the case upon subsequent appeal. What was irrevocably established by the CA in **CA-G.R. SP No. 00214**, as affirmed by this Court in *PPA v. NIASSI*, is that NIASSI was entitled to the reinstatement of the WPMI previously dissolved by the RTC. While the CA had to pass upon the question of whether or not a perfected contract already existed at the time of NIASSI's conformity to the Notice of Award, this sub-issue was resolved under the framework of preliminary injunctions, and hence, cannot bind the court in resolving the main case. Indeed, the CA's finding on the perfection of the said contract was made only for the limited purpose of determining whether NIASSI possessed an ostensible right to justify the reinstatement of the writ of preliminary injunction. x x x [I]t is my view that a court cannot take as conclusive on the actual main case a mere incidental adjudication on a provisional relief.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Poculan and Associates Law Office for respondent.

D E C I S I O N

CAGUIOA, *J.*:

This is a Petition for Review on *Certiorari*[1] (Petition) filed under Rule 45 of the Rules of Court against the Amended Decision[2]

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[1] *Rollo*, pp. 18-38.

[2] *Id.* at 41-45. Penned by Associate Justice Henri Jean Paul B. Inting, with Associate Justices Edgardo A. Camello and Pablito A. Perez concurring.

dated September 15, 2014 (Amended Decision) in CA-G.R. SP No. 04828-MIN rendered by the Court of Appeals, Cagayan de Oro City, Special Former Twenty-Second Division (CA). The Amended Decision stems from an Amended Petition for Mandamus with Prayer for the Writ of Preliminary Mandatory Injunction and/or Temporary Restraining Order[3] filed before the Regional Trial Court of Butuan City (RTC) by respondent Nasipit Integrated Arrastre and Stevedoring Services, Inc. (NIASSI) against petitioner Philippine Ports Authority (PPA),[4] which sought to compel the latter to formally execute the 10-year cargo-handling contract awarded in NIASSI's favor.

The Facts

PPA is a government agency created by virtue of Presidential Decree No. 505 (PD 505). Under PD 505, PPA is charged with the management and control of all ports in the Philippines.[5] On the other hand, NIASSI is a duly organized Philippine corporation engaged in the business of cargo handling.[6]

Sometime in November 2000, PPA, through its Pre-qualification, Bids and Awards Committee (PBAC) accepted bids for a 10-year contract to operate as the sole cargo handler at the port of Nasipit, Agusan del Norte (Nasipit Port).[7] Subsequently, PBAC issued Resolution No. 005-2000[8] recommending that the 10-year cargo-handling contract be awarded to NIASSI as the winning bidder.[9]

On November 20, 2000, the second highest bidder, Concord Arrastre and Stevedoring Corporation (CASCOR) filed a protest with PPA's General Manager, Oscar M. Sevilla[10] (Sevilla),

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[3] *Id*. at 75-84.

[4] Docketed as SP Civil Case No. 1242.

[5] *Id*. at 86.

[6] See *id*. at 181.

[7] *Id*. at 86.

[8] *Id*. at 46-48.

[9] *Id*.

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

alleging that two of NIASSI's stockholders on record are legislators who are constitutionally prohibited from having any direct or indirect financial interest in any contract with the government or any of its agencies during the term of their office.[11]

Notwithstanding the protest, PPA issued a Notice of Award in favor of NIASSI on December 21, 2000.[12] The Notice of Award directed NIASSI to signify its concurrence thereto by signing the *conforme* portion and returning the same to PPA within 10 days from receipt.[13] PPA received notice of NIASSI's conformity to the Notice of Award on January 3, 2001.[14]

However, instead of formally executing a written contract, NIASSI requested PPA to issue a Hold-Over Authority (HOA) in its favor, in view of CASCOR's pending protest. PPA granted NIASSI's request and issued a HOA dated August 1, 2001, effective until October 31, 2001, "or until [such time] a cargo[-] handling contract shall have been awarded, whichever comes first."[15]

Meanwhile, the Office of the Government Corporate Counsel (OGCC) issued Opinion No. 028, series of 2002 on February 7, 2002 (OGCC Opinion) which confirmed the authority of PPA to bid out the cargo-handling contract and affirmed the validity of the award in NIASSI's favor.[16] Despite this, the HOA was subsequently extended several times upon NIASSI's request. While the exact number of extensions and their particulars cannot be ascertained from the records, the last extension of the HOA appears to have been issued on October 13, 2004, for a term of six months.[17]

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[11] *Id*. at 87.

[12] *Id*. at 49, 51.

[13] *Id*. at 51.

[14] See *id*. at 29.

[15] *Id*. at 50.

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

[17] *Id*. at 62.

However, barely two months after the last extension of the HOA, PPA, through its Assistant General Manager for Operations, Benjamin B. Cecilio (Cecilio), issued a letter dated December 6, 2004 revoking the extension.[18] In said letter, Cecilio advised NIASSI that PPA received numerous complaints regarding the poor quality of its services due to the use of inadequately maintained equipment. Cecilio further relayed that PPA would take over the cargo-handling services at the Nasipit Port beginning December 10, 2004.[19]

Proceedings before the RTC

On the scheduled date of the take-over, NIASSI filed with the RTC a Petition for Injunction with Prayer for the Writ of Preliminary Injunction and/or Temporary Restraining Order. The petition was later amended to a Petition for Mandamus with Prayer for the Writ of Preliminary Mandatory Injunction and/or Temporary Restraining Order on December 22, 2004. (Amended Petition).[20]

The Amended Petition prayed for the issuance of a writ of mandamus directing PPA to formally execute a written contract, and a writ of preliminary mandatory injunction directing PPA to turn over the management and operations of Nasipit Port's cargo-handling services back to NIASSI.[21]

On March 18, 2005, the RTC issued a resolution granting NIASSI's prayer for a writ of preliminary mandatory injunction, conditioned upon the posting of a ₱1,000,000.00 surety bond.[22] The pertinent portion of the said resolution reads:

It is undeniable that petitioner spent a considerable capital outlay, in the form of equipment, machineries and appliances in the

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[18] *Id.* at 65.

[19] *Id.*

[20] *Id.* at 88.

[21] *Id.*

[22] *Id.*

establishment of its port operation. Moreover, it has also supplied the necessary manpower to wheel its operation.

When the PPA took an active part in the management, control and supervision of the port operations, it practically utilized all the available resources supplied by the petitioner.

What actually happened was that PPA made only adjustment/ correction in the port operation to improve the delivery of basic services. No additional capital outlay was spent.

In summation, this Court recognizes and declares that petitioner's right to continue the cargo handling operations should be protected. It cannot be denied that the continued operation by respondents will probably work injustice to the petitioner, causing irreparable damage to the latter. The better ends of justice [will] be served if the state of affairs [will] be maintained prior to respondent's actual takeover, until finally the main action is disposed.[23]

After NIASSI posted the required surety bond, the RTC issued the writ of preliminary mandatory injunction on March 28, 2005.[24] PPA filed a Motion for Reconsideration on even date, followed by a Supplemental Motion on March 30, 2005. The Supplemental Motion alleged that the writ of preliminary mandatory injunction should be quashed since its corresponding surety bond designated NIASSI's President Ramon Calo as principal, instead of NIASSI itself.[25]

Subsequently, PPA filed a Manifestation expressing its willingness to file a counter-bond in the event that its Motion for Reconsideration is granted.[26] Thereafter, NIASSI filed an Opposition/Reply to PPA's Motion for Reconsideration.[27]

On April 11, 2005, the RTC issued an order (April 2005 RTC Order) granting PPA's Motion for Reconsideration. The

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[23] *Id*. at 89.

[24] *Id*. at 90.

[25] *Id*. at 90-91.

[26] See *id*. at 91.

[27] *Id*. at 92.

April 2005 RTC Order immediately dissolved the writ of preliminary mandatory injunction and directed NIASSI to surrender the management and control of Nasipit Port's cargo-handling operations to PPA.[28]

Prompted by the April 2005 RTC Order, NIASSI filed a Petition for *Certiorari* before the CA (CA petition), docketed as CA-G.R. SP No. 00214.[29] The CA petition assailed the immediately executory nature of the April 2005 RTC Order and questioned the dissolution of the writ of preliminary injunction without prior hearing. In addition, the CA petition alleged that the April 2005 RTC Order reversed the RTC's previous order despite the absence of new matters or issues raised.[30] The CA petition thus prayed for the reversal of the April 2005 RTC Order, and ultimately, the reinstatement of the writ of preliminary injunction.[31]

For its part, PPA argued, among others, that NIASSI was not entitled to the issuance of the injunctive writ because it had no legal right to continue providing cargo-handling services at Nasipit Port, considering that PPA has no existing cargo-handling contract with NIASSI.[32]

In a Decision[33] dated August 8, 2006, the CA granted the petition observing that Presiding Judge Godofredo B. Abul, Jr. (Judge Abul) of the RTC committed several procedural errors when he issued the April 2005 RTC Order. According to the CA, Judge Abul did not conduct a hearing on PPA's Motion for Reconsideration nor did he direct PPA to file a counter-bond before quashing the writ of preliminary mandatory

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[28] *Id.*

[29] *Id.* at 85.

[30] *Id.* at 93.

[31] See *id*. at 85-86.

[32] *Id.* at 96.

[33] *Id.* at 85-116. Penned by Associate Justice Ricardo R. Rosario, with Associate Justices Ramon R. Garcia and Mario V. Lopez concurring.

injunction, in violation of Section 6, Rule 58 of the Rules of Court.[34] The CA concluded that these lapses, taken together with Judge Abul's sudden and inexplicable change of mind, gave rise to suspicions that the issuance of the April 2005 RTC Order was tainted with irregularity and grave abuse of discretion.[35] Thus, the CA directed the reinstatement of the writ of preliminary mandatory injunction.[36] This decision was later affirmed by this Court in the case of *Philippine Ports Authority v. Nasipit Integrated Arrastre and Stevedoring Services, Inc.*[37]

Notably, in the process of resolving NIASSI's CA petition, it became necessary for the CA to determine whether NIASSI had any legal right to continue its operations at Nasipit Port. In this connection, the CA found that a perfected contract between NIASSI and PPA in respect of the cargo-handling operations in fact existed, *albeit* unwritten.[38] The CA held:

> Under Article 1318 of the Civil Code, there can be no contract unless the following requisites concur: (a) consent of the contracting parties; (b) object certain which is the subject matter of the contract; and (c) cause of the obligation which is established.
>
> Under Article 1315 of the same Code, contracts are perfected by mere consent, upon the acceptance by the offeree of the offer made by the offeror. From that moment, the parties are bound not only to the fulfillment of what has been expressly stipulated but also to all the consequences which, according to their nature, may be in keeping with good faith, usage and law.
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> In the case at bar, there is no dispute as to the subject matter of the contract and the cause of the obligation. The controversy lies in the consent — whether the Notice of Award constitutes as a counter-offer and, as a consequence, did not give rise to a perfected contract.

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[34] *Id*. at 96-100.

[35] *Id*. at 102.

[36] *Id*. at 115.

[37] 595 Phil. 887 (2008).

[38] See *rollo*, pp. 43, 111.

A perusal of the records shows that PPA conducted a public bidding for a ten-year contract to operate as sole cargo handler at Nasipit Port, and among the bidders, only two (2) pre-qualified, one of which is the petitioner. In its Resolution No. 005-2000, the Pre-qualification, Bids and Awards Committee (PBAC) declared the petitioner as the winning bidder, and, consequently, a Notice of Award was given to the latter. x x x

x x x x x x x x x

Since respondent PPA started the process of entering into the contract by conducting a bidding, Article 1326 of the Civil Code shall apply, to wit:

> Advertisements to bidders are simply invitations to make proposals, and the advertiser is not bound to accept the highest or lowest bidder, unless the contrary appears.

Accordingly, the rules and regulations issued by the PPA for the public bidding constituted the advertisement to bid on the contract, while the bid proposals submitted by the bidders constituted the offer. The reply of respondent PPA shows its acceptance or rejection of the respective offers.

x x x PPA categorically awarded the contract to the petitioner in accordance with the terms and conditions of the latter's bid proposal. This is the acceptance of petitioner's offer as contemplated by the law. A thorough reading of the required documents clearly shows that they had no material or significant bearing to the perfection of the contract. These were mere formal requirements that will not affect the award of the contract to the petitioner. If at all, the need to submit the documents in question pertains to the issuance of the written evidence of the contract.

x x x x x x x x x

Verily, the Holdover Authority (HOA) granted by the private respondent and the series of extensions allowing the petitioner to operate provisionally the arrastre service confirm the perfection of their contract despite the delay in its consummation due to acts attributable to the private respondents. But it cannot be gainsaid that the series of extensions constitute partial fulfillment and execution of the contract of cargo handling services.

x x x x x x x x x

It is therefore Our submission that a perfected contract of cargo handling services existed when the petitioner won the bidding, given the Notice of Award and conformed (sic) to the conditions set forth in the Notice of Award because the requirements prescribed in the Notice of Award have no bearing on the perfection of the contract. On the contrary, it amounted to a qualified acceptance of petitioner's offer, a clear legal right to continue its operations in the port. Since the respondent is bound by the contract, the act of taking over the cargo handling service from the petitioner is violative of its right.[39] (Emphasis supplied)

In view of the foregoing CA decision, and this Court's decision in G.R. No. 174136 affirming the same, the RTC directed the parties to submit their simultaneous memoranda on the issue of whether the Amended Petition had been rendered moot and academic.[40] On the basis of such memoranda, Judge Abul issued a Resolution[41] dated June 1, 2011 (June 2011 RTC Resolution) dismissing the Amended Petition for being moot and academic. The June 2011 RTC Resolution observed that since the CA had already made a definitive ruling that a contract had been perfected between the parties, the RTC had "nothing left to do" in respect of the Amended Petition.[42]

However, on NIASSI's Motion for Reconsideration, the RTC issued a Resolution[43] dated September 20, 2011 (September 2011 RTC Resolution) reversing the June 2011 RTC Resolution. The dispositive portion of the September 2011 RTC Resolution reads:

WHEREFORE, premises considered, the Motion for Reconsideration is granted.

The defendant is hereby ordered to execute a formal ten (10) years contract in favor of the plaintiff, upon the finality of this order. The

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[39] *Id*. at 105-111.

[40] *Id*. at 24.

[41] *Id*. at 117-132.

[42] *Id*. at 131.

[43] *Id*. at 133-140.

writ of preliminary injunction issued by the Court dated August 8, 2006, will be considered dissolved upon perfection of the formal arrastre service contract.

SO ORDERED.[44]

PPA moved for the reconsideration of the September 2011 RTC Resolution. However, the RTC denied PPA's motion in an Order dated December 20, 2011 (December 2011 RTC Order).[45]

Proceedings before the CA

Aggrieved, PPA filed an appeal before the CA, docketed as CA-G.R. SP No. 04828. In said appeal, PPA faulted the RTC for reversing the June 2011 RTC Order, insisting that the Amended Petition had already become moot and academic. The PPA also alleged that the CA erred in directing it to execute a written 10-year contract with NIASSI reckoned from the finality of the September 2011 RTC Resolution, as this was tantamount to extending the original term of the contract between the parties that was perfected on January 3, 2001, the date when PPA received notice of NIASSI's conformity to the Notice of Award.[46]

PPA thus prayed that the September 2011 RTC Resolution and December 2011 RTC Order be set aside, and a new order be issued dismissing the Amended Petition for being moot and academic.[47]

On December 11, 2013, the CA rendered a Decision[48] granting PPA's appeal in part (CA Decision) by annulling the September 2011 RTC Resolution and December 2011 RTC Order in so far as they failed to consider that the 10-year cargo-handling contract had been partially fulfilled. The CA ruled:

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[44] *Id*. at 140.

[45] *Id*. at 141.

[46] See *id*. at 153-158.

[47] *Id*. at 165.

[48] *Id*. at 167-172.

There is already a perfected contract of ten years, *albeit* it is not written. In fact, NIASSI is already exercising the subject matter of that unwritten contract. To compel PPA to execute a new written ten-year contract without deducting the periods mentioned above is to create another contract for the parties and to unjustly enrich NIASSI. Consequently, the written contract should only cover the remaining period of the original ten-year contract. In the event that the total period is already more than ten (10) years, then the petition should be dismissed for being moot and academic.

WHEREFORE, the instant appeal is partly GRANTED. The case is remanded to the Regional Trial Court to determine the total period of time during which NIASSI was in operation of the cargo handling services of Nasipit port, which period covers the following:

(1) The several hold-over permits granted to NIASSI since 2001, the year the contract was perfected;

(2) The operation of NIASSI as a consequence of Our decision in 2006; and

(3) The operation of NIASSI as a consequence of the granting of its motion for reconsideration in 2011 until the finality of this case.

The total period shall then be deducted, as partial fulfillment, to the ten-year contract in favor of NIASSI. The written contract should only cover the balance of the ten-year period awarded to NIASSI in the Notice of Award. Otherwise, the petition should be dismissed for being moot and academic.

SO ORDERED.[49] (Emphasis and underscoring supplied)

On NIASSI's Motion for Reconsideration, however, the CA issued its Amended Decision dated September 15, 2014.[50] As stated earlier, the Amended Decision affirmed the September 2011 RTC Resolution and December 2011 RTC Order directing PPA to execute the cargo-handling contract in favor of NIASSI for a full 10-year term from the finality of the September 2011 RTC Resolution,[51] on the ground that NIASSI's operations for

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[49] *Id.* at 170-172.

[50] *Id.* at 41-45.

[51] *Id.* at 44.

the period covered by the HOA and its extensions should not be deducted therefrom:

Having a Notice of Award in its favor and having complied with the requirements, NIASSI has established that it has a right for (sic) the ten-year cargohandling contract; yet no written contract embodying the terms of the agreement was signed between the parties. "*A contract is perfected by mere consent and from that moment the parties are bound not only to the fulfillment of what has been expressly stipulated but also to all the consequences which, according to their nature, may be in keeping with good faith, usage and law.*" What remains then is just the execution of the written contract embodying the terms of the agreement so that both parties can comply. And "*there is no unjust enrichment where the one receiving the benefit has a legal right or entitlement thereto.*" Thus, pursuant to the Notice of Award, the PPA is now directed to execute the 10-year written contract in favor of NIASSI. **Based on the language of the last hold-over authority, the PPA does not consider the hold-over permits as partial fulfillment of the unwritten cargo handling contract. The HOA is a separate agreement between the parties pending the issuance of the cargo-handling services contract.**[52] (Italics in the original; emphasis supplied)

PPA received a copy of the Amended Decision on October 20, 2014.[53]

On November 4, 2014, PPA filed a motion with the Court asking for an additional period of 30 days within which to file a Petition for Review on *Certiorari*.[54] PPA's motion was granted by the Court in its Resolution dated November 17, 2014.[55]

Finally, on December 3, 2014, PPA filed the instant Petition.

Issue

The sole issue for resolution of this Court is whether the CA erred when it issued the Amended Decision affirming the

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[52] *Id*.

[53] *Id*. at 19.

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

[55] *Id*. at 16.

September 2011 RTC Resolution and December 2011 RTC Order, and directing PPA to execute a cargo-handling contract in favor of NIASSI for a full 10-year term without deducting the period covered by the HOA.

The Court's Ruling

In the instant Petition, PPA contends that the Amended Petition before the RTC had been rendered moot and academic by virtue of the CA's decision in CA-G.R. SP No. 00214.[56] On this basis, PPA concludes that it can no longer be compelled to formally execute a contract with NIASSI upon finality of the Amended Decision, since the term of the perfected contract already expired on January 3, 2011, 10 years after PPA received notice of NIASSI's conformity to the Notice of Award.[57]

The Petition is impressed with merit.

The CA's findings in CA-G.R. SP No. 00214 constitute the law of the case between the parties, and are thus binding herein.

In its decision in CA-G.R. SP No. 00214, the CA held that (i) the 10-year cargo-handling contract had already been perfected, and (ii) the HOA and its subsequent extensions constituted partial fulfillment thereof. For emphasis, the relevant portions are reproduced:

> Verily, the Holdover Authority (HOA) granted by the private respondent and the series of extensions allowing the petitioner to operate provisionally the arrastre service confirm the perfection of their contract despite the delay in its consummation due to acts attributable to the private respondents. But it cannot be gainsaid that the series of extensions constitute partial fulfillment and execution of the contract of cargo handling services.
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> x x x x x x x x x
>
> It is therefore Our submission that a perfected contract of cargo handling services existed when the petitioner won the bidding, given

[56] *Id*. at 26-28.

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

the Notice of Award and conformed to the conditions set forth in the Notice of Award because the requirements prescribed in the Notice of Award have no bearing on the perfection of the contract. On the contrary, it amounted to a qualified acceptance of petitioner's offer, a clear legal right to continue its operations in the port. Since the respondent is bound by the contract, the act of taking over the cargo handling service from the petitioner is violative of its right.[58]

This decision was affirmed by the Court *in toto* in G.R. No. 174136, thus:

WHEREFORE, the petition is *DENIED* and the appealed Decision of the Court of Appeals is *AFFIRMED*.[59]

In turn, the Court's decision became final and executory after the lapse of 15 days from notice thereof to the parties. From such time, the Court's decision became immutable and unalterable.[60]

The Court notes that CA-G.R. SP No. 00214 and the instant Petition both stem from the Amended Petition, and seek the same relief – the execution of a written contract in accordance with the Notice of Award. Moreover, both cases involve the same facts, parties and arguments. For these reasons, the Court believes that the doctrine of the law of the case is applicable.

The doctrine of the law of the case precludes departure from a rule previously made by an appellate court in a subsequent proceeding essentially involving the same case.[61] Pursuant to this doctrine, the Court, in *De La Salle University v. De La Salle University Employees Association (DLSUEA-NAFTEU)*,[62] (*DLSU*) denied therein petitioner's prayer for review, since the

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[58] *Id*. at 109-111.

[59] *Philippine Ports Authority v. Nasipit Integrated Arrastre and Stevedoring Services, Inc.*, 595 Phil. 887, 903 (2008).

[60] See *Heirs of Emiliano San Pedro v. Garcia, et al*., 609 Phil. 369, 383 (2009).

[61] See *Spouses Sy v. Young*, 711 Phil. 444, 450 (2013).

[62] 693 Phil. 205 (2012).

petition involved a single issue which had been resolved with finality by the CA in a previous case involving the same facts, arguments and relief.

We note that both G.R. No. 168477 and this petition are offshoots of petitioner's purported temporary measures to preserve its neutrality with regard to the perceived void in the union leadership. While these two cases arose out of different notices to strike filed on April 3, 2003 and August 27, 2003, it is undeniable that the facts cited and the arguments raised by petitioner are almost identical. Inevitably, G.R. No. 168477 and this petition seek only one relief, that is, to absolve petitioner from respondent's charge of committing an unfair labor practice, or specifically, a violation of Article 248(g) in relation to Article 252 of the Labor Code.

For this reason, we are constrained to apply the law of the case doctrine in light of the finality of our July 20, 2005 and September 21, 2005 resolutions in G.R. No. 168477. In other words, our previous affirmance of the Court of Appeals' finding — that petitioner erred in suspending collective bargaining negotiations with the union and in placing the union funds in escrow considering that the intra-union dispute between the Aliazas and Bañez factions was not a justification therefor — is binding herein. Moreover, we note that entry of judgment in G.R. No. 168477 was made on November 3, 2005, and that put to an end to the litigation of said issues once and for all.

The law of the case has been defined as the opinion delivered on a former appeal. It means that whatever is once irrevocably established as the controlling legal rule or decision between the same parties in the same case continues to be the law of the case, *whether correct on general principles or not*, so long as the facts on which such decision was predicated continue to be the facts of the case before the court.[63] (Italics in the original; emphasis supplied; citations omitted)

In *Heirs of Felino M. Timbol, Jr. v. Philippine National Bank*[64] *(Heirs of Timbol)*, the Court was confronted with procedural antecedents similar to those attendant in this case. Therein, the Court affirmed the CA's decision declaring as valid the

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[63] *Id*. at 223-224.

[64] G.R. No. 207408, April 18, 2016.

extrajudicial foreclosure assailed by petitioners on the basis of factual findings which were affirmed by the Court in a previous decision that dealt with the dissolution of a writ of preliminary injunction issued in the same case. Thus, in *Heirs of Timbol*, the Court ruled that the CA correctly applied the doctrine of the law of the case.

The Court of Appeals correctly applied the *law of the case* doctrine.

In *PNB v. Timbol*, PNB brought a petition for *certiorari* to set aside the order of Judge Zeus L. Abrogar that issued a writ of preliminary injunction in Civil Case No. 00-946. The Court struck down this order, holding that the order "was attended with grave abuse of discretion."

The Court found that the Spouses Timbol "never denied that they defaulted in the payment of the obligation." In fact, they even acknowledged that they had an outstanding obligation with PNB, and simply requested for more time to pay.

The Court also held that the extrajudicial foreclosure of the mortgage was proper, since it was done in accordance with the terms of the Real Estate Mortgage, which was also the Court's basis in finding that Supreme Court Administrative Order No. 3 does not apply in that case.

The Court also found that the Spouses Timbol's claim that PNB bloated the amount of their obligation was "grossly misleading and a gross misinterpretation" by the Spouses Timbol. The Court noted the Spouses Timbol's letter to PNB that acknowledged they had an outstanding obligation to PNB, as well as affirmed that they received the demand letter directing them to pay, contrary to their claim. Thus, the Court in *PNB v. Timbol* concluded that the RTC committed grave abuse of discretion when it issued a writ of preliminary injunction.

No doubt, this Court is bound by its earlier pronouncements in *PNB v. Timbol*.

The term *law of the case* has been held to mean that "whatever is once irrevocably established as the controlling legal rule or decision between the same parties in the same case continues to be the law of the case, *whether correct on general principles or not*, so long as the facts on which such decision was predicated continue to be the facts of the case before the court. As a general

rule, a decision on a prior appeal of the same case is held to be the law of the case *whether that question is right or wrong*, the remedy of the party deeming himself aggrieved being to seek a rehearing."

x x x x x x x x x

The Court is bound by its earlier ruling in *PNB v. Timbol* finding the extrajudicial foreclosure to be proper. The Court therein thoroughly and thoughtfully examined the validity of the extrajudicial foreclosure in order to determine whether the writ of preliminary injunction was proper. To allow a reexamination of this conclusion will disturb what has already been settled and only create confusion if the Court now makes a contrary finding.

Thus, "[q]uestions necessarily involved in the decision on a former appeal will be regarded as the law of the case on a subsequent appeal, although the questions are not expressly treated in the opinion of the court, as the presumption is that all the facts in the case bearing on the point decided have received due consideration whether all or none of them are mentioned in the opinion."[65] (Italics in the original; emphasis supplied; citations omitted)

The Court's discussions in *DLSU* and *Heirs of Timbol* are in point here where the allegations and reliefs prayed for in NIASSI's Amended Petition show that their disposition required the RTC to resolve a single issue — whether PPA is bound to formally execute the 10-year cargo-handling contract pursuant to the Notice of Award. The relevant portions of the Amended Petition state:

14. **Petitioner won the bidding to operate cargo-handling services in the port of Nasipit, Agusan del Norte, for ten (10) years**. Notwithstanding due compliance by petitioner of (sic) all the requirements as indicated in the Notice of Award x x x petitioner was surprised to receive a communication from respondent CECILIO for public respondent to take-over instead the management and operations of cargo-handling services in the port of Nasipit, Agusan del Norte.

x x x x x x x x x

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[65] *Id*. at 11-13.

19. The act of public respondent in taking-over the management and operations of cargo-handling services of petitioner utilizing the existing facilities and manpower constitutes not only a blatant disregard to the existing permit to operate, it likewise demonstrates a notorious abuse of power reminiscent of the dark days of martial rule. The same act is oppressive, capricious, whimsical, arbitrary and despotic as it denied petitioner of (sic) its right to be heard and dispute the malicious allegations against it. **Essentially, the act is a calculated move to snatch away the award of the ten-year contract of petitioner to operate the Cargo Handling Services.** x x x

24. WHEREFORE, FOR ALL THE FOREGOING, it is most respectfully prayed of (sic) this Honorable Court that upon filing of this Petition, a Temporary Restraining Order (TRO) and/or the Writ of Preliminary Mandatory Injunction be issued commanding or enjoining the respondents and all persons acting in their behalf or direction, to refrain, cease and desist from further implementing the take-over of the management and operations of the cargo-handling services in Nasipit Port, Agusan del Norte, as contained in the letter dated 6 December 2004 x x x, and to refrain from issuing similar orders pending resolution of the instant case and to restore to the herein petitioner the management and operation of the cargo handling services at the Port of Nasipit and until after the Honorable Court shall have heard and resolved the application for the issuance of the Writ of Preliminary Mandatory Injunction.

25. **Petitioner further prays that after due notice and hearing, the Writ of Mandamus be issued commanding the respondents to execute or cause the final execution of a Cargo-Handling contract between petitioner and the Philippine Ports Authority as represented by herein respondents**.[66] (Underscoring omitted; emphasis supplied)

In CA-G.R. SP No. 00214, the CA determined the existence of a perfected contract between PPA and NIASSI in order to ascertain whether the issuance of a writ of preliminary injunction in favor of NIASSI was proper. Thus, the sole issue for the RTC's determination had been resolved in CA-G.R. SP No. 00214, when the CA made the following findings:

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[66] *Rollo*, pp. 79-83.

1. The 10-year cargo-handling contract had been perfected on January 3, 2001, the date when PPA received notice of NIASSI's conformity to the Notice of Award;
2. The parties are bound to formally execute the perfected cargo-handling contract in accordance with the Notice of Award; and
3. NIASSI's operations during the period covered by the HOA constitute partial fulfillment of the perfected cargo-handling contract.

A preliminary injunction is in the nature of an ancillary remedy to preserve the *status quo* during the pendency of the main case. As a necessary consequence, matters resolved in injunction proceedings do not, as a general rule, conclusively determine the merits of the main case or decide controverted facts therein.[67] Generally, findings made in injunction proceedings are subject to the outcome of the main case which is usually tried subsequent to the injunction proceedings.

In this case, however, no further proceedings were conducted after the Decision of the Supreme Court relative to the injunction proceedings had become final. To be sure, the RTC directed the parties to submit their respective memoranda on the issue of whether or not the main case had become moot and academic because of the finality of said Decision and, on the basis of the memoranda, the RTC resolved to dismiss the Amended Petition, as it had nothing left to determine.[68] As such, no evidence to controvert the findings of the CA in CA-G.R. SP No. 00214 were presented in the main case. This being the case, the factual findings of the CA in respect of the perfected cargo-handling contract in the injunction proceedings became *conclusive* upon finality of this Court's decision affirming the same. These circumstances thus render the application of the law of the case doctrine proper.

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[67] *Bank of the Philippine Islands v. Hontanosas, Jr.,* 737 Phil. 38, 57 (2014).

[68] *Rollo,* p. 131.

In any case, it is worth noting that NIASSI recognized the perfection of the cargo-handling contract in its Comment to the instant Petition, thus:

> x x x When NIASSI received and signed the "conforme" portion [of the Notice of Award], there [was] already [a] meeting of minds between the parties as to the object and cause of the cargo handling contract, including the terms and duration thereof.[69]

To NIASSI, the cargo-handling contract was a valid and binding agreement, and it was thus bound by the concomitant rights and obligations arising therefrom.

The term of the perfected contract has already expired.

PPA avers that its 10-year cargo-handling contract with NIASSI already expired on January 3, 2011, after the lapse of 10 years from the date when said contract was perfected.[70] In turn, PPA concludes that it can no longer be directed to formally execute another contract with NIASSI, since such a directive would unduly lengthen the term of the cargo-handling contract contrary to the intention of the parties.[71]

While the Court agrees with PPA's submission that the perfected contract has already expired, the Court clarifies that such expiration is not because of the mere lapse of 10 years reckoned from the date when the same was perfected. To hold as such would be to feign ignorance of the events that transpired thereafter, which led to the institution of this very Petition.

It bears emphasizing that PPA assumed the management and operations of the cargo-handling services at Nasipit Port on two separate instances — first, by virtue of its letter dated December 6, 2004 revoking the last extension of the HOA, and second, by virtue of the April 2005 RTC Order lifting the preliminary mandatory injunction granted in NIASSI's favor.

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[69] *Id*. at 188.

[70] *Id*. at 29, 31.

[71] See *id*. at 32.

The 10-year term of the perfected contract must be deemed interrupted during the periods when PPA assumed management and control over NIASSI's cargo-handling operations.

The relevant periods are summarized, thus:

Period	Duration	Operator	Basis
January 3, 2001 to December 9, 2004	3 years, 11 months and 6 days	NIASSI	Notice of Award
December 10, 2004 to March 27, 2005	3 months and 17 days	PPA	Letter dated December 6, 2004
March 28, 2005 to April 11, 2005	14 days	NIASSI	Issuance of Preliminary Mandatory Injunction
April 12, 2005 to August 7, 2006	1 year, 3 months and 26 days	PPA	Dissolution of Preliminary Injunction
August 8, 2006 to December 3, 2014	8 years, 3 months and 26 days	NIASSI	Reinstatement of Preliminary Injunction
December 3, 2014	-	NIASSI	Institution of the Petition

Based on the table above, NIASSI conducted the cargo-handling operations at Nasipit Port for a total period of 3 years, 11 months and 20 days. Notably, NIASSI does not dispute that it has been conducting such operations since the reinstatement of the preliminary mandatory injunction.

Thus, even if the Court assumes a conservative stance for purposes of illustration and sets the cut-off date for NIASSI's current operations on the date when this Petition was filed, NIASSI's total period of operation would be pegged at **12 years, 3 months and 15 days**, computed as follows:

Period	Duration	Basis
January 3, 2001 to December 9, 2004	3 years, 11 months and 6 days	Notice of Award
March 28, 2005 to April 11, 2005	14 days	Issuance of Preliminary Mandatory Injunction

August 8, 2006 to December 3, 2014	8 years, 3 months and 26 days	Reinstatement of Preliminary Injunction
Total	12 years, 3 months and 15 days	

Clearly, the 10-year term of the perfected contract had already expired, leaving the RTC with nothing to enforce.[72]

Finally, it bears stressing that PPA issued the Notice of Award on December 21, 2000. To compel PPA to formally execute a 10-year cargo-handling contract at this time on the basis of conditions prevailing nearly two decades ago would certainly be unreasonable and iniquitous.

For the foregoing reasons, the Court resolves to grant the instant Petition.

WHEREFORE, premises considered, the Petition for Review on *Certiorari* is **GRANTED**. The Amended Decision dated September 15, 2014 of the Court of Appeals in CA-G.R. SP No. 04828-MIN is **SET ASIDE**. Consequently, SP. Civil Case No. 1242 pending before the Regional Trial Court of Butuan City, Branch 4, is hereby **DISMISSED**.

SO ORDERED.

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

Perlas-Bernabe, J., see separate concurring opinion.

SEPARATE CONCURRING OPINION

PERLAS-BERNABE, *J.*:

I concur in the result, although express certain reservations on the *ponencia*'s application of the law of the case doctrine to reach the intended conclusion.

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[72] See generally *PLDT v. Eastern Telecommunications, Philippines, Inc.,* 703 Phil. 1 (2013).

I.

The facts[1] are as follows: petitioner Philippine Ports Authority (PPA) accepted bids for a ten (10)-year contract to operate as the sole cargo holder at the port of Nasipit, Agusan del Norte. Respondent Nasipit Integrated Arrastre and Stevedoring Services, Inc. (NIASSI) was proclaimed as the winning bidder. The second highest bidder filed a protest against the award to NIASSI. Despite the protest, PPA issued to NIASSI a Notice of Award, directing the latter to signify its concurrence by signing the *conforme* portion. PPA received notice of NIASSI's conformity on **January 3, 2001**.

The Notice of Award requires the parties to formally execute a written contract. Instead of executing the contract, NIASSI requested PPA to issue a Hold-Over Authority (HOA). PPA issued the HOA initially for three (3) months **from August 1, 2001** or until the cargo-handling contract is awarded, whichever comes first. The HOA was extended several times upon NIASSI's request even after the Office of the Government Corporate Counsel issued an opinion affirming the validity of the award in NIASSI's favor.

Barely two (2) months after the last extension of the HOA was granted, PPA sent a letter revoking the extension. It allegedly received numerous complaints regarding the poor quality of NIASSI's services due to inadequately maintained equipment. Thus, PPA would take over the cargo-handling services at the port starting on December 10, 2004.

Aggrieved, NIASSI filed a petition for *mandamus*[2] against PPA before the Regional Trial Court of Butuan City, Branch 3 (RTC), praying that a writ of *mandamus* be issued compelling PPA to formally execute a written contract reflecting its right to operate the port.

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[1] See *ponencia*, pp. 1-3.

[2] Dated December 10, 2004. See *rollo*, pp. 66-73.

II.

Ancillary thereto, NIASSI's petition included an **application for the issuance of a writ of preliminary mandatory injunction** (WPMI),[3] seeking that the cargo-handling operations of the said port be returned to it pending litigation of the main case.

The RTC initially granted NIASSI's application for the issuance of a WPMI in an Order dated March 18, 2005. However, on PPA's motion for reconsideration, it reversed itself and dissolved the WPMI, thus reinstating PPA's cargo-handling operations.[4]

The RTC's holding on this incident (*i.e.*, the dissolution of the WPMI) was elevated by NIASSI to the Court of Appeals (CA) on *certiorari*, docketed as **CA-G.R. SP No. 00214**. In a Decision[5] dated August 8, 2006, the CA granted the *certiorari* petition, finding, among others, **that NIASSI had "a clear legal right to continue its operations in the port"**:[6]

> Verily, the Holdover Authority (HOA) granted by [PPA] and the series of extensions allowing [NIASSI] to operate provisionally the arrastre service confirm the perfection of their contract despite the delay in its consummation due to acts attributable to [PPA]. But it cannot be gainsaid that the series of extensions constitute partial fulfillment and execution of the contract of cargo handling services.
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> x x x x x x x x x
>
> **It is therefore Our submission that a perfected contract of cargo handling services existed when [NIASSI] won the bidding, given the Notice of Award and conformed to the conditions set forth in the Notice of Award** because the requirements prescribed in the Notice of Award have no bearing on the perfection of the contract. On the contrary, it amounted to a qualified acceptance of

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[3] See Amended Petition dated December 22, 2004; *id*. at 75-83.

[4] See *ponencia*, p. 3.

[5] *Rollo*, pp. 85-116. Penned by Associate Justice Ricardo R. Rosario with Associate Justices Ramon R. Garcia and Mario V. Lopez concurring.

[6] *Rollo*, pp. 109-111.

[NIASSI's] offer, **a clear legal right to continue its operations in the port**. x x x.[7] (Emphases and underscoring supplied)

Accordingly, the CA went on to discuss the grounds and requisites for the issuance of a writ of preliminary injunction,[8] and ultimately ruled that:

> WHEREFORE, finding merit in the petition for *certiorari*, the same is GRANTED. Accordingly, the assailed Order dated 11 April 2005 is hereby NULLIFIED and SET ASIDE for having been issued with grave abuse of discretion amounting to lack or in excess of jurisdiction. **Consequently, the Order dated 18 March 2005 granting the Writ of Preliminary Mandatory Injunction is hereby REINSTATED**.[9]

This Court later affirmed the CA in *PPA v. NIASSI*,[10] docketed as G.R. No. 174136.

With the WPMI reinstated, the case was remanded to the RTC for proceedings on the main. Instead of advancing to the pre-trial and trial stages of the proceedings, the RTC, after the parties' filing of their respective memoranda, dismissed the case on the ground of mootness. According to the RTC, the issue of whether or not PPA should be directed to formally execute a 10-year cargo-handling contract with NIASSI had been rendered moot and academic by the CA's ruling in **CA-G.R. SP No. 00214**, that a contract had been perfected between the parties. As such, there was no more need for the parties to execute the 10-year contract.[11]

However, the RTC reversed itself upon reconsideration,[12] and its reversal was later upheld by the CA on appeal in **CA-**

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[7] *Id*. at 111.

[8] *Id*. at 111-112.

[9] *Id*. at 115.

[10] 595 Phil. 887 (2008).

[11] See Resolution dated June 1, 2011, penned by Judge Godofredo B. Abul, Jr.; *rollo*, pp. 117-132.

[12] *Id*. at 133-140.

G.R. SP No. 04828-MIN.[13] The CA held that the HOA is a separate agreement between the parties pending the issuance of the cargo-handling contract. Based on the language of the HOA, the hold-over permits do not constitute partial fulfillment of the unwritten contact. Thus, finding that NIASSI has a right to the 10-year cargo-handling contract in view of the Notice of Award and its compliance with the necessary requirements, PPA is bound to execute a formal contract.[14] Notably, this ruling was an adjudication by the CA on the main case, whereby it granted the main relief prayed for by NIASSI in its *mandamus* petition.[15] PPA now assails this CA ruling *via* the present petition.

III.

The *ponencia* stands to reverse the CA's ruling in **CA-G.R. SP No. 04828-MIN** on the following grounds:

First, the CA's findings in **CA-G.R. SP No. 00214** — more particularly, that a contract between PPA had been perfected — constitute the **law of the case** between the parties, and hence, binding, thereby rendering NIASSI's *mandamus* petition moot;[16] and

Second, the 10-year term of the perfected contract between the parties had already expired, leaving the RTC with nothing to enforce.[17]

I agree with the *ponencia's* reversal of the aforesaid CA ruling. However, I find it unnecessary (and even improper) to apply the law of the case doctrine to reach this conclusion.

As above-intimated, the CA's findings in **CA-G.R. SP No. 00214** were only made for the purpose of determining whether

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[13] See Amended Decision dated September 14, 2015, penned by Associate Justice Henri Jean Paul B. Inting with Associate Justices Edgardo A. Camello and Pablito A. Perez concurring; *id*. at 41-45.

[14] *Id*. at 44.

[15] See Amended Petition dated December 22, 2004; *id*. at 82.

[16] See *ponencia*, pp. 13-14.

[17] *Id*. at 15.

or not the WPMI, which the RTC previously dissolved, should be reinstated. In particular, the CA's holding that "a perfected contract of cargo handling services existed when [NIASSI] won the bidding, given the Notice of Award and conformed to the conditions set forth in the Notice of Award" was made relative to its conclusion that NIASSI had "**a clear legal right to continue its operations in the port."** The existence of a clear legal right is one of the requisites for the issuance of a writ of preliminary injunction. As enumerated by the CA itself in the same ruling:

> The requisites for the issuance of a writ of preliminary injunction are: (1) the existence of a clear and unmistakable right that must be protected; and (2) an urgent and paramount necessity for the writ to prevent serious damage. In taking cognizance of an application for a writ of preliminary injunction, a court has the duty to determine whether the requisites for the grant of an injunction are present in the case before it.[18]

Jurisprudence provides that in a proceeding to determine whether to issue a writ of preliminary injunction, the applicant must show that it has a **clear legal right** to be protected and that the other party's act against which the writ is to be directed violates that right.[19] The Court, however, clarified that **although a clear right is necessary, its existence need not be conclusively established**.[20] In fact, **the evidence to be submitted need not be conclusive or complete but need only be a sampling** to convince the court to issue the preliminary injunction pending the decision on the merits of the case.[21] In more explicit terms, **the applicant only needs to show that it has the ostensible right to the final relief prayed for in the petition**.[22] Therefore,

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[18] *Rollo*, p. 112.

[19] *China Banking Corporation v. Spouses Ciriaco*, 690 Phil. 480, 488 (2012); *Executive Secretary v. Forerunner Multi Resources, Inc.*,701 Phil. 64, 68-69 (2013).

[20] *Bank of the Philippine Islands v. Hontanosas, Jr.*,737 Phil. 38, 56 (2014), citing *Saulog v. CA*, 330 Phil. 590, 602 (1996).

[21] *Id*.

[22] *Id*.

the issuance of a preliminary injunction does not conclusively determine the merits of the main case or decide controverted facts therein.[23] This is because a **preliminary injunction is merely an ancillary remedy to preserve the *status quo* and prevent irreparable harm until the merits of the main case resolving the rights of the parties are heard and decided**.[24]

Verily, it is within the foregoing legal framework that we should treat and characterize the CA's findings in **CA-G.R. SP No. 00214**.

Again, the issue which the CA resolved in **CA-G.R. SP No. 00214** was whether or not the WPMI, which the RTC previously dissolved, should be reinstated. **The context, evidentiary parameters, and issue in CA-G.R. SP No. 00214 are clearly different from those that should apply in the adjudication of the main case.**

In **CA-G.R. SP No. 00214**, the CA only resolved an incident pertaining to the issuance of a provisional relief, for which the parties need not submit complete or conclusive evidence. Only a sampling of evidence is required to determine the existence of an ostensible right to the final relief prayed for. This determination leads the issuing court to merely enjoin/restrain a particular conduct or preserve the *status quo* until the merits of the main case are fully heard and decided.

On the other hand, the resolution of the main case requires the parties to completely present their respective evidence during trial. While hearings were conducted in the proceedings *a quo*, these were only meant to ascertain the merits of NIASSI's application for a WPMI. In the final analysis, the CA in CA-G.R. SP No. 00214 did not determine, under the evidentiary standard of preponderance of evidence, whether or not to grant NIASSI's *mandamus* petition.

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[23] *Id*.

[24] See *BP Philippines, Inc. v. Clark Trading Corp.*, 695 Phil. 481, 491-492 (2012), citing *Bacolod City Water District v. Labayen*, 487 Phil. 335, 346-347 (2004).

According to jurisprudence, the law of the case doctrine means that **whatever is once irrevocably established as the controlling legal rule or decision between the same parties in the same case continues to be the law of the case**, whether correct on general principles or not, so long as the facts on which such decision was predicated continue to be the facts of the case before the court.[25] In other words, when an appellate court passes on a question and remands the case to the lower court for further proceedings, the question settled therein becomes the law of the case upon subsequent appeal.[26]

What was irrevocably established by the CA in **CA-G.R. SP No. 00214**, as affirmed by this Court in *PPA v. NIASSI*, is that NIASSI was entitled to the reinstatement of the WPMI previously dissolved by the RTC. While the CA had to pass upon the question of whether or not a perfected contract already existed at the time of NIASSI's conformity to the Notice of Award, this sub-issue was resolved under the framework of preliminary injunctions, and hence, cannot bind the court in resolving the main case. Indeed, the CA's finding on the perfection of the said contract was made only for the limited purpose of determining whether NIASSI possessed an ostensible right to justify the reinstatement of the writ of preliminary injunction.

The *ponencia* supports its application of the law of the case doctrine by citing *Timbol v. Philippine National Bank* (*Timbol*).[27] While *Timbol* presents a situation similar to this case, I, however, believe that the doctrine was misapplied. At the risk of repetition, it is my view that a court cannot take as conclusive on the actual main case a mere incidental adjudication on a provisional relief. As above-illustrated, the context, evidentiary parameters, and issues involved are simply different between the two

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[25] *Spouses Sy v. Young*,711 Phil. 444, 449-450 (2013); *Suarez-De Leon v. Estrella*, 503 Phil. 34, 41 (2005); *Cucueco v. CA*, 484 Phil. 254, 267 (2004).

[26] *Dela Cruz v. Sandiganbayan*, 622 Phil. 908, 923-925 (2009); *Cucueco v. CA*, 484 Phil. 254, 267-268 (2004); *Agustin v. CA*, 338 Phil. 171, 176 (1997).

[27] See G.R. No. 207408, April 18, 2016.

proceedings. Moreover, from a practical standpoint, a party can shrewdly avert a full-blown trial on the main case's merits by simply invoking the law of the case doctrine after the issue on the propriety of an injunctive relief has been finally resolved on appeal. In this regard, the parties would not be accorded the benefit of presenting their complete evidence under the rigors of a civil trial, and courts would simply shortcut the adjudication process on the basis of *prima facie* determinations.

Contrary to the *ponencia's* assertion,[28] the fact that no other proceedings were conducted and no other evidence were presented after the Court reinstated the WPMI does not render conclusive in the main case the CA's *prima facie* factual findings in **CA-G.R. SP No. 00214**. I reiterate that the context in which the CA made those factual findings differs from the context in the main case. After the Court reinstated the WPMI, what was incumbent upon the RTC was to receive evidence on the issue in the main case, instead of short railing the proceedings by requiring the parties to submit their respective memoranda anent its misplaced perception of mootness. To my mind, the RTC's failure to follow the proper procedure (*i.e.*, to proceed to trial) is not sufficient reason to elevate the status of the CA's factual findings in **CA-G.R. SP No. 00214** from *prima facie* to conclusive on the main. Instead, the proper recourse would be to remand this case to the trial court for reception of evidence on the issue in the main case. However, as will be explained below, NIASSI's admissions in this case render the remand unnecessary, and thus, ultimately validates the *ponencia*'s reversal of the CA's ruling in **CA-G.R. SP No. 04828-MIN**.

In particular, although it appears that the RTC did not proceed to trial in the main proceedings, records show that NIASSI **admitted** that there was already a meeting of the minds between the parties when it signed the *conforme* of the Notice of Award.[29] **By this admission therefore, this Court can already derive**

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[28] See *ponencia*, pp. 14-15.

[29] *Rollo*, p. 188.

the conclusion that the contract between the parties had already been perfected on January 3, 2001. In fact, NIASSI also **admitted** that it was allowed to operate the cargo-handling services at the port *via* the hold-over permits from August 1, 2001 until PPA took over the operations on December 10, 2004.[30] However, NIASSI regained control of the operations of the cargo-handling services after the Court reinstated the WPMI.[31] NIASSI did not dispute that it has been conducting such operations since the reinstatement of the writ until the present. Thus, these admissions – which therefore dispenses with the need for trial – indubitably establish that **the contract was not only perfected at the time of NIASSI's conformity to the Notice of Award but also that the obligations therein had been performed as soon as NIASSI took over the operations even without a formal written contract**.

The usual procedure under the PPA Rules[32] is that the Philippine Ports Authority will issue the Notice of Award to the winning bidder and, thereafter, the parties will execute a cargo-handling contract to enable it to issue a Notice to Commence cargo-handling operations. Without the Notice to Commence, the winning bidder is prohibited from starting the cargo-handling operation.[33] In the present case, NIASSI conducted operations by virtue of the HOA and its extensions prior to the execution of the written contract. Thus, the HOA and the extensions took the place of the Notice to Commence while no written contract has been executed. As the *ponencia* observed, NIASSI had control over the operations of the cargo-handling services at the port for a total period of **12 years, 3 months, and 15 days**, which is clearly way beyond the 10-year

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[30] *Id*. at 190.

[31] *Id*. at 198.

[32] See PPA Administrative Order No. 03-2000, Revised Guidelines in the Conduct of Public Budding and Comparative Evaluation For Cargo Handling Services, February 15, 2000. (*id*. at 205-234) specifically Annex B or the template of Instruction to Bidders (*id*. at 228-234).

[33] *Id*.

period.[34] Therefore, the cargo-handling contract between the parties has already expired and now, ceases to have any force and effect. Accordingly, the core issue in the main proceeding — whether PPA should be compelled by *mandamus* to execute a contract — is already moot and academic on this ground.

WHEREFORE, under these premises, I vote to **GRANT** the petition.

SECOND DIVISION

[G.R. No. 215742. March 22, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOSE BELMAR UMAPAS *y* CRISOSTOMO,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; PARRICIDE; ELEMENTS.—** Parricide is committed when: (1) a person is killed; (2) the deceased is killed by the accused; (3) the deceased is the father, mother, or

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[34] See *ponencia*, p. 15:

Period	Duration	Basis
January 3, 2001 to December 9, 2004	3 years, 11 months and 6 days	Perfection of Contract until PPA's take over
March 28, 2005 to April 11, 2005	14 days	Issuance of the Writ of Preliminary Injunction until Dissolution
August 8, 2006 to December 3, 2014	8 years, 3 months and 26 days	Reinstatement of Preliminary Injunction to Institution of the present Petition
TOTAL	**12 years, 3 months, and 15 days**	

child, whether legitimate or illegitimate, or a legitimate other ascendants or other descendants, or the legitimate spouse of the accused.

2. **REMEDIAL LAW; EVIDENCE; RULES OF ADMISSIBILITY; HEARSAY RULE; EXCEPTIONS; DYING DECLARATION; REQUISITES; DISCUSSED.—** While witnesses in general can only testify to facts derived from their own perception, a report in open court of a dying person's declaration is recognized as an exception to the rule against hearsay if it is "made under the consciousness of an impending death that is the subject of inquiry in the case." It is considered as "evidence of the highest order and is entitled to utmost credence since no person aware of his impending death would make a careless and false accusation." Four requisites must concur in order that a dying declaration may be admissible, thus: *First*, the declaration must concern the cause and surrounding circumstances of the declarant's death. This refers not only to the facts of the assault itself, but also to matters both before and after the assault having a direct causal connection with it. Statements involving the nature of the declarant's injury or the cause of death; those imparting deliberation and willfulness in the attack, indicating the reason or motive for the killing; justifying or accusing the accused; or indicating the absence of cause for the act are admissible. *Second,* at the time the declaration was made, the declarant must be under the consciousness of an impending death. The rule is that, in order to make a dying declaration admissible, a fixed belief in inevitable and imminent death must be entered by the declarant. It is the belief in impending death and not the rapid succession of death in point of fact that renders the dying declaration admissible. It is not necessary that the approaching death be presaged by the personal feelings of the deceased. The test is whether the declarant has abandoned all hopes of survival and looked on death as certainly impending. *Third,* the declarant is competent as a witness. The rule is that where the declarant would not have been a competent witness had he survived, the proffered declarations will not be admissible. Thus, in the absence of evidence showing that the declarant could not have been competent to be a witness had he survived, the presumption must be sustained that he would have been competent. *Fourth*, the declaration must be offered in a criminal case for homicide, murder, or parricide, in which the declarant is the victim.

3. **ID.; ID.; CIRCUMSTANTIAL EVIDENCE; WHEN ADEQUATE FOR CONVICTION.—** Direct evidence of the actual killing is not indispensable for convicting an accused when circumstantial evidence can also sufficiently establish his guilt. The consistent rule has been that circumstantial evidence is adequate for conviction if: (a) there is more than one circumstance; (b) the facts from which the inferences are derived have been proven; and (c) the combination of all circumstances is such as to produce a conviction beyond reasonable doubt. Thus, conviction based on circumstantial evidence can be upheld provided that the circumstances proven constitute an unbroken chain which leads to one fair and reasonable conclusion that points to the accused, to the exclusion of all others, as the guilty person.

4. **ID.; ID.; RULES OF ADMISSIBILITY; HEARSAY RULE; EXCEPTIONS; DOCTRINE OF INDEPENDENTLY RELEVANT STATEMENTS; IF THE PURPOSE OF PLACING THE STATEMENT ON THE RECORD IS MERELY TO ESTABLISH THE FACT THAT THE STATEMENT WAS MADE.—** Evidence is hearsay when its probative force depends in whole or in part on the competency and credibility of some persons other than the witness by whom it is sought to produce. However, while the testimony of a witness regarding a statement made by another person given for the purpose of establishing the truth of the fact asserted in the statement is clearly hearsay evidence, it is otherwise if the purpose of placing the statement on the record is merely to establish the fact that the statement, or the tenor of such statement, was made. Regardless of the truth or falsity of a statement, when what is relevant is the fact that such statement has been made, the hearsay rule does not apply and the statement may be shown. As a matter of fact, evidence as to the making of the statement is not secondary but primary, for the statement itself may constitute a fact in issue or is circumstantially relevant as to the existence of such a fact. This is the doctrine of independently relevant statements.

5. **ID.; ID.; ALIBI; REQUIRES PHYSICAL IMPOSSIBILITY TO BE AT THE TIME AND SCENE OF THE CRIME.—** It is axiomatic that alibi is an inherently weak defense, and may only be considered if the following circumstances are shown: (a) he was somewhere else when the crime occurred; and

(b) it would be physically impossible for him to be at the *locus criminis* at the time of the alleged crime. The requirements of time and place must be strictly met. It is not enough to prove that appellant was somewhere else when the crime happened. They must also demonstrate by clear and convincing evidence that it was physically impossible for him to have been at the scene of the crime at the approximate time of its commission. Unless substantiated by clear and convincing proof, such defense is negative, self-serving, and undeserving of any weight in law. A mere denial, like alibi, is inherently a weak defense and constitutes self-serving negative evidence, which cannot be accorded greater evidentiary weight than the declaration of credible witnesses who testify on affirmative matters.

6. **ID.; ID.; CREDIBILITY OF WITNESSES; UPHELD IN THE ABSENCE OF ILL MOTIVE.—** The court *a quo* also correctly accorded credence to the testimonies of the prosecution witnesses who are police officers. Appellant failed to present any plausible reason to impute ill motive on the part of the police officers who testified against him. In fact, appellant did not even question the credibility of the prosecution witnesses. When police officers have no motive to testify falsely against the accused, courts are inclined to uphold the presumption of regularity in the performance of their duties. Thus, the testimonies of said police officers deserve full faith and credit.

7. **ID.; ID.; ID.; FINDINGS OF TRIAL COURT AFFIRMED BY THE COURT OF APPEALS, RESPECTED.—** This Court has consistently conformed to the rule that findings of the trial court on the credibility of witnesses deserve great weight. Factual findings of the trial court and its observation as to the testimonies of the witnesses are accorded great respect, if not conclusive effect, most especially when affirmed by the Court of Appeals, as in this case. The reason for this is that trial courts are in a better position to decide the question of credibility, having heard the witnesses themselves and having observed firsthand their demeanor and manner of testifying under grueling examination. In the absence of palpable error or grave abuse of discretion on the part of the trial judge, the trial court's evaluation of the credibility of witnesses will not be disturbed on appeal.

8. **CRIMINAL LAW; PARRICIDE; PENALTY AND DAMAGES. —** Parricide, under Article 246 of the Revised Penal Code, is punishable by two indivisible penalties, *reclusion perpetua* to

death. However, with the enactment of Republic Act No. 9346 (RA 9346), the imposition of the penalty of death is prohibited. Likewise, significant is the provision found in Article 63 of the Revised Penal Code stating that in the absence of mitigating and aggravating circumstances in the commission of the crime, the lesser penalty shall be imposed. Applying these to the instant case, there being no aggravating or mitigating circumstance in the commission of the offense, the penalty of *reclusion perpetua* was correctly imposed by the court *a quo*. In conformity with *People v. Ireneo Jugueta,* the Court deems it proper to modify the amounts of damages awarded to the heirs of Gemma Umapas, as follows: Civil indemnity – from ₱50,000.00 to ₱75,000.00; Moral damages from ₱50,000.00 to ₱75,000.00; and temperate damages in the amount of ₱50,000.00. We, likewise, award exemplary damages in the amount of ₱75,000.00 on account of relationship, a qualifying circumstance, which was alleged and proved, in the crime of parricide. All with interest at the rate of six percent (6%) *per annum* from the date of finality of judgment until the same are fully paid.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERALTA, *J*.:

Before this Court is an appeal from the Decision[1] dated February 26, 2014 of the Court of Appeals (*CA*) in CA-G.R. CR-HC No. 05424. The CA affirmed with modification the Decision[2] dated October 10, 2011 of the Regional Trial Court (*RTC*) of Olongapo City in Criminal Case No. 611-98 which convicted appellant Jose Belmar Umapas y Crisostomo of parricide.

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[1] Penned by Associate Justice Socorro B. Inting, with Associate Justices Jose C. Reyes, Jr. and Mario V. Lopez, concurring; *rollo*, pp. 2-10.

[2] CA *rollo*, pp. 36-41.

The facts are as follows:

In the evening of November 30, 1998, around 11 o'clock, appellant mauled his wife Gemma Gulang Umapas (*Gemma*) and, with the use of alcohol intended for a coleman or lantern, doused her with it and set her ablaze at their home located at Lower Kalakhan, Olongapo City. Gemma was brought to James L. Gordon Memorial Hospital for treatment by a certain Rodrigo Dacanay who informed the attending hospital personnel, which included Dr. Arnildo C. Tamayo (*Dr. Tamayo*), that it was appellant who set her on fire.[3] Gemma was found to have suffered the following injuries: contusions on the left cheek and on the lower lip, lacerations on right parietal area and on the left temporal area, and thermal burns over 57% of her body.[4] Due to the severity of the injuries, the victim died on December 5, 1998 from multiple organ failure secondary to thermal burns.[5]

The police authorities were unable to talk to Gemma immediately after the incident as they were prevented from doing so by the attending physician at the hospital's emergency room. But the following day, December 1, 1998, around 1:30 p.m., SPO1 Anthony Garcia (*SPO1 Garcia*) was able to interview the victim at her hospital bed.[6] Though she spoke slowly with eyes closed, Gemma was said to be coherent and agreed to give a statement about the incident which included her identifying her husband, Umapas, as her assailant.[7] Gemma was asked if she felt that she was dying, and she said "yes."[8] SPO1 Garcia reduced her statement in writing and the same was attested thru the victim's thumbmark. A nurse who was present when the statement of the victim was taken signed as witness.[9]

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[3] Records, pp. 281-282.

[4] *Id*. at 114.

[5] *Id*. at 18.

[6] *Id*. at 286.

[7] *Id*. at 286-287.

[8] *Id*. at 290.

[9] *Id*. at 289-288.

On January 5, 1999, an Information[10] was filed against appellant Jose Belmar Umapas y Crisostomo for parricide. The Information alleged —

That on or about the thirtieth (30th) day of November, 1998, in the City of Olongapo, Philippines, and within the jurisdiction of this Honorable Court, the said accused, Jose Belmar C. Umapas, with intent to kill, taking advantage of his superior strength and with evident premeditation, arming himself with a bottle of alcohol intended for a coleman, did then and there willfully, unlawfully and feloniously inflict multiple injuries upon the different parts of the body of his lawfully wedded wife Gemma G. Umapas by then and there pouring the said alcohol on the different parts of the body of said Gemma G. Umapas, setting her body ablaze, resulting in the immediate death of the latter.

CONTRARY TO LAW.

Appellant, for his part, narrated that on November 30, 1998, he was with a certain Rommel fishing in Kalakhan.[11] They left at 5 o'clock in the afternoon and returned at 2 o'clock in the morning the following day to their residence at 195 Lower Kalakhan, Olongapo City.[12] When appellant went home, there was a commotion, but he claimed not to know what the commotion was all about. There were many people in the vicinity of their house. He then learned from the neighbors who were outside their house that his wife was brought to the hospital but was not told why. His four children were in their house and they told him that their mother is in the hospital. When he learned about this, appellant allegedly dressed up to go to the hospital, but he was not able to go because he was stopped by the people from the barangay. He was instead brought to the police precinct and was detained.[13]

Appellant later on learned that he was a suspect in his wife's death. He claimed that he was not able to talk to his wife before

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[10] *Id*. at 1-2.

[11] *Id*. at 252.

[12] *Id*. at 252-253.

[13] *Id*. at 253-256.

she died or visit her at the hospital. He was not even able to visit the wake of his wife because he was already detained. He, however, believed that his wife pointed him as the one who did wrong to her because his wife suspected him of womanizing while he was working at EEI.[14] Appellant averred that they had petty quarrels and his wife was always hot tempered, and she even asked him to choose between work and family. Appellant added that he just chose to ignore her and took a vacation. While he was on vacation from work, he earned a living by fishing. He maintained that he was out fishing, and not in their house, on November 30, 1998 when the incident occurred.[15]

On June 7, 1999, upon arraignment, appellant pleaded not guilty to the crime charged.[16] Trial ensued.

The prosecution presented three (3) witnesses, namely, Dr. Tamayo, SPO1 Garcia and PO1 Rommel Belisario (*PO1 Belisario*). On the other hand, the defense presented the lone testimony of the appellant.

Dr. Tamayo testified that he gave medical treatment to the victim Gemma G. Umapas who suffered contusions and lacerations in her head and second degree burns over fifty-seven percent (57%) of her body. Dr. Tamayo testified that he was informed by one Rodrigo Dacanay that the victim was doused by her husband, appellant, with one hundred percent (100%) alcohol and set on fire.[17] Due to the severity of the burns, he thought that the victim had a slim chance of surviving. He also authenticated the medical certificate he issued on the victim's injuries.[18]

SPO1 Garcia testified that on December 1, 1998, while the victim was being treated at the hospital, he was able to obtain the statement of the victim who identified appellant as the perpetrator of the crime. SPO1 Garcia reduced the victim's

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[14] *Id*. at 269.

[15] *Id*. at 270.

[16] *Id*. at 36.

[17] *Id*. at 276.

[18] *Id*. at 277-278.

statement in writing which, due to the victim's inability to use her hands, was marked merely by her thumb. The statement was witnessed by a hospital nurse.[19]

PO1 Belisario, on the other hand, testified that he was prevented by the hospital personnel from talking to the victim because of the severity of the latter's injuries. At the crime scene, he was told by the victim's daughter, Ginalyn Umapas, that her mother was set ablaze by appellant. He, however, admitted that he failed to reduce Gemma's daughter's statement in writing.[20]

Appellant, testifying on his behalf, denied setting his wife on fire and claimed he was out fishing with a friend he identified as a certain Rommel.[21] He further claimed that his wife probably pointed to him as her assailant to get back at him due to his alleged womanizing.[22] While appellant intended to present another witness, the defense eventually rested its case on July 25, 2011 when no other witness was available to corroborate the appellant's testimony.

On October 10, 2011, the RTC found the appellant guilty of the crime of parricide. The dispositive portion of the decision reads in this wise:

> IN VIEW THEREOF, accused JOSE BELMAR UMAPAS y CRISOSTOMO is found GUILTY beyond reasonable doubt of the crime of PARRICIDE, and sentenced to suffer the imprisonment of *reclusion perpetua*.
>
> Accused is likewise ordered to pay the heirs of the victim Php50,000.00 as civil indemnity *ex delicto*, Php50,000.00 as moral damages and Php25,000.00 as temperate damages.
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> **SO ORDERED.**[23]

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[19] *Supra* note 9.

[20] Records, pp. 244-245.

[21] *Supra* note 15.

[22] *Supra* note 14.

[23] *Supra* note 2.

The RTC was unconvinced by the defense of alibi and denial interposed by appellant.

Unperturbed, appellant appealed the trial court's decision before the Court of Appeals.

On February 26, 2014, in its disputed Decision,[24] the Court of Appeals denied the appeal and affirmed the appealed decision of the trial court with modification, to wit:

> **WHEREFORE**, the instant appeal is **DENIED**. The assailed Decision dated October 10, 2011 of the Regional Trial Court (RTC) of Olongapo City, Branch 74, in Criminal Case No. 611-98 is hereby **AFFIRMED** with **MODIFICATION** that in addition to the damages awarded by the court *a quo* to the heirs of the victim, the accused-appellant is likewise ordered to pay the amount of ₱30,000.00 as exemplary damages. All damages awarded shall earn interest at the rate of 6% per annum from the date of finality of this Decision until fully paid.
>
> **SO ORDERED**.

Hence, this appeal.

I

WHETHER THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT BASED ON THE ALLEGED DYING STATEMENT OF THE VICTIM GEMMA UMAPAS, ADMITTING THE SAME AS A DYING DECLARATION AND PART OF RES GESTAE

II

WHETHER THE COURT A QUO ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

We affirm appellant's conviction.

Parricide is committed when: (1) a person is killed; (2) the deceased is killed by the accused; (3) the deceased is the father,

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[24] *Supra* note 1.

mother, or child, whether legitimate or illegitimate, or a legitimate other ascendants or other descendants, or the legitimate spouse of the accused.[25]

In the instant case, the fact of Gemma's death is incontestable. The fact that Gemma died on December 5, 1998 was established by witnesses from both the prosecution and defense. As additional proof of Gemma's demise, the prosecution presented her Certificate of Death which was admitted by the RTC. [26] Also, the spousal relationship between Gemma and the appellant is undisputed. Appellant already admitted that Gemma was his legitimate wife in the course of the trial of the case.[27] In parricide involving spouses, the best proof of the relationship between the offender and victim is their marriage certificate. However, oral evidence may also be considered in proving the relationship between the two as long as such proof is not contested, as in this case. Thus, having established the fact of death and the spousal relationship between Gemma and the appellant, the remaining element to be proved is whether the deceased is killed by the accused.

Conviction based on dying declaration:

While witnesses in general can only testify to facts derived from their own perception, a report in open court of a dying person's declaration is recognized as an exception to the rule against hearsay if it is "made under the consciousness of an impending death that is the subject of inquiry in the case." It is considered as "evidence of the highest order and is entitled to utmost credence since no person aware of his impending death would make a careless and false accusation."[28]

Four requisites must concur in order that a dying declaration may be admissible, thus: *First*, the declaration must concern

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[25] *People v. Manuel Macal y Bolasco*, G.R. No. 211062, January 13, 2016.

[26] *Rollo,* p. 121.

[27] Records, p. 251.

[28] *People v. Maglian,* 662 Phil. 338, 346 (2011).

the cause and surrounding circumstances of the declarant's death. This refers not only to the facts of the assault itself, but also to matters both before and after the assault having a direct causal connection with it. Statements involving the nature of the declarant's injury or the cause of death; those imparting deliberation and willfulness in the attack, indicating the reason or motive for the killing; justifying or accusing the accused; or indicating the absence of cause for the act are admissible. *Second,* at the time the declaration was made, the declarant must be under the consciousness of an impending death. The rule is that, in order to make a dying declaration admissible, a fixed belief in inevitable and imminent death must be entered by the declarant. It is the belief in impending death and not the rapid succession of death in point of fact that renders the dying declaration admissible. It is not necessary that the approaching death be presaged by the personal feelings of the deceased. The test is whether the declarant has abandoned all hopes of survival and looked on death as certainly impending. *Third,* the declarant is competent as a witness. The rule is that where the declarant would not have been a competent witness had he survived, the proffered declarations will not be admissible. Thus, in the absence of evidence showing that the declarant could not have been competent to be a witness had he survived, the presumption must be sustained that he would have been competent. *Fourth*, the declaration must be offered in a criminal case for homicide, murder, or parricide, in which the declarant is the victim.[29]

In the present case, all the abovementioned requisites of a dying declaration were met. Gemma communicated her ante-mortem statement to SPO1 Garcia, identifying Umapas as the person who mauled her, poured gasoline on her, and set her ablaze.[30] Gemma's statements constitute a dying declaration, given that they pertained to the cause and circumstances of her death and taking into consideration the severity of her wounds,

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[29] See *People v. Cerilla,* 564 Phil. 230, 242 (2007).

[30] Records, p. 117.

it may be reasonably presumed that she uttered the same under the belief that her own death was already imminent.[31] There is ample authority for the view that the declarant's belief in the imminence of her death can be shown by the declarant's own statements or from circumstantial evidence, such as the nature of her wounds, statements made in her presence, or by the opinion of her physician.[32] While more than 12 hours has lapsed from the time of the incident until her declaration, it must be noted that Gemma was in severe pain during the early hours of her admission. Dr. Tamayo even testified that when she saw Gemma in the hospital, she was restless, in pain and incoherent considering that not only was she mauled, but 57% of her body was also burned.[33] She also underwent operation and treatment, and was under medication during the said period.[34] Given the circumstances Gemma was in, even if there was sufficient lapse of time, we could only conclude that at the time of her declaration, she feared that her death was already imminent. While suffering in pain due to thermal burns, she could not have used said time to contrive her identification of Umapas as her assailant. There was, thus, no opportunity for Gemma to deliberate and to fabricate a false statement.

Moreover, Gemma would have been competent to testify on the subject of the declaration had she survived. There is nothing in the records that show that Gemma rendered involuntary declaration. *Lastly*, the dying declaration was offered in this criminal prosecution for parricide in which Gemma was the

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[31] *Id*. at 120.

[32] *People v. Salafranca*, 682 Phil. 470, 482 (2012), citing *M. Graham, Federal Practice and Procedure: Evidence* § 7074, Interim Edition, Vol. 30B, 2000, West Group, St. Paul, Minnesota; citing *Shepard v. United States*, 290 US 96, 100; *Mattox v. United States*, 146 US 140, 151 (sense of impending death may be made to appear "from the nature and extent of the wounds inflicted, being obviously such that he must have felt or known that he could not survive."); *Webb v. Lane*, 922 F.2d 390, 395-396 (7th Cir. 1991); *United States v. Mobley*, 491 F.2d 345 (5th Cir. 1970).

[33] Records, pp. 275-276; 279-281.

[34] *Id.* at 279.

victim. It has been held that conviction or guilt may be based mainly on the ante-mortem statements of the deceased.[35] In the face of the positive identification made by deceased Gemma of appellant Umapas, it is clear that Umapas committed the crime.

Conviction based on circumstantial evidence:

Direct evidence of the actual killing is not indispensable for convicting an accused when circumstantial evidence can also sufficiently establish his guilt. The consistent rule has been that circumstantial evidence is adequate for conviction if: (a) there is more than one circumstance; (b) the facts from which the inferences are derived have been proven; and (c) the combination of all circumstances is such as to produce a conviction beyond reasonable doubt. Thus, conviction based on circumstantial evidence can be upheld provided that the circumstances proven constitute an unbroken chain which leads to one fair and reasonable conclusion that points to the accused, to the exclusion of all others, as the guilty person. All these requisites, not to mention the dying declaration of the deceased victim herself, are present in the instant case.[36]

In the instant case, the testimonies of: (1) SPO1 Belisario that during his investigation immediately after the crime was reported, he went to the crime scene and was able to talk to Ginalyn Umapas, the daughter of the victim, wherein the latter told him that Umapas was the one who set her mother ablaze inside their house, (2) Dr. Tamayo that a certain Rodrigo Dacanay told him that Umapas was the one who mauled and set Gemma ablaze, and (3) SPO1 Garcia that he took the statement of Gemma which he reduced into writing after the same was thumbmarked by Gemma and witnessed by the hospital nurse, can be all admitted as circumstantial evidence. While Ginalyn Umapas

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[35] *People v. Serrano*, 58 Phil. 669, 670 (1933).

[36] *People v. Sañez*, 378 Phil. 573, 584 (1999); *People v. Dela Cruz*, G.R. No. 108180, February 8, 1994, 229 SCRA 754; *People v. De Guzman*, G.R. No. 92537, April 25, 1994, 231 SCRA 737; *People v. Retuta*, G.R. No. 95758, August 2, 1994, 234 SCRA 645.

and Rodrigo Dacanay or the hospital nurse were not presented to prove the truth of such statements, they may be admitted not necessarily to prove the truth thereof, but at least for the purpose of placing on record to establish the fact that those statements or the tenor of such statements, were made. Thus, the testimonies of SPO1 Belisario, Dr. Tamayo, and SPO1 Garcia are in the nature of *an independently relevant statement* where what is relevant is the fact that Ginalyn Umapas and Rodrigo Dacanay made such statement, and the truth and falsity thereof is immaterial. In such a case, the statement of the witness is admissible as evidence and the hearsay rule does not apply.

Evidence is hearsay when its probative force depends in whole or in part on the competency and credibility of some persons other than the witness by whom it is sought to produce. However, while the testimony of a witness regarding a statement made by another person given for the purpose of establishing the truth of the fact asserted in the statement is clearly hearsay evidence, it is otherwise if the purpose of placing the statement on the record is merely to establish the fact that the statement, or the tenor of such statement, was made. Regardless of the truth or falsity of a statement, when what is relevant is the fact that such statement has been made, the hearsay rule does not apply and the statement may be shown. As a matter of fact, evidence as to the making of the statement is not secondary but primary, for the statement itself may constitute a fact in issue or is circumstantially relevant as to the existence of such a fact. This is the doctrine of independently relevant statements. Thus, all these requisites to support a conviction based on circumstantial evidence, not to mention the dying declaration of the deceased victim herself, are existing in the instant case.[37]

We, likewise, do not find credence in appellant's defense of alibi. It is axiomatic that alibi is an inherently weak defense, and may only be considered if the following circumstances are shown: (a) he was somewhere else when the crime occurred; and (b) it would be physically impossible for him to be at the

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[37] *Espineli v. People*, G.R. No.179535, June 9, 2014, 725 SCRA 365, 378.

locus criminis at the time of the alleged crime.[38] The requirements of time and place must be strictly met. It is not enough to prove that appellant was somewhere else when the crime happened. They must also demonstrate by clear and convincing evidence that it was physically impossible for him to have been at the scene of the crime at the approximate time of its commission. Unless substantiated by clear and convincing proof, such defense is negative, self-serving, and undeserving of any weight in law.[39] A mere denial, like alibi, is inherently a weak defense and constitutes self-serving negative evidence, which cannot be accorded greater evidentiary weight than the declaration of credible witnesses who testify on affirmative matters.[40] Under the circumstances, there is the possibility that appellant could have been present at the *locus criminis* at the time of the incident considering that where he claimed to have gone fishing and his residence are both in Kalakhan.[41] Accordingly, appellant's defense of alibi must fall.

The court *a quo* also correctly accorded credence to the testimonies of the prosecution witnesses who are police officers. Appellant failed to present any plausible reason to impute ill motive on the part of the police officers who testified against him. In fact, appellant did not even question the credibility of the prosecution witnesses. When police officers have no motive to testify falsely against the accused, courts are inclined to uphold the presumption of regularity in the performance of their duties.[42] Thus, the testimonies of said police officers deserve full faith and credit.

This Court has consistently conformed to the rule that findings of the trial court on the credibility of witnesses deserve great

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[38] *People v. Palanas*, G.R. No. 214453, June 17, 2015, 759 SCRA 318, 329; *People v. Agcanas*, G.R. No. 174476, October 11, 2011, 658 SCRA 842, 847.

[39] *People v. Sato*, G.R. No. 190863, November 19, 2014, 741 SCRA 132, 140; *People v. Nelmida*, 694 Phil. 529, 564 (2012).

[40] *People v. Estrada*, 624 Phil. 211, 217 (2010).

[41] Records, pp. 252-253.

[42] *People v. Buenaventura*, 677 Phil. 230, 240 (2011).

weight. Factual findings of the trial court and its observation as to the testimonies of the witnesses are accorded great respect, if not conclusive effect, most especially when affirmed by the Court of Appeals, as in this case. The reason for this is that trial courts are in a better position to decide the question of credibility, having heard the witnesses themselves and having observed firsthand their demeanor and manner of testifying under grueling examination. In the absence of palpable error or grave abuse of discretion on the part of the trial judge, the trial court's evaluation of the credibility of witnesses will not be disturbed on appeal.[43]

All told, based on the foregoing, this Court finds the established circumstances, as found by the trial court and the appellate court, to have satisfied the requirement of Section 4, Rule 133 of the Rules of Court.[44] Indeed, the incriminating circumstances, including the ante-mortem statement of Gemma, when taken together, constitute an unbroken chain of events enough to arrive at the conclusion that indeed appellant Umapas was guilty for the killing of his wife Gemma.

PENALTY

Parricide, under Article 246 of the Revised Penal Code, is punishable by two indivisible penalties, *reclusion perpetua* to death. However, with the enactment of Republic Act No. 9346 (RA 9346), the imposition of the penalty of death is prohibited. Likewise, significant is the provision found in Article 63[45] of

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[43] *People v. Colorada*, G.R. No. 215715, August 31, 2016 (Resolution).

[44] Sec. 4. Circumstantial evidence, when sufficient. – Circumstantial evidence is sufficient for conviction if: (a) There is more than one circumstance; (b) The facts from which the inferences are derived are proven; and (c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

[45] In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof: x x x.

2. When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied. x x x.

the Revised Penal Code stating that in the absence of mitigating and aggravating circumstances in the commission of the crime, the lesser penalty shall be imposed. Applying these to the instant case, there being no aggravating or mitigating circumstance in the commission of the offense, the penalty of *reclusion perpetua* was correctly imposed by the court *a quo*.

In conformity with *People v. Ireneo Jugueta,*[46] the Court deems it proper to modify the amounts of damages awarded to the heirs of Gemma Umapas, as follows: Civil indemnity — from ₱50,000.00 to ₱75,000.00; Moral damages from ₱50,000.00 to ₱75,000.00; and temperate damages in the amount of ₱50,000.00.[47] We, likewise, award exemplary damages in the amount of ₱75,000.00 on account of relationship, a qualifying circumstance, which was alleged and proved, in the crime of parricide.[48] All with interest at the rate of six percent (6%) *per annum* from the date of finality of judgment until the same are fully paid.

WHEREFORE, the appeal is **DENIED**. The Decision dated February 26, 2014 of the Court of Appeals in CA-G.R. CR-HC No. 05424 finding appellant Jose Belmar Umapas *y* Crisostomo **GUILTY** beyond reasonable doubt of the crime of Parricide, as defined and punished under Article 246 of the Revised Penal Code, is hereby **AFFIRMED WITH MODIFICATION,** in that he is sentenced to suffer the penalty of *reclusion perpetua*. The appellant is also hereby **ORDERED** to **INDEMNIFY** the heirs of the deceased the following amounts of:

a. PhP75,000.00 as civil indemnity;
b. PhP75,000.00 as moral damages;
c. PhP75,000.00 as exemplary damages; and
d. PhP50,000.00 as temperate damages;

All damages awarded shall earn interest at the rate of six percent (6%) *per annum* from the date of finality of this Judgment until fully paid.

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

[47] *People v. Manuel Macal y Bolasco*, G.R. No. 211062, January 13, 2016.

[48] *People v. Paycana*, *Jr.,* 574 Phil. 780, 791 (2008).

Let a copy of this Decision be furnished the Department of Justice for its information and appropriate action. Costs against the appellant.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 224295. March 22, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ARIEL S. MENDOZA**, *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; SIMPLE RAPE TO QUALIFIED RAPE; ELEMENTS.—** The elements of rape under Article 266-A, paragraph (1)(a) of the RPC, as amended, are: (1) that the offender had carnal knowledge of a woman; and (2) that such act was accomplished through force, threat, or intimidation. Then, to raise the crime of simple rape to qualified rape under Article 266-B, paragraph (1) of the RPC, as amended, the twin circumstances of minority of the victim and her relationship to the offender must concur.

2. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURT, RESPECTED. —** The Court finds no compelling reason to depart from the finding of the RTC that AAA's testimony was clear and straightforward, and in according the same with full weight and credence. It is well to remember that when it comes to the issue of credibility of the victim or the prosecution witnesses, the findings of the trial courts carry great weight and respect and, generally, the appellate courts will not overturn the said findings unless the trial court overlooked, misunderstood or

misapplied some facts or circumstances of weight and substance which will alter the assailed decision or affect the result of the case. This is so because trial courts are in the best position to ascertain and measure the sincerity and spontaneity of witnesses through their actual observation of the witnesses' manner of testifying, their demeanor and behavior in court.

3. **ID.; ID.; DENIAL; FAILS AGAINST POSITIVE IDENTIFICATION OF ACCUSED.—** The accused-appellant's defense of denial deserves scant consideration. Aside from his allegation of denial, the records are wanting of any evidence that would support his claim. On the other hand, he was positively identified by his own daughter as the one who committed the crime. Between the positive assertions of AAA and the negative averments of the accused-appellant, the former indisputably deserve more credence and are entitled to greater evidentiary weight.

4. **CRIMINAL LAW; QUALIFIED RAPE; PENALTY AND DAMAGES.—** With respect to the monetary awards, [it must be] consistent to the prevailing jurisprudence of *People of the Philippines v. Ireneo Jugueta*. For qualified rape where the penalty imposable is death penalty but was reduced to *reclusion perpetua* in view of Republic Act No. 9346, the accused-appellant shall be ordered to pay the following: (a) civil indemnity – ₱100,000.00; (b) moral damages – ₱100,000.00; and (c) exemplary damages – ₱100,000.00.

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

REYES, *J.*:

This is an appeal from the Decision[1] dated March 13, 2015 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 04919,

[1] Penned by Associate Justice Myra V. Garcia-Fernandez, with Associate Justices Noel G. Tijam (now a Member of this Court) and Mario V. Lopez concurring; CA *rollo*, pp. 70-80.

which affirmed with modification the Decision[2] dated December 9, 2010 of the Regional Trial Court (RTC) of Iba, Zambales, Branch 69, in Criminal Case No. RTC 5785-I finding Ariel S. Mendoza (accused-appellant) guilty beyond reasonable doubt of Qualified Rape.

Factual Antecedents

On February 10, 2010,[3] the accused-appellant was charged with the crime of Rape, as defined and penalized under Article 266-A and 266-B of the Revised Penal Code (RPC), in an Information, the accusatory portion of which reads as follows:

> That sometime in between 2008 and 2009, in Brgy. Luna, Municipality of San Antonio, Province of Zambales, Philippines and within the jurisdiction of this Honorable Court, the [accused-appellant], with lewd design, through intimidation, did then and there willfully, unlawfully and feloniously inserted his penis into the vagina and buttocks of his own daughter, five (5) year old [AAA],[4] against her will and consent, and which degraded and demeaned the latter of her intrinsic worth and dignity, to the damage and prejudice of said minor [AAA].
>
> CONTRARY TO LAW.[5]

Upon arraignment on April 13, 2010, the accused-appellant pleaded not guilty to the charge. During the preliminary conference held on May 5, 2010, he admitted that AAA is his daughter, as well as the existence and due execution of AAA's certificate of live birth.[6]

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[2] Rendered by Judge Josefina D. Farrales; *id*. at 10-15.

[3] *Id*. at 71.

[4] The real name of the victim, her personal circumstances and other information which tend to establish or compromise her identity, as well as those of her immediate family or household members, shall not be disclosed to protect her privacy and fictitious initials shall, instead, be used, in accordance with *People v. Cabalquinto* (533 Phil. 703 [2006]), and A.M. No. 04-11-09-SC dated September 19, 2006.

[5] CA *rollo*, p. 10.

[6] *Id*. at 71.

During the trial, AAA recalled that the incident transpired at her grandfather's house, around the same time when their own house was being demolished. She claimed that while her grandfather was away, the accused-appellant stripped her naked and asked her to lie facing downwards. The accused-appellant then inserted his penis into her vagina and anus. The harrowing incident was interrupted by the arrival of her grandfather, after which she dressed up, went out of the house and played with her dog, while the accused-appellant stayed inside the house.[7]

AAA's testimony during the trial was a reiteration of her narration of the incident in her sworn statement executed on April 16, 2009 which reads as follows:

TANONG - AAA, marunong ka bang magsalita at bumasa ng salita o wikang Tagalog?
SAGOT - Marunong lang pong magsalita ng Tagalog.

T - AAA, bakit nandito kayo ni mama mo sa opisina ng pulis?
S - Isusumbong ko po si Ninong Rolex at Papa ko.

T - Bakit mo isusumbong si Papa mo?
S - Kasi pinasok po niya yong 'TOTOY' niya sa 'PEPE' ko at saka sa 'PUWET' ko.

T - Papaano ipinasok ng PAPA mo ang 'TOTOY' niya sa pepe mo?
S - Diba ito yong 'TOTOY' niya, ito yung 'PEPE' ko, yun ipinasok nya? (Victim demonstrate thru her hands how [her] father sexually abused her)

T - Maalala mo ba kong ano ang itsura ng 'TOTOY' ni PAPA mo?
S - May balbas saka medyo mahaba.

T - Anung kulay ng balbas ng 'TOTOY' ni PAPA mo?
S - Kulay itim, katulad ng buhok. (Victim hold her hair)

T - Anung naramdaman mo noong pinasok ni PAPA mo ang 'TOTOY' niya sa pepe mo?
S - Masakit po at saka mahapdi.

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[7] *Id*. at 13.

T - Pagkatapos ipinasok ng PAPA mo ang 'TOTOY' niya sa 'PEPE' mo, anung ginawa mo?
S - Nagsumbong po ako kay BBB, ninang at tita.

T - Maalala mo ba kung kailan ipinasok ni PAPA mo ang kanyang 'TOTOY' sa 'PEPE' mo?
S - Noong giniba yong bahay namin, umaga po sa loob ng bahay ni Lolo [DDD].

T - Alam mo ba kung anung pangalan ni PAPA?
S - Opo, ARIEL MENDOZA, pero ang palayaw po niya ay "DAGA"[.]

T - Maari mo bang ikuwento sa amin kong anu ang ginawa ni PAPA mo sa iyo?
S - Hinubad po ni PAPA ko ang short ko at panty ko at saka damit ko, tapos pinadapa niya ako, tapos ipinasok nila ang 'TOTOY' niya sa 'PEPE' at saka sa 'PUWET' ko tapos po dumating si LOLO ko, nagbihis na po ako tapos lumabas na po ako, at si papa ay naiwan sa loob ng bahay ni LOLO, tapos naglaro po ako kasama ko ang aso ko po.[8] (Citation omitted)

EEE, the mother of AAA and live-in partner of the accused-appellant, testified that she was in Meycauayan, Bulacan when the incident happened. She claimed that she had a fight with the accused-appellant which prompted her to leave their place for a while but she left her children under the care of their grandfather and not with the accused-appellant.[9]

To further establish its case, the prosecution presented the following evidence: (1) *Sinumpaang Salaysay* of AAA; (2) *Sinumpaang Salaysay* of EEE; (3) Joint Affidavit of Arrest of Police Officer (PO) 1 Walter Primero and PO3 John Lazaro; (4) Certificate of live birth of AAA; and (5) Initial Medico-Legal Report.[10]

For his defense, the accused-appellant claimed innocence and denied the charge. He testified that it was his *compadre*

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

[9] *Id*. at 11.

[10] *Id*.

Rolex Labre who committed the crime when the latter was still living with them in 2008. He asseverated that the filing of the case against him was instigated by his live-in partner, EEE, who wanted him jailed so that she could freely cohabitate with her new flame who lives in Bulacan.[11]

On December 9, 2010, the RTC rendered a Decision,[12] finding the accused-appellant guilty beyond reasonable doubt of the crime charged, the dispositive portion of which reads as follows:

> IN VIEW THEREOF, [the accused-appellant] is found GUILTY beyond reasonable doubt of the crime of qualified incestuous rape and is hereby sentenced to suffer the penalty of *reclusion perpetua* without eligibility of parole pursuant to R.A. [No.] 9346. [The accused-appellant] is likewise ordered to pay [AAA] the amount of ₱75,000.00 as civil indemnity, ₱75,000.00 as and by way of moral damages and ₱25,000.00 as exemplary damages.[13]

The RTC held that it is fully convinced that the crime was committed and that the accused-appellant was responsible for the same. It found the testimony of AAA clear and straightforward and gave credence to the categorical identification of AAA of her own father as the author of the crime.[14]

On appeal, the CA affirmed with modification the decision of the RTC in its Decision[15] dated March 13, 2015, the dispositive portion of which reads as follows:

> **WHEREFORE**, the appeal is DENIED. The decision dated December 9, 2010 issued by the [RTC] of Iba, Zambales[,] Branch 69, finding [the accused-appellant] guilty of qualified rape under Articles 266-A and 266-B of the [RPC] in further relation of [sic] Art. III, Section 5(B) of Republic Act [No.] 7610 with [sic] AFFIRMED with MODIFICATION. The award of civil indemnity of ₱75,000[.00] and moral damages of ₱75,000[.00] is AFFIRMED. The award for

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[11] *Id*.

[12] *Id*. at 10-15.

[13] *Id*. at 15.

[14] *Id*. at 14.

[15] *Id*. at 70-80.

exemplary damages is increased to ₱30,000.00. All damages awarded by this Court shall earn legal interest at the rate of 6% per annum from the date of finality of this decision until fully paid.

SO ORDERED.[16]

The CA found no reason to doubt AAA's credibility and accorded great weight and respect to the observation of the RTC that her testimony was consistent, candid and straightforward throughout the proceedings. It likewise dismissed the accused-appellant's question on the failure of the prosecution to present the medico-legal officer who conducted the physical examination on AAA after the incident holding that the same is not indispensable in the prosecution for rape.[17]

On April 10, 2015, the accused-appellant filed a Notice of Appeal[18] with the CA, pursuant to Section 13(c) of Rule 124 of the Rules of Court, as amended by A.M. No. 00-5-03-SC.

Ruling of the Court

The appeal lacks merit.

The elements of rape under Article 266-A, paragraph (1)(a) of the RPC, as amended, are: (1) that the offender had carnal knowledge of a woman; and (2) that such act was accomplished through force, threat, or intimidation.[19] Then, to raise the crime of simple rape to qualified rape under Article 266-B, paragraph (1) of the RPC, as amended, the twin circumstances of minority of the victim and her relationship to the offender must concur.[20]

There is no question that all of the foregoing elements were duly established by the prosecution in the instant case. AAA consistently and categorically stated during the trial that the

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

[17] *Id.* at 77-78.

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

[19] *People v. Amistoso*, 701 Phil. 345, 355 (2013).

[20] *Id.*

accused-appellant had carnal knowledge of her against her will. Even at her tender age, she was able to clearly relay the incident in a vernacular familiar to her and even demonstrated how she was violated. She testified, thus:

> T - Bakit mo isusumbong si Papa mo?
> S - Kasi pinasok po niya yong 'totoy' niya sa 'pepe' ko at saka sa 'puwet' ko.
>
> T - Papaano ipinasok ni papa mo ang 'totoy' niya sa 'pepe' mo?
> S - Di [ba] ito yong 'totoy' niya, ito yung 'pepe' ko, yun ipinasok nya (Victim demonstrate thru her hands how his father sexually abused her[.])[21]

The elements of minority and relationship were also duly established during the trial by the admission of the parties and the presentation of AAA's certificate of live birth, where the accused-appellant was identified as the father and also verified that the victim was only 5 years old at the time of the incident.[22] As to the manner by which the crime was committed, *i.e.*, by force, threat or intimidation, such is dismissible in view of the relationship between the parties. In *People v. Barcela*,[23] the Court expounded on this matter, *viz.*:

> [I]n the incestuous rape of a minor, actual force or intimidation need not be [proven]. x x x The moral and physical [domination] of the father is sufficient to [intimidate] the victim into submission to his [carnal] desires. x x x The [rapist], by his overpowering and overbearing moral influence, can easily consummate his bestial lust with impunity. [Consequently], proof of force and violence is unnecessary, unlike when the accused is not an ascendant or a blood relative of the victim.[24]

What is most important is that the victim categorically and consistently identified her own father as the author of that hideous

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[21] CA *rollo*, p. 13.

[22] *Id*. at 14.

[23] 652 Phil. 134 (2010).

[24] *Id*. at 147.

violation of her person. There was no instance that she showed even the slightest hesitation on the identity of her perpetrator. All throughout the proceedings, and even on her sworn statement, she has pointed to her own father as the one who committed the crime.

The Court also finds no compelling reason to depart from the finding of the RTC that AAA's testimony was clear and straightforward, and in according the same with full weight and credence. It is well to remember that when it comes to the issue of credibility of the victim or the prosecution witnesses, the findings of the trial courts carry great weight and respect and, generally, the appellate courts will not overturn the said findings unless the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which will alter the assailed decision or affect the result of the case. This is so because trial courts are in the best position to ascertain and measure the sincerity and spontaneity of witnesses through their actual observation of the witnesses' manner of testifying, their demeanor and behavior in court.[25]

The accused-appellant's defense of denial deserves scant consideration. Aside from his allegation of denial, the records are wanting of any evidence that would support his claim. On the other hand, he was positively identified by his own daughter as the one who committed the crime. Between the positive assertions of AAA and the negative averments of the accused-appellant, the former indisputably deserve more credence and are entitled to greater evidentiary weight.[26]

Further, the accused-appellant's claim that the filing of the complaint was instigated by EEE so that she may be able to freely cohabit with her alleged new lover fails to persuade. The Court entertains no doubt that AAA's filing of complaint against her own father was prompted by nothing else but to seek redress for the desecration of her honor and innocence.

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[25] *People v. Amistoso*, *supra* note 19, at 247.

[26] *People v. Barcela*, *supra* note 23, at 148.

In *People v. Dimanawa*,[27] the Court held that no young woman, especially one of tender age, would concoct a story of defloration in the hands of her own father, allow an examination of her private parts, and thereafter pervert herself by being subjected to a public trial, if she was not motivated solely by the desire to obtain justice for the wrong committed against her. It is against human nature for a 5-year-old girl to fabricate a story that would expose herself, as well as her family, to a lifetime of shame, especially when her charge could mean the death or lifetime imprisonment of her own father.[28]

On the basis of the foregoing, the Court is in agreement with the RTC and the CA's finding of guilt of the accused-appellant beyond reasonable doubt of the crime of qualified rape.

With respect to the monetary awards, however, modification must be made in order to be consistent to the prevailing jurisprudence of *People of the Philippines v. Ireneo Jugueta*.[29] For qualified rape where the penalty imposable is death penalty but was reduced to *reclusion perpetua* in view of Republic Act No. 9346, the accused-appellant shall be ordered to pay the following: (a) civil indemnity – ₱100,000.00; (b) moral damages – ₱100,000.00; and (c) exemplary damages – ₱100,000.00.[30]

WHEREFORE, the appeal is **DISMISSED**. The Decision dated March 13, 2015 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 04919 is **AFFIRMED with MODIFICATION** in that accused-appellant Ariel S. Mendoza is hereby ordered to pay the victim the following increased amounts: civil indemnity of ₱100,000.00, moral damages of ₱100,000.00, and exemplary damages of ₱100,000.00. He is further ordered to pay interest on all damages awarded at the legal rate of six percent (6%) *per annum* from the date of finality of this Resolution until fully paid.

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[27] 628 Phil. 678 (2010).

[28] *Id*. at 689.

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

[30] *Id*.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 225599. March 22, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **CHRISTOPHER MEJARO ROA,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; EXEMPTING CIRCUMSTANCES; INSANITY; MUST BE ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE; PROOF OF INSANITY MUST RELATE TO THE TIME IMMEDIATELY PRECEDING OR SIMULTANEOUS WITH THE COMMISSION OF THE OFFENSE CHARGED.—** Insanity as an exempting circumstance is provided for in Article 12, par. 1 of the Revised Penal Code: **Article 12.** *Circumstances which exempt from criminal liability.* - The following are exempt from criminal liability: 1. An imbecile or an insane person, unless the latter has acted during a lucid interval. When the imbecile or an insane person has committed an act which the law defines as a felony (delito), the court shall order his confinement in one of the hospitals or asylums established for persons thus afflicted, which he shall not be permitted to leave without first obtaining the permission of the same court. x x x In this jurisdiction, it had been consistently

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[*] Additional Member per Raffle dated March 20, 2017 vice Associate Justice Noel G. Tijam.

[**] Additional Member per Raffle dated March 15, 2017 vice Associate Justice Francis H. Jardeleza.

and uniformly held that the plea of insanity is in the nature of confession and avoidance. Hence, the accused is tried on the issue of sanity alone, and if found to be sane, a judgment of conviction is rendered without any trial on the issue of guilt, because the accused had already admitted committing the crime. This Court had also consistently ruled that for the plea of insanity to prosper, the accused must present clear and convincing evidence to support the claim. Insanity as an exempting circumstance is not easily available to the accused as a successful defense. It is an exception rather than the rule on the human condition. Anyone who pleads insanity as an exempting circumstance bears the burden of proving it with clear and convincing evidence. The testimony or proof of an accused's insanity must relate to the time immediately preceding or simultaneous with the commission of the offense with which he is charged.

2. **ID.; MURDER; PENALTY AND DAMAGES.—** As to the award of damages, x x x in line with the rule enunciated in *People v. Jugueta,* where the Court laid down the rule that in cases where the imposable penalty is *reclusion perpetua,* the proper amounts of awarded damages should be ₱75,000 as civil indemnity, ₱75,000 as moral damages and ₱75,000 as exemplary damages, regardless of the number of qualifying aggravating circumstances present.

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*.:

The Case

This is an appeal from the Decision[1] promulgated on August 27, 2015, in CA-G.R. CR-H.C. No. 06456, which affirmed accused-appellant's conviction for the offense of murder,

[1] Penned by Associate Justice Stephen C. Cruz and concurred in by Associate Justices Jose C. Reyes Jr. and Eduardo B. Peralta Jr.

punished under Article 248 of the Revised Penal Code, by the Regional Trial Court (RTC), Branch 32, Pili, Camarines Sur, in its Decision in Criminal Case No. P-4100, promulgated on September 3, 2013.

The present case stems from an Information filed against accused-appellant Christopher Mejaro Roa (Roa) on June 5, 2007, charging him for the murder of Eliseo Delmiguez (Delmiguez), committed as follows:

> That on or about 16 March 2007 at around 3:30 in the afternoon at Barangay San Miguel, Municipality of Bula, Province of Camarines Sur, Philippines, and within the jurisdiction of this Court, the above-named accused, with intent to kill and without justifiable cause, did then and there willfully, unlawfully, and feloniously attack, assault, and stab Eliseo Delmiguez with the use of a bladed weapon, locally known as "ginunting," hitting and injuring the body of the latter, inflicting multiple mortal hack wound[s] thereon, which were the immediate and direct cause of his instantaneous death, to the damage and prejudice of the heirs of the victim in such amount that may be proven in court.
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> That the killing was committed 1) with treachery, as the qualifying circumstance or which qualified the killing to murder, and 2) [w]ith taking advantage of superior strength, as aggravating circumstance.[2]

The Facts

The facts surrounding the incident, as succinctly put by the RTC, are as follows:

> A resident of Brgy. San Miguel, Bula, Camarines Sur, accused [Roa] is known to have suffered mental disorder prior to his commission of the crime charged. While his uncle, Issac [Mejaro], attributes said condition to an incident in the year 2000 when accused was reportedly struck in the head by some teenagers, SPO1 [Nelson] Ballebar claimed to have learned from others and the mother of the accused that the ailment is due to his use of illegal drugs when he was working in Manila. When accused returned from Manila in 2001, Issac recalled that, in marked contrast to the silent and formal deportment with which he normally associated his nephew, the latter became talkative and was observed to be "always talking to himself" and "complaining of a headache."

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[2] CA *rollo*, p. 44.

On September 27, 2001, accused had a psychotic episode and was brought to the [Don Susano J. Rodriguez Mental Hospital] DSJRM by his mother and Mrs. Sombrero. Per the October 10, 2005 certification issued by Dr. Benedicto Aguirre, accused consulted and underwent treatment for schizophrenia at the [Bicol Medical Center] BMC in the years 2001, 2002, 2003, 2004, and 2005. In her Psychiatric Evaluation Report, Dr. [Edessa Padre-]Laguidao also stated that accused was prescribed antipsychotic medication which he was, however, not able to continue taking due to financial constraints. Edgar [Sapinoso] and Rico [Ballebar], who knew accused since childhood, admitted hearing about the latter's mental health issues and/or his treatment therefor. Throughout the wake of an unnamed aunt sometime in March 2007, it was likewise disclosed by Issac that accused neither slept nor ate and was known to have walked by himself all the way to Bagumbayan, Bula.

On March 16, 2007, Issac claimed that accused was unusually silent, refused to take a bath and even quarreled with his mother when prompted to do so. At about 3:30 p.m. of the same day, it appears that Eliseo, then 50 years old, was walking with Edgar on the street in front of the store of Marieta Ballecer at Zone 3, San Miguel, Bula, Camarines Sur. From a distance of about 3 meters, the pair was spotted by Rico who, while waiting for someone at the roadside, also saw accused sitting on the sidecar of a trimobile parked nearby. When Eliseo passed by the trimobile, he was approached from behind by accused who suddenly stabbed him on the left lower back with a bolo locally known as *ginunting* of an approximate length of 8 to 12 inches. Taken aback, Eliseo exclaimed *"Tara man,"* before falling to the ground. Chased by both Edgar and Rico and spotted running by Mrs. Sombrero who went out of the Barangay Hall upon hearing the resultant din, accused immediately fled and took refuge inside the house of his uncle, Camilo Mejaro.

With the incident already attracting people's attention, Barangay Captain Herminion Ballebar called for police assistance even as Isaac tried to appease Eliseo's relatives. Entering Camilo's house, Issac saw accused who said nothing when queried about what he did. Shortly thereafter, SPO1 Hermilando Manzano arrived on board a motorcycle with SPO1 Ballebar who called on accused to surrender. Upon his voluntary surrender and turn over of the jungle knife he was holding to the police officers, accused was brought to the Bula Municipal Police Station for investigation and detention. In the meantime, Eliseo was brought to the Bula Municipal Health Center where he was

pronounced dead on arrival and, after the necropsy examination, later certified by Dr. Consolacion to have died of *Hypovolemia secondary to multiple stab wounds.*[3] (citations omitted)

When arraigned, accused-appellant pleaded "not guilty," but in the certificate of arraignment, he signed his name as "Amado M. Tetangco." Trial on the merits ensued. There was no contest over the fact that accused-appellant, indeed, stabbed the victim, but he interposed the defense of insanity.

The Ruling of the RTC

In its Decision promulgated on September 3, 2013, the RTC of Pili, Camarines Sur found that accused-appellant is guilty of the offense of Murder. The RTC ruled that the defense of insanity was not sufficiently proven as to exculpate accused-appellant from the offense charged. The RTC noted that as an exempting circumstance, insanity presupposes that the accused was completely deprived of reason or discernment and freedom of will at the time of the commission of the crime. Thus, the RTC said, the accused must be shown to be deprived of reason or that he acted without the least discernment because there is a complete absence of the power to discern, or that there is a total deprivation of the will. It is the accused who pleads the exempting circumstance of insanity that has the burden of proving the same with clear and convincing evidence. This entails, the RTC added, opinion testimony which may be given by a witness who has rational basis to conclude that the accused was insane based on the witness' own perception of the accused, or by a witness who is qualified as an expert, such as a psychiatrist.[4]

In the case of accused-appellant, the RTC ruled, he failed to discharge the burden of proving the claim of insanity. *First*, while Isaac Mejaro's testimony was able to sufficiently prove that accused-appellant started having mental health issues as early as 2001, the trial court ruled that his past medical history does not suffice to support a finding that he was likewise insane

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[3] *Id*. at 45-47.

[4] *Id*. at 49.

at the time that he perpetrated the killing of Delmiguez in 2007. To the trial court, the lack of showing of any psychotic incidents from the time of his discharge in 2002 until March 2007 suggests that his insanity is only occasional or intermittent and, thus, precludes the presumption of continuity.[5]

Second, the trial court acknowledged that accused-appellant exhibited abnormal behavior after the incident, particularly in writing the name of Amado M. Tetangco in his certificate of arraignment. It also noted that midway through the presentation of the prosecution's evidence, accused-appellant's mental condition worsened, prompting his counsel to file another motion for psychiatric evaluation and treatment, and that he was subsequently diagnosed again to be suffering from schizophrenia of an undifferentiated type. The trial court, however, cited the rule that the evidence of insanity after the fact of commission of the offense may be accorded weight only if there is also proof of abnormal behavior immediately before or simultaneous to the commission of the crime. The trial court then ruled that the witnesses' account of the incident provides no clue regarding the state of mind of the accused, and all that was established was that he approached Delmiguez from behind and stabbed him on his lower back. To the trial court, this actuation of the accused, together with his immediate flight and subsequent surrender to the police authorities, is not indicative of insanity.

Finally, while the accused was reputed to be "crazy" in his community, the trial court ruled that such is of little consequence to his cause. It said:

> The popular conception of the word "crazy" is to describe a person or act that is unnatural or out of the ordinary. A man may, therefore, behave in a crazy manner but it does not necessarily or conclusively prove that he is legally so. The legal standard requires that the accused must be so insane as to be incapable of entertaining a criminal intent.[6]

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[5] *Id.*

[6] *Id.* at 51.

Hence, the RTC found accused-appellant guilty of the crime of murder, and sentenced him as follows:

> **WHEREFORE,** premises considered, judgment is rendered finding accused Christopher Mejaro Roa **GUILTY** beyond reasonable doubt of the crime of Murder defined and penalized under Article 248 of the Revised Penal Code, and imposing upon him the penalty of *reclusion perpetua*.
>
> Accused is ordered to pay the Heirs of Eliseo Delmiguez the following sums: (1) ₱75,000.00 as civil indemnity for the death of said victim; (b) ₱50,000.00 as moral damages; and (c) ₱30,000.00 as exemplary damages.

Aggrieved, accused-appellant appealed his conviction to the CA.

The Ruling of the CA

In its presently assailed Decision, the CA affirmed the finding of conviction by the trial court. The CA first noted that all the elements of the crime of murder had been sufficiently established by the evidence on record. On the other hand, the defense of insanity was not sufficiently proven by clear and convincing evidence. The CA said:

> Record shows that the accused-appellant has miserably failed to prove that he was insane when he fatally stabbed the victim on March 16, 2007. To prove his defense, accused-appellant's witnesses including Dr. Edessa Padre-Laguidao testified that they knew him to be insane because he was brought and confined to the Bicol Medical Center, Department of Psychiatry for treatment in the year 2001. However, such fact does not necessarily follow that he still suffered from *schizophrenia* during the time he fatally attacked and stabbed the victim, Eliseo Delmiguez. No convincing evidence was presented by the defense to show that he was not in his right mind, or that he had acted under the influence of a sudden attack of insanity, or that he had generally been regarded as insane around the time of the commission of the acts attributed to him.
>
> An inquiry into the mental state of the accused should relate to the period immediately before or at the very moment the act under prosecution was committed. Mere prior confinement in a mental institution does not prove that a person was deprived of reason at

the time the crime was committed. It must be noted that accused-appllant was discharged from the mental hospital in 2002, or long before he committed the crime charged. He who relies on such plea of insanity (proved at another time) must prove its existence also at the time of the commission of the offense. This, accused-appellant failed to do.[7] (citations ommitted)

Moreover, the CA ruled that the testimonies of the defense witnesses that purport to support the claim of insanity are based on assumptions, and are too speculative, presumptive, and conjectural to be convincing. To the CA, their observation that accused-appellant exhibited unusual behavior is not sufficient proof of his insanity, because not every aberration of the mind or mental deficiency constitutes insanity.[8] On the contrary, the CA found that the circumstances of the attack bear *indicia* that the killing was done voluntarily, to wit: (1) the use of a long bolo locally known as *ginunting*, (2) the location of the stab wounds, (3) the attempt of accused-appellant to flee from the scene of the crime, and (4) his subsequent surrender upon being called by the police authorities.

Thus, the CA dismissed the claim of insanity, and affirmed the conviction of the RTC for the offense charged. The CA merely modified the award of damages, and dispositively held, thus:

WHEREFORE, in view of the foregoing, the Judgment dated September 3, 2013 of the Regional Trial Court of Pili, Camarines Sur, Branch 32, is hereby **AFFIRMED with MODIFICATION.** Accused-appellant Christopher Mejaro Roa is found **GUILTY** beyond reasonable doubt of Murder as defined in Article 248 of the Revised Penal Code, and he is sentenced to suffer the penalty of *Reclusion Perpetua.* Accused-appellant is **ORDERED** to pay the heirs of the victim, Eliseo Delmiguez, the amount of: (1) ₱75,000.00 as civil indemnity for the death of the said victim, (b) ₱50,000.00 as moral damages, and (c) ₱30,000.00 as exemplary damages as provided by the Civil Code in line with recent jurisprudence, with costs. In addition, all awards for damages shall bear legal interest at the rate of six

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[7] *Rollo*, pp. 16-17.

[8] *Id.* at 18.

[percent] (6%) per annum from the date of finality of judgment until fully paid.[9]

Aggrieved by the ruling of the CA, accused-appellant elevated the case before this Court by way of a Notice of Appeal.[10]

The Issue

The sole issue presented in the case before the Court is: whether there is sufficient evidence to uphold the conviction of accused-appellant for the offense of Murder, punishable under Article 248 of the Revised Penal Code. However, there being no contest that accused-appellant perpetrated the stabbing of the victim, which caused the latter's death, the resolution of the present issue hinges on the pleaded defense of insanity.

The Court's Ruling

The Court finds no reversible error in the findings of fact and law by the CA. Hence, the assailed Decision affirming the conviction of accused-appellant for murder must be upheld.

Insanity as an exempting circumstance is provided for in Article 12, par. 1 of the Revised Penal Code:

> **Article 12.** *Circumstances which exempt from criminal liability.* — The following are exempt from criminal liability:
>
> 1. An imbecile or an insane person, unless the latter has acted during a lucid interval.
>
> When the imbecile or an insane person has committed an act which the law defines as a felony (delito), the court shall order his confinement in one of the hospitals or asylums established for persons thus afflicted, which he shall not be permitted to leave without first obtaining the permission of the same court.

In *People v. Fernando Madarang*,[11] the Court had the opportunity to discuss the nature of the defense of insanity as an exempting circumstance. The Court there said:

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

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

[11] G.R. No. 132319, May 12, 2000, 332 SCRA 99.

In all civilized nations, an act done by a person in a state of insanity cannot be punished as an offense. The insanity defense is rooted on the basic moral assumption of criminal law. Man is naturally endowed with the faculties of understanding and free will. The consent of the will is that which renders human actions laudable or culpable. Hence, where there is a defect of the understanding, there can be no free act of the will. An insane accused is not morally blameworthy and should not be legally punished. No purpose of criminal law is served by punishing an insane accused because by reason of his mental state, he would have no control over his behavior and cannot be deterred from similar behavior in the future.

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In the Philippines, the courts have established a more stringent criterion for insanity to be exempting as it is required that there must be a complete deprivation of intelligence in committing the act, i.e., the accused is deprived of reason; he acted without the least discernment because there is a complete absence of the power to discern, or that there is a total deprivation of the will. Mere abnormality of the mental faculties will not exclude imputability.

The issue of insanity is a question of fact for insanity is a condition of the mind, not susceptible of the usual means of proof. As no man can know what is going on in the mind of another, the state or condition of a person's mind can only be measured and judged by his behavior. Establishing the insanity of an accused requires opinion testimony which may be given by a witness who is intimately acquainted with the accused, by a witness who has rational basis to conclude that the accused was insane based on the witness' own perception of the accused, or by a witness who is qualified as an expert, such as a psychiatrist. The testimony or proof of the accused's insanity must relate to the time preceding or coetaneous with the commission of the offense with which he is charged. (citations omitted)

In this jurisdiction, it had been consistently and uniformly held that the plea of insanity is in the nature of confession and avoidance.[12] Hence, the accused is tried on the issue of sanity alone, and if found to be sane, a judgment of conviction is

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[12] *People v. Arnold Garchitorena*, G.R. No. 175605, August 28, 2009, 597 SCRA 420.

rendered without any trial on the issue of guilt, because the accused had already admitted committing the crime.[13] This Court had also consistently ruled that for the plea of insanity to prosper, the accused must present clear and convincing evidence to support the claim.

Insanity as an exempting circumstance is not easily available to the accused as a successful defense. It is an exception rather than the rule on the human condition. Anyone who pleads insanity as an exempting circumstance bears the burden of proving it with clear and convincing evidence. The testimony or proof of an accused's insanity must relate to the time immediately preceding or simultaneous with the commission of the offense with which he is charged.[14]

In the case at bar, the defense of insanity of accused-appellant Roa was supported by the testimony of the following witnesses: (1) his uncle, Isaac Mejaro (Mejaro), (2) municipal health worker Mrs. Lourdes Padregon Sombrero (Sombrero), and (3) Dr. Edessa Padre-Laguidao (Dr. Laguidao).

Dr. Laguidao testified that in 2001, accused-appellant was admitted at the Bicol Medical Center, and was discharged in 2002. She examined accused-appellant on March 15, 2012 and August 15, 2012. She evaluated his mental condition and found out that his answers to her queries were unresponsive, and yielding a meaningless conversation. She then diagnosed him as having undifferentiated type of Schizophrenia, characterized by manifest illusions and auditory hallucinations which are commanding in nature. She also recommended anti-psychotic drug maintenance.[15]

Mejaro testified that accused-appellant's mental illness could be attributed to an incident way back in May 8, 2000, when he was struck on the head by some teenager. After that incident,

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[13] *People v. Madarang*, *supra* note 11.

[14] *People v. Edwin Isla*, G.R. No. 199875, November 21, 2012, 686 SCRA 267.

[15] CA *rollo*, p. 32.

accused-appellant, who used to be silent and very formal, became very talkative and always talked to himself and complained of headaches. On September 27, 2001, accused-appellant had a psychotic episode, prompting his mother to confine him at Don Suzano Rodriguez Mental Hospital (DSRMH). He was observed to be well after his confinement. The illness recurred, however, when he failed to maintain his medications. The symptoms became worse in March 2007, when his aunt died. He neither slept nor ate, and kept walking by himself in the morning until evening. He did not want to take a bath, and even quarreled with his mother when told to do so.[16]

The foregoing testimonies must be examined in light of the quantum of proof required, which is that of clear and convincing evidence to prove that the insanity existed immediately preceding or simultaneous to the commission of the offense.

Taken against this standard, the testimonies presented by accused-appellant unfortunately fail to pass muster. *First*, the testimony of Dr. Laguidao to the effect that accused-appellant was suffering from undifferentiated schizophrenia stems from her psychiatric evaluation of the accused in 2012, or about five years after the crime was committed. His mental condition five years after the crime was committed is irrelevant for purposes of determining whether he was also insane when he committed the offense. While it may be said that the 2012 diagnosis of Dr. Laguidao must be taken with her testimony that the accused was also diagnosed with schizophrenia in 2001, it is worth noting that the testimony of Dr. Laguidao as to the 2001 diagnosis of the accused is pure hearsay, as she had no personal participation in such diagnosis. Even assuming that that portion of her testimony is admissible, and even assuming that it is credible, her testimony merely provides basis for accused-appellant's mental condition in 2001 and in 2012, and not immediately prior to or simultaneous to the commission of the offense in 2007.

Second, the testimony of Mejaro also cannot be used as a basis to find that accused-appellant was insane during the

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

commission of the offense in 2007. His testimony merely demonstrated the possible underlying reasons behind accused-appellant's mental condition, but similar to Dr. Laguidao's testimony, it failed to shed light on accused-appellant's mental condition immediately prior to, during, and immediately after accused-appellant stabbed the victim without any apparent provocation.

Accused-appellant further argues that the presumption of sanity must not be applied in his case, because of the rule that a person who has been committed to a hospital or to an asylum for the insane is presumed to continue to be insane. In this case, however, it is noteworthy that while accused-appellant was confined in a mental institution in 2001, he was properly discharged therefrom in 2002. This proper discharge from his confinement clearly indicates an improvement in his mental condition; otherwise, his doctors would not have allowed his discharge from confinement. Absent any contrary evidence, then, the presumption of sanity resumes and must prevail.

In fine, therefore, the defense failed to present any convincing evidence of accused-appellant's mental condition when he committed the crime in March 2007. While there is evidence on record of his mental condition in 2001 and in 2012, the dates of these two diagnoses are too far away from the date of the commission of the offense in 2007, as to altogether preclude the possibility that accused-appellant was conscious of his actions in 2007. Absent any supporting evidence, this Court cannot sweepingly conclude that accused-appellant was mentally insane for the whole 11-year period from 2001 to 2012, as to exempt him criminal liability for an act committed in 2007. It was the defense's duty to fill in the gap in accused-appellant's state of mind between the 2001 diagnosis and the 2012 diagnosis, and unfortunately, it failed to introduce evidence to paint a full picture of accused-appellant's mental condition when he committed the crime in 2007. With that, the Court has no other option but to adhere to the presumption of sanity, and conclude that when accused-appellant attacked the victim, he was conscious of what he was doing, and was not suffering from an insanity.

This conclusion is based not merely on the presumption of sanity, but bolstered by the circumstances surrounding the incident. As the prosecution correctly argued in its Appellee's Brief, there are circumstances surrounding the incident that negate a complete absence of intelligence on the part of accused-appellant when he attacked the victim. *First*, he surprised the victim when he attacked from behind. This is supported by the companion of the victim, who testified that while they were walking, they did not notice any danger when they saw accused-appellant standing near the trimobile. *Second*, accused-appellant's attempt to flee from the scene of the crime after stabbing the victim indicates that he knew that what he just committed was wrong. And *third*, when the police officers called out to accused-appellant to surrender, he voluntarily came out of the house where he was hiding and voluntarily turned himself over to them.

The foregoing actions of accused-appellant immediately before, during, and immediately after he committed the offense indicate that he was conscious of his actions, that he intentionally committed the act of stabbing, knowing the natural consequence of such act, and finally, that such act of stabbing is a morally reprehensible wrong. His actions and reactions immediately preceding and succeeding the act of stabbing are similar if not the same as that expected of a fully sane person.

Therefore, the Court finds no reasonable basis to reverse the findings of the RTC, as affirmed by the CA, that accused-appellant's culpability had been proven beyond a reasonable doubt.

As to the award of damages, however, the Court finds the need to modify the same, in line with the rule enunciated in *People v. Jugueta*, where the Court laid down the rule that in cases where the imposable penalty is *reclusion perpetua*, the proper amounts of awarded damages should be ₱75,000 as civil indemnity, ₱75,000 as moral damages and ₱75,000 as exemplary damages, regardless of the number of qualifying aggravating circumstances present.

IN VIEW OF THE FOREGOING, the instant appeal is hereby **DISMISSED**. The assailed Decision of the Court of Appeals, promulgated on August 27, 2015, in CA-G.R. CR-H.C. No. 06456,

is hereby **AFFIRMED** with **MODIFICATION**. As modified, the *fallo* of the Decision must read:

WHEREFORE, in view of the foregoing, the Judgment dated September 3, 2013 of the Regional Trial Court of Pili, Camarines Sur, Branch 32, is hereby **AFFIRMED with MODIFICATION.** Accused-appellant Christopher Mejaro Roa is found **GUILTY** beyond reasonable doubt of Murder as defined in Article 248 of the Revised Penal Code, and he is sentenced to suffer the penalty of *Reclusion Perpetua.* Accused-appellant is **ORDERED** to pay the heirs of the victim, Eliseo Delmiguez, the amount of: (1) ₱75,000.00 as civil indemnity for the death of the said victim, (b) **₱75,000.00** as moral damages, and (c) **₱75,000.00** as exemplary damages as provided by the Civil Code in line with recent jurisprudence, with costs. In addition, all awards for damages shall bear legal interest at the rate of six percent (6%) per annum from the date of finality of judgment until fully paid.

SO ORDERED.

Bersamin, Reyes, Leonen, and *Tijam, JJ.,* concur.

SECOND DIVISION

[G.R. No. 227398. March 22, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ANASTACIO HEMENTIZA *y* DELA CRUZ,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.—** The elements necessary in every prosecution for the illegal sale of dangerous drugs are: (1) the identity of the buyer and the seller, the object

and the consideration; and (2) the delivery of the thing sold and the payment. Similarly, it is essential that the transaction or sale be proved to have actually taken place coupled with the presentation in court of evidence of *corpus delicti* which means the actual commission by someone of the particular crime charged.

2. **ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS.—** [T]o successfully prosecute a case of illegal possession of dangerous drugs, the following elements must be established: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug.

3. **ID.; ID.; CHAIN OF CUSTODY RULE; NON-COMPLIANCE EXCUSED UNDER JUSTIFIABLE GROUNDS AS LONG AS THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED.—** The *corpus delicti* in cases involving dangerous drugs is the presentation of the dangerous drug itself. x x x [T]he chain of custody over the dangerous drug must be shown to establish the *corpus delicti*. Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002, which implements R.A. No. 9165, defines chain of custody as follows: Chain of Custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition. x x x Section 21 of R.A. No. 9165 provides for the manner by which law enforcement officers should handle seized items in dangerous drugs cases: x x x Strict compliance with the chain of custody requirement, however, is not always the case. Hence, the IRR of R.A. No. 9165 provides: x x x **Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the**

apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.

4. **ID.; ID.; ID.; LINKS THAT MUST BE ESTABLISHED IN A BUY-BUST OPERATION.—** *People v. Dahil* restated the links that the prosecution must establish in the chain of custody in a buy-bust situation to be as follows: *first,* the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *second,* the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third,* the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *fourth,* the turnover and submission of the marked illegal drug seized by the forensic chemist to the court.

5. **ID.; ID.; ID.; ID.; MARKING OF DRUGS RECOVERED FROM THE ACCUSED BY THE APPREHENDING OFFICER; MARKING MAY BE DONE AT THE POLICE STATION AS LONG AS IT IS DONE IN THE PRESENCE OF THE ACCUSED.—** Crucial in proving the chain of custody is the marking of the seized drugs or other related items immediately after they have been seized from the accused. "Marking" means the placing by the apprehending officer or the poseur-buyer of his/her initials and signature on the items seized. Marking after seizure is the starting point in the custodial link; hence, it is vital that the seized contraband be immediately marked because the succeeding handlers of the specimens will use the markings as reference. The marking of the evidence serves to separate the marked evidence from the corpus of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of the criminal proceedings, thus, preventing switching, planting or contamination of evidence. Still, there are cases when the chain of custody rule is relaxed such as when the marking of the seized items is allowed to be undertaken at the police station rather than at the place of arrest for as long as it is done in the presence of the accused in illegal drugs cases.

6. **ID.; ID.; ID.; ID.; TURNOVER OF THE SEIZED DRUGS BY THE APPREHENDING OFFICER TO THE INVESTIGATING OFFICER THEN TO THE FORENSIC CHEMIST AND LAST, TO THE COURT.—** The second link in the chain of custody is the transfer of the seized drugs by the apprehending officer to the investigating officer. Usually,

> the police officer who seizes the suspected substance turns it over to a supervising officer, who will then send it by courier to the police crime laboratory for testing. This is a necessary step in the chain of custody because it will be the investigating officer who shall conduct the proper investigation and prepare the necessary documents for the developing criminal case. Certainly, the investigating officer must have possession of the illegal drugs to properly prepare the required documents. x x x From the investigating officer, the illegal drug is delivered to the forensic chemist. Once the seized drugs arrive at the forensic laboratory, it will be the laboratory technician who will test and verify the nature of the substance. x x x The last link involves the submission of the seized drugs by the forensic chemist to the court when presented as evidence in the criminal case. x x x In both illegal sale and illegal possession of prohibited drugs, conviction cannot be sustained if there is a persistent doubt on the identity of the drug. The identity of the prohibited drug must be established with moral certainty. Apart from showing that the elements of possession or sale are present, the fact that the substance illegally possessed and sold in the first place is the same substance offered in court as exhibit must likewise be established with the same degree of certitude as that needed to sustain a guilty verdict.

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 October 16, 2015 Decision[1] of the Court of Appeals *(CA)* in CA-G.R. CR-HC No. 06847, which affirmed the January 29, 2014 Decision[2] of the Regional Trial

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[1] Penned by Associate Justice Manuel M. Barrios with Associate Justice Ramon M. Bato, Jr. and Associate Justice Maria Elisa Sempio Diy, concurring; *rollo*, pp. 2-10.

[2] Penned by Executive Judge Ronaldo B. Martin; CA *rollo,* pp. 36-41.

Court, Branch 73, Antipolo City *(RTC)* in Criminal Case Nos. 03-25726 and 03-25727, finding Anastacio Hementiza *y* Dela Cruz *(accused-appellant)* guilty of violation of Sections 5 and 11, Article II of Republic Act *(R.A.)* No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The Antecedents

On May 27, 2003, accused-appellant was charged in two (2) separate Informations before the RTC. In Criminal Case No. 03-25726, accused-appellant was charged with possession of *shabu* in violation of Section 11, Article II of R.A. No. 9165. The Informations read:

> That on or about the 25th day of May 2003, in the City of Antipolo, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without having been lawfully authorized by law, did, then and there wilfully, unlawfully and feloniously have in his possession, custody and control two (2) heat sealed transparent plastic sachets containing 0.03 and 0.06 gram of white crystalline substance or with total weight of 0.09 gram, which after the corresponding laboratory examination conducted thereon by the PNP Crime Laboratory both gave positive results to the test for Methylamphetamine Hydrochloride, also known as "shabu," a dangerous drug, in violation of the above-cited law.
>
> CONTRARY TO LAW.[3]

In Criminal Case No. 03-25727, accused-appellant was charged with violation of Section 5, Article II of R.A. No. 9165 for the sale of *shabu*. The Information states:

> That on or about the 25th day of May 2003, in the City of Antipolo, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not having been authorized by law to sell or otherwise dispose of any dangerous drug, did, then and there wilfully, unlawfully and feloniously sell, deliver and give away to PO2 Rache E. Palconit, who acted as a poseur-buyer, one (1) heat sealed transparent plastic sachet containing 0.05 gram of white crystalline substance,

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

for and in consideration of the sum of ₱200.00, which after the corresponding laboratory examination conducted by the PNP Crime Laboratory gave a positive result to the test for Methylamphetamine Hydrochloride, also known as "shabu," a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.[4]

On July 22, 2003, accused-appellant was arraigned and he pleaded not guilty. Thereafter, trial ensued with the prosecution presenting Forensic Chemist P/Insp. Sharon Lontoc Fabros *(Fabros)*, PO2 Rache E. Palconit *(Palconit)* and Barangay Captain, Dr. Rina Gabuna Junio *(Dr. Junio),* as its witnesses.

Version of the Prosecution

On May 25, 2003, at around 1:15 o'clock in the morning, Palconit, SPO2 Gerry Abalos *(Abalos)*, PO2 Manuel Bayeng *(Bayeng),* and PO3 Russel Medina *(Medina)*, conducted a buy-bust operation at Sitio Lower Sto. Niño, Barangay Sta. Cruz, Antipolo City. A confidential informant *(CI)* told them that a certain Anastacio was peddling drugs in the area. A buy-bust team was formed with Abalos as the team leader and Palconit as the poseur-buyer. Abalos marked two (2) ₱100.00 bills for the operation. After briefing and coordination with the local police, the team was dispatched to Barangay Sta. Cruz. Upon arrival, the CI pointed to their target person. Palconit approached accused-appellant and asked if he could buy shabu. After receiving the marked money, accused-appellant handed to Palconit one (1) small heat-sealed plastic sachet containing *shabu*. At that point, Palconit scratched his head to signal that the sale was consummated, and the rest of the team rushed to the scene. Abalos introduced themselves as police officers and immediately frisked accused-appellant. Abalos recovered the marked money and two (2) other plastic sachets containing *shabu* from the left pocket of accused-appellant's pants. Thereafter, accused-appellant and the seized items were brought to the Philippine Drug Enforcement Agency *(PDEA)* Office in Barangay San

[4] *Id*. at 37.

Roque, Antipolo City. The seized items were turned over to the case investigator who prepared the corresponding request for laboratory examination. Thereafter, Palconit brought the seized items to the crime laboratory. After examination, Fabros issued a report confirming that the crystalline substance in the sachets were positive for *methamphetamine hydrochloride* or *shabu*.

Version of the Defense

In his defense, accused-appellant alleged that on May 25, 2003 at around 1:15 o'clock in the morning, he was playing billiards at Sitio Lower Sto. Niño when three (3) armed men suddenly arrived and pointed a gun at him. Without saying anything, the men frisked and handcuffed him but found nothing illegal on him. He was arrested and brought to an office in Lores where he was detained, interrogated, and forced to admit a wrongdoing. He was also asked to point to other persons so that he could be released.

The RTC Ruling

In its January 29, 2014 decision, the RTC found accused-appellant guilty beyond reasonable doubt of the crimes of violation of Sections 5 and 11, Article II of R.A. No. 9165. Accordingly, the trial court sentenced him to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00 for violation of Section 5 of R.A. No. 9165. It also sentenced him to suffer the penalty of imprisonment for a period of twelve (12) years and one (1) day to twenty (20) years and to pay a fine of ₱300,000.00 for violation of Section 11 of R.A. No. 9165.

The RTC held that the failure of the prosecution to show that the police officers conducted the required physical inventory and photograph of the evidence confiscated did not automatically render accused-appellant's arrest illegal or the items seized from him as inadmissible for it was shown that the integrity and evidentiary value of the seized items were preserved by the apprehending officers. It opined that the witnesses presented by the prosecution successfully established the chain of custody of the seized illegal drugs. The *fallo* reads:

WHEREFORE, premises considered, accused Anastacio Hementiza y Dela Cruz is hereby found guilty beyond any shadow of a doubt of the offense charged in the Informations and is sentenced to the penalty of Life Imprisonment in Criminal Case No. 03-25727 with a fine of Php 500,000.00 and in Criminal Case No. 03-25726, the same accused is hereby sentenced to suffer an Imprisonment of Twelve (12) years and one (1) day to twenty (20) years with a fine of Php300,000.00 as provided for under Sec. 11 Par. (3) of RA 9165, as amended.

Anastacio Hementiza *y* Dela Cruz is to be promptly committed to the National Bilibid Prisons for immediate service of his sentence.

The seized specimens subject of the instant cases are ordered destroyed in the manner provided by law.

SO ORDERED.[5]

Aggrieved, accused-appellant appealed before the CA.

The CA Ruling

In its October 16, 2015 decision, the CA affirmed the conviction of accused-appellant. It explained that the police witnesses had adequately established the conduct of the buy-bust operation which resulted in the consummated sale of the illegal drugs and the recovery of two (2) sachets and the marked money in his possession. The CA added that prior surveillance of the suspected offender was not a prerequisite for the validity of a buy-bust operation and that failure to strictly comply with the provisions of Section 21 (1), Article II of R.A. No. 9165, on the handling of confiscated illegal drugs, as well as its IRR, was not fatal and would not render accused-appellant's arrest illegal or the items seized from him inadmissible. The CA disposed the appeal in this wise:

WHEREFORE, finding no reversible error, the appeal is DENIED. The Decision dated 29 January 2014 of the Regional Trial Court, Branch 73, Antipolo City is AFFIRMED.

SO ORDERED.[6]

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[5] *Id*. at 41.

[6] *Rollo*, p. 10.

Hence, this appeal.

ISSUE

WHETHER THE GUILT OF THE ACCUSED FOR THE CRIMES CHARGED HAS BEEN PROVEN BEYOND REASONABLE DOUBT.

In a Resolution,[7] dated December 7, 2016, the Court required the parties to submit their respective supplemental briefs, if they so desired. In his Manifestation in lieu of Supplemental Brief,[8] dated February 28, 2017, accused-appellant manifested that he was adopting his Appellant's Brief filed before the CA as his supplemental brief for the same had adequately discussed all the matters pertinent to his defense. In its Manifestation,[9] dated February 6, 2017, the Office of the Solicitor General *(OSG)* stated that all matters and issues raised by accused-appellant had already been discussed in its Brief before the CA and asked that it be excused from filing its supplemental brief.

The Court's Ruling

The Court grants the appeal.

The elements necessary in every prosecution for the illegal sale of dangerous drugs are: (1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment. Similarly, it is essential that the transaction or sale be proved to have actually taken place coupled with the presentation in court of evidence of *corpus delicti* which means the actual commission by someone of the particular crime charged.[10]

On the other hand, to successfully prosecute a case of illegal possession of dangerous drugs, the following elements must be established: (1) the accused is in possession of an item or

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[7] *Id*. at 16-17.

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

[9] *Id*. at 18-19.

[10] *People v. Roble,* 663 Phil. 147, 157 (2011).

object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug.[11]

The *corpus delicti* in cases involving dangerous drugs is the presentation of the dangerous drug itself. In *People v. Alcuizar*,[12] the Court held:

> The dangerous drug itself, the *shabu* in this case, constitutes the very *corpus delicti* of the offense and in sustaining a conviction under Republic Act No. 9165, the identity and integrity of the *corpus delicti* must definitely be shown to have been preserved. This requirement necessarily arises from the illegal drugs unique characteristic that renders it indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise. Thus, to remove any doubt or uncertainty on the identity and integrity of the seized drug, evidence must definitely show that the illegal drug presented in court is the same illegal drug actually recovered from the accused-appellant; otherwise, the prosecution for possession under Republic Act No. 9165 fails.[13]

Thus, the chain of custody over the dangerous drug must be shown to establish the *corpus delicti*.

Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002,[14] which implements R.A. No. 9165, defines chain of custody as follows:

> Chain of Custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized

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[11] *People v. Alcuizar,* 662 Phil. 794, 808 (2011).

[12] *Id*.

[13] *People v. Alcuizar,* 662 Phil. 794, 801 (2011).

[14] Guidelines of the Custody and Disposition of Seized Dangerous Drugs, Controlled Precursors and Essential Chemicals and Laboratory Equipment.

item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.

In *Mallillin v. People*,[15] the Court explained the importance of the chain of custody:

As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered in evidence, in such a way that every person who touched the exhibit would describe how and from whom it was, received, where it was and what happened to it while in the witness possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.

While testimony about a perfect chain is not always the standard because it is almost always impossible to obtain, an unbroken chain of custody becomes indispensable and essential when the item of real evidence is not distinctive and is not readily identifiable, or when its condition at the time of testing or trial is critical, or when a witness has failed to observe its uniqueness. The same standard likewise obtains in case the evidence is susceptible to alteration, tampering, contamination, and even substitution and exchange. In other words, the exhibits level of susceptibility to fungibility, alteration or tampering without regard to whether the same is advertent or otherwise not dictates the level of strictness in the application of the chain of custody rule.

Indeed, the likelihood of tampering, loss or mistake with respect to an exhibit is greatest when the exhibit is small and is one that has physical characteristics fungible in nature and similar in form to substances familiar to people in their daily lives. *Graham v. State* positively acknowledged this danger. In that case where a substance was later analyzed as heroin was handled by two police officers prior to examination who however did not testify in court on the condition and whereabouts of the exhibit at the time it was in their possession

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[15] 576 Phil. 576 (2008).

was excluded from the prosecution evidence, the court pointing out that the white powder seized could have been indeed heroin or it could have been sugar or baking powder. It ruled that unless the state can show by records or testimony, the continuous whereabouts of the exhibit at least between the time it came into the posession of the police officers until it was tested in the laboratory to determine its composition, testimony of the state as to the laboratory's findings is inadmissible.

A unique characteristic of narcotic substances is that they are not readily identifiable as in fact they are subject to scientific analysis to determine their composition and nature. The Court cannot reluctantly close its eyes to the likelihood or at least the possibility, that at any of the links in the chain of custody over the same there could have been tampering, alteration or substitution of substances from other cases by accident or otherwise in which similar evidence was seized or in which similar evidence was submitted for laboratory testing. Hence, in authenticating the same, a standard more stringent than that applied to cases involving objects which are readily identifiable must be applied, a more exacting standard that entails a chain of custody of the item with sufficient completeness if only to render it improbable that the original item has either been exchanged with another or been contaminated or tampered with.[16]

In connection thereto, Section 21 of R.A. No. 9165 provides for the manner by which law enforcement officers should handle seized items in dangerous drugs cases:

SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment.* — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

1. The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused

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[16] *Id.* at 587-589.

or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;

2. Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;

3. A certification of the forensic laboratory examination results, which shall be done under oath by the forensic laboratory examiner, shall be issued within twenty-four (24) hours after the receipt of the subject item/s: *Provided,* That when the volume of the dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: *Provided, however,* That a final certification shall be issued on the completed forensic laboratory examination on the same within the next twenty-four (24) hours[.]

Strict compliance with the chain of custody requirement, however, is not always the case. Hence, the IRR of R.A. No. 9165 provides:

SECTION 21. (a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; **Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized**

items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items. [Emphasis supplied]

In the case at bench, the prosecution failed to demonstrate substantial compliance by the apprehending officers with the safeguards provided by R.A. No. 9165 as regards the rule on chain of custody. To begin with, the records are bereft of any showing that an inventory of the seized items was made. Neither does it appear on record that the apprehending team photographed the contraband in accordance with law.

Further, *People v. Dahil*[17] restated the links that the prosecution must establish in the chain of custody in a buy-bust situation to be as follows: *first,* the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *second,* the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third,* the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *fourth,* the turnover and submission of the marked illegal drug seized by the forensic chemist to the court.

First Link: Marking of the Drugs Recovered from the Accused by the Apprehending Officer

Crucial in proving the chain of custody is the marking of the seized drugs or other related items immediately after they have been seized from the accused. "Marking" means the placing by the apprehending officer or the poseur-buyer of his/her initials and signature on the items seized. Marking after seizure is the starting point in the custodial link; hence, it is vital that the seized contraband be immediately marked because the succeeding handlers of the specimens will use the markings as reference. The marking of the evidence serves to separate the marked evidence from the corpus of all other similar or related evidence from the time they are seized from the accused until they are

[17] 745 SCRA 221 (2015).

disposed of at the end of the criminal proceedings, thus, preventing switching, planting or contamination of evidence.[18]

Still, there are cases when the chain of custody rule is relaxed such as when the marking of the seized items is allowed to be undertaken at the police station rather than at the place of arrest for as long as it is done in the presence of the accused in illegal drugs cases.[19]

In this case, Palconit claimed that he had placed his initials on the seized items. Based on his testimony, it is clear that the marking was not immediately done at the place of seizure; instead, the markings were only placed at the PDEA office, for which the prosecution did not offer any justifiable reason. Even if the Court glosses over this lapse, still, it could not be said that the integrity and evidentiary value of the seized items were preserved. For one, neither in the direct examination nor in the cross-examination of Palconit was it mentioned that the markings were made in the presence of accused-appellant or his representatives. He merely testified that he placed the markings at the PDEA office, without any allusion to the identities of the persons who were present when he did the markings.

Moreover, in the Incident Report[20] as well as in the Affidavit of Arrest,[21] the specific markings made on the seized items were not mentioned. The same documents merely specified that three (3) small heat-sealed transparent plastic bags containing suspected *methamphetamine hydrochloride* of undetermined quantity were found in accused-appellant's possession. Considering that the apprehending officers did not mark the sachets of illegal drugs at the place of seizure, then, it logically follows that the marking should have been their foremost priority and should have been made prior to writing the incident report

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

[19] *People v. Resurrecion*, 618 Phil. 520 (2009).

[20] Records, pp. 6-7.

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

and executing the affidavit of arrest. It, therefore, behooves the Court how Palconit could have said that he placed the markings at the PDEA office, but no mention of the same whatsoever was made in both the incident report and in the affidavit of arrest. If the sachets of illegal drugs were already marked, then there would have been no reason for its non-inclusion in the aforecited documents. Thus, the Court can only guess the time when the markings were made and whether they were placed before the preparation of the incident report and the affidavit of arrest.

To make matters worse, from the place of seizure to the PDEA office, the seized items were not marked. It could not, therefore, be determined how the unmarked drugs were transported and who took custody of them while in transit.

Unfortunately, the direct examination of Palconit left much to be desired for it offered no explanation and justification for these lapses. At most, what can be gleaned is the prosecution's lack of zealousness and interest in ensuring the conviction of accused-appellant despite the time and resources at its disposal, *viz*:

Prosecutor Sampayo: When the marked money was recovered and two other sachets were recovered, what did you do?
Palconit: The suspect was brought to the PDEA office.

Prosecutor Sampayo: What did you do at the PDEA office?
Palconit: We turned over the confiscated evidence to the investigator and we informed our CO that the operation was positive.

Prosecutor Sampayo: What were the confiscated items which were turned over?
Palconit: Buy bust money, one sachet which I bought and two other sachets which were recovered from the suspect.

Prosecutor Sampayo: What was done with the confiscated sachets, the one that was bought and the two others which were recovered from the target person?
Palconit: When we arrived at the office, we made a request for laboratory examination.

Prosecutor Sampayo: What did you do with the items?
Palconit: We placed markings on the confiscated items.

Prosecutor Sampayo: Do you remember what marking was placed?
Palconit: Yes, ma'm, REP-1, REP-2, REP-3.

Prosecutor Sampayo: What are these markings about?
Palconit: Those are my initials, Rache E. Palconit.

Prosecutor Sampayo: Where did you put the markings?
Palconit: At the sachets.

Posecutor Sampayo: What sachets are you talking about?
Palconit: The sachet that I bought and the sachets that were recovered.

Prosecutor Sampayo: What marking was placed on the specimen found on his possession?
Palconit: REP-2 and REP-3.

Prosecutor Sampayo: After putting the markings, what did you do?
Palconit: We brought it to the crime laboratory.

Prosecutor Sampayo: Who personally brought it?
Palconit: Me.[22]

In *People v. De La Cruz*,[23] where the marking of the seized items was made at the police station, and without any showing that the same had been done in the presence of the accused or his representatives, the Court concluded that the apprehending team's omission to observe the procedure outlined by R.A. No. 9165 in the custody and disposition of the seized drugs significantly impaired the prosecution's case.

The prosecution's sweeping guarantees as to the identity and integrity of seized drugs and drug paraphernalia will not secure a conviction.[24] While law enforcers enjoy the presumption of regularity in the performance of their duties, this presumption cannot prevail over the constitutional right of the accused to be presumed innocent and it cannot by itself constitute proof of guilt beyond reasonable doubt. The presumption of regularity

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[22] TSN, March 23, 2006, p. 8.

[23] 591 Phil. 259 (2008).

[24] *People v. Holgado*, G.R. No. 207992, August 11, 2014, 732 SCRA 554, 570.

is merely just that — a mere presumption disputable by contrary proof and which when challenged by evidence cannot be regarded as binding truth.[25]

Second Link: Turnover of the Seized Drugs by the Apprehending Officer to the Investigating Officer

The second link in the chain of custody is the transfer of the seized drugs by the apprehending officer to the investigating officer. Usually, the police officer who seizes the suspected substance turns it over to a supervising officer, who will then send it by courier to the police crime laboratory for testing. This is a necessary step in the chain of custody because it will be the investigating officer who shall conduct the proper investigation and prepare the necessary documents for the developing criminal case. Certainly, the investigating officer must have possession of the illegal drugs to properly prepare the required documents.[26]

Here, the identity of the investigating officer was unknown.

Prosecutor Sampayo: What did you do at the PDEA office?

Palconit: We turned over the confiscated evidence to the investigator and we informed our CO that the operation was positive.

Prosecutor Sampayo: What were the confiscated items which were turned over?

Palconit: Buy bust money, one sachet which I bought and two other sachets which were recovered from the suspect.[27]

It is unlikely that Palconit did not know the officer to whom he supposedly turned over the seized drugs. Surely, this investigating officer worked with him in the same office. Indeed, the apprehending officer and investigating officer might be one

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[25] *People v. Sabdula*, 733 Phil. 85, 100-101 (2014).

[26] *Supra* note 17 at 244.

[27] TSN, March 23, 2006, p. 7.

and the same person. If that was the case, however, then there would have been no need to say that Palconit turned over the seized items to the investigator. He could have simply said that he was the one who conducted the investigation and prepared the necessary documents for the filing of a criminal case against accused-appellant.

Similarly, in *People v. Nandi*,[28] where the apprehending officer was unable to identify the investigating officer to whom he turned over the seized items, the Court held that such circumstance, when taken in light of the several other lapses in the chain of custody that attend the case, raises doubts as to whether the integrity and evidentiary value of the seized illegal drugs had been preserved.

Third Link: Turnover by the Investigating Officer of the Illegal Drugs to the Forensic Chemist

From the investigating officer, the illegal drug is delivered to the forensic chemist. Once the seized drugs arrive at the forensic laboratory, it will be the laboratory technician who will test and verify the nature of the substance.[29] In this case, it was uncertain who received the seized items when it was brought to the forensic laboratory, to wit:

Prosecutor Sampayo: When the marked money was recovered and two other sachets were recovered, what did you do?
Palconit: The suspect was brought to the PDEA office.

Prosecutor Sampayo: What did you do at the PDEA office?
Palconit: We turned over the confiscated evidence to the investigator and we informed our CO that the operation was positive.

Prosecutor Sampayo: What were the confiscated items which were turned over?
Palconit: Buy bust money, one sachet which I bought and two other sachets which were recovered from the suspect.

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[28] 639 Phil. 134 (2010).

[29] *Supra* note 17 at 245.

Prosecutor Sampayo: What was done with the confiscated sachets, the one that was bought and the two others which were recovered from the target person?
Palconit: When we arrived at the office, we made a request for laboratory examination.

Prosecutor Sampayo: What did you do with the items?
Palconit: We placed markings on the confiscated items.[30]

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Prosecutor Sampayo: After putting the markings, what did you do?
Palconit: We brought it to the crime laboratory.

Prosecutor Sampayo: Who personally brought it?
Palconit: Me.

Prosecutor Sampayo: Why did you bring it to the crime laboratory.
Palconit: For laboratory examination.[31]

There are several unexplained and doubtful points in this step.

First, Palconit testified that he placed the markings on the sachets upon arrival at the office. Then, he turned over the seized items to the investigator. In the latter part of his testimony, however, he said that after placing the markings, he brought the illegal drugs to the crime laboratory. The circumstances surrounding the custody of the illegal drugs, from the time they were brought to the PDEA office up to their turnover to the forensic laboratory, are all muddled. Moreover, it is unclear whether another officer intervened in the handling of the illegal drugs or it was only Palconit himself who placed the markings and delivered the illegal drugs to the forensic chemist.

Further, a perusal of the records shows that the request for laboratory examination[32] was prepared and signed by a certain Police Chief Inspector Raul Loy Bargamento *(Bargamento)*, who had necessarily taken custody of the seized items at some

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[30] TSN, March 23, 2006, p. 8.

[31] *Id*. at 9.

[32] Records, p. 22.

point in order to execute the request for laboratory examination. Yet, Palconit did not even bother to mention Bargamento in his testimony. The prosecution would have the Court guess (1) whether Bargamento was the same person to whom Palconit turned over the seized items and (2) whether Bargamento was the one who handed Palconit the seized items for delivery to the forensic laboratory. Hence, the identities of the officers who had custody of the illegal drugs, even for momentary periods, are open to question.

Finally, Fabros testified that their office received the request for laboratory examination on May 25, 2003 at three (3) o'clock in the afternoon. The request for laboratory examination[33] indicated that the same was received by Fabros. It is worthy to note, however, that she did not affix her signature thereon. Moreover, in their testimonies, neither Palconit nor Fabros identified each other as the person who delivered and received the seized drugs respectively. Hence, for failure of Fabros to mention before the court that she indeed received the seized drugs from Palconit, her name, appearing on the request for laboratory examination, remained to be hearsay.

In *People v. Beran,*[34] the investigator of the case claimed that he personally took the drug to the laboratory for testing, but there was no showing who was the laboratory technician who received the drug from him. The Court noted that there was serious doubt that the integrity and evidentiary value of the seized item had not been fatally compromised.

Fourth Link: Turnover of the Marked Illegal Drug Seized by the Forensic Chemist to the Court

The last link involves the submission of the seized drugs by the forensic chemist to the court when presented as evidence in the criminal case.[35]

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[33] *Id*.

[34] 724 Phil. 788 (2014).

[35] *Supra* note 17 at 247.

In this case, the records are bereft of any evidence as to how the illegal drugs were brought to court. Fabros merely testified that she made a report confirming that the substance contained in the sachets brought to her was positive for *shabu*.

The saving clause in Section 21, IRR of R.A. No. 9165 fails to remedy the lapses and save the prosecution's case. In *People v. Garcia*,[36] the Court stated that "the saving clause applies only where the prosecution recognized the procedural lapses, and thereafter cited justifiable grounds." Failure to follow the procedure mandated under R.A. No. 9165 and its IRR must be adequately explained.[37]

In both illegal sale and illegal possession of prohibited drugs, conviction cannot be sustained if there is a persistent doubt on the identity of the drug. The identity of the prohibited drug must be established with moral certainty. Apart from showing that the elements of possession or sale are present, the fact that the substance illegally possessed and sold in the first place is the same substance offered in court as exhibit must likewise be established with the same degree of certitude as that needed to sustain a guilty verdict.[38]

In fine, the Court holds that the totality of the evidence presented does not support a finding of guilt with the certainty that criminal cases require. The procedural lapses committed by the apprehending team show glaring gaps in the chain of custody, creating a reasonable doubt on whether the *shabu* seized from accused-appellant was the same *shabu* that were brought to the crime laboratory for chemical analysis, and eventually offered in court as evidence. Hence, the *corpus delicti* has not been adequately proven.

It could be that the accused was really involved in the sale of shabu, but considering the doubts engendered by the paucity

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[36] 599 Phil. 416, 432-433 (2009).

[37] *People v. Lorenzo*, 633 Phil. 393 (2010).

[38] *Id.* at 403.

of the prosecution's evidence, the Court has no recourse but to give him the benefit thereof. Law enforcers should not only be mindful of the procedures required in the seizure, handling and safekeeping of confiscated drugs, but the prosecution should also prove every material detail in court. Observance of these is necessary to avoid wasting the efforts and the resources in the apprehension and prosecution of violators of our drug laws.[39]

WHEREFORE, the appeal is **GRANTED.** The October 16, 2015 Decision of the Court of Appeals in CA-G.R. CR. H.C. No. 06847 is **REVERSED** and **SET ASIDE**. Accused-appellant Anastacio Hementiza *y* Dela Cruz is hereby **ACQUITTED** of the crimes charged against him and ordered immediately **RELEASED** from custody, unless he is confined for some other lawful cause.

The Director of the Bureau of Corrections is **ORDERED** to immediately implement this decision and to inform this Court of the date of the actual release from confinement of the accused within five (5) days from receipt of a copy of this decision.

SO ORDERED.

Carpio (Chairperson), Peralta, Leonen, and *Martires, JJ.,* concur.

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[39] *People v. Sabdula*, 733 Phil. 85, 101 (2014).

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ACTIONS

Moot and academic case — One that ceases to present a justiciable controversy by virtue of supervening events, so that an adjudication of the case or a declaration on the issue would be of no practical value or use; courts generally decline jurisdiction over such case or dismiss it on the ground of mootness. (Hon. Jacinto-Henares *vs*. St. Paul College of Makati, G.R. No. 215383, Mar. 8, 2017) p. 133

ADMINISTRATIVE LAW

Expenditure of public funds — The Administrative Code of 1987 expressly prohibits the entering into contracts involving the expenditure of public funds unless two prior requirements are satisfied; first, there must be an appropriation law authorizing the expenditure required in the contract; second, there must be attached to the contract a certification by the proper accounting official and auditor that funds have been appropriated by law and such funds are available; failure to comply with any of these two requirements renders the contract void. (Guillermo *vs.* Philippine Information Agency, G.R. No. 223751, Mar. 15, 2017) p. 555

ALIBI

Defense of — It is axiomatic that alibi is an inherently weak defense, and may only be considered if the following circumstances are shown: (a) he was somewhere else when the crime occurred; and (b) it would be physically impossible for him to be at the *locus criminis* at the time of the alleged crime. (People *vs.* Umapas *y* Crisostomo, G.R. No. 215742, Mar. 22, 2017) p. 975

AN ACT EXTENDING THE TERM OF THE COMMITTEE ON PRIVATIZATION AND THE ASSET PRIVATIZATION TRUST (R.A. NO. 8758)

Application of — When the statutory term of a non-incorporated agency expires, the powers, duties and functions, as well as the assets and liabilities of that agency, revert to and are re-assumed by the Republic of the Philippines; this rule holds in the absence of special provisions of law specifying some other manner of disposition, the devolution or transmission of such powers, duties, and functions, to some other identified successor agency or instrumentality of the Republic; R.A. No. 8758 provides that upon the expiration of the terms of the Committee on Privatization and the Asset Privatization Trust, all their powers, function, duties and responsibilities, all properties, real or personal assets, equipment and records, as well as their obligations and liabilities, shall devolve upon the National Government. (Rep. of the Phils. *vs.* Phil. Int'l. Corp., G.R. No. 181984, Mar. 20, 2017) p. 604

APPEALS

Appeal from the Regional Trial Court — The three modes of appeal from decisions of the RTC, namely: a) ordinary appeal or appeal by writ of error, where judgment was rendered in a civil or criminal action by the RTC in the exercise of its original jurisdiction; b) petition for review, where judgment was rendered by the RTC in the exercise of its appellate jurisdiction; and c) petition for review to this Court; the first mode of appeal is governed by Rule 41, and is taken to the CA on questions of fact or mixed questions of fact and law; the second mode, covered by Rule 42, is brought to the CA on questions of fact, of law, or mixed questions of fact and law; the third mode, provided for by Rule 45, is elevated to this Court only on questions of law. (Almendras *vs.* South Davao Dev't. Corp., Inc., (SODACO), G.R. No. 198209, Mar. 22, 2017) p. 884

Appeals in criminal cases — In criminal cases, an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment or even reverse the trial court's decision based on grounds other than those that the parties raised as errors; the appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law. (People *vs.* Alejandro *y* Rigor, G.R. No. 225608, Mar. 13, 2017) p. 221

Factual findings of the Office of the Ombudsman — As a general rule, factual findings of the Ombudsman are conclusive when supported by substantial evidence and are accorded due respect and weight, especially when affirmed by the CA. (Office of the Ombudsman *vs.* Ps/ Supt. Espina, G.R. No. 213500, Mar. 15, 2017) p. 529

— The general rule is that findings of fact of the CTA are not to be disturbed by this Court unless clearly shown to be unsupported by substantial evidence; since by the very nature of its functions, the CTA has developed an expertise to resolve tax issues, the Court will not set aside lightly the conclusions reached by them, unless there has been an abuse or improvident exercise of authority. (Commissioner of Internal Revenue *vs.* Phil. Daily Inquirer, Inc., G.R. No. 213943, Mar. 22, 2017) p. 912

Petition for review on certiorari to the Supreme Court under Rule 45 — Appeal by petition for review on *certiorari* under Rule 45 is available only as a remedy from a decision or final order of a lower court. (Bintudan *vs.* COA, G.R. No. 211937, Mar. 21, 2017) p. 795

— Court can proceed to review the factual findings of the CA as an exception to the general rule that it should not review issues of fact on appeal on *certiorari*. (Abrogar *vs.* Cosmos Bottling Co., G.R. No. 164749, Mar. 15, 2017) p. 317

— Only questions of law are entertained in a Rule 45 petition; findings of fact of the lower courts are generally conclusive and binding on the Supreme Court whose function is not to analyze or weigh the evidence all over again. (Our Lady of Lourdes Hospital *vs.* Sps. Capanzana, G.R. No. 189218, Mar. 22, 2017) p. 833

— Only questions of law may be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court; factual findings of the Labor Arbiter and the National Labor Relations Commission, if supported by substantial evidence and when upheld by the Court of Appeals, are binding and conclusive upon this Court when there is no cogent reason to disturb the same. (Rodriguez *vs.* Park N Ride Inc., G.R. No. 222980, Mar. 20, 2017) p. 747

— Rule 45 petitions may only raise pure questions of law and that the factual findings of lower courts are generally binding and conclusive on the Supreme Court. (Daayata *vs.* People, G.R. No. 205745, Mar. 8, 2017) p. 102

— The Court is not a trier of facts and only questions of law may be raised in a petition under Rule 45 of the Rules of Court; a departure from this rule is nevertheless allowed where the factual findings of the CA are contrary to those of the lower courts or tribunals. (Brown *vs.* Marswin Marketing, Inc., G.R. No. 206891, Mar. 15, 2017) p. 479

— The Court's jurisdiction in a petition for review on *certiorari* under Rule 45 of the Rules of Court is limited to the review of pure questions of law; a Rule 45 petition does not allow the review of questions of fact because the Court is not a trier of facts. (Bank of the Philippine Islands *vs.* Mendoza, G.R. No. 198799, Mar. 20, 2017) p. 640

Points of law, issues, theories and arguments — As a general rule, points of law, theories, and arguments not brought before the trial court cannot be raised for the first time on appeal and will not be considered by the Supreme Court; otherwise, a denial of respondent's right to due

process would result; the Supreme Court will consider and resolve the issue in the interest of justice and the complete adjudication of the rights and obligations of the parties. (Rep. of the Phils. *vs.* Phil. Int'l. Corp., G.R. No. 181984, Mar. 20, 2017) p. 604

ARRESTS

Warrantless arrest — Any question regarding the legality of a warrantless arrest must be raised before arraignment; failure to do so constitutes a waiver of the right to question the legality of the arrest especially when the accused actively participated during trial as in this case; however, such waiver is only confined to the defects of the arrest and not on the inadmissibility of the evidence seized during an illegal arrest. (Villamor *y* Tayson *vs.* People, G.R. No. 200396, Mar. 22, 2017) p. 894

— In warrantless arrests made pursuant to Sec. 5(a), Rule 113, two elements must concur, namely: (a) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (b) such overt act is done in the presence or within the view of the arresting officer. (*Id.*)

— Sec. 2, Art. III of the 1987 Constitution requires a judicial warrant based on the existence of probable cause before a search and an arrest may be effected by law enforcement agents; without the said warrant, a search or seizure becomes unreasonable within the context of the Constitution and any evidence obtained on the occasion of such unreasonable search and seizure shall be inadmissible in evidence for any purpose in any proceeding. (*Id.*)

ATTORNEYS

Disbarment — A case of suspension or disbarment may proceed regardless of interest or lack of interest of the complainant; what matters is whether, on the basis of the facts borne out by the record, the charge of deceit and grossly immoral

conduct has been duly proven. (Liang Fuji *vs.* Atty. Dela Cruz, A.C. No. 11043, Mar. 8, 2017) p. 1

— The IBP's formal investigation is a mandatory requirement which may not be dispensed with, except for valid and compelling reasons, as it is essential to accord both parties an opportunity to be heard on the issues raised; absent a valid fact-finding investigation, the Court usually remands the administrative case to the IBP for further proceedings. (Paras Yap *vs.* De Jesus Paras, A.C. No. 5333, Mar. 13, 2017) p. 153

— The Supreme Court defers from taking cognizance of disbarment complaints against lawyers in government service arising from their administrative duties and refers the complaint first either to the proper administrative body that has disciplinary authority over the erring public official or employee or the Ombudsman. (*Id.*)

— The suspension from the practice of law or disbarment of a lawyer is justified if he or she proves unworthy of the trust and confidence imposed by the Lawyer's Oath or is otherwise found to be wanting in that honesty and integrity that must characterize the members of the Bar in the performance of their professional duties. (Ortigas Plaza Dev't. Corp. *vs.* Atty. Tumulak, A.C. No. 11385, Mar. 14, 2017) p. 258

— Willful disobedience to any lawful order of a superior court and willfully appearing as an attorney without authority to do so are grounds for disbarment or suspension from the practice of law; the penalty of suspension or disbarment can no longer be imposed on a lawyer who had been previously disbarred; nevertheless, it resolved the issue on the lawyer's administrative liability for recording purposes in the lawyer's personal file in the Office of the Bar Confidant. (*Id.*)

Lawyers in the government service — The ethical standards under the Code of Professional Responsibility are rendered even more exacting as to government lawyers because they have the added duty to abide by the policy of the

State to promote a high standard of ethics, competence, and professionalism in public service. (Liang Fuji *vs.* Atty. Dela Cruz, A.C. No. 11043, Mar. 8, 2017) p. 1

Liability of — Generally, a lawyer who holds a government office may not be disciplined as a member of the Bar for misconduct in the discharge of her duties as a government official; however, if said misconduct as a government official also constitutes a violation of her oath as a lawyer and the Code of Professional Responsibility, then she may be subject to disciplinary sanction by this Court. (Liang Fuji *vs.* Atty. Dela Cruz, A.C. No. 11043, Mar. 8, 2017) p. 1

— The sworn obligation of every lawyer under the Lawyer's Oath and the Code of Professional Responsibility to respect the law and the legal processes is a continuing condition for retaining membership in the Legal Profession; the lawyer must act and comport himself or herself in such a manner that would promote public confidence in the integrity of the Legal Profession. (Ortigas Plaza Dev't. Corp. *vs.* Atty. Tumulak, A.C. No. 11385, Mar. 14, 2017) p. 258

Suspension — A lawyer's suspension is not automatically lifted upon the lapse of the suspension period; the lawyer must submit the required documents and wait for an order from the Court lifting the suspension before he or she resumes the practice of law. (Paras Yap *vs.* De Jesus Paras, A.C. No. 5333, Mar. 13, 2017) p. 153

BILL OF RIGHTS

Right against self-incrimination — The privilege did not prohibit legitimate inquiry in non-criminal matters; the rule only finds application in case of oral testimony and does not apply to object evidence. (Office of the Court Administrator *vs.* Judge Yu, A.M. No. MTJ-12-1813 [Formerly A.M. No. 12-5-42-MeTJ], Mar. 14, 2017) p. 277

CERTIORARI

Petition for — Although the filing of a motion for reconsideration is a condition *sine qua non* to the filing of a petition for *certiorari*, the rule is subject to the following exceptions: 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* proceeding 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 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 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 where public interest is involved. (Puerto Azul Land, Inc. *vs.* Export Industry Bank, Inc., [formerly named Urban Bank, Inc.], G.R. No. 213020, Mar. 20, 2017) p. 683

— Only when the COA has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, may the Supreme Court entertain and grant a petition for *certiorari* brought to assail its actions. (Bintudan *vs.* COA, G.R. No. 211937, Mar. 21, 2017) p. 795

CIVIL SERVICE

Disability retirement — Disability retirement is conditioned on the incapacity of the employee to continue his or her employment for involuntary causes such as illness or accident; the social justice principle behind retirement benefits also applies to those who are forced to cease

from service for disabilities beyond their control. (*Re*: Medical Condition of Associate Justice Maria Cristina J. Cornejo, Sandiganbayan, A.M. No. 16-10-05-SB, Mar. 14, 2017) p. 272

— Request for optional retirement treated as disability retirement. (*Id*.)

CIVIL SERVICE DECREE OF THE PHILIPPINES (P.D. NO. 807)

Administrative cases against non-presidential appointees — Sec. 38(a) of P.D. No. 807 has drawn a definite distinction between subordinate officers or employees who were presidential appointees, on the one hand, and subordinate officers or employees who were non-presidential appointees, on the other; for one, presidential appointees come under the direct disciplining authority of the President pursuant to the well-settled principle that, in the absence of a contrary law, the power to remove or to discipline is lodged in the same authority in whom the power to appoint is vested; having the power to remove or to discipline presidential appointees, therefore, the President has the corollary authority to investigate them and look into their conduct in office. (Baculi *vs.* Office of the President, G.R. No. 188681, Mar. 8, 2017) p. 52

COMMISSION ON AUDIT (COA)

Decisions, final orders and rulings — COA's decisions, final orders or rulings may be brought to the Supreme Court on *certiorari* by the aggrieved party within 30 days from receipt of a copy thereof. (Bintudan *vs.* COA, G.R. No. 211937, Mar. 21, 2017) p. 795

COMPREHENSIVE AGRARIAN REFORM LAW OF 1988 (R.A. NO. 6657)

Just compensation — Although the determination of just compensation is essentially a judicial function, the RTC, sitting as a SAC, must consider the factors mentioned in Sec. 17 of R.A. No. 6657; the RTC is bound to observe the basic factors and formula prescribed by the DAR

pursuant to Sec. 17 of R.A. No. 6657; when the RTC is faced with situations that do not warrant the strict application of the formula, it may, in the exercise of its discretion, relax the formula's application to fit the factual situations before it; the RTC is duty bound to explain and justify in clear terms the reason for any deviation from the prescribed factors and formula. (Land Bank of the Philippines *vs.* Heirs of Tapulado, G.R. No. 199141, Mar. 8, 2017) p. 74

— Deposit of an amount equivalent to 18% of the actual value of the subject landholdings cannot be considered substantial enough to satisfy the full requirement of just compensation. (Land Bank of the Philippines *vs.* Phil-Agro Industrial Corp., G.R. No. 193987, Mar. 13, 2017) p. 183

— In the determination of just compensation, the RTC should be guided by the following: 1) Just compensation must be valued at the time of taking, or the time when the owner was deprived of the use and benefit of his property, that is, the date when the title or the emancipation patents were issued in the names of the farmer-beneficiaries; 2) Just compensation must be determined pursuant to the guidelines set forth in Sec. 17 of R.A. No. 6657, as amended, prior to its amendment by R.A. No. 9700; while it should take into account the different formulas created by the DAR in arriving at the just compensation, it is not strictly bound thereto if the situations before it do not warrant their application; in which case, the RTC must clearly explain the reasons for deviating therefrom, and for using other factors or formulas in arriving at a reasonable just compensation; and 3) Interest may be awarded as warranted by the circumstances of the case and based on prevailing jurisprudence. (Land Bank of the Philippines *vs.* Heirs of Tapulado, G.R. No. 199141, Mar. 8, 2017) p. 74

— Legal interest should be reckoned from the issuance dates of the Certificates of Land Ownership Award (CLOA). (*Id.*)

— The LBP's valuation of lands covered by the CARP Law is considered only as an initial determination, which is not conclusive, as it is the RTC-SAC that could make the final determination of just compensation, taking into consideration the factors provided in R.A. No. 6657 and the applicable DAR regulations. (Land Bank of the Philippines *vs.* Heirs Marcos, Sr., G.R. No. 175726, Mar. 22, 2017) p. 806

— The rationale for imposing the interest is to compensate the respondent for the income it would have made had it been properly compensated for its properties at the time of the taking; the need for prompt payment and the necessity of the payment of interest is to compensate for any delay in the payment of compensation for property already taken; the award of interest is imposed in the nature of damages for delay in payment which makes the obligation on the part of the government one of forbearance to ensure prompt payment of the value of the land and limit the opportunity loss of the owner. (*Id.*)

COMPREHENSIVE DANGEROUS ACT OF 2002 (R.A. NO. 9165)

Chain in custody — Marking means the placing by the apprehending officer or the poseur-buyer of his/her initials and signature on the items seized; marking after seizure is the starting point in the custodial link; it is vital that the seized contraband be immediately marked because the succeeding handlers of the specimens will use the markings as reference. (People *vs.* Hementiza *y* Dela Cruz, G.R. No. 227398, Mar. 22, 2017) p. 1017

— Means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction; such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of

the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition. (*Id.*)

— The apprehending team shall, immediately after seizure and confiscation conduct a physical inventory and photograph the seized items in the presence of the accused or the person from whom the items were seized, his representative or counsel, a representative from the media and the Department of Justice and any elected public official who shall be required to sign the copies of the inventory and be given a copy of the same, and the seized drugs must be turned over to the PNP Crime Laboratory within twenty-four (24) hours from confiscation for examination. (People *vs.* Macapundag *y* Labao, G.R. No. 225965, Mar. 13, 2017) p. 234

— The links that the prosecution must establish in the chain of custody in a buy-bust situation to be as follows: first, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; third, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and fourth, the turnover and submission of the marked illegal drug seized by the forensic chemist to the court. (*Id.*)

— The second link in the chain of custody is the transfer of the seized drugs by the apprehending officer to the investigating officer; the police officer who seizes the suspected substance turns it over to a supervising officer, who will then send it by courier to the police crime laboratory for testing; this is a necessary step in the chain of custody because it will be the investigating officer who shall conduct the proper investigation and prepare the necessary documents for the developing criminal case. (*Id.*)

Illegal possession of dangerous drugs — To successfully prosecute a case of illegal possession of dangerous drugs, the following elements must be established: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug. (People *vs.* Hementiza *y* Dela Cruz, G.R. No. 227398, Mar. 22, 2017) p. 1017

Illegal sale of dangerous drugs — In order to secure the conviction of an accused charged with illegal sale of dangerous drugs, the prosecution must prove the: (*a*) identity of the buyer and the seller, the object, and the consideration; and (*b*) delivery of the thing sold and the payment. (People *vs.* Macapundag *y* Labao, G.R. No. 225965, Mar. 13, 2017) p. 234

— It is essential that the transaction or sale be proved to have actually taken place coupled with the presentation in court of evidence of *corpus delicti* which means the actual commission by someone of the particular crime charged. (People *vs.* Hementiza *y* Dela Cruz, G.R. No. 227398, Mar. 22, 2017) p. 1017

Sec. 7 (b) — Penalizes the act of knowingly visiting a drug den; before a person may be convicted under the foregoing provision, it must be shown that he or she knew that the place visited was a drug den and still visited the place despite this knowledge. (Coronel *y* Santillan *vs.* People, G.R. No. 214536, Mar. 13, 2017) p. 207

CONSPIRACY

Existence of — A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it; conspiracy can be inferred from and established by the acts of the accused themselves when said acts point to a joint purpose and design, concerted action and community of interests. (People *vs.* Villanueva *y* Isorena *alias* “Tutoy”, G.R. No. 226475, Mar. 13, 2017) p. 245

CONSTRUCTION INDUSTRY ARBITRATION LAW (E.O. NO. 1008)

Application of — The agreement contemplated in the CIAC Revised Rules to vest jurisdiction of the CIAC over the parties' dispute is not necessarily an arbitration clause to be contained only in a signed and finalized construction contract; the agreement could also be in a separate agreement or any other form of written communication, as long as their intent to submit their dispute to arbitration is clear; the fact that a contract was signed by both parties has nothing to do with the jurisdiction of the CIAC and this is the explanation why the CIAC Revised Rules itself expressly provides that the written communication or agreement need not be signed by the parties. (Federal Builders, Inc. *vs.* Power Factors, Inc., G.R. No. 211504, Mar. 8, 2017) p. 121

— The jurisdiction of the CIAC is over the dispute, not over the contract between the parties; Sec. 2.1, Rule 2 of the CIAC Revised Rules particularly specifies that the CIAC has original and exclusive jurisdiction over construction disputes, whether such disputes arise from or are merely connected with the construction contracts entered into by parties and whether such disputes arise before or after the completion of the contracts. (*Id.*)

— The need to establish a proper arbitral machinery to settle disputes expeditiously was recognized by the Government in order to promote and maintain the development of the country's construction industry; with such recognition came the creation of the CIAC through Executive Order No. 1008 (E.O. No. 1008), also known as The Construction Industry Arbitration Law; all that is required for the CIAC to acquire jurisdiction is for the parties of any construction contract to agree to submit their dispute to arbitration; Sec. 2.3 of the CIAC Revised Rules states that the agreement may be reflected in an arbitration clause in their contract or by subsequently agreeing to submit their dispute to voluntary arbitration; the CIAC Revised Rules clarifies, however, that the

agreement of the parties to submit their dispute to arbitration need not be signed or be formally agreed upon in the contract because it can also be in the form of other modes of communication in writing. (*Id.*)

CO-OWNERSHIP

Sale of a co-owner — When a co-owned property is sold, the buyer's right in the co-owned property is limited only to the seller's share. (Tiu *vs.* Sps. Jangas, G.R. No. 200285, Mar. 20, 2017) p. 653

CORPORATIONS

Corporate rehabilitation — Pursuant to the Interim Rules of Procedure on Corporate Rehabilitation, petitioner should have ventilated its discontent with the First Order *via* a Rule 43 petition for review before the CA, and not through a mere motion before the RTC. (NSC Holdings [Phils.], Inc. *vs.* Trust Int'l. Paper Corp.[TIPCO], G.R. No. 193069, Mar. 15, 2017) p. 425

— Sec. 26 of the Interim Rules allows the modification and alteration of the approved rehabilitation plan, if these steps are necessary to achieve the desired targets or goals set forth therein; it is allowed because of conditions that may supervene or affect its implementation subsequent to its approval. (*Id.*)

Intra-corporate controversy — May be classified as an action whose subject matter is incapable of pecuniary estimation if the complaint's main purpose does not involve the recovery of sum of money. (Dee *vs.* Harvest All Investment Limited, G.R. No. 224834, Mar. 15, 2017) p. 572

— The amendments in various commercial cases, including those involving intra-corporate controversies indicate that the subject matter of an intra-corporate controversy may or may not be capable of pecuniary estimation. (*Id.*)

COURT OF TAX APPEALS

Jurisdiction — The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, decisions of the Collector of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue. (Alcantara *vs.* Rep. of the Phils., G.R. No. 192536, Mar. 15, 2017) p. 394

COURTS

Doctrine of hierarchy of courts — The doctrine of hierarchy of courts is not an iron-clad rule that it 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; recognized exceptions to the said doctrine are as follows: (a) when there are genuine issues of constitutionality that must be addressed at the most immediate time; (b) when the issues involved are of transcendental importance; (c) cases of first impression where no jurisprudence yet exists that will guide the lower courts on the matter; (d) the constitutional issues raised are better decided by the Court; (e) where exigency in certain situations necessitate urgency in the resolution of the cases; (f) the filed petition reviews the act of a constitutional organ; (g) when petitioners rightly claim that they had no other plain, speedy, and adequate remedy in the ordinary course of law that could free them from the injurious effects of respondents' acts in violation of their right to freedom of expression; and (h) 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. (Puerto

Azul Land, Inc. *vs.* Export Industry Bank, Inc., [formerly named Urban Bank, Inc.], G.R. No. 213020, Mar. 20, 2017) p. 683

CRIMINAL LIABILITY

Extinguishment of — Criminal liability is totally extinguished by the death of the accused pending appeal as well as civil liability based solely thereon. (People *vs.* Toukyo *y* Padep, G.R. No. 225593, Mar. 20, 2017) p. 775

CRIMINAL PROCEDURE

Information — Failure to object to the alleged defect in the Information before entering his plea amounted to a waiver of such defects, especially since objections as to matters of form or substance in the Information cannot be made for the first time on appeal. (Navarra *vs.* People, G.R. No. 224943, Mar. 20, 2017) p. 765

DAMAGES

Attorney's fees — The court modified the award of attorney's fees from 25% to 5% of the total amount due. (Louh, Jr. *vs.* Bank of the Philippine Islands, G.R. No. 225562, Mar. 8, 2017) p. 142

— The general rule is that the same cannot be recovered as part of damages because of the policy that no premium should be placed on the right to litigate; they are not to be awarded every time a party wins a suit; the power of the court to award attorney's fees under Art. 2208 of the Civil Code demands factual, legal, and equitable justification. (Delos Santos *vs.* Abejon, G.R. No. 215820, Mar. 20, 2017) p. 720

Doctrine of assumption of risk — Means that one who voluntarily exposes himself to an obvious, known and appreciated danger assumes the risk of injury that may result therefrom; it rests on the fact that the person injured has *consented* to relieve the defendant of an obligation of conduct toward him and to take his chance of injury from a known risk, and whether the former has exercised proper caution or not is immaterial; it is based on voluntary consent, express

or implied, to accept danger of a known and appreciated risk; as a defense in negligence cases, therefore, the doctrine requires the concurrence of three elements, namely: (1) the plaintiff must know that the risk is present; (2) he must further understand its nature; and (3) his choice to incur it must be free and voluntary. (Abrogar *vs.* Cosmos Bottling Co., G.R. No. 164749, Mar. 15, 2017) p. 317

Interests — Art. 2211 of the Civil Code expressly provides that interest, as a part of damages, may be awarded in crimes and quasi-delicts at the discretion of the court; the rate of interest provided under Art. 2209 of the Civil Code is 6% *per annum* in the absence of stipulation to the contrary. (Abrogar *vs.* Cosmos Bottling Co., G.R. No. 164749, Mar. 15, 2017) p. 317

Intervening cause — To be considered efficient, must be one not produced by a wrongful act or omission, but independent of it and adequate to bring the injurious results; any cause intervening between the first wrongful cause and the final injury which might reasonably have been foreseen or anticipated by the original wrongdoer is not such an efficient intervening cause as will relieve the original wrong of its character as the proximate cause of the final injury. (Abrogar *vs.* Cosmos Bottling Co., G.R. No. 164749, Mar. 15, 2017) p. 317

Loss of earning capacity — Art. 2206 (1) of the Civil Code, which stipulates that the defendant shall be liable for the loss of the earning capacity of the deceased and the indemnity shall be paid to the heirs of the latter; such indemnity shall in every case be assessed and awarded by the court, unless the deceased on account of permanent physical disability not caused by the defendant, had no earning capacity at the time of his death; indeed, damages for loss of earning capacity may be awarded to the heirs of a deceased non-working victim simply because earning capacity, not necessarily actual earning, may be lost. (Abrogar *vs.* Cosmos Bottling Co., G.R. No. 164749, Mar. 15, 2017) p. 317

Medical negligence — Failure to act may be the proximate cause if it plays a substantial part in bringing about an injury; the omission to perform a duty may also constitute the proximate cause of an injury, but only where the omission would have prevented the injury; the injury need only be a reasonably probable consequence of the failure to act; there is no need for absolute certainty that the injury is a consequence of the omission. (Our Lady of Lourdes Hospital *vs.* Sps. Capanzana, G.R. No. 189218, Mar. 22, 2017) p. 833

— In order to successfully pursue a claim in a medical negligence case, the plaintiff must prove that a health professional either failed to do something which a reasonably prudent health professional would have or have not done; and that the action or omission caused injury to the patient. (*Id.*)

Negligence — Neglecting employee's immediate medical requirement constitutes gross negligence, tantamount to bad faith. (Doroteo [Deceased] *vs.* Philimare Incorporated, G.R. No. 184917, Mar. 13, 2017) p. 164

— Negligence is the failure to observe for the protection of the interests of another person that degree of care, precaution, and vigilance which the circumstances justly demand, whereby such other person suffers injury; under Art. 1173 of the *Civil Code*, it consists of the omission of that diligence which is required by the nature of the obligation and corresponds with the circumstances of the person, of the time and of the place. (Abrogar *vs.* Cosmos Bottling Co., G.R. No. 164749, Mar. 15, 2017) p. 317

Proximate cause — That which, in natural and continuous sequence, unbroken by any new cause, produces an event and without which the event would not have occurred; to be considered the proximate cause of the injury, the negligence need not be the event closest in time to the injury; a cause is still proximate, although farther in time in relation to the injury, if the happening of it set

other foreseeable events into motion resulting ultimately in the damage; a prior and remote cause cannot be made the basis of an action, if such remote cause did nothing more than furnish the condition or give rise to the occasion by which the injury was made possible, if there intervened between such prior or remote cause and the injury a distinct, successive, unrelated and efficient cause, even though such injury would not have happened but for such condition or occasion. (Abrogar *vs.* Cosmos Bottling Co., G.R. No. 164749, Mar. 15, 2017) p. 317

DENIAL

Defense of — Fails against the positive identification of the accused. (People *vs.* Mendoza, G.R. No. 224295, Mar. 22, 2017) p. 993

EJECTMENT

Action for — The essence of an ejectment suit is for the rightful possessor to lawfully recover the property through lawful means instead of unlawfully wresting possession of the property from its current occupant; an action for unlawful detainer or forcible entry is a summary proceeding and is an expeditious means to recover possession; if the parties raise the issue of ownership, courts may only pass upon that issue for the purpose of ascertaining who has the better right of possession; any ruling involving ownership is not final and binding. (Province of Camarines Sur *vs.* Bodega Glassware, G.R. No. 194199, Mar. 22, 2017) p. 865

ELECTIONS

Canvass of votes — A complete canvass of votes is necessary in order to reflect the true desire of the electorate and that a proclamation of winning candidates on the basis of incomplete canvass is illegal and of no effect. (Commission on Elections *vs.* Mamalinta, G.R. No. 226622, Mar. 14, 2017) p. 304

EMINENT DOMAIN

Just compensation — The just compensation due to an owner should be the "fair and full price of the taken property," whether for land taken pursuant to the State's agrarian reform program or for property taken for purposes other than agrarian reform. (Land Bank of the Philippines *vs.* Heirs Marcos, Sr., G.R. No. 175726, Mar. 22, 2017) p. 806

— While it is fundamentally a function of the courts, the factors provided by law and the formula outlined in DAR A.O. No. 5, Series of 1998 should be applied. (*Id.*)

EMPLOYMENT, TERMINATION OF

Abandonment — In order for the employer to discharge its burden to prove that the employee committed abandonment, which constitutes neglect of duty, and is a just cause for dismissal, the employer must prove that the employee: 1) failed to report for work or had been absent without valid reason; and 2) had a clear intention to discontinue his or her employment; the second requirement must be manifested by overt acts and is more determinative in concluding that the employee is guilty of abandonment; this is because abandonment is a matter of intention and cannot be lightly presumed from indefinite acts. (Brown *vs.* Marswin Marketing, Inc., G.R. No. 206891, Mar. 15, 2017) p. 479

— The immediate filing of an illegal dismissal case especially so when it includes a prayer for reinstatement is totally contrary to the charge of abandonment. (*Id.*)

Constructive dismissal — There is constructive dismissal when an employer's act of clear discrimination, insensibility or disdain becomes so unbearable on the part of the employee so as to foreclose any choice on his part except to resign from such employment; it exists where there is involuntary resignation because of the harsh, hostile and unfavorable conditions set by the employer. (Rodriguez *vs.* Park N Ride Inc., G.R. No. 222980, Mar. 20, 2017) p. 747

Dismissal from employment — A valid dismissal necessitates compliance with substantive and procedural requirements: (a) there should be just and valid cause as provided under Art. 282 of the Labor Code; and (b) the employee be afforded an opportunity to be heard and to defend himself. (Ortiz *vs.* DHL Phils. Corp., G.R. No. 183399, Mar. 20, 2017) p. 626

— Cases involving dismissals for cause but without observance of the twin requirements of notice and hearing, the validity of the dismissal shall be upheld but the employer shall be ordered to pay nominal damages. (*Id.*)

— Dismissal founded on acts constituting serious misconduct and grave dishonesty are grounds for a valid dismissal. (*Id.*)

Incentive pay — The prescriptive period with respect to petitioner's claim for her entire service incentive leave pay commenced only from the time of her resignation or separation from employment. (Rodriguez *vs.* Park N Ride Inc., G.R. No. 222980, Mar. 20, 2017) p. 747

Reinstatement — An employee who is illegally dismissed is entitled to reinstatement without loss of seniority rights, and to full backwages, which include allowances and other benefits or their monetary equivalent, from the time his compensation was withheld until his actual reinstatement. (Brown *vs.* Marswin Marketing, Inc., G.R. No. 206891, Mar. 15, 2017) p. 479

EVIDENCE

Best evidence rule — The original copy of the document must be presented whenever the content of the document is under inquiry, the rule admits of certain exceptions, such as when the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror; in order to fall under the aforesaid exception, it is crucial that the offeror proves: (*a*) the existence or due execution of the original; (*b*) the loss and destruction of the original, or the reason for its non-production in court; and (*c*) the absence of bad faith on

the part of the offeror to which the unavailability of the original can be attributed. (Bank of the Philippine Islands *vs.* Mendoza, G.R. No. 198799, Mar. 20, 2017) p. 640

Burden of proof — The burden of proof to establish the status of a purchaser and registrant in good faith lies upon the one who asserts it; this *onus probandi* cannot be discharged by mere invocation of the legal presumption of good faith. (Yap *vs.* Rep. of the Phils., G.R. No. 199810, Mar. 15, 2017) p. 456

Circumstantial evidence — Direct evidence of the actual killing is not indispensable for convicting an accused when circumstantial evidence can also sufficiently establish his guilt; the consistent rule has been that circumstantial evidence is adequate for conviction if: (a) there is more than one circumstance; (b) the facts from which the inferences are derived have been proven; and (c) the combination of all circumstances is such as to produce a conviction beyond reasonable doubt. (People *vs.* Umapas *y* Crisostomo, G.R. No. 215742, Mar. 22, 2017) p. 975

Dying declaration — While witnesses in general can only testify to facts derived from their own perception, a report in open court of a dying person's declaration is recognized as an exception to the rule against hearsay if it is made under the consciousness of an impending death that is the subject of inquiry in the case; four requisites must concur in order that a dying declaration may be admissible, thus: first, the declaration must concern the cause and surrounding circumstances of the declarant's death; second, at the time the declaration was made, the declarant must be under the consciousness of an impending death; third, the declarant is competent as a witness; and fourth, the declaration must be offered in a criminal case for homicide, murder, or parricide, in which the declarant is the victim. (People *vs.* Umapas *y* Crisostomo, G.R. No. 215742, Mar. 22, 2017) p. 975

Independent relevant statements — Evidence is hearsay when its probative force depends in whole or in part on the competency and credibility of some persons other than

the witness by whom it is sought to produce; however, while the testimony of a witness regarding a statement made by another person given for the purpose of establishing the truth of the fact asserted in the statement is clearly hearsay evidence, it is otherwise if the purpose of placing the statement on the record is merely to establish the fact that the statement, or the tenor of such statement, was made; regardless of the truth or falsity of a statement, when what is relevant is the fact that such statement has been made, the hearsay rule does not apply and the statement may be shown. (People *vs.* Umapas *y* Crisostomo, G.R. No. 215742, Mar. 22, 2017) p. 975

Parol evidence — Parol evidence can serve the purpose of incorporating into the contract additional contemporaneous conditions, which are not mentioned at all in writing, only if there is fraud or mistake. (Felix Plazo Urban Poor Settlers Community Association, Inc. *vs.* Lipat, Sr., G.R. No. 182409, Mar. 20, 2017) p. 614

Preponderance of evidence — In civil cases, the party having the burden of proof must produce a preponderance of evidence thereon, with plaintiff having to rely on the strength of his own evidence and not upon the weakness of the defendant's; preponderance of evidence is the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term 'greater weight of evidence' or 'greater weight of credible evidence.' (Bank of the Philippine Islands *vs.* Mendoza, G.R. No. 198799, Mar. 20, 2017) p. 640

Presentation of — Evidence not objected to is deemed admitted and may validly be considered by the court in arriving at its judgment since it was in a better position to assess and weigh the evidence presented during the trial. (Bank of the Philippine Islands *vs.* Mendoza, G.R. No. 198799, Mar. 20, 2017) p. 640

Proof beyond reasonable doubt — Conviction in criminal actions demands proof beyond reasonable doubt; while not impelling such a degree of proof as to establish

absolutely impervious certainty, the quantum of proof required in criminal cases nevertheless charges the prosecution with the immense responsibility of establishing moral certainty, a certainty that ultimately appeals to a person's very conscience. (Daayata *vs.* People, G.R. No. 205745, Mar. 8, 2017) p. 102

Substantial evidence — In order to sustain a finding of administrative culpability, only the quantum of proof of substantial evidence is required, or that amount or relevant evidence which a reasonable mind might accept as adequate to support a conclusion; as a rule, technical rules of procedure and evidence are not strictly applied in administrative proceedings. (Commission on Elections *vs.* Mamalinta, G.R. No. 226622, Mar. 14, 2017) p. 304

Testimonial evidence — A party's failure to attend a scheduled hearing through no fault of his own cannot be considered as a waiver of his right to cross-examine. (Martinez *vs.* Ongsiako, G.R. No. 209057, Mar. 15, 2017) p. 500

— The right to cross-examine opposing witnesses has long been considered a fundamental element of due process in both civil and criminal proceedings; in proceedings for the perpetuation of testimony, the right to cross--examine a deponent is an even more vital part of the procedure; the Revised Rules on Evidence provide that depositions previously taken are only admissible in evidence against an adverse party who had the opportunity to cross-examine the witness. (*Id.*)

EXECUTIVE DEPARTMENT

Doctrine of qualified political agency — Although the powers and functions of the Chief Executive have been expressly reposed by the Constitution in one person, the President of the Philippines, it would be unnatural to expect the President to personally exercise and discharge all such powers and functions; the exercise and discharge of most of these powers and functions have been delegated to others, particularly to the members of the Cabinet, conformably to the doctrine of qualified political agency.

(Baculi *vs.* Office of the President, G.R. No. 188681, Mar. 8, 2017) p. 52

Preventive suspension — Preventive suspension is of two kinds; the first is the preventive suspension pending investigation and the second is the preventive suspension pending appeal where the penalty imposed by the disciplining authority is either suspension or dismissal but after review the respondent official or employee is exonerated; preventive suspension pending investigation is not a penalty; it is a measure intended to enable the disciplining authority to investigate charges against respondent by preventing the latter from intimidating or in any way influencing witnesses against him; if the investigation is not finished and a decision is not rendered within that period, the suspension will be lifted and the respondent will automatically be reinstated; if after investigation, respondent is found innocent of the charges and is exonerated, he should be reinstated. (Baculi *vs.* Office of the President, G.R. No. 188681, Mar. 8, 2017) p. 52

— Preventive suspension pending investigation is not violative of the Constitution because it is not a penalty.; it is authorized by law whenever the charge involves dishonesty, oppression or grave misconduct, or neglect in the performance of duty, or whenever there are reasons to believe that the respondent is guilty of charges that would warrant removal from the service; if the *proper disciplinary authority* does not finally decide the administrative case within a period of 90 days from the start of preventive suspension pending investigation, *and the respondent is not a presidential appointee*, the preventive suspension is lifted and the respondent is automatically reinstated in the service; in the case of presidential appointees, the preventive suspension pending investigation shall be for a reasonable time as the circumstances of the case may warrant. (*Id.*)

— Respondent should be paid his back salaries and other benefits *for the entire time that he should have been* automatically reinstated at the rate owing to his position

that he last received prior to his preventive suspension. (*Id.*)

EXEMPTING CIRCUMSTANCES

Insanity — Anyone who pleads insanity as an exempting circumstance bears the burden of proving it with clear and convincing evidence; the testimony or proof of an accused's insanity must relate to the time immediately preceding or simultaneous with the commission of the offense with which he is charged. (People *vs.* Roa, G.R. No. 225599, Mar. 22, 2017) p. 1003

FAMILY CODE

Conjugal partnership of gains — Loan obligation of spouses married before the effectivity of the Family Code shall be chargeable to their conjugal partnership of gains. (Delos Santos *vs.* Abejon, G.R. No. 215820, Mar. 20, 2017) p. 720

FORUM SHOPPING

Principle of — Forum shopping is the act of a litigant who repetitively availed of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues, either pending in or already resolved adversely by some other court, to increase his chances of obtaining a favorable decision if not in one court, then in another; elements of forum shopping are: (a) identity of parties or at least such parties that represent the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; and (c) identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration. (Puerto Azul Land, Inc. *vs.* Export Industry Bank, Inc., [formerly named Urban Bank, Inc.], G.R. No. 213020, Mar. 20, 2017) p. 683

HOMICIDE

Commission of — To successfully prosecute the crime of homicide, the following elements must be proved beyond reasonable doubt: (1) that a person was killed; (2) that the accused killed that person without any justifying circumstance; (3) that the accused had the intention to kill, which is presumed; and (4) that the killing was not attended by any of the qualifying circumstances of murder, or by that of parricide or infanticide. (People *vs.* Alejandro *y* Rigor, G.R. No. 225608, Mar. 13, 2017) p. 221

HUMAN RELATIONS

Unjust enrichment — The refund to the buyer of all sums previously made, after terminating the contract for failure to pay the purchase price, based on the principle against unjust enrichment. (Felix Plazo Urban Poor Settlers Community Association, Inc. *vs.* Lipat, Sr., G.R. No. 182409, Mar. 20, 2017) p. 614

INDETERMINATE SENTENCE LAW

Application of — The penalty for homicide under Art. 249 of the RPC is *reclusion temporal*; since there are no mitigating or aggravating circumstances, the penalty should be fixed in its medium period; applying the Indeterminate Sentence Law, each of the accused-appellants should be sentenced to an indeterminate term, the minimum of which is within the range of the penalty next lower in degree, *i.e.*, *prision mayor*, and the maximum of which is that properly imposable under the RPC, *i.e.*, *reclusion temporal* in its medium period. (People *vs.* Villanueva *y* Isorena *alias* "Tutoy", G.R. No. 226475, Mar. 13, 2017) p. 245

INJUNCTION

Preliminary injunction — Is in the nature of an ancillary remedy to preserve the *status quo* during the pendency of the main case; as a necessary consequence, matters resolved in injunction proceedings do not, as a general rule, conclusively determine the merits of the main case

or decide controverted facts therein; generally, findings made in injunction proceedings are subject to the outcome of the main case which is usually tried subsequent to the injunction proceedings. (Philippine Ports Authority (PPA) *vs.* Nasipit Integrated Arrastre and Stevedoring Services, Inc. (NIASSI), G.R. No. 214864, Mar. 22, 2017) p. 942

INTELLECTUAL PROPERTY CODE

Trademark — Any distinctive word, name, symbol, emblem, sign, or device, or any combination thereof, adopted and used by a manufacturer or merchant on his goods to identify and distinguish them from those manufactured, sold, or dealt by others. (Dy *vs.* Koninlijke Philips Electronics, N.V., G.R. No. 186088, Mar. 22, 2017) p. 819

— In determining similarity and likelihood of confusion, jurisprudence has developed two tests: the dominancy test, and the holistic or totality test; the dominancy test focuses on 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; duplication or imitation is not necessary; neither is it required that the mark sought to be registered suggests an effort to imitate; on the other hand, the holistic or totality test necessitates a consideration of the entirety of the marks as applied to the products, including the labels and packaging, in determining confusing similarity. (*Id.*)

— The confusing similarity becomes even more prominent when the entirety of the marks used by petitioner and respondent, including the way the products are packaged; in using the holistic test, we find that there is a confusing similarity between the registered marks. (*Id.*)

INTERESTS

Annual interest — The court reduced the cumulative annual interest of 114% imposed by the bank to 12% per annum. (Louh, Jr. *vs.* Bank of the Philippine Islands, G.R. No. 225562, Mar. 8, 2017) p.142

Attorney's fees — Not being a loan or forbearance of money, an interest of six percent (6%) per annum should be imposed on the amount to be refunded and on the damages and attorney's fees awarded, if any, computed from the time of demand until its satisfaction. (Bank of the Philippine Islands *vs.* Mendoza, G.R. No. 198799, Mar. 20, 2017) p. 640

JUDGES

Administrative cases against — Awards for outstanding performances as a professional and as a judge, far from accenting her good qualities as a person, rather highlighted her unworthiness to remain on the Bench by showing that her misconduct and general bad attitude as a member thereof has put the awards and recognitions in serious question. (Office of the Court Administrator *vs.* Judge Yu, A.M. No. MTJ-12-1813 [Formerly A.M. No. 12-5-42-MeTJ], Mar. 14, 2017) p. 277

— Good faith implies the lack of any intention to commit a wrongdoing; based on the totality of respondent's acts and actuations, her claims of good faith and lack of intent to commit a wrong cannot be probable. (*Id.*)

— Misdemeanor as a member of the bench could also cause expulsion from the legal profession through disbarment. (*Id.*)

— Respondent voluntarily waived her right to be present and to confront the complainants and their witnesses and evidence during the administrative investigation. (*Id.*)

— Voluminous records of cases constituted proof of administrative wrongdoings and sufficed to warrant the supreme action of respondent's removal from the judiciary. (*Id.*)

JUDGMENTS

Annulment of judgment — The only grounds for annulment of judgment are extrinsic fraud and lack of jurisdiction;

lack of jurisdiction as a ground for annulment of judgment refers to either lack of jurisdiction over the person of the defending party or over the subject matter of the claim; in case of absence or lack of jurisdiction, a court should not take cognizance of the case; thus, the prevailing rule is that where there is want of jurisdiction over a subject matter, the judgment is rendered null and void. (Sebastian *vs.* Sps. Cruz, G.R. No. 220940, Mar. 20, 2017) p. 738

— When a petition for annulment of judgment is grounded on lack of jurisdiction, the petitioner need not allege that the ordinary remedy of new trial or reconsideration of the judgment sought to be annulled are no longer available through no fault of her own; this is because a judgment rendered without jurisdiction is fundamentally void. (Coombs *vs.* Castañeda, G.R. No. 192353, Mar. 15, 2017) p. 383

Conclusiveness of judgment — Following the doctrine of conclusiveness of judgment, the parties are already bound by the ruling on that specific issue. (Pacasum, Sr. *vs.* Atty. Zamoranos, G.R. No. 193719, Mar. 21, 2017) p. 783

Doctrine of law of the case — Precludes departure from a rule previously made by an appellate court in a subsequent proceeding essentially involving the same case. (Philippine Ports Authority (PPA) *vs.* Nasipit Integrated Arrastre and Stevedoring Services, Inc. (NIASSI), G.R. No. 214864, Mar. 22, 2017) p. 942

Final and executory judgment — When a final judgment becomes executory, it thereby becomes immutable and unalterable; the judgment may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law. (Rep. of the Phils. *vs.* Phil. Int'l. Corp., G.R. No. 181984, Mar. 20, 2017) p. 604

JUSTIFYING CIRCUMSTANCES

Self-defense — A person invoking self-defense, or defense of a relative, admits to having inflicted harm upon another

person, a potential criminal act under Title Eight (Crimes Against Persons) of the Revised Penal Code; however, he or she makes the additional, defensive contention that even as he or she may have inflicted harm, he or she nevertheless incurred no criminal liability as the looming danger upon his or her own person (or that of his or her relative) justified the infliction of protective harm to an erstwhile aggressor. (Velasquez *vs.* People, G.R. No. 195021, Mar. 15, 2017) p. 438

— Self-defense is an affirmative allegation and offers exculpation from liability for crimes only if satisfactorily proved; having admitted the shooting of the victims, the burden shifted to the accused to prove that he indeed acted in self-defense by establishing the following with clear and convincing evidence: (1) unlawful aggression on the part of the victims; (2) reasonable necessity of the means employed to prevent or repel the aggression; and (3) lack of sufficient provocation on his part. (People *vs.* Bugarin, G.R. No. 224900, Mar. 15, 2017) p. 588

— To successfully invoke self-defense, an accused must establish: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel such aggression; and (3) lack of sufficient provocation on the part of the person resorting to self-defense; defense of a relative under Art. 11 (2) of the Revised Penal Code requires the same first two (2) requisites as self-defense and, in lieu of the third in case the provocation was given by the person attacked, that the one making the defense had no part therein; the first requisite, unlawful aggression, is the condition *sine qua non* of self-defense and defense of a relative; the second requisite, reasonable necessity of the means employed to prevent or repel the aggression, requires a reasonable proportionality between the unlawful aggression and the defensive response. (*Id.*)

LABOR CODE

Labor union — For fraud and misrepresentation to constitute grounds for cancellation of union registration under the

Labor Code, the nature of the fraud and misrepresentation must be grave and compelling enough to vitiate the consent of a majority of union members. (De Ocampo Memorial Schools, Inc. *vs.* Bigkis Manggagawa sa De Ocampo Memorial School, Inc., G.R. No. 192648, Mar. 15, 2017) p.414

— The inclusion in a union of disqualified employees is not among the grounds for cancellation, unless such inclusion is due to misrepresentation, false statement or fraud under the circumstances enumerated in Sec. (a) and (c) of Art. 247 of the Labor Code; for purposes of de-certifying a union, it is not enough to establish that the rank-and-file union includes ineligible employees in its membership. (*Id.*)

LAND REGISTRATION

Certificate of title — The alleged incontrovertibility of title cannot be successfully invoked by the petitioner because certificates of title merely confirm or record title already existing and cannot be used as a shield for the commission of fraud. (Tiu *vs.* Sps. Jangas, G.R. No. 200285, Mar. 20, 2017) p. 653

Torrens system — When the property is registered under the Torrens system, the registered owner's title to the property is presumed legal and cannot be collaterally attacked, especially in a mere action for unlawful detainer, and it does not even matter if the party's title to the property is questionable; it is fundamental that a certificate of title serves as evidence of an indefeasible and incontrovertible title to the property in favor of the person whose name appears therein; the title holder is entitled to all the attributes of ownership of the property, including possession. (Sps. Gaela (Deceased) *vs.* Sps. Tan Tian Heang, G.R. No. 185627, Mar. 15, 2017) p. 373

LEASE

Concept — Art. 764 on the prescription of actions for the revocation of a donation does not apply in cases where the donation has an automatic revocation clause; this is

necessarily so because Art. 764 speaks of a judicial action for the revocation of a donation; it cannot govern cases where a breach of a condition automatically, and without need of judicial intervention, revokes the donation. (Province of Camarines Sur *vs.* Bodega Glassware, G.R. No. 194199, Mar. 22, 2017) p. 865

Contract of — From the time of the execution of the lease contract, its efficacy continues until it is terminated on the grounds provided for by law. (Rep. of the Phils. *vs.* Phil. Int'l. Corp., G.R. No. 181984, Mar. 20, 2017) p. 604

— The owner has a right of action against the holder and possessor of the thing in order to recover it; while a lessor need not be the owner of the property leased, he or she must, at the very least, have the authority to lease it out. (Province of Camarines Sur *vs.* Bodega Glassware, G.R. No. 194199, Mar. 22, 2017) p. 865

MARRIAGE

Psychological incapacity — The non-examination of one of the parties will not automatically render as hearsay or invalidate the findings of the examining psychiatrist or psychologist, since 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; *Molina* case does not require a physician to examine a person and declare him/her to be psychologically incapacitated; what matters is that the totality of evidence presented establishes the party's psychological condition; by the very nature of Art. 36, courts, despite having the ultimate task of decision-making, must give due regard to expert opinion on the psychological and mental disposition of the parties. (Tani-De La Fuente *vs.* De La Fuente, Jr., G.R. No. 188400, Mar. 8, 2017) p. 31

MORTGAGES

Extrajudicial foreclosure of real estate mortgage — It shall be the duty of the Executive Judge to ensure strict

compliance with the rules on extrajudicial foreclosure of mortgage. (Puerto Azul Land, Inc. *vs.* Export Industry Bank, Inc., [formerly named Urban Bank, Inc.], G.R. No. 213020, Mar. 20, 2017) p. 683

— No written request/petition for extrajudicial foreclosure of real estate mortgages shall be acted upon by the Clerk of Court, as *Ex-Officio* Sheriff, without the corresponding fee having been paid and the receipt thereof attached to the request/petition as provided for in Sec. 7(c) of Rule 141 of the Rules of Court; A.M. No. 99-10-05-0, as amended, provides that upon receipt of an application for extrajudicial foreclosure of mortgage, it shall be the duty of the Clerk of Court to, among other things, collect the filing fees therefor, and issue the corresponding official receipt, pursuant to Rule 141, Sec. 7 (c), as amended by A.M. No. 00-2-01-SC. (*Id.*)

Foreclosure of real estate mortgage — The disposition of the proceeds of the foreclosure sale shall be in the following order: (a) pay the costs of sale; (b) pay off the mortgage debt to the person foreclosing the mortgage; (c) pay the junior encumbrances, if any, in the order of priority; and (d) give the balance to the mortgagor, his agent or the person entitled to it. (Puerto Azul Land, Inc. *vs.* Export Industry Bank, Inc., [formerly named Urban Bank, Inc.], G.R. No. 213020, Mar. 20, 2017) p. 683

MOTION TO DISMISS

Failure to state a cause of action — To determine the sufficiency of a cause of action in a motion to dismiss, only the facts alleged in the complaint should be considered, in relation to whether its prayer may be granted; to sufficiently state a cause of action, the complaint should have alleged facts showing that the trial court could grant its prayer based on the strength of its factual allegations. (Guillermo *vs.* Philippine Information Agency, G.R. No. 223751, Mar. 15, 2017) p. 555

MUSLIM CODE (P.D. NO. 1083)

Divorce — The decree, insofar as it affects the civil status, has therefore become *res judicata*, subject to no collateral attack; the proscription against collateral attacks similarly applies to matters involving the civil status of persons. (Pacasum, Sr. *vs.* Atty. Zamoranos, G.R. No. 193719, Mar. 21, 2017) p. 783

— There are seven modes of effecting divorce under the Muslim Code, namely: 1) repudiation of the wife by the husband (talaq); 2) vow of continence by the husband (ila); 3) injurious assimilation of the wife by the husband (zihar); 4) acts of imprecation (lian); 5) redemption by the wife (khul'); 6) exercise by the wife of the delegated right to repudiate (tafwid); or 7) judicial decree (faskh); the divorce becomes irrevocable after observance of a period of waiting called idda, the duration of which is three monthly courses after termination of the marriage by divorce; once irrevocable, the divorce has the following effects: the severance of the marriage bond and, as a consequence, the spouses may contract another marriage; loss of the spouses' mutual rights of inheritance; adjudication of the custody of children in accordance with Art. 78 of the Muslim Code; recovery of the dower by the wife from the husband; continuation of the husband's obligation to give support in accordance with Art. 67; and the dissolution and liquidation of the conjugal partnership, if stipulated in the marriage settlements. (*Id.*)

NATIONAL INTERNAL REVENUE CODE (NIRC)

Assessment — Under Sec. 203 of the NIRC, the prescriptive period to assess is set at three years; this rule is subject to the exceptions provided under Sec. 222 of the NIRC; in the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity,

fraud or omission; provided, that in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof. (Commissioner of Internal Revenue *vs.* Philippine Daily Inquirer, Inc., G.R. No. 213943, Mar. 22, 2017) p. 912

Filing of return — While the filing of a fraudulent return necessarily implies that the act of the taxpayer was intentional and done with intent to evade the taxes due, the filing of a false return can be intentional or due to honest mistake; the entry of wrong information due to mistake, carelessness, or ignorance, without intent to evade tax, does not constitute a false return. (Commissioner of Internal Revenue *vs.* Philippine Daily Inquirer, Inc., G.R. No. 213943, Mar. 22, 2017) p. 912

NOTARY PUBLIC

Jurat **—** A *jurat* as sketched in jurisprudence lays emphasis on the paramount requirements of the physical presence of the affiant as well as his act of signing the document before the notary public; physical presence of the affiant ensures the proper execution of the duty of the notary public under the law to determine whether the former's signature was voluntarily affixed. (Dr. Malvar *vs.* Atty. Baleros, A.C. No. 11346, Mar. 8, 2017) p. 16

— A '*jurat*' refers to an act in which an individual on a single occasion: (a) appears in person before the notary public and presents an instrument or document; (b) is personally known to the notary public or identified by the notary public through competent evidence of identity; (c) signs the instrument or document in the presence of the notary; and (d) takes an oath or affirmation before the notary public as to such instrument or document; the *jurat* is that end part of the affidavit in which the notary certifies that the instrument is sworn to before her, thus, making the notarial certification essential. (*Id.*)

Liability of — Failure to enter the notarial acts in one's notarial register, notarizing a document without the personal presence of the affiants and the failure to properly identify the person who signed the questioned document constitute dereliction of a notary public's duties which warrants the revocation of a lawyer's commission as a notary public. (Dr. Malvar *vs.* Atty. Baleros, A.C. No. 11346, Mar. 8, 2017) p. 16

— Notarization is not an empty, meaningless or routinely act; it is through the act of notarization that a private document is converted into a public one, making it admissible in evidence without need of preliminary proof of authenticity and due execution; the respondent's delegation of her notarial function of recording entries in her notarial register to her staff is a clear contravention of the explicit provision of the Notarial Rules dictating that such duty be fulfilled by her and not somebody else; likewise it violates Canon 9, Rule 9.01 of the CPR which provides that: a lawyer shall not delegate to any unqualified person the performance of any task which by law may only be performed by a member of the Bar in good standing. (*Id.*)

OBLIGATIONS

Consignation — Although it is true that consignment has a retroactive effect, such payment is deemed to have been made only at the time of the deposit of the thing in court or when it was placed at the disposal of the judicial authority. (Philippine National Bank *vs.* Chan, G.R. No. 206037, Mar. 13, 2017) p. 195

— Consignation is necessarily judicial; it is not allowed in venues other than the courts. (*Id.*)

— Consignation is the act of depositing the thing due with the court or judicial authorities whenever the creditor cannot accept or refuses to accept payment; it generally requires a prior tender of payment; consignation alone is sufficient even without a prior tender of payment: a) when the creditor is absent or unknown or does not

appear at the place of payment; b) when he is incapacitated to receive the payment at the time it is due; c) when, without just cause, he refuses to give a receipt; d) when two or more persons claim the same right to collect; and e) when the title of the obligation has been lost. (*Id.*)

— For consignation to be valid, the debtor must comply with the following requirements under the law: 1) there was a debt due; 2) valid prior tender of payment, unless the consignation was made because of some legal cause provided in Art. 1256; 3) previous notice of the consignation has been given to the persons interested in the performance of the obligation; 4) the amount or thing due was placed at the disposal of the court; and 5) after the consignation had been made, the persons interested were notified thereof. (*Id.*)

OWNERSHIP

Accession — The terms builder, planter, or sower in good faith as used in reference to Art. 448 of the Civil Code, refers to one who, not being the owner of the land, builds, plants, or sows on that land believing himself to be its owner and unaware of the defect in his title or mode of acquisition; the essence of good faith lies in an honest belief in the validity of one's right, ignorance of a superior claim, and absence of intention to overreach another; on the other hand, bad faith may only be attributed to a landowner when the act of building, planting, or sowing was done with his knowledge and without opposition on his part. (Delos Santos *vs.* Abejon, G.R. No. 215820, Mar. 20, 2017) p. 720

— Where both the landowner and the builder, planter, or sower acted in bad faith, they shall be treated as if both of them were in good faith; whenever both the landowner and the builder/planter/sower are in good faith, the landowner is given two (2) options under Art. 448 of the Civil Code, namely: (*a*) he may appropriate the improvements for himself after reimbursing the buyer (the builder in good faith) the necessary and useful expenses under Art. 546 and 548 of the Civil Code; or

(*b*) he may sell the land to the buyer, unless its value is considerably more than that of the improvements, in which case, the buyer shall pay reasonable rent. (*Id.*)

PARRICIDE

Commission of — Parricide is committed when: (1) a person is killed; (2) the deceased is killed by the accused; (3) the deceased is the father, mother, or child, whether legitimate or illegitimate, or a legitimate other ascendants or other descendants, or the legitimate spouse of the accused. (People *vs.* Umapas *y* Crisostomo, G.R. No. 215742, Mar. 22, 2017) p. 975

PARTITION

Complaint for — A special civil action of judicial partition under Rule 69 of the Rules of Court is a judicial controversy between persons who, being co-owners or coparceners of common property, seek to secure a division or partition thereof among themselves, giving to each one of them the part corresponding to him; the object of partition is to enable those who own property as joint tenants or coparceners or tenants in common to put an end to the joint tenancy so as to vest in each a sole estate in specific property or an allotment in the lands or tenements. (Bautista *vs.* Bautista, G.R. No. 202088, Mar. 8, 2017) p. 85

— Where circumstances show that there are several co-owners of the property although it was titled to only one of their siblings, implied resulting trust existed among them and partition of the said property is in order. (*Id.*)

2000 PHILIPPINE OVERSEAS EMPLOYMENT AGENCY STANDARD EMPLOYMENT CONTRACT (POEA-SEC)

Application of — A worker brings with him possible infirmities in the course of his employment and while the employer does not insure the health of the employees, he takes the employee as found and assumes the risk of liability; however, claimants in compensation proceedings must show credible information that there is probably a relation

between the illness and the work; they cannot rely on the fact that the employer's designated physician had declared the employee fit pursuant to the pre-employment medical examination (PEME). (Doroteo [Deceased] *vs.* Philimare Incorporated, G.R. No. 184917, Mar. 13, 2017) p. 164

— The illness is required to be work-related, work-caused, or work-aggravated. (*Id.*)

Disability benefits — Non-observance of the requirement to have the conflicting assessments determined by a third doctor would mean that the assessment of the company-designated physician prevails. (TSM Shipping Phils., Inc. *vs.* Patiño, G.R. No. 210289, Mar. 20, 2017) p. 666

Permanent partial disability — A final assessment of grade 10 made before the maximum 240-day medical treatment period has expired is merely equivalent to a permanent partial disability. (TSM Shipping Phils., Inc. *vs.* Patiño, G.R. No. 210289, Mar. 20, 2017) p. 666

PLEADINGS

Filing of — Pleadings may be filed in court either personally or by registered mail; in the first case, the date of filing is the date of receipt; in the second case, the date of mailing is the date of receipt; though filing of pleadings thru a private courier is not prohibited by the Rules, it is established in jurisprudence that the date of actual receipt of pleadings by the court is deemed the date of filing of such pleadings and not the date of delivery thereof to a private letter-forwarding agency. (Bautista *vs.* Bautista, G.R. No. 202088, Mar. 8, 2017) p. 85

PROPERTY

Easement — An entitlement to the easement of right of way requires that the following requisites must be met: 1) the dominant estate is surrounded by other immovables and has no adequate outlet to a public highway (Art. 649, par. 1); 2) There is payment of proper indemnity (Art. 649, par. 1); 3) The isolation is not due to the acts

of the proprietor of the dominant estate (Art. 649, last par.); and 4) The right of way claimed is at the point least prejudicial to the servant estate; and, where the distance from the dominant estate to a public highway may be the shortest. (Sps. Williams *vs.* Zerda, G.R. No. 207146, Mar. 15, 2017) p. 491

— The criterion of least prejudice to the servant estate must prevail over the criterion of shortest distance although this is a matter of judicial appreciation; where the easement may be established on any of several tenements surrounding the dominant estate, the one where the way is shortest and will cause the least damage should be chosen; if having these two (2) circumstances do not concur in a single tenement, the way which will cause the least damage should be used, even if it will not be the shortest. (*Id.*)

PUBLIC LAND ACT

Action for reversion — A Torrens title emanating from a free patent which was secured through fraud does not become indefeasible because the patent from whence the title sprung is itself void and of no effect whatsoever; a free patent that was fraudulently acquired and the certificate of title issued pursuant to the same, may only be assailed by the government in an action for reversion, pursuant to Sec. 101 of the Public Land Act. (Yap *vs.* Rep. of the Phils., G.R. No. 199810, Mar. 15, 2017) p. 456

PUBLIC OFFICERS

Conduct prejudicial to the best interest of service — Certain acts may be considered as conduct prejudicial to the best interest of service as long as they tarnish the image and integrity of the public office and may or may not be characterized by corruption or a willful intent to violate the law or to disregard established rules. (Commission on Elections *vs.* Mamalinta, G.R. No. 226622, Mar. 14, 2017) p. 304

Dishonesty — Defined as the disposition to lie, cheat, deceive, or defraud; untrustworthiness, lack of integrity; classified in three (3) gradations, namely: serious, less serious, and simple; serious dishonesty comprises dishonest acts: (*a*) causing serious damage and grave prejudice to the government; (*b*) directly involving property, accountable forms or money for which respondent is directly accountable and the respondent shows an intent to commit material gain, graft and corruption; (*c*) exhibiting moral depravity on the part of the respondent; (*d*) involving a Civil Service examination, irregularity or fake Civil Service eligibility such as, but not limited to, impersonation, cheating and use of crib sheets; (*e*) committed several times or in various occasions; (*f*) committed with grave abuse of authority; (*g*) committed with fraud and/or falsification of official documents relating to respondent's employment; and (*h*) other analogous circumstances; a dishonest act without the attendance of any of these circumstances can only be characterized as simple dishonesty; in between the aforesaid two forms of dishonesty is less serious dishonesty which obtains when: (*a*) the dishonest act caused damage and prejudice to the government which is not so serious as to qualify as serious dishonesty; (*b*) the respondent did not take advantage of his/her position in committing the dishonest act; and (*c*) other analogous circumstances. (Office of the Ombudsman *vs.* Ps/Supt. Espina, G.R. No. 213500, Mar. 15, 2017) p. 529

Duties — Public office is a public trust and public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency, act with patriotism and justice and lead modest lives. (Office of the Ombudsman *vs.* Ps/ Supt. Espina, G.R. No. 213500, Mar. 15, 2017) p. 529

Gross neglect of duty — Defined as negligence characterized by 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 willfully 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; in contrast, simple neglect of duty is 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." (Office of the Ombudsman *vs.* Ps/Supt. Espina, G.R. No. 213500, Mar. 15, 2017) p. 529

Misconduct — Means wrongful, improper or unlawful conduct motivated by a premeditated, obstinate or intentional purpose; it is intentional wrongdoing or deliberate violation of a rule of law or standard of behavior and to constitute an administrative offense, the misconduct should relate to or be connected with the performance of the official functions and duties of a public officer. (Office of the Ombudsman *vs.* Ps/Supt. Espina, G.R. No. 213500, Mar. 15, 2017) p. 529

— Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer; to warrant dismissal from the service, the misconduct must be grave, serious, important, weighty, momentous, and not trifling; in order to differentiate gross misconduct from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule, must be manifest in the former. (Commission on Elections *vs.* Mamalinta, G.R. No. 226622, Mar. 14, 2017) p. 304

— There are two (2) types of misconduct, namely: grave misconduct and simple misconduct; in grave misconduct, as distinguished from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of an established rule must be manifest; without any of these elements, the transgression of an established rule is properly characterized as simple misconduct only. (*Id.*)

Neglect of duty — As compared to simple neglect of duty which is defined as the failure of an employee to give proper attention to a required task or to discharge a duty due to carelessness or indifference, gross neglect of duty is characterized by want of even the slightest care or by conscious indifference to the consequences, or by flagrant and palpable breach of duty. (Commission on Elections *vs.* Mamalinta, G.R. No. 226622, Mar. 14, 2017) p. 304

Negligence — Negligence is the omission to do something that a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or the doing of something which a prudent man and reasonable man could not do. (Bintudan *vs.* COA, G.R. No. 211937, Mar. 21, 2017) p. 795

QUALIFYING CIRCUMSTANCES

Abuse of superior strength — Mere superiority in numbers does not *ipso facto* indicate an abuse of superior strength. (People *vs.* Villanueva *y* Isorena *alias* "Tutoy", G.R. No. 226475, Mar. 13, 2017) p. 245

Treachery — In order for the qualifying circumstance of treachery to be appreciated, the following requisites must be shown: (1) the employment of means, method, or manner of execution would ensure the safety of the malefactor from the defensive or retaliatory acts of the victim, no opportunity being given to the latter to defend himself or to retaliate, and (2) the means, method, or manner of execution was deliberately or consciously adopted by the offender; the qualifying circumstance of treachery or *alevosia* does not even require that the perpetrator attacked his victim from behind; even a frontal attack could be treacherous when unexpected and on an unarmed victim who would be in no position to repel the attack or avoid it. (People *vs.* Bugarin, G.R. No. 224900, Mar. 15, 2017) p. 588

— Is not presumed but must be proved as conclusively as the crime itself; a finding of the existence of treachery should be based on clear and convincing evidence; such

evidence must be as conclusive as the fact of killing itself and its existence cannot be presumed; in the absence of proof beyond reasonable doubt that treachery attended the killing of the victim, the crime is homicide, not murder. (*Id.*)

— While the ability to avoid greater harm by running away may be an indicator that no treachery exists, treachery may still be appreciated where the victim was unarmed, defenseless, and unable to flee at the time of the infliction. (*Id.*)

QUASI-DELICTS

Employer's liability — An employer may be held liable for the negligence of its employees based on its responsibility under a relationship of *patria potestas*; the liability of the employer is direct and immediate; it is not conditioned upon a prior recourse against the negligent employee or a prior showing of the insolvency of that employee; the employer may only be relieved of responsibility upon a showing that it exercised the diligence of a good father of a family in the selection and supervision of its employees; once negligence of the employee is shown, the burden is on the employer to overcome the presumption of negligence on the latter's part by proving observance of the required diligence. (Our Lady of Lourdes Hospital *vs.* Sps. Capanzana, G.R. No. 189218, Mar. 22, 2017) p. 833

— Petitioner's failure to sanction the tardiness of the defendant nurses shows an utter lack of actual implementation and monitoring of compliance with the rules and ultimately of supervision over its nurses. (*Id.*)

RAPE

Commission of — Elements are: (1) that the offender had carnal knowledge of a woman; and (2) that such act was accomplished through force, threat, or intimidation; to raise the crime of simple rape to qualified rape under Art. 266-B, par. (1) of the RPC, as amended, the twin circumstances of minority of the victim and her

relationship to the offender must concur. (People *vs.* Mendoza, G.R. No. 224295, Mar. 22, 2017) p. 993

— Under Art. 335 of the RPC, the elements of Rape are: (*a*) the offender had carnal knowledge of the victim; and (*b*) said carnal knowledge was accomplished through the use of force or intimidation; or the victim was deprived of reason or otherwise unconscious; or when the victim was under twelve (12) years of age or demented. (People *vs.* Alejandro *y* Rigor, G.R. No. 225608, Mar. 13, 2017) p. 221

RECONSTITUTION OF TITLE (R.A. NO. 26)

Application of — The fact of loss or destruction of the owner's duplicate certificate of title is crucial in clothing the RTC with jurisdiction over the judicial reconstitution proceedings; the rule that when the owner's duplicate certificate of title was not actually lost or destroyed, but is in fact in the possession of another person, the reconstituted title is void because the court that rendered the order of reconstitution had no jurisdiction over the subject matter of the case. (Sebastian *vs.* Sps. Cruz, G.R. No. 220940, Mar. 20, 2017) p. 738

— The following requisites must be complied with for an order for reconstitution to be issued: (*a*) that the certificate of title had been lost or destroyed; (*b*) that the documents presented by petitioner are sufficient and proper to warrant reconstitution of the lost or destroyed certificate of title; (*c*) that the petitioner is the registered owner of the property or had an interest therein; (*d*) that the certificate of title was in force at the time it was lost and destroyed; and (*e*) that the description, area and boundaries of the property are substantially the same as those contained in the lost or destroyed certificate of title; the reconstitution of a certificate of title denotes restoration in the original form and condition of a lost or destroyed instrument attesting the title of a person to a piece of land. (*Id.*)

RECONVEYANCE

Action for — Not warranted. (Tiu *vs.* Sps. Jangas, G.R. No. 200285, Mar. 20, 2017) p. 653

RES JUDICATA

Conclusiveness of judgment — When a party seeks relief upon a cause of action different from the one asserted by him in a previous one, the judgment in the former suit is conclusive only as to such points or questions as were actually in issue or adjudicated therein; the bar on re-litigation of a matter or question extends to those questions necessarily implied in the final judgment, although no specific finding may have been made in reference thereto, and although those matters were directly referred to in the pleadings and were not actually or formally presented; if the record of the former trial shows that the judgment could not have been rendered without deciding a particular matter, it will be considered as having settled that matter as to all future actions between the parties. (Yap *vs.* Rep. of the Phils., G.R. No. 199810, Mar. 15, 2017) p. 456

SALES

Buyer in good faith — One who purchases real estate with knowledge of a defect or lack of title in his vendor cannot claim that he has acquired title thereto in good faith as against the true owner of the land or of an interest therein; and the same rule must be applied to one who has knowledge of facts which should have put him upon such inquiry and investigation as might be necessary to acquaint him with the defects in the title of his vendor; when a piece of land is in the actual possession of persons other than the seller, the buyer must be wary and should investigate the rights of those in possession; without making such inquiry, one cannot claim that he is a buyer in good faith. (Tiu *vs.* Sps. Jangas, G.R. No. 200285, Mar. 20, 2017) p. 653

Contract of — The declaration of nullity of a contract which is void *ab initio* operates to restore things to the state and condition in which they were found before the

execution thereof. (Delos Santos *vs.* Abejon, G.R. No. 215820, Mar. 20, 2017) p. 720

Contract to sell — The obligation of the seller to sell becomes demandable only upon the occurrence of the suspensive condition; payment of the full purchase price is a positive suspensive condition, failure of which is not considered a breach of the same but an occurrence that prevents the obligation of the seller to transfer title from becoming effective. (Felix Plazo Urban Poor Settlers Community Association, Inc. *vs.* Lipat, Sr., G.R. No. 182409, Mar. 20, 2017) p. 614

SHARI'A COURTS

Jurisdiction — Jurisdiction over actions for divorce is vested upon the *Shari'a* Circuit Courts, whose decisions may be appealed to the *Shari'a* District Courts. Under the Special Rules of Procedure in *Shari'a* Courts, an appeal must be made within a reglementary period of 15 days from receipt of judgment; the judgment shall become final and executory after the expiration of the period to appeal, or upon decision of the *Shari'a* District Courts on appeal from the *Shari'a* Circuit Court. (Pacasum, Sr. *vs.* Atty. Zamoranos, G.R. No. 193719, Mar. 21, 2017) p. 783

SOCIAL SECURITY ACT OF 1997 (R.A. NO. 8282)

Application of — If the act or omission penalized by the Act be committed by an association, partnership, corporation or any other institution, its managing head, directors or partners shall be liable to the penalties provided in this Act for the offense; punishable acts are considered *mala prohibita* and, thus, the defenses of good faith and lack of criminal intent are rendered immaterial. (Navarra *vs.* People, G.R. No. 224943, Mar. 20, 2017) p. 765

STARE DECISIS

Principle of — An opinion delivered by a court in relation to a hypothetical scenario which is different from the actual case before it cannot be a controlling jurisprudence to

bind the courts when it adjudicates similar cases upon the principle of *stare decisis*. (Dee *vs.* Harvest All Investment Limited, G.R. No. 224834, Mar. 15, 2017) p. 572

STATUTES

Procedural rules — May be given retroactive effect. (Dee *vs.* Harvest All Investment Limited, G.R. No. 224834, Mar. 15, 2017) p. 572

TAXATION

Bureau of Internal Revenue — Reconciliation of Listing for Enforcement (RELIEF) System is an information technology tool used by the BIR to improve tax administration. (Commissioner of Internal Revenue *vs.* Philippine Daily Inquirer, Inc., G.R. No. 213943, Mar. 22, 2017) p. 912

Dispute assessment — Sec. 229 of Presidential Decree (P.D.) No. 1158, the law in effect at the time of the disputed assessment, stated that prior resort to the administrative remedies was necessary; otherwise, the assessment would attain finality; claim for refund is a prerequisite before any resort to the courts could be made to recover the erroneously or illegally paid taxes. (Alcantara *vs.* Rep. of the Phils., G.R. No. 192536, Mar. 15, 2017) p. 394

UNLAWFUL DETAINER

Action for — An action to recover possession of real property from one who unlawfully withholds possession after the expiration or termination of his right to hold possession under any contract, express or implied; the possession of the defendant in an unlawful detainer case is originally legal but becomes illegal due to the expiration or termination of the right to possess; the sole issue for resolution in an unlawful detainer case is physical or material possession of the property involved, independent of any claim of ownership by any of the parties. (Sps. Gaela (Deceased) *vs.* Sps. Tan Tian Heang, G.R. No. 185627, Mar. 15, 2017) p. 373

— It refers to a situation where the current occupant of the property initially obtained possession lawfully; this possession only became unlawful due to the expiration of the right to possess which may be a contract, express or implied, or by mere tolerance; in an unlawful detainer action, the party seeking recovery of possession alleges that the opposing party occupied the subject property by mere tolerance, this must be alleged clearly and the acts of tolerance established. (Province of Camarines Sur *vs.* Bodega Glassware, G.R. No. 194199, Mar. 22, 2017) p. 865

— Prior physical possession by the plaintiff is not an indispensable requirement in an unlawful detainer case brought by a vendee or other person against whom the possession of any land is unlawfully withheld after the expiration or termination of a right to hold possession. (*Id.*)

— The rightful possessor in an unlawful detainer case is entitled to recover damages, which refer to rents or the reasonable compensation for the use and occupation of the premises, or fair rental value of the property and attorney's fees and costs; recoverable damages are those which the plaintiff could have sustained as a mere possessor, or those caused by the loss of the use and occupation of the property. (*Id.*)

WITNESSES

Credibility of — Findings of the trial court on the credibility of witnesses deserve great weight. (People *vs.* Umapas *y* Crisostomo, G.R. No. 215742, Mar. 22, 2017) p. 975

— The trial court's findings bearing on the credibility of witnesses on these matters are invariably binding and conclusive upon the appellate court unless of course, there is a showing that the trial court had overlooked, misapprehended or misconstrued some fact or circumstance of weight or substance, or had failed to

accord or assign such fact or circumstance its due import or significance. (People *vs.* Gabriel *y* Gajardo, G.R. No. 213390, Mar. 15, 2017) p. 516

— Upheld in the absence of ill motive. (*Id.*)

— When it comes to the issue of credibility of the victim or the prosecution witnesses, the findings of the trial courts carry great weight and respect and, generally, the appellate courts will not overturn the said findings unless the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which will alter the assailed decision or affect the result of the case. (People *vs.* Mendoza, G.R. No. 224295, Mar. 22, 2017) p. 993

— Witnesses cannot be expected to recollect with exactitude every minute detail of an event; this is especially true when the witnesses testify as to facts which transpired in rapid succession, attended by flurry and excitement. (Velasquez *vs.* People, G.R. No. 195021, Mar. 15, 2017) p. 438

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